
ICANN Transcription

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

Tuesday, 15 September 2020 at 13:00 UTC

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JULIE BISLAND:

Good morning, good afternoon, and good evening. Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group call on Tuesday the 15th of September 2020.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. And I would like to remind everyone to please state your name before speaking for recording purposes. And please keep phones and microphones on mute when not speaking to avoid background noise.

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

BRIAN BECKHAM:

Thank, Julie, and welcome, everyone. I think we have a reasonably short agenda today. You can see it there on the screen. So welcome, again. And let me ask before the formal call starts. Are there any questions about the agenda?

I know that we had a slight revision based on—if you'll recall, there's a small team looking at this. I think it's TMCH Recommendation 2. There was a small group working on that, and I think they may not have been ready to provide an update. If we have time, maybe we can check in on that later. So that was taken off our agenda—sorry, Ariel is correcting me. That's Sunrise Recommendation 2.

So any questions on the agenda or updates to statement of interest? Okay, so seeing none, let's kick off. Please, do feel free to interrupt or raise hands as usual.

Ariel, if you can help us go to Trademark Claims Final Recommendations 4 and 5. Apologies, to lean on you guys, but just to refresh my own recollection—because when I looked at this in preparation for this call, all of this text looked awfully familiar. So I just want to confirm that what we're going here is basically going through, let's say, a final pass before we get to the final consensus call to make sure that we've accurately captured the, let's say, the notes and updates from our prior calls and to make sure that this matches everyone's understanding/expectations. Is that correct?

ARIEL LIANG:

Hi, Brian. This is Ariel. Yes, your recollection is correct. This item is to basically walk through staff's completion of the action item

from previous call. There were some suggested some additional edits to these recommendations. So we just want to make sure the Working Group has the chance to look at them and provide any additional feedback. And once approved, then these texts will be final.

BRIAN BECKHAM:

Perfect, thank you. So, everyone can see on the screen— Trademark Claims Final Recommendation 5—and this went to, basically, the concept that Trademark Claims would be applicable to all TLDs except for two carve outs. Those are the Spec 13, which is .brands and those that are exempt from the registry agreement code of conduct, pursuant to Section 6 of Specification 9. So I think it's safe to say that this is not treading any new ground. That this is really just capturing at a textual level what we've already discussed and agreed as a Working Group.

I guess, really, the question is, for us here on the call, does the language that's on the screen match everyone's shared understanding? Are there any requests to massage that language a little bit, or do we look like we're on good footing to accept the edits that are on the screen?

I know this is always the tough part, the kind of going ahead in the absence of interventions. And normally we assume that, barring any interventions, people accept what's on the screen. But of course, especially as we kind of get towards the finish line, it's useful if anyone can just confirm that this what we've created.

I see that Ariel has her hand up. Ariel.

ARIEL LIANG:

Than, Brian. This is Ariel. Just to clarify what has changed. The language itself, of the recommendation, didn't change from the one we showed you in the previous meeting. What changed is the placement of this recommendation. Thanks to Susan, as she pointed out that the current status quo is these Spec 13 and Spec 9 exempt registry operators were not exempt from running the Trademark Claims Period. That's the status quo. Hence this recommendation will suggest a change to the existing policy, and that's why the placement right now is placed under Trademark Claims new policy recommendations. So that's the first change.

Then the second change is to the Public Comment Review Summary. Basically, in the first paragraph we clarified what's the current situation now. These two types of TLDs are still required to run mandatory Trademark Claims Period. And then the second paragraph at the beginning, we clarified that this recommendation is to amend the existing policy to give them the exemption. And that's basically the change—is to more or less the contextual language of this recommendation and the placement of this recommendation.

BRIAN BECKHAM:

Perfect, perfect. Thanks, Ariel. And thanks, Susan, for having flagged that previously.

I see the comment from Jeff Neuman in the chat. I think that could be a useful suggestion if others agree. I think the idea would basically be to, up at the recommendation there, put in

parentheses after Specification 13—we could just put (.brands). And then for Spec 9, section 6 it would just say (exemption from the Code of Conduct). I think that does make sense that the less people have to refer back to other documents, I personally find always useful as long as it doesn't bog things down. And that's not remotely the case here.

I think, Jeff, that's a good suggestion. Thank you. I just want to double check if anyone has any concerns about that. I don't see any hands or calls for the floor.

