
**ICANN Transcription
RPM Sub Group B
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JULIE BISLAND: Well, good morning, good afternoon, and good evening. Welcome to the RPM Subgroup B call on Thursday the 2nd of July, 2020. In the interest of time, there will be no rollcall. Attendance will be taken by the Zoom room.

And I would like 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.

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

PAUL MCGRADY: Thank you. I'm trying to decide whether or not the phone ringing as Julie was reminding us all to mute our phones was a clever attention grab from staff or just a really hilarious coincidence. But anyways, it gave me a good chuckle.

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Welcome, everybody. You've chosen to spend some time on this call today. It's a great choice. We're going to have a great call. We're going to get lots done.

So, to begin, we will review the agenda. But first, can you please raise your hand if you have any update to your statement of interest? All right. Seeing no hands, let me quickly review the agenda.

First, we'll have a wrap-up summary from the last call. Ariel will take that. And then, we will jump into today's work, which is looking at Recommendation 7, Recommendation 8, question five, and Recommendation 9, time permitting.

And then, we will handle any other business. I don't know of any other business. Does anyone have any other business? All right. Seeing no hands, I will not save any time at the end for any other business, unless something comes up in the meantime. So, Ariel, can you give us the wrap-up from last week?

ARIEL LIANG:

Sure. Thanks, Paul. So, last week the subgroup reviewed URS recommendations five, six, and questions three and four. The conclusion for Recommendation 5 is to maintain the language as-is, but the subgroup has flagged several comments, especially INTA's, CPH's, and ICANN's comments for the full working group to further consider it and also consider whether any implementation guidance can be developed through these comments.

And then, regarding the URS question three, it has an open action item for David McAuley to follow up with CPH and seek clarification on their public comment.

And based on some correspondence David provided to staff, we know that he is in touch with Maxim, as Maxim is the source of the CPH comment. So perhaps, after I wrap-up this wrap-up session, if David has any update regarding this action item, David can please feel free to comment in the subgroup.

And then, next is the Recommendation 6. The conclusion from the subgroup is also to maintain the language as-is, but let the working group consider possible revision to the implementation guidance in order to provide some further flexibility for the IRT to decide on specific implementation issues.

And there are also several other public comments that were flagged by the subgroup. They're from CPH, WIPO, and [FORUM]. And another thing the subgroup recommended is that the working group consider public comments for Q4, together with the Recommendation 6, across the board, as some of the comments from Q4 can, perhaps, inform the implementation guidance for this recommendation.

And the final one is Q4. So, it's kind of similar as what I just mentioned for Recommendation 6. It's that some of the comments for this question can inform the implementation guidance for Recommendation 6, and the subgroup is inviting the working group to review the entire public comment for this question. So, that's basically the wrap-up.

PAUL MCGRADY: Thanks, Ariel. I see from the chat that David McAuley can briefly speak to the issue he was going to track down for us. David, do you want to do that?

DAVID MCAULEY: Sure. Thank you, Paul. Hi, everybody. So, when I took off that assignment, I did write to the small team that had drafted the Registries Stakeholder Group comments for the CPH group, and was informed that the area—I forget exactly how to specify it—that we're interested in was Maxim Alzoba's.

So I wrote, then, subsequently, to Maxim, and I didn't hear back. And so again, this morning, I sent a nudging reminder to Maxim. So, I don't have an update, but I am in the process of tracking it down. Sorry that I don't have anything yet. Thank you.

PAUL MCGRADY: Thank you, David. Thank you, Ariel. Okay. So, with that done, let's dive into today's work. So, we're going to put up, here, on the screen ... And I hope ... There we go. All right. This is our Recommendation 7. I'll give the recommendation a quick read, and then we'll do what we always do.

We'll take a queue on whether or not this should be passed along to the main working group as-is, or if there are any new thoughts/ideas/arguments that came out of the public comment period, or if we should pass it along as something that didn't make it. Okay. Here we go.

So, Recommendation 7: “The working group recommends that all URS providers require their examiners to document their rationale in sufficient detail to explain how the decision was reached in all issue determinations.”

“As an implementation guidance, the working group also recommends the URS providers provide their examiners a uniform set of basic guidance for documenting their rationale for determination.”

“The purpose of the guidance is to ensure consistency and precision in terminology and format, as well as ensure that all steps in a proceeding are recording. Such guidance may take the form of an administrative checklist or template of minimum elements that need to be included for a determination.” And I note that it says “such guidance may,” not “such guidance must,” so I read, at least, that last sentence as somewhat flexible.

So, stepping back and looking at the Bundt cake, it looks like we have—and again, numbers don’t drive everything, but it’s certainly worth taking note of—67.3% support as written, 10%, almost 11%, supporting the concept, 1.8% needing a significant change to support it, no opinion, no response.

And so, it’s a rare Bundt cake where we see no red. And so, I will open a queue, if anybody has something they’d like to say about this one generally. And if we don’t get hands, then we’ll dig here into the comment highlights. I see a hand from David McAuley. David, please go ahead.

DAVID MCAULEY:

Thank you, Paul. Hi, again, everyone. What I would suggest is, because “sufficient details” is somewhat opaque, and on reading through the comments, it strikes me that we may want to consider asking the full group to, maybe, pursue a hybrid approach where they would ask the implementation team to make it obligatory that the examiner comment on the elements of the conduct that it takes to result in a rapid suspension.

The three elements are, basically, that the domain name is identical or confusingly similar to the mark. The second is that the registrant has no legitimate right or interest. And then, the third is that they registered, and are using it, in bad faith.

It seems to me that an examiner should comment on the elements. And then, maybe, the other part of the implementation guidance would be, why not create a brief model that examiners can use if they wish? Not make it obligatory, because it is a low-cost procedure. We don’t want to have too many burdens. Anyway, that’s what struck me on reading the two green sets of comments. Thank you.

PAUL MCGRADY:

Thank you, David. Any other comments on this one? Any reaction to what David suggests? So, from my point of view, what David is suggesting is, essentially, making the language in the recommendation itself more tight. Because when I read it, I thought that that would require the examiner to list out those elements, right?