I'll do a final call for comments on this update to capture this suggestion from the Working Group to make a slight change to the status quo to exempt these two different categories of new registries from the 90-day period for claims. Any concerns with the concept or the language on the screen?

Thanks, Jeff, for the exact language in the chat. We can, of course, get that offline, but I think it's the suggestion to accept the parenthetical with the title of what a Spec 13 and Spec 9 registry are is well taken.

I think with that we can move on to Trademark Claims Final Recommendation #4. You can see that on the screen. That was basically—I'm paraphrasing—a small clarification that even during limited registration periods, that the registry operator would have to run the Claims Period when the TLD opens for general registration.

Let's all take minute. I don't know if it's necessary or useful for me to read the text on the screen. We can all look at it. Any concerns

about the language? Any concerns about the recommendation to maintain the status quo on this? That's the offering of a claim period once a TLD that's run a limited registration period opens for general registration.

Ariel, are there any—I see just in the context—are there any things that you think are particularly necessary to flag? Or this is pretty self-evident from what we see on the screen here.

ARIEL LIANG:

Thanks, Brian. This is Ariel. Just a quick clarification based on suggestion from Paul McGrady, I think, from last week's call. What's changed to the recommendation language is that we removed the sentence regarding the exemption language—like which TLDs are not required to run the monetary claims period. That's the crossed sentence in the first paragraph, because the recommendation that you just reviewed earlier already addressed this point. So there's no need to mention this here.

And then, definitely the second paragraph—that's basically what the Working Group reviewed last week. And there's no change to that language.

And the other minor change is the contextual language. At the end of the first paragraph, we clarify what the status quo refers to. And this recommendation is referring to the minimum initial 90-day of Claims period when the TLD opens for general registration. So we just want to make it very clear that this is the status quo we're referring to in this recommendation.

And there's no other—oh, yes. Basically, in the contextual language, we also removed the paragraphs related to the exemption language about the two types of TLDs because this information already repeated in the previous recommendation. So no need to mention this here. And that's consistent with the change to the recommendation itself. So we're not talking about the exemption of the types of TLDs in this recommendation.

So these are the changes.

BRIAN BECKHAM:

Okay, perfect. Thanks so much.

Just doing a double check if there are any calls for the floor. I don't see any hands raised. I don't see any comments in the chat. Again, this was taking away the language regarding Spec 13 and Spec 9 because that was in the Recommendation 5 that we just covered, and then clarification both at the level of the? recommendation and in the context as to what the status quo is.

Ariel, I apologize again for leaning so heavily on you all here. The next items was the TMCH final recommendations, if I'm not mistaken.

ARIEL LIANG:

This is Ariel. Yes, Brian. But perhaps before we move on, I just want to quickly note that there are a couple of additional minor edits based on the other two recommendations that the Working Group agreed on in last week's call. I just want to quickly show the redlines so the Working Groups knows that we have adopted the

suggestions and revised the recommendations accordingly. But they're super minor.

BRIAN BECKHAM: Okay, so let's just have a look at this. This was for Sunrise Implementation Guidance.

ARIEL LIANG: Perhaps I can just provide a quick background to refresh folks' memory while we make this redline.

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

ARIEL LIANG: Thanks, Brian. So this is the Implementation Guidance related to a potential wording change of the AGB and related to the Sunrise Dispute Resolution Policy.

What you're seeing on the screen, the redline, is a suggestion from Phil because we started the second paragraph originally as what the SDRP is not intended to do. So his suggestion is to perhaps start it with what SDRP is intended to do. So that's why we inserted this phrase just saying, "SDRP allows challenges to Sunrise registrations related to Registry Operator's allocation and registration policies..."

So we just added that and made it probably smoother and more logical to start a sentence with a positive, and then after that

saying that it is not intended to do blah, blah, blah—so retain the previous sentence. So that's the only minor change to this recommendation.

BRIAN BECKHAM:

All right, thank you. And if I recall, the latter part of that sentence was because there was a separate process at the TMCH that the trademark record itself could be challenged.

So I'm just doing a quick glance at the chat and at the list of participants. I'm not seeing any comments or requests for the floor.

Ariel, where does that take us in terms of going through the TMCH Final Recommendations—again, as we've done with numbers 4 and 5 for the claims, going through just to make sure the final languages agree? If I recall—just prior to the call, having a quick glance and this—there were no changes made to the language itself?

ARIEL LIANG:

Thanks, Brian. Yes. There are no changes.

But, sorry, there is one more minor thing I just want to mention about last week's action item completion. It's related to another Sunrise Recommendation. I think Kathy, in her comment, asked staff to provide a footnote to explain what Spec 13 and Spec 9 is about. So we provided a footnote to explain what they are in this particular Sunrise Recommendation.

I guess that's also similar to what Jeff Neuman is mentioning in the chat. Because we already provided explanation to these two specifications in these footnotes, perhaps in other recommendations when these two things are referenced we can just say, "Please see footnote of Sunrise Rec #-something," so that we don't keep repeating these explanations. Hopefully, that will be sufficient.

BRIAN BECKHAM:

Yes. Perfectly, perfectly clear. Thanks for capturing the suggestion from Kathy and the footnotes. It's always useful to refer people to the exact language of these types of things.

I don't see any requests for the floor in the chat. I think that should prove terribly uncontroversial to add that footnote providing the links to the Spec 13 and Spec 9 definitions.

This, on the screen here, Ariel, this is—apologies, again, to rely on you so much—but this is going through and doing a final pass of our prior conversations, and so the changes we see on the screen were agreed in a prior call.

ARIEL LIANG:

Sorry, this is Ariel, Brian. This is actually a new item for the Working Group, to do a review of the suggested final recommendation of TMCH, and also there's a TM-PDRP. And these suggested changes were discussed in previous Working Group meetings. And that's why we're showing you the redline. That's what the Working Group agreements were. But you haven't got a chance to see how it looks in the actual language, so that's

why we're doing this pass today—to review the TMCH Final Recommendation. And then there's a TM-PDDRP one.

BRIAN BECKHAM: Okay, perfect. So in other words, we've discussed the concepts but have not seen the particular language.

ARIEL LIANG: Yes, correct.

BRIAN BECKHAM: Okay. Thanks, Ariel. Everyone, if we can just go through this together maybe to look at the changes that are on the screen.

We can all see, then, "Whether, where a Trademark contains dictionary term(s), the Sunrise and Trademark Claims RPMs should be (and we'll see the changed language) changed such as to be limited in their scope to be applicable..."—it looks like a little bit of wordsmithing—"to be applicable only in those gTLDs that pertain to the categories of goods and services for which the dictionary term(s) within that trademark are protected."

So that was basically a question that we had asked ourselves. So this is just some wordsmithing on what we had discussed. And, of course, we came to the conclusion not to make changes to make those types of limitations. So that corresponds to the deleting of the word "preliminary" there to say that the recommendation is that the status quo would be maintained.

So, any questions or thoughts on the particular textual changes that are on the screen there? And of course, the final parts in the box there about the review of public comments is stricken, as it's no longer valid since we've moved on from the public comments.

Okay. Not seeing any hands raised or any comments in the chat, so I take that that people are comfortable to the minor to the language there that match our conversations.

Thanks for scrolling us to the next change, Ariel.

ARIEL LIANG: Brian, this is Ariel. If easier, maybe staff can just provide a quick recap about the contextual language of what has changed there.

BRIAN BECKHAM: That would be good, thank you.

ARIEL LIANG: Thanks, Brian. So for the contextual language, as previous recommendations, we pulled the language in the initial report and repeated them here. So, definitely no substantive changes to some of the parts of the contextual language. So I can probably just let you know that for the TM +50—this section—definitely no substantive changes. And it's extremely similar to what we had in the initial report.

For the Exact Match section, it's also pretty much the same as what we had in the initial report.

And the only changes that we had here is related to the third paragraph. So what is different is basically the title of this section called, "Scope of Applicability of the Sunrise & Claims RPMs to specific gTLDs for trademarks containing dictionary term(s)."

Before, we had the word "limiting" here, so it seems a little inconsistent with how the other sections are. It's basically just saying what's this category of things we're talking about here, but not suggesting any changes. The title changed slightly.

And then we added—this first paragraph under the section is to clarify what the current status quo is. So basically saying the current status quo is that the Sunrise Claims are not limited, in the sense that trademark owners—so these RPMs are available to trademark owners that contain—trademarks that contain dictionary terms regardless whether the gTLDs are related or unrelated to the categories of goods and services.

So we just added this paragraph to clarify what the status quo is, and then it will kind of flow better to explain that this recommendation is not to change the status quo.

So basically, the third section is slightly revised compared to what we had in the initial report. And then we added this Public Comment Review section to say that this change stems from public comment suggestions that we clarify what the status quo is in the recommendations. So that's why we have made these slight amendments.