You can't base a determination without saying how you're dealing with the elements of the URS, one way or the other. But if that language needs some tightening, we can certainly capture that for the working group. Any other comments on this one? Okay. All right.

Should I read through the comment highlights, or do we think David has done a good job of zeroing in on the primary issues? I don't want to belabor a recommendation if it does not need to be belabored. Can I get some response back in the chat? Move on to the next one, or read through?

KATHY KLEIMAN: Paul, I've got my hand raised.

PAUL MCGRADY: Oh, I'm sorry, Kathy. Hold on a second. I'm sorry, Kathy. I didn't see that pop up. Kathy, please go ahead.

KATHY KLEIMAN: In response to your query I think, in looking at the chat, it looks like ... Well, now I'm reading Rebecca's. It looks like there's a real convergence on what David McAuley said about making sure that the examiner comments on the elements of the conduct, or, as Rebecca would call it, "the relevant facts."

So, I think there is generally support for that clarification and moving that forward, and moving this all of this forward, to the working group. I don't think we have to read more details, but that's just me. Thanks, Paul.

PAUL MCGRADY:

Thank you, Kathy. So, yeah, I think that that makes sense. And so, perhaps staff can help us to capture that, that by saying that “rationale is sufficient,” that means that we need to have the relevant facts spelled out and have the elements each addressed, and that’s what any well-written decision should have.

So, if staff could capture that? Last call to object to staff capturing that. Last call to move onto the next one. Any hands? Terrific. I kind of feel like this one was once in a lifetime. All right. Let’s move on. Thank you, everybody.

Next up is Recommendation 8. I’ll just give it a read. “The working group recommends that the Implementation Review Team consider reviewing the implementation issues with respect to the Registry Requirement 10 in the URS High-Level Technical Requirements for Registries and Registrars, and amend the Registry Requirement 10 if needed.”

“The provider sub-team discovered issues with respect to implementing the outcomes of a URS proceeding. For example, relief awarded following the URS decision, or where the party settled the case prior to determination, or where a complainant requests to extend a suspension.”

Okay. So, looking here at the Bundt cake, we have 52% support as written, almost-not-quite-2% support the concept, another almost-not-quite-2% are requesting significant changes. 11% do not support. 16%, no opinion, and 16% or 18%—hard to read—no response.

So, let's take a look at the ... Well, first of all, I want to take a look at the concern clarification from Tucows. They say, "The URS should not allow the inter-registrar transfer policy to be bypassed." And secondly, "Removal of 'and registrars,' because the URS applies to registries."

And I'm looking, here, for the "and registrar." I think that is in quotes. I think that's the name of a thing. So, I'm not sure that we can change the name of a thing. The recommendation itself is specifically related to the registry requirement number ten.

So, I don't know if Tucows just misread that or if there's something else that they're getting at. Is there anybody on the call from Tucows, or who might understand what Tucows was trying to get at, there? Any hands?

Okay. I don't see hands, and I don't think that we can rename documents in this particular form. So, we may have to let that one go. What about concerns that Tucows raises in relationship to how this requirement would affect the inter-registrar transfer policy?

Anybody understand that concern, want to address it, want to tell us why it's not a problem, want to tell us why it's a big problem? Anybody at all? Okay. I don't see any hands on that. I think that's an interesting thing to pass along, that we could just say that ... Oh, I see a hand. Here's David McAuley. David, please go ahead.

DAVID MCAULEY:

Thanks, Paul. I honestly don't know, but I'm looking at registry requirement number ten, and the last sentence may be what they were getting at. The last sentence in Registry Requirement 10 says,

“Registry operator may collect the registrar renewal fee if the URS complainant elects to renew the URS-suspended domain name with the sponsoring registrar.” So I’m baffled by Tucows, but if there’s anything in Registry Requirement 10 that gets at that, maybe that’s it. Thanks.

PAUL MCGRADY:

Thanks, David. I appreciate that. So, I think because Tucows isn’t here, and because we don’t really know what they were getting at, the safe bet—unless anybody disagrees—is to simply capture that, that idea, and make sure that we draw that out for the working group. I don’t think it undoes this particular recommendation, but I think it’s certainly worthy of capture and sending along.

So, there were some non-supports. One is from the Contracted Parties House generally. It was captured as “do not support.” When I read this, though, it wasn’t clear to me.

Because it says, “We do support the idea of having the IRT consider reviewing implementation issues with respect to Registry Requirement 10 in the high-level document, and amending the Registry Requirement 10 if needed.”

“We recommend that the IRT consider the issues noted by the provider sub-team, and we also encourage the working group to catalog other issues in this regard, if any, in the final report. For instance, there may well be issues in cases where the URS parties settle their claim, or where a URS winner is unable to, or unwilling to, pay for a further one-year renewal. These should be cataloged/clarified in the final report.”

So, I guess I don't read that as non-support. Can anybody from the CPH explain, is this really meant to be non-support, or is this meant to be sort of clarification of things that we should capture? Once again, David to the rescue.

DAVID MCAULEY: Thanks, Paul. I'm not sure it's to the rescue, and I'm sorry for taking up so much time. But I was on the CPH, or on the Registries Stakeholder Group drafting team, but I had nothing to do with this particular comment. I do, like you, read that as support, however. Thank you.

PAUL MCGRADY: Thank you, David. Yeah, I think it might have just ended up in the wrong color-coding, and maybe should have been yellow. The other two, there was an individual response from George Kirikos, who didn't really address the subject matter, just said that the recommendation came from a smaller group, or a non-representative group.

There was an individual comment from [Ted Chang] saying, "Unnecessary amendment to make rich people richer. Wow, you have no heart or soul, do you?" Okay. I'm not sure what to do with that.

And then, there was a non-support comment from namebright.com, and I think it's worth reading. "URS was expressly designed to apply only to clear-cut cases by changing the technical requirements and to allow extensions of transfer domains. This is adding more complexity to a very simple policy."