BRIAN BECKHAM:

Thank you so much. I think we should all take a minute to just— [and as you say,] this just captures the status quo in our conversations. Maybe it's worth us taking a moment, since we're on the call here and have it on screen, to read it together.

Are there any questions or any comments, any concerns, with the language that's on the screen here? Again, this is just to say that there was a discussion around potentially limiting the trademark claims to certain types of terms corresponding to the TLD, but that there was no agreement in working group on that.

Okay, not seeing any hands raised or any comments in the chat. That takes us to what I think is our final item for today. That was regarding the Trademark Post-Delegation Dispute Resolution Procedure. There was a recommendation that—you can see it there on the screen—really goes to the concept of joinder or consolidation.

I remember there were some conversations around the idea that, at least—and I loathe to do this, but maybe just to be on the safe side—kind of taking my co-chair hat off and saying that having been involved with the creation of the PDDRP (and as one of the providers), our sense was that this effectively captures, at a textual level, a legal concept that's already permitted in the PDDRP, namely consolidation or joinder.

So this suggestion and, indeed the recommendation of the Working Group, was simply to codify that through our reports here. So, again, this is really nothing that's not been discussed. In fact, this was one of our first items that we looked at many, many

years back. And from memory, it was pretty uncontroversial—the concept of joinder or consolidation.

Just doing a quick review of the chat and the list of participants. I don't see any hands raised or comments in the chat. I'm just pausing for a moment to see if there any concerns about this. Again, this really is nothing new. We're really just, you might say, covering all of our bases here and making sure our final pass, that the language here is copacetic for everyone.

Ariel?

ARIEL LIANG:

Thanks, Brian. This is Ariel. Just to clarify that this TM-PDRP recommendation has gone through no change after public comments. So this is what we put in the initial report and what you're seeing now is exactly the same language.

And very quickly about the contextual language, essentially there's also no change to the contextual language from the one we had in the initial change. There's only one minor thing. I want to note that we removed a sentence at the very end of this paragraph I'm highlighting here.

So in the initial report, we had the sentence that it also concluded that at this stage, there was insufficient agreement to make substantive changes to the TM-PDDRP because we know that there is a small group that's working on a potential recommendation that may have impact to the TM-PDDRP, so we removed it now. But, of course, that's pending the Working Group's agreement whether that small group's recommendation

will be included. So if it's not going to be included, then we will put that sentence back.

So I just wanted to quickly note that. Definitely no other changes to the contextual language to this recommendation.

Then in the Public Comment Review section, we noted that public comment hasn't raised any new ideas/suggestions as for now and did not receive opposition from public comment that the Working Group hasn't considered. That's why this recommendation maintains as is.

And we included another paragraph here to recognize that there's one public comment, I believe, from ICANN org's feedback saying, "This recommendation may impose additional costs and resource burden on providers," but the Working Group agreement is that this concern may be misplaced. So we just summarized this particular feedback. So that's all they had for this recommendation.

BRIAN BECKHAM:

Thanks, everyone. I was thinking the same thing, Phil. There's a comment in the chat about the suggestion about the potential changes to the PDDRP. And, in fact, I think the agreement of that small group and of the Working Group was that, in fact, the proposal which was being led by a small group—led by Paul McGrady—was in fact looking at the Sunrise Recommendation, too, not the PDDRP itself, although it could have some potential impact there.

And I would just say to the final comment from ICANN org about potential cost on providers, I don't know if it's necessary. I would have to go back and look at both our—as WIPO—Supplemental Rules and other providers. But I would imagine that that type of joint complaint situation would be covered in supplemental rules to the extent it involves additional time or fees or things of that nature. I don't know if it's necessary to capture that here—the idea that that's covered in Provider Supplemental Rules.

Any questions or last thoughts on the consolidation joinder recommendation going back to the early days of this Working Group? I'm not seeing any hands raised. I'm not seeing any comments in the chat to that effect. I take that we can leave this recommendation intact, potentially with that one small footnote, if it's useful. I don't know.

For example, Ariel, we could provide a link to Provider Supplemental Rules to the extent it's useful regarding the comment from ICANN org about burden or cost for providers.

I see there's a question from Paul Tattersfield in the chat. It says, "AOB question—we may have a solution for ALP in the small group. Do we still have more time to bring this forward?"

Can I ask if that relates to—? I know on some prior calls you had mentioned the comments from CORE, for example, on these ALPs. If the comment is relating to that, I'd like to suggest that we've sufficiently covered that and captured those comments. And we can probably leave that behind.

I don't know if it's useful to—I'm sorry to put anyone on the spot—if it's useful to call on Paul McGrady to see if there's any update on... For example, can we expect to have something in front of the Working Group for the next call on Thursday with regards to the Recommendation #2?

PAUL MCGRADY:

Sure, Brian. This is Paul McGrady. No problem at all being called on. We're sort of in a weird spot where we do have a working language that we're considering taking back to the Working Group. And it seems to have support of most, but we have a team member who is supporting bringing it back to the Working Group but not supporting it substantively.

I've never encountered that before, and I've always sort of viewed the small team efforts and various PDPs as meaning that a small group gets together and comes back with something that the small team supports and, hopefully, the Working Group can then chew.

So as the informal quasi chair of this small team, I really don't know what to do with that. So I'm hoping that the three big-time co-chairs can give some direction. What are you guys expecting for the small team? Does it have to be unanimous? Could it be that everybody supports bringing it to you but doesn't support the concept? What's the threshold that you guys are looking for? I don't want to waste anybody's time. Any guidance you could give us would be greatly appreciated. Thank you.

BRIAN BECKHAM:

Thank you, Paul. Brian Beckham, again, for the record. I know Phil and Kathy are here so, please, do speak up. I would say, for myself, probably if there's full agreement in a small team to bring something to the full Working Group, obviously that's great. To the extent there's—as I think you were kind of saying, I'm paraphrasing—a majority with maybe one concern, then I would suggest both generally, and also noting that we're coming up on the eleventh hour here, maybe the best thing to do is simply to bring it back to the Working Group and say, "This is concept or the text," or whatever it is, "that the small team has coalesced around. There's concern from one member. "

I don't know if it's useful to identify that person or concern, but basically to get whatever the current status is in front of us because if you will, the small team is, let's say, a microcosm of the full Working Group, and so any concerns that are raised from a member of a small team would, I think it's safe to say, be raised in the full Working Group.

In other words, I don't see a need to—and again, I'm just kind of ad libbing here. Unless you feel that there's reasonable prospect that the small group could come to an unanimous agreement on something just to get whatever the status of that small team work is in front of the full Working Group. And then the full Working Group can discuss it. And whatever the agreement is, then that's where it lands on the full Working Group's side.

Let me know if Phil or Kathy have anything to add to that. I see Kathy's hand up. Kathy?

KATHYRN KLEIMAN: Yeah. Thanks, Brian. Hi, everyone. Kathy Kleiman. I think it's the same thing with this room. I think this is Rec 2, right? I want to call it Paul's group, but I know it's not Paul's group. This group and the ALP group. To quote my father, it's time to fish or cut bait. I agree with you. We have to move forward now, so language should circle back. And it will have a high bar as we as we evaluate it in the Working Group, but if there is language to bring back it should come back now. Thanks.

BRIAN BECKHAM: Yeah, I think that's probably a very apt expression, Kathy. Phil?

PHILIP CORWIN: Yeah, thank you. Phil for the record. My view as a co-chair is that when any one individual or group of individuals of the Working Group have something they want to air with the Working Group, it's up to them when it's ready for Working Group consideration. There's no unanimity requirement; it's really up to the group of individuals.

My only caveat would be that it be forwarded to the Working Group list at least 24 hours before the meeting at which it's going to be discussed so that members have time to consider it and to raise any clarifying questions before we get into oral discussion.

But given the timeline, sooner would be better. But it's up to the group when they're ready to bring it back and air it with the full group and see if it gets requisite support. Thank you.

BRIAN BECKHAM: Thanks, Phil and Kathy. I don't know—Paul, does that sufficiently give you guidance? I see the comment in the chat—"Thanks. This is all very helpful."

So we'll take that as the small group can do its work in the background, of course mindful that we have a call on Thursday. So if it's possible for that small group to share something still today or tomorrow, that would be obviously ideal for the full Working Group to discuss.

Regarding the ALP, maybe I'm a little fuzzy. Apologies. I wasn't aware that there was a small group working on something. I thought we had covered, on a number of call in fact, the CORE comments and the question about, let's say, the path to approval of the ALPs and LRP—and I think there was another acronym, QLP maybe. We had well noted that there was some frustration from registry operators that had found workarounds. And there was even an agreement to kind of suggest that that process be streamlined for future applicants.