“Once you start introducing extensions and transfers, we are morphing URS into UDRP, and this was not the intent of URS. URS was designed as a complement to, rather than a substitute for, the UDRP.”

“Once the complainant has the right to obtain the domain name through due process, the whole thing starts looking very similar to UDRP. This recommendation assists bad-faith filers to forum shop to try to find the best way to file a bad-faith complaint and create a disadvantage for domain registrants.”

“Under no circumstances should a domain name be transferred under URS. A domain name should only be suspended as was the intent of the creation of the URS, the Uniform Rapid Suspension System.”

“If a complainant wants a domain name transferred to them, the proper procedure is the UDRP. These need to be kept separate, and their intent, as created by ICANN, should not be modified, as it greatly diminishes the integrity of the URS. Settlement should be considered, as it is the most favorable option, where two opposing parties agree to move forward and everyone is happy.”

So, again, I think ... And I see the comment from Rebecca Tushnet in the chat. I think that, as she says, “NameBright comment could probably be addressed by some clarification that there is no intent to create a transfer remedy.” I think that’s right.

When I read this, I was thinking more in terms of housing the thing once it’s in suspension, rather than a transfer remedy for the URS. And so, I do think that we should capture what Rebecca has to say

there to make it clear that there is not an inadvertent desire to create a transfer remedy. Kathy, I see your hand is up. Can you jump in, here?

KATHY KLEIMAN:

Yeah, thanks. I wanted to circle back to Tucows and CPH. So, with Tucows, I was actually wondering if we could reach out to them. I know there's nobody here from Tucows but, rather than passing this on directly to the working group, I think there are some questions here about what they meant and why they're raising the transfer policy.

So, before we get the questions from the full working group, it might be worth just reaching out and getting a few more details. And on the CPH, I'm like you. I'm used to the SubPro, where staff and then the working group decided whether it was support or not support.

But here, the CPH chose the button "do not support." So, they did that for a reason. And if we're going to recategorize their comments I think, again, we should reach out to them and see what it is that they're ... Especially what they're asking for in the non-red.

They seem to be trying to push us to clarify. For instance, there may well be issues in cases where the URS parties settle their claim, or where the URS winner is unable or unwilling to pay for a further one-year renewal. These should be catalog-clarified in the final report.

I just think there may be a little more work, here. I'm not sure we can do it, but if we get some clarification back, both from Tucows and CPH, I think that will give us what to pass along. So, I just

wanted—I hate the phrase—to put a pin in some of this because I just don't think ... I don't work in this document regularly and I just think there are some open questions. Thanks.

PAUL MCGRADY:

Thanks, Kathy. I'm a little concerned about putting pins in things, especially when the Bundt cake looks the way it does, which is there appears to be fairly strong support for the concept.

My inclination is, rather, to pass this along with what we can glean out of the public comment, which I think makes sense, and then invite Tucows to provide further clarification to the working group.

Because we are capturing the fact that they had an issue with it, and we can encourage them to let the working group know in more detail what that is. I'm happy to take a queue on that process. But in the meantime, I see Brian Beckham's hand is up. And Kathy, your hand is still up. Is that new or old?

KATHY KLEIMAN:

It is old. I'll take it down. Thanks, Paul.

PAUL MCGRADY:

All right. Perfect. Thank you. Brian, please go ahead.

BRIAN BECKHAM:

Thanks, Paul. I just wanted to ... I think that that's not an un-useful suggestion, here. I did want to just flag, comment, or ask a question. I've noticed a few of the comments from Tucows tend to

misunderstand the recommendation, or the broader policy, or kind of wander into philosophical territory.

So, I think, here, this seems, let's say, rather technical. But I was just wondering, is there any particular guidance on in which instances do we go back to a commenter to ask for clarification, versus we can sort of take it under advisement that they've, maybe, missed the mark slightly and we don't need to do that? Thanks.

PAUL MCGRADY:

Thanks, Brian. So, to a certain extent, I think that that is a question more for you, Phil, and Kathy. I see that Rebecca Tushnet put in the chat, essentially, agreeing with my idea that we send this one to the working group, basically saying, "It had broad support, but Tucows asked a question and we're going to ask staff to follow up with Tucows to get more information to the main working group, so when the main working group looks at this, they'll have it," and also capture the ... Specifically responding to NameBright's that this is not meant to create a transfer remedy.

And with those two things, I think this one is ready to go back to the working group. Oh, I see here Brian says, "Makes sense. Thanks, Paul and Rebecca." Phil says, "When you take CPH out of the red zone, there is overwhelming support." David McAuley says, "Agree."

So, I think that's the path forward, just so that we don't ... We don't want to start pinning things at the subgroup level if we think it has got enough legs to go back to the working group, and I think that this one does, with those clarifications.

So, with staff's help, that's what we'll do. I'll raise a queue on ... Oh, Cynthia King had a hand, and then it went down. All right. I'll look for hands on the ultimate question of process, here. And if my process, as plus-oned by Rebecca, makes sense to everybody, then we'll move on. All right. I see no hands. Whoops. Yes?

ARIEL LIANG: Sorry. Do you mind just repeating so I can capture that in the notes? I was a little distracted in the chat.

PAUL MCGRADY: Yeah, you bet. No problem at all. So, the idea here is that we will send this one back to the working group, essentially saying it appears to have the support it needs to survive as a recommendation.

But Tucows did raise an issue with regard to a couple of items, and you've already got those in the comment highlights, that staff if reaching out to Tucows for additional feedback on that so that the working group can more fully understand what those questions or those concerns were about, and that NameBright raised a concern that we might inadvertently be creating a transfer remedy under the URS, but we think that the recommendation will be better served if we expressly state that we are not doing that.

And with those details appended, this can go back onto the working group and we can be done with it. And if staff can reach out to Tucows, that would be fabulous. All right. I think that works. Okay.

Let's move on, then. Well, our Bundt cake doesn't look as good as the last two, does it? All right. URS question number five. Here's the question: "Should Registry Requirement 10 be amended to include the possibility for another registrar, which is different from the sponsoring registrar but accredited by the same registry, to be elected by the URS complainant to renew the URS-suspended domain name and to collect the registrar renewal fee?"