Kathy, I don't know if that's a new hand or old, so maybe if it's possible to call on staff, maybe, to see what the recollection on this ALP concept was. And then see if, Kathy, if you have anything to add.

Julie?

KATHRYN KLEIMAN: I was just going to say, Brian, the other Paul in our group—Paul Tattersfield—may have an update for you on that.

BRIAN BECKHAM: Yeah, and again, maybe if it's okay if we can call on staff because I seem to recall on a number of calls, actually, that we had covered this concept. Maybe I'm completely glossing over something, but I wasn't aware there was work going on in the background and, in fact, I thought that the concept had already been put behind us.

But I see Julie has her hand up.

JULIE HEDLUND: Hi. Thank you. This is Julie Hedlund from staff. There was a meeting of the small team. It was a short meeting because during that meeting, none of the members of the small team had any recommendations to make relating to the question on ALP. There's no recommendation as such.

But we recognized that Susan Payne was out of the office, so we waited until she returned to see if she had anything that she wanted to bring up. But she did not have any recommendation text. Then Paul Tattersfield had raised some suggested text among the small team. Susan Payne registered concerns about that text, and we have not had any other support from other small team members on that text.

But Paul T. is indicating in the chat here that there is alternative text. Staff has not seen that circulated among the small team members. And I think Susan is indicating, also, that she hasn't seen it. So it's unclear whether or not that text would get support among the small team members. But Paul is indicating that some

text will be brought forward before the next call. Whether or not that text has support in the small team remains to be seen since we have not seen it—I'm sorry, the small team has not seen it. Thank you very much.

BRIAN BECKHAM:

Thanks, Julie. Is it possible for someone—maybe staff or even Paul T. or Susan—to refresh (and apologies if I'm the only one) my memory on what exactly that ALP small team was looking at? Was there a recommendation that needing massaging based on public comments? Was there an individual proposal that was going to be agreed to be morphed into a recommendation based on public comments? Was this merely recognizing, as we've done on a number of calls, that there were comments from CORE saying that they found the process to be inefficient and we have noted that and suggested that be streamlined in the future?

I guess, in other words, I'm a little bit lost what the small team is working on and what's going to be presented to the full working group.

Is anyone—Susan, staff, or Paul T.—able to answer that question?

Julie, please. And then Susan.

JULIE HEDLUND:

Actually, maybe I will go ahead and cede to Susan. And staff can try to bring up the Google doc that we had circulated with the small team that included the question related to ALP. There was a

question, not a recommendation. And the public comments on the question, I think, were not definitive as far as suggesting a recommendation. And a small team was asked then to look into whether or not there could be a recommendation. But I'll stop and maybe we can go to Susan. Thank you.

BRIAN BECKHAM:

Thanks, Julie. And I see that there's Susan and Kathy. And I'm sorry to be a bit pushy here—but Paul and others in the small group—we've recently had a call where we were going through the need to submit a project change request to the council. There was a question whether we needed to do that, and really we don't have the luxury of time to sort of look into things if there's not going to be a recommendation forthcoming. I'm not aware that that's the case, but if I'm wrong I'm certainly happy to be corrected.

So, I had Susan. I see Kathy's had has gone down. And then Paul and Maxim. Susan?

SUSAN PAYNE:

Thanks, Brian. Look, I only put my hand up because you were calling for people to do so, and no one was. So I won't speak very long. I'll cede to Paul Tattersfield because he is the one who's trying to push this forward. I don't mean that in a derogatory way, but he is the one who's very concerned to try and find a solution here.

My understanding and my recollection is that we came to the feeling that perhaps we might be able to come up with a

recommendation which was a response to some questions that we'd asked. When we put the questions out in our initial report, there were a number of questions that elicited responses, but were all basically problems with the ALP which were, essentially...

I think the responses were certainly from CORE. I don't recall if there were other people as well who put in similar comments. Certainly, CORE had issues.

But I'm not aware of us having come up with any proposed solution. I agree that Paul had suggested some language, but I don't believe personally that it was addressing the problem that needed to be addressed. And in fact, Maxim has now queried that, with some of the registry operators including from CORE. And they've agreed that, in fact, the proposal from Paul—well-meaning as it is—is not addressing the problem.

And I think the problem we have, as agreed, is that we don't have anyone who is seeking ALPs, who is working in this Working Group and coming up with suggestions of improvements that they could suggest as a result of their learning. I think that's one of our biggest problems. We don't have anyone really participating in this Working Group who's been making suggestions of what could be done better.

But I'll shut up now and let Paul speak.

BRIAN BECKHAM:

Thank you, Susan. I was kind of joking with Jeff Neuman, but I think this almost feels like more of a topic for SubPro. Look, I think

at this point, unless we have a recommendation forthcoming imminently, we need to put this behind us.

I have Paul, Maxim, and Kathy. Paul, please.

PAUL TATTERSFIELD: Thanks. We've had two or three approaches. It had to be—it's a bit rushed because we've had a very short time scale and people from different parts of the world. And we've had some pretty good input into it, and I think we've got a solution now. We haven't brought it to the Working Group because we've been trying to get it resolved amongst ourselves.

I think if we can get the ICANN staff to provide the right information and the rationale as to why they're rejecting these schemes—and making sure that it gives sufficient depth so that the applicants can understand why these schemes have been rejected—then I think perhaps we can do something on it. I think it is possible. But we're hoping to bring that to [inaudible] in the next couple of days or so, so it should easily be ready for the next meeting.

One way is perhaps to look at the approved launch program application review guidelines and extend it in there. But I won't waste everybody's time now, and we'll try and bring something forward to the small group. If they're happy with it, we'll bring it forward to the Working Group. If not, then we'll just have to say that we didn't have sufficient input from the registry operators to help us move this forward. Thank you.

BRIAN BECKHAM: Thanks, Paul. Maxim.

MAXIM ALZOBA: Maxim Alzoba for the record. I'd like to correct Susan. First of all, only GEOs need ALPs. And given the really, really limited numbers of GEO applications in that round, there aren't many registries who actually investigated that.

The second thing, it was [said.] I used to deliver this at least a few times. In Moscow, Moskva, we decided not to use ALP for the reasons of totally nontransparent explanation of how the decisions are going to be made, no limits in time, and we decided that it's not feasible to be stuck for years paying invoices and having no certainty. So it's not that members who were eligible, formally, to ask for ALP haven't delivered the information.

The second thing—suggestion: if nothing changes, the ALP process is just non-usable. The only applicant who had enough resources to have the luxury of waiting for a year or so was CORE. It was the only organization which could sustain these periods of waiting.

And thus, I would suggest waiting for the delivery of the text from the small group. It's 24 hours. I don't think we die because of allowing them to deliver the text. Thanks—all the information required, I pass to the small group. Thanks.

BRIAN BECKHAM: Okay, perfect. Thanks, Maxim. So look, I think at this point, I'm going to make a suggestion and then call on Kathy and see where

we go. I think at this point, first of all we have ALPs; we have QLPs; we have LRPs. Registries have different possibilities for launch programs, in other words. We have one anecdotal comment from CORE group that they've had an issue with one of those. We don't have a recommendation.

Frankly, I think, at this point the moment has passed to address this. By the way, I'm not aware of a representative of CORE being on this Working Group. So in other words, I think we've landed too far afield in theoretical territory. This isn't even coming from an individual proposal or a Working Group recommendation that was put out for public comment. This was merely a question that we got one anecdotal response on.

I appreciate the desire of Paul and others to try and bring this to some sort of recommendation. But I think, with respect, the moment for that has passed. We're at the end of our timeline here, so I'm going to see if there's any concerns with that approach. In other words, I think we need to put this behind us. If we need to discuss that procedurally, I'm happy to do that. We can take feedback from the Working Group offline with the co-chairs and staff and council liaison.

Kathy?

KATHRYN KLEIMAN:

I wish you had called on me first. I was going to say—and I've written it down, so I have notes—is that I think we have two Pauls in parallel universes. They are doing similar things. There has

been a lot of language, I understand, in circulation—including circulated to us, Brian—although not the Working Group.

As Paul Tattersfield and Maxim and the small group are trying to work hard on the same kind of deadline we put Paul McGrady and his group on, the fact that [the mechanism we] created was largely unusable first round, to me remains a problem. And if something can fix it, even if it's not huge—we certainly put out a lot of requests on this and got some. And we've gotten some over the years, as you remember [Amadeu?] has joined us.

I think time, I think language may be an issue as we circulate language on this because we're dealing with GEOs and others. So the time to parse and review language may be a little longer.