In other words, if I'm a complainant, the domain name is with registrar A, I win, but now I want it to be moved to registrar B because I like those dudes better, should we amend the Registry Requirement 10 to allow that?

So, we have, looking at our Bundt cake, got some no responses/no opinions making up a significant minority of the Bundt cake. And then, we have a not quite even split, but a significant split, between the yeses and the noes: 32%, yes, 23% no.

And if we look at the level of support, I think this is what jumped out at me. The noes have some big brands: Lego, Hermes, some individuals. We have significant ... How do I say this? Representative associations. Trademark attorneys, Chanel is here, European Brand Association [Cum Laude, Marks] and so forth, on one hand.

On the other hand, we have individuals. We have Internet associations, like the Internet Commerce Associations. That also has a large membership. We have Tucows. It's a registrar. Digimedia is kind of a well-known entity in our space. And Domain Name Rights Coalition.

So, this is not one where we've got the yeses consists of a handful of individuals and the noes are big associations, or vice versa. This is one where we've really got a real split.

So, I am going to open a queue on this one. I don't mean to cast my bias by reading it the way that I did, but I don't think this one is as nicely clear-cut as the last two. Let's just say it that way. So, I will open a queue on this, and if people want to address it, great. If not, then we can read some of the comments and see if that helps us. Any hands? Hand up. Ariel, please go ahead.

ARIEL LIANG:

Thanks, Paul. I am noting Phil's question in the chat. I just want to provide a quick background of this question. The way we formulated it in the Google Forms for public comment is multiple choice question for people to select yes, no, other, no opinion, or they can simply just ignore the question.

So, that's why there is a lack of rationale behind the choices by the commenters. However, if someone selects "other," they will have a short text box to provide additional comments, and that's what the IPC and ALAC did.

But then, when we read their comments, IPC basically said yes, and then the provided additional rationale. So, that's why we categorized their answer as yes, even they selected "other" in the multiple-choice question.

And then, for ALAC, the also selected "other," but they said ... At the beginning, their comment is "no opinion," blah, blah, blah, so we

categorized this as “no opinion.” So, that’s why we only have two commenters that provided the rationale for this question.

PAUL MCGRADY:

Thank you, Ariel. So, with only two commenters and, essentially, the IPC is “yes” ... And they provide an example: “For example, where the complainant cannot pay their existing registrar due to OFAC concerns,” I think OFAC is the U.S. Treasury department’s prohibitions on doing business with folks in certain countries, “or where the registrar is one with a reputation as a bad actor.”

And obviously, the IPC members don’t want to help financially support somebody who they think is a bad actor. I mean, that makes sense. But with a voice ... Boy, this one is hard. All right. Let’s go to the queue and see if, maybe, the queue can help me out, here. I don’t know what order these came up in, so I’m just going to say Phil, Cyntia, and David. Phil, if you can go ahead? Thank you. Phil, I’m afraid you may be on double-mute.

PHILIP CORWIN:

Oh, I hate that double-mute, where I unmute and I’m still muted. It seems very unfair. Can you hear me now?

PAUL MCGRADY:

We can. It always reminds me of triple-secret probation. But anyway, we can hear you now, Phil.

PHILIP CORWIN:

All right. Yeah. I'm going to speak in a personal capacity. I don't have any dog in this fight or strong views, but my recollection is that the reasons that some ... This is where the complainant wants to take advantage of the one-year additional term of suspension.

It's to a domain transfer; it's just an additional year where the domain is suspended and unavailable, either for legal reasons, or for reputation reasons, or just because they like keeping all ...

They have a registrar that handles all their business and they like having their issues consolidated. They want to switch the suspension this year to that registrar. So, I don't know why there is controversy.

I would suggest that, maybe, in this one, we pass along ... There are individuals in organizations that said no, as well as yes, that are part of this subgroup. And if not part of this subgroup, part of the full working group.

So, I'd suggest that the best thing to do might be to pass it along and let people weigh-in verbally on other reasons for support or opposition when we reach ... And I'm not sure there's a recommendation related to this, but without any rationale other than the IPC statement it's awfully hard to know what to make of the answers. Thank you.

PAUL MCGRADY:

Thanks, Phil. I have a follow-up question to that, and I am hoping that the people in the queue can bear with me. But it seems to me that, allowing a transfer, that automatically puts on another year to

the registration that wasn't there are the time the facts came into the panelists.

And right now—correct me if I'm wrong, Phil—the winning complainant doesn't have the ability to keep renewing the TLD forever. And so, I'm not sure where the OFAC comment comes from from the IPC. Because if the winning complainant can't renew it anyway, then there's really no OFAC problem because you're not paying any money.

So, essentially, does this request ... Is it really a change to the remedies in the URS? Because it does grant the complainant at least one more additional year of suspension that they don't have under the URS as written now. So, maybe either Phil could address that, or somebody else. But Phil, if you feel comfortable addressing it, that would be great.

PHILIP CORWIN:

Yeah. Paul, I was typing in. Yeah, the rule ... The URS extension of the suspension period, as I recall, is for a single year beyond the original registration chosen by the losing registrant. You can't go more than a year. Or some registrar has to be paid to extend the registration, even though the domain is not going to resolve, and that's what the issue is.

So, there's really no change to the remedy. This is really a dispute about which registrar is going to be paid to accomplish that one-year extension, which has always been allowed.

And as the IPC said, sometimes a party, a winning complainant, doesn't want to be associated with a particular registrar, and

sometimes there are legal barriers to them paying them because of where they're located. But that's the [stump] of my understanding. Thank you.

PAUL MCGRADY: Thank you, Phil. I think that's helpful. So, it doesn't sound like what we're saying is that we're changing the remedy. So, I guess that's good. It's a little less radical. All right. Next up is Cyntia King. Cyntia, please go ahead.

CYNTIA KING: Hi. Can you hear me? Hello?

PAUL MCGRADY: We sure can. Yep. Go ahead.

CYNTIA KING: Oh, great. Hi. So, the IPC had some discussions about this one, and I know that there are some circumstances that have occurred in the past that brought this to the fore. And I can tell you that there are bad-faith registrants that are the sole client of a registrar or own their own registrar.

I know that that's the case in the ... I can't remember his name for the life of me, but there was a fellow who had the huge domain portfolio in Texas. He didn't pay his legal bills, and so they took him to court and they stripped him of his portfolio and were saying the pieces of the portfolio to pay off his creditors.

That fellow was the sole client of the registrar where he kept his domains. It's unclear to me whether he or an associate was the actual registrar/official owner but, in many respects, he controlled the registrar.

Leaving a domain name at a registrar like that would just be counter-intuitive. You can't expect a registrar to act responsibly when they are already acting irresponsibly by being the sole owner of many infringing domains.

There was another case in the Caiman Islands where there were at least two fellows with at least three registrars registered in the Caimans, and, every time that they would get a UDRP complaint, what they would do is they would switch the domains between registrars. So, before they had the opportunity to lock it, they'd be like, "Oh, the domain's not here." But there were these two fellows that had three different registrars.

So, there are circumstances where the registrar makes a difference. I would say that's probably not normally the case, but there are times that that would happen.

And I think there are also cases where an infringing domain is registered to a registrar in a foreign country where even the interface, where you would manage the domain to make sure that it's locked, or the WHOIS, or whatever, is in a foreign language that's not spoken by the winning complainant. So, there are reasons why it may be useful to have a domain transferred to a different registrar, even before the extension takes place. Thank you.

PAUL MCGRADY: Thanks, Cyntia. We're going to go onto David, and then I'm going to read a question from Rebecca from the chat, and then we're going to go to Zak. Go ahead, David.

DAVID MCAULEY: Thank you, Paul. Hi, everybody. What I'd like to say is the comment that Tucows made with respect to URS recommendation number eight, which was the subject immediately preceding this one, the first part of it said, "The URS should not allow the inter-registrar transfer policy to be bypassed," and we were scratching our heads over what they meant. So, it might be worthwhile to have staff ask Tucows, did they mean that comment to apply here with respect to question five? Thank you.

PAUL MCGRADY: Thank you, David. I think that makes sense. Staff, if you could take that on board, that would be great. Here's a question from Rebecca Tushnet from the chat: "Do we think that there are processes in place that a transferee registrar should treat the extensions as different from ordinary registrations? Because for them, it would be a new registration they're handling, not an extension of an existing registration."

That is an interesting question. I suppose the short answer for that would be, if the registrar handled new gTLDs—in other words, TLDs from the 2012 round—in theory, they would be set up to handle the URS. But as a practical matter, I don't know how each individual registrar would handle that.

So, if somebody has a response to that, to Rebecca, if you guys could respond to that either in the chat or raise a hand, that would be great. Cyntia, I see your hand is still up. Is that an old hand? Did you want to reply to ...? Okay. Perfect. Okay. So now, we're off to Zak. Zak, please go ahead.

ZAK MUSCOVITCH: Thanks. Can you hear me?

PAUL MCGRADY: We sure can.

ZAK MUSCOVITCH: Okay, great. Thanks very much. So, yeah. I appreciate the concerns that Cyntia raised with regard to the rationale for wanting to, in some circumstances, transfer to the complaint in zone registrar.

But on the other hand, I don't see it as a terribly common problem that there are Iranian or North Korean registrars that are used. So, I don't think that's a terribly big deal. But in terms of the bad-faith actors who happen to control registrars, that may be a valid point.

But the corollary also may have some merit in the sense that—and this is really a question, in case anybody has the answer to this—if a complainant were to have the domain name transferred after the expiry of the original registration term to its own selected registrar, would that give any complainant the upper hand when it comes to that domain name expiring and then wanting to pick it up?

Does it amount to a complainant getting some kind of an advantage if it's brought to their own in-house, or not quite arm's length, registrar, or particularly cooperative registrar? Would that give them any advantage, or would the domain name be treated in such a way that the complaint doesn't get any advantage from that? Thank you.

PAUL MCGRADY:

Thanks, Zak. That's a very interesting question. I see, from the chat, Phil says, "Can you explain ICA's opposition? What is the concern?" I don't know if the drop period is the concern of the ICA or if there is more there. Because we've heard from some people who supported it, and we've heard from their concerns. So maybe, Zak, do you mind doing a broader brushstroke on ICA's opposition?

ZAK MUSCOVITCH:

Well, I think that that was one of the concerns. The other concern, very broadly, is that I don't see a particular need for this. Now, I hear that it's about the countries that can't do business with, or concerns about, particular registrants. But I don't see the particular need for it, and I saw it as a kind of unnecessary complication and expansion without a particularly big justification.

The other is that it makes me generally uncomfortable when a registrant, who is still the registrant, even after losing a URS, to have his or her contract transferred to another registrar. I'm also wondering whether that has implications for the mutual jurisdiction clause, if a UDRP is ultimately brought, because changing it to a different registrar not selected by the registrant would give a complainant who brought a subsequent UDRP the ability to select

the mutual jurisdiction of the registrar that they just changed it to. So, I think that's another concern. Thanks.

PAUL MCGRADY:

Thanks, Zak. Yeah. That's an important point, and there are all kinds of things in the Registrant/Registrar Agreement that the registrant's supposed to agree to, not the least of which is a representation that they are not going to be doing anything infringing. And so, I don't know what happens, then, to the contract if there's a forceable move.

So, those are all very interesting things. I see we have Phil, Cyntia, and Kathy in the queue. Let's talk. Let's hear from these three. And then, I think at that point we do need to decide what we're going to do about this one. So Phil, if you could go ahead? Thank you.

PHILIP CORWIN:

Yeah. Thank you, Paul, and thanks, Zak, for that explanation, which was helpful. I certainly understand the concern that transferring the additional year of registration to a new registrar could possibly be abused to result in an unauthorized domain transfer as a result of a successful URS, or at least a right of first refusal.