I recommend we treat both of these where we're telling everybody to fish or cut bait. So let's see what we get back in 24 hours so that we can talk about this on Thursday. That's what I was going to say when I raised my hand. Thanks.

BRIAN BECKHAM:

Thanks, Kathy. I think the only issue I have with that analogy is that I wasn't even aware that we were pulling up to the lake to go fishing on the ALPs.

KATHRYN KLEIMAN:

There may have been something. I remember being circulated on some draft language coming out of what I thought was a small group. But it may be parts of the small group. So I've seen something—and Maxim just raised his hand, I think. So I'm [I've

seen something,] Brian, but I know there's a lot of email crossing and I'm not sure who was CC'd on everything. But I see the work going on in the background, so thanks.

BRIAN BECKHAM:

Thanks, Kathy. I think Maxim's hand has gone down.

And, again, I think this is something we need to take back to a call with the co-chairs and staff and the council liaison. From my perspective, again, I see a fundamental difference in that this is coming from one of the question as opposed to a recommendation or an individual proposal and wasn't aware that there was a small team working on this.

So I think that this is really in different territory than the small group that Paul McGrady's been leading, because that comes squarely from the recommendation and proposal territory.

Let me see if there are any concerns with that approach. I think, in other words, we have the kind of procedural understanding that we would need to take this conversation offline from a leadership perspective and come back to the Working Group with a more definitive way forward. Any last feedback on that?

KATHRYN KLEIMAN:

Yes. Brian, in the interim, given the timing—and given that these extensive, extensive questions for Sunrise #3 and #4 were based on our findings that there were problems in this—shouldn't we be encouraging that final language to come through because we are at the end. We're racing towards the finish gate here. There is

something that the small group which does exist has been working on. Shouldn't they get it to us as quickly as possible?

BRIAN BECKHAM:

Sure. I think, Kathy, that's a question that maybe we take offline. I think we could debate this a lot here. Mainly I'm mindful of the fact that we had a robust discussion about the need for project change requests. Whether asking for additional time would really just sort of give additional room to have conversations that we've had previously—I feel this certainly lands in that territory.

As Julie was recalling for us in the chat, there wasn't a recommendation. This was just a question, so from my perspective this is fundamentally different from an individual proposal or a Working Group recommendation where we sought public comments to help smooth off some of the rough edges. This was a question where—to kind of take the fishing analogy in another direction—you could almost say it was a bit of a fishing expedition to look for anecdotes and experiences.

I don't mean that in a derogatory way. But in other words, we had an information gap. We put out surveys for claims and registrants, and asked registries and registrars for their feedback. So I think, again, from my perspective, the moment has passed for this. This is not, again, something where we've had an individual proposal or recommendation.

In other words, with the recommendation to Paul McGrady's small team, they're much further down the board. And here, it feels like we're kind of still on the starting blocks. And I think, frankly, we

don' t have the time to coalesce around this. I understand from some of the chat that there's not even a recommendation coming out of this small team effort. There's not text. There's nothing to put in front of the Working Group, so it feels to me that it's procedurally out of order.

I think the best we can do at this point is discuss this amongst the leadership with the staff and the council liaison and see where to go from there. I know that puts Paul Tattersfield and other people—I don't know who's working on that effort—in a bit of chicken and egg scenario. I guess I would only say, if they feel strongly about this, there's certainly nothing stopping anyone from working on their own time in the background on this. From a Working Group perspective, however, I think this is not timely.

I think that wraps up our formal agenda for today. Are there any other questions on any of the things that we've discussed today and final comments on the way forward with this ALP, with the project change request? Any last guidance from staff on our next Working Group call?

Julie?

JULIE HEDLUND:

Thank you, Brian. This is Julie Hedlund from staff. Just a note, then, that for the next call, we'll shift to looking at the URS final recommendations. And staff is finalizing capturing the discussions from the Working Group—the deliberations on the public comments to finalize the changes of any of those recommendations. We'll have that out with the agenda shortly.

We also had shifted the Small Team 2 agenda item, which was Sunrise question #2, to the agenda for Thursday as well. And I know that Paul McGrady is working on looking to the small team members for support of some language that we'll then have in front of the Working Group before next Thursday's meeting.

BRIAN BECKHAM:

Okay, thanks, Julie. Just a last pass for hand or chat comments and not seeing any. With that, I think we can end our call for today. Always good to end early. So we'll see everyone on Thursday, and we look forward to your participation. Thank you.

[END OF TRANSCRIPTION]