I want to say two things. One, I don't have any sympathy for a registrant who has been found guilty of an incontrovertible black-and-white case of cybersquatting, and particularly if the registrar they used is one they control, as Cyntia has described.

But having said that, I believe that the concern that Zak outlined is legitimate, and we could accommodate both sides. We could

accommodate the victorious complainant who wants to use a different registrar for that one-year extension of the registration, which has always been allowed by URS.

But we could also advise the IRT that it should be made absolutely clear that the registrar to whom the domain is transferred cannot extend that registration for that winning complainant beyond a 12-month term, and cannot use the control of the domain to provide any right of first refusal, since we didn't get consensus on that one. So I think we could, with a little discussion when we get to consensus, accommodate the legitimate concerns of both sides of this question. Thank you.

PAUL MCGRADY:

Thanks, Phil. I appreciate that. Cyntia, you're up next.

CYNTIA KING:

Hi. Just very quickly, to respond to some of the comments. I understand Zak's concern. Phil, I like what you've proposed. Regarding how often this happens, as I put into the chat, I am currently, right now, today, working on at least seven matters where the respondent is clearly cybersquatting and they're hiding behind a foreign registrar, or a registrar that acts in bad faith.

That's just now, today. And this happens. I get this all the time. It's what I do, so I tend to see it more often than some other folks might. But it is definitely out there, and it's definitely something that happens on a regular basis.

Secondly, I understood what Zak was saying about the Registrant Agreement and all of that stuff. But I think it's important to note that this happens all the time, where, if there's a problem with a registrar, that domains can be transferred to a different registrar.

So, for example, if a registrar is suspended by ICANN, the domains are transferred to a different registrar, or if a registrar goes out of business the domains are transferred to a different registrar.

And again, people may say that doesn't happen often, but it does. I'm aware of at least two registrars that went out of business in the last, say, six months, where the domains were wholly transferred to a different registrar.

So, this is already happening out there. What we're just asking is that, within parameters that we've already discussed, the domains be moved to a place where they're secure. Thank you.

PAUL MCGRADY: Thanks, Cyntia. And then, we have Kathy. Kathy, please go ahead.

KATHY KLEIMAN: Yeah. Thanks. I had to step away for a second, so I came back. I've been in the conversation for a while, now. I'm a little surprised by what's going on, because this was kind of a clarifying question to which the answer appears to be, quite seriously, "No."

And the underlying recommendation has already been approved, right? Recommendation number eight is going forward to the full working group. And this is a wrinkle, which is, can we transfer? And

this question, can we transfer the domain name to a different registrar?

And the comments are saying no, and, clearly, there is not overwhelming support for this. It's 32.7% to 23.6%. But it fundamentally changes the remedies, here. It creates a massive number of problems, as Zak has outlined, and I think others have outlined. Completely unforeseen.

And it's not addressing the problem. If there are problems with registrars, this isn't the place to address them. That's a different set of recommendations, that we want the registrars to do what they're supposed to do.

We don't know if it's a communication problem, if it's a language problem, if it's a lack of understanding problem, because so much of the communication goes directly to the registries. But this isn't the place to do it. We said, "No transfers in the URS," and this is a transfer, and I think the public agrees. Thanks.

PAUL MCGRADY: Thanks, Kathy.

KATHY KLEIMAN: That was a [inaudible].

PAUL MCGRADY: Right, yeah. Yeah. No, no. I think that unless someone says, "I'm speaking with my overall working group co-chair hat on," that we

should just presume to their speaking in a personal capacity. That's why you guys got Zak and me to run this, instead of you guys.

So, I think that's perfectly fine. I see Cyntia's hand is back up. Old hand/new hand, Cyntia? Oh, okay. Hand went down. Gosh. What a mess this one is, right? Because we've heard interesting things from the subgroup team members both for and against.

We have people in the queue that have said they're for putting it back up to the working group, noting that there's a lot of work to be done on this. We've heard people in the speaking queue say, "No, don't do that." We've got both ways in the chat. This is a stinker. I see Jay's hand is up. I'm hoping Jay has the magical solution for us. Jay, please solve this.

JAY CHAPMAN:

Thanks, Paul. My suggestion would just be it appears to me that this is pretty broadly drafted. And I understand what Cyntia's saying, and the concerns there. There are a lot of different requests that we're going through, both the individual ones, the individual proposals, and such. And the URS, depending on where things end up falling here in the working group, once we get to consensus call, could look completely different.

And so, there is a lot of interplay, here, as to, "Well, if this one goes through, what's the application there?" and then we start piling all these additional new features into the URS, and perhaps it's completely different.

And then, a small thing where people go, "Well, it's just specifically about this particular situation," or whatever. That potentially, on top

of some of these other potential new applications, could really have a broad, negative impact toward registrants.

And so, I understand, again, what Cyntia's saying. Perhaps there's a situation here where that could be—I don't know—more specifically drafted and limited to where it actually ... Because right now, it just kind of generally says, "Hey, we're just going to come up with something that might be possible."

Maybe if there's more color and background as to what might work, and just really try and prescribe what the specific circumstance is ... And by the way, I also take into account what Kathy just said, and give credence to that, that perhaps it's a registrar/ICANN-related issue and not necessarily a URS-related issue.

I give credence to that. I'm just trying to say, is there the possibility that we could zoom in, and try and focus, and limit what we're talking about here to try and get something that might be more palatable? Thanks.

PAUL MCGRADY:

Thanks. Thanks, Jay. I see Cyntia is back in the queue. Before Cyntia goes, I want to throw something out, and maybe we can get some hands on it. I think that all this good stuff raised by sub-team members in a sub-team call—which is not the same thing as public comment, which is what we're supposed to be looking at, public comment, not sub-team member points of view—could fall back under the final discussions around URS Recommendation 8, which we just went through.

Because that one does say, “Eg., when we’ve awarded following a URS decision, or where a complainant requests to extend a suspension, in that case a transfer to a new registrar would automatically serve to extend a suspension.”

So, I do think that the subject matter is found in Recommendation 8. And so, I’m leaning toward, and would like to hear from people, Kathy’s position, which is there is no clear guidance from public comment—not from all of us, but from public comment—that this is a yes or no, but that, because of the language found in Recommendation 8, if the people who have raised their concerns for or against want to address those, that could be done around a consensus call for Recommendation 8.

So, I throw that out there as the solution to get me out of my problem. Cyntia, if you could go ahead, and then I will ask for reactions to my proposed solution, either in the chat or hand up. And then, I’m going to have to draw a line under it so we have time to get to our last item. Cyntia, please go ahead.

CYNTIA KING:

I feel like we might be having two conversations, here. I’m extremely confused. I’m seeing in the comments that they’re talking about moving the domain to the complainant’s registrar, as if being in the complainant’s registrar means that the complainant then controls the domain, which of course isn’t true.

The domain would be moved to another registrar but it would remain in the name of the respondent because the domain is not transferred to the complainant.

So, I'm not understanding what's going on in the chat about the domain being ... This getting a whole new set of rights. It's not getting any new sets of rights. All it's doing is transferring the locking mechanism, the control mechanism, which is from one registrar to another registrar. It's not transferring the domain to the complainant or even taking the domain out of the name of the respondent. So, I'm kind of confused by that. Thank you.

PAUL MCGRADY:

Thanks, Cyntia. Phil's hand is up. Phil, I hope you can provide some thoughts on my proposed solution. Phil, please go ahead.

PHILIP CORWIN:

Well, Paul, I don't remember all the details of your solution. What I'd like to say here is that we're a small subgroup of the full working group. We have a question put out with only one party providing any rationale for their response. Everywhere else was just yes or no, multiple choice. There was a lot of no response or no opinion. 32% said, "Yes, this should be made possible." 23%, no. So, about a three to two ratio of yes to no – inconclusive.

But having heard the full discussion, there is a right for the winning complainant in the URS—it has always been there—to extend the registration for one additional year.

We have heard in the IPC comment, and Cyntia has been particularly articulate in explaining the barriers to exercising that right. We've heard from Zak about the concerns that allowing the name of the registrar to be changed, which, as Cyntia noted, does not change control of the domain, to allow any mischief.

But I still believe that, based on this conversation, this question, and the answers, and the issues, should be preserved for the consensus call in the hope that, between now and then, we can reach a compromise, probably through strict instructions to the IRT.

If we do this, that would take down the barrier to complainants exercising an existing right in the URS, while assuring those who are concerned that this could be abused to allow domain transfer or further extension of the suspension to be assured that that won't happen. So, that is the course I'm urging. I forget, exactly, the details of yours. But that's where I stand, personally, on this matter. Thank you.

PAUL MCGRADY: Thanks, Phil. Kathy, please go ahead.

KATHY KLEIMAN: Yeah. I'll try to be brief. The kind of details that we're writing into this are nowhere in the recommendation or the question. It's my understanding that we're looking at this question number five only. And I repeat this just because, if this is where we're going then, first, I think we're going to be spending time we don't have in the full working group, and I don't think we have the support to do it.

But what we're talking about, my understanding is the very narrow event of a registrar not honoring a complainant's legitimate request for an extension of one year – not honoring, or not being able to honor.

I remember when this came up with [inaudible] and sanctions. I don't think anybody had proof of this, but I recognize that Cyntia is having some problems that are not part of this. If this is going forward, let's define this situation very, very, very narrowly. I think it's the only legitimate way to go forward and the only way there's a chance of introducing this. Because otherwise, I think we could have spent a lot of time in the working group on this. Thanks.

PAUL MCGRADY:

Thanks, Kathy. So, having heard from Phil and Kathy both personally, but also they are not acting as co-chairs of the overall working group, both voices ring loud. I think what we need to do, here, is to report to the full working group that there was no conclusive decision ... Decision is the wrong word. No conclusive direction from the public comments.

But in the discussion of question five, subgroup team members raised important issues regarding issues of ... How do we say this? Issues regarding relief awarded following a URS decision, because their right to transfer to a different registrar relates to the relief and also relates to whether or not the complainant ... Or when the complainant requests an extension of the suspension because the transfer works with suspension.

And those two concepts are mentioned briefly in URS Recommendation 8. So, when it comes time to discuss getting to a consensus on Recommendation 8, those subgroup members who raised concerns because of URS question five should be allowed to express those concerns, either for or against.

But in terms of us coming to the conclusion that the public comments somehow support the action suggested in URS question five, I don't think we can really do that. There just are no rationales, and there's a fairly ... The difference between 32.7% and 23.6%, especially when associations with hundreds or thousands of members are involved, it's a distinction without a difference. There is not a clear direction here from the public comment.

So, unless that's going to get me in big trouble, I think that's where the main working group can address these concerns. I agree with Phil; they're important but they can be addressed in URS Recommendation 8 deliberations. But URS question five as an independent subject, I think, is a goner. I see an "agree with Paul" from Zak. David McAuley can support. "Agree" from Paul T.

So, in other words, the concern lives to fight another day under Recommendation 8, but URS question five doesn't make it. Georges says he agrees. Jay agrees. Okay, goody. All right. So, we have 20 minutes left. Let's try to deal with ... Oh, Ariel says, "Hand's up." Ariel, please go ahead.

ARIEL LIANG:

Thanks, Paul. Sorry for taking more time. I just want to note the language of Recommendation 8 is for the [implementation] [inaudible] to consider implementation issues related to [inaudible] ten. So, basically, question five provides additional information regarding implementation issues.

And, if the working group consider appropriate, the information shared by Cyntia, and also public comment, can be included in the

context language of Recommendation 8. So, I just want to reemphasize the relations between Q5 and Rec 8. They're basically related, and Q5 is to help provide further information for Recommendation 8.

PAUL MCGRADY:

Thank you, Ariel. That's terrific. Yes. And Phil says, "Being unable to utilize a permitted one-year extension is an implementation issue." I agree with that, and I think that the plus-oneing on the Paul plan, here, which I appreciate, does the trick. Okay.

So, let's move on. We have 20 minutes left. We had URS recommendation number nine, if time permitted. And so, I'll jump into that. Let's do that. Here we go.

Recommendation number nine: "The working group recommends that, as an implementation guidance, the Implementation Review Team considers developing guidance to assist in the URS providers" ...

Oh. "To assist the URS providers," sorry, getting old, "in deciding what language to use during the URS proceedings and when issuing a determination. Such guidance should take into account the fact that domains subject to URS complaint may have been registered via a privacy or proxy service and the location of this other service will determine the language of that service, which may be relevant."

Okay. So, that's a big old handful. Let's take a quick look, here. So, we've got support as written, 45%. We've got support the concept with some proposed changes at 20%, 7.3%, yes, but with significant

changes, and 5.5% do not support. And then, we have a sort of small amount of no opinion/no response on the Bundt cake. So, this was one that people care about. That's what we can glean from there.

So, let's take a quick look at some of the change suggestions. The change suggestion from WIPO: "It should be possible to ascertain the language of the Registration Agreement from the registrar principles articulated, and section 4.5 of the WIPO Overview should be applied."

Mark says, "Consider procedures followed under the UDRP. Consider any cost implications of any change in guidance to URS providers and feasibility under existing cost structures."

So, those are both paths forward for how the implementation guidance could come about. CPH, Contracted Parties House, says, "Such guidance should consider the following factors: language used by the registry and/or predominant language of the country of the registry; language used by the registrar; any predominant language of the country of the registrar; whether the domain was registered through a privacy or proxy service; and/or the location of the privacy or proxy service; and any other pertinent information about the registrant, which may be limited depending on applicable laws, particularly privacy laws.

So again, some concerns for an Implementation Review Team to think about. We've got some comments from, it looks like, various brand owners: Hermes, Novartis, among others.

“The whole URS process should at least have English as a common language, on top of the language of the location of the service.” So, essentially, they’re suggesting that there be two languages for URS decisions, in cases where one language might not be English. Probably, if there are providers on the line, I’d like to hear what that does and to cost.

Concerns/clarifications: BC says, “Such implementation guidance is inappropriate coming from the Implementation Review Team. Such guidance is a responsibility of the providers and its panelists, which should accord with the body determinations already well-established and used to determine the language in proceedings under the UDRP.” So basically, the BC is essentially saying the same thing that Mark said, which is, “Follow the procedures under the UDRP.”

Tucows says, “This does not seem necessary, as registrants using a privacy or proxy service have agreed to different venues.” Okay. Interesting point. George Kirikos says, “Individual URS [proposal] number 34 is superior to this recommendation.” Okay.

And then, for those who are not supporting, Dennis Foster says, “Language of registration, not location of services or respondent.” In other words, looking at the underlying Registration Agreement. So basically, I think Dennis is saying the same thing WIPO said.

INTA: “The URS already provides rules regarding language of proceedings, particularly once proxy service is removed, which typically is in the course of URS proceeding.” I’m not sure what that means. I’ll read it again.

“The URS already provides rules regarding languages of [proceedings], particularly once proxy service is removed, which it typically is in the course of URS proceeding.” In other words, I think INTA’s saying, “We don’t need this because the URS already addresses this.” Okay.

And then, we’ve got Global Brand Owner and Consumer Protection Coalition: “Panels are already well-equipped to make this determination on a case-by-case basis pursuant to the existing rules and proposed supplemental language in other PDP recommendations.”

So, there seem to be some noes, and there seem to be some folks offering guidance on how an Implementation Review Team would handle it. The noes seem small to me on this one, and the yeses seem substantial.

So, I don’t want to say this is an easy one because there is some red, but I’d love to have a queue to hear from anybody who thinks that this one should not go onto the main working group as-is. And by as-is, I mean noting the concerns of those who were clarifying or wanted to tweak, that kind of thing, or said no because they think that this is already handled.

I think we should capture that stuff, but it looks to me just at first glance that, this one, we should send back to the working group as-is with those concerns captured. Anybody opposed to that idea?

And I’m not doing this to end discussion, but we could end up with 12 minutes of lives back, here, if we’re careful. All right. I see no

hands popping up here in the queue opposed to that. All right. Going once, going twice. All right.

So, I think this one goes back to the working group, essentially saying, "The recommendation should survive as-is, and please be aware of this handful of concerns raised by some." And I think that should do it. Oh, I see a hand up by Kathy. Kathy, please go ahead.

KATHY KLEIMAN:

Sorry. I don't want to take [here] 12 minutes. I think we might also want to highlight the CPH comments, as well, when we go back in, which are in support, but they provide some guidance and some more details. They're summarized right in that top table.

PAUL MCGRADY:

Thanks, Kathy. Yeah. I certainly don't want to feel anybody cut short in terms of the yes comments, but I didn't go through them just because I thought "yes" was winning the day. So, if anybody wants to go through those, we can.

If anybody wants to read those separately, of course, very welcome. And I'm sure you all already have, in terms of preparing for this one. But yet, I think that, come consensus call time, the working group certainly will have access to those and should keep them top-of-mind.

Okay. So, Phil says, "Agree. It should go on. This should be tweaked in accordance with the comments." Absolutely. And Phil, Kathy, and Brian, I leave that in your capable hands when the time comes.

All right. Unless somebody has sprouted any other business, I think we are done for the day. We made, I think, good progress. I want to especially thank everybody, not only for the great participation and comments, but also for the kindly manner in which this call went down.

It always makes me happy to be in the ICANN community when you can hop off a call and feel like it was spent with good colleagues trying to reach solutions. So, thank you all for that.

Those of you in the United States, I wish you a happy 4th of July. And for those of you in the UK, I wish you a happy, treasonous colonials day. And for those elsewhere, please have a safe weekend, everybody. Stay safe, and thank you all. We'll talk to you soon. Bye-bye.

JULIE HEDLUND: Great. Thanks, Paul. Thanks, everyone, for joining. This meeting is adjourned.

[END OF TRANSCRIPTION]