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ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs)
Wednesday, 04 March 2020 at 18:00 UTC

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JULIE BISLAND: Good morning, good afternoon, and good evening. Welcome to the Review of All Rights Protection Mechanisms (RPMs) and all gTLDs PDP Working Group call on Wednesday, the 4th of February 2020.

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

I have Rebecca Tushnet is on audio-only. Griffin, looks like he's on audio-only and Kathy Kleiman.

BRIAN BECKHAM: Brian Beckham [inaudible].

JULIE BISLAND: Who is that?

BRIAN BECKHAM: Brian Beckham.

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

JULIE BISLAND:
Brian? Thank you, Brian. Okay. All right. I just want to remind everyone to please state your name before speaking for the transcription, and please keep your phones and microphones on mute when not speaking to avoid background noise. With this, I will turn it over to Phil Corwin. You can begin, Phil.

PHILIP CORWIN:
Good morning, afternoon, evening, everybody. Welcome to our final working group meeting prior to virtual ICANN next week. Let's start. The agenda is on the board. If anyone has any other business they want to suggest, now would be a good time. And if anyone has updates to Statements of Interest, please let us know at this time.

Okay, all right, so we'll get going in a minute, which what I hope is another fairly boring and very efficient review of the draft contextual language of the initial report. Looking to get that published and as for public comment two weeks from today. The only other thing I'll say is I don't know about the rest of you, but this week my hands are the cleanest they've ever been in my entire life. I'm washing them about every hour. That's probably good.

Staff is going to give us a quick update on the ICANN virtual meeting and what we can expect next week in our four sessions.

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JULIE HEDLUND: Thanks very much, Phil. This is Julie Hedlund from staff. Essentially, what you see before you is the plan to complete the review of the initial report at ICANN67. We did send around earlier to all of you the list of the sessions and that went out on Monday. Just to remind you when those sessions are, they are each day next week. There are no weekend sessions. Sessions are all during the week, starting with Monday, March 9 at 13:45-15:15; Tuesday, March 10 at 13:30-15:00; Wednesday, March 11 at 10:45-12:15; and Thursday, 12 March at 14:45-15:45. As staff has indicated in that message – and we'll resend this message as well – right now there is nothing on the agenda for the meeting, the session on the 12th of March on that Thursday, and so that meeting will be cancelled if it turns out it's not needed. Right now, the schedule of topics takes us through Wednesday.

Again, to look back at what you see here, we're actually going to start today to review topics that we can otherwise expect to start in ICANN67 because we have moved far enough along in our work to be able to gain some time and also, of course, we did not anticipate having today's meeting since we assumed people would be traveling. Yeah, as Greg Shatan [moves], the 12th is a virtual travel day for some.

Starting today we're going to be looking at the TM-PDDRP and the additional marketplace RPMs. We'll finish off the action items from the completion of the discussion of URS individual proposals also today, but moving along then to the last of the recommendations to review, so TM-PDDRP and additional marketplace RPMs. We're probably not going to get to review of the background. That was one item that we might start today but

we don't expect that we'll have time for that and we don't actually have the content ready for that and we'll be ready shortly.

After today, if looking at Monday, on Monday we're going to look at next steps and background, so you'll see here, and then also the approach taken by the working group. Just to remind everybody, these sections, once we complete TM-PDDRP and additional marketplace RPMs, those are the last of the recommendations. These other sections are boilerplate sections. They're sections that are part of the structure of an initial report, but much of the content is taken from the wiki and from the issues report from already existing documentation because a lot of it is just the same how we got where we got to as opposed to having anything to do with recommendations, proposals, or questions.

So, Next Steps is what happens after the initial report. Background is the background on the working group, and that's mostly from the wiki. The approach taken by the working group describes the different subteams that were created.

Then moving on to the 10th of March on next Tuesday, we'll be looking at the executive summary. We'll look at the overview of preliminary recommendations and questions for community input, and that really is just listing the recommendations and questions for community input. So that won't be anything new from what the working group has already reviewed.

Also on the 10th, we'll look at the charter questions. Again, these are the agreed two charter questions that the working group has already discussed and agreed on. The working group documents are the documents taken from the wiki.

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On the 11th, we'll look at the introduction section to the deliberations of the working group and much of that material you've already seen. We'll also do the introductions for the individual proposals then on recommendations on the 11th. Also on the 11th, we'll look at the community input that was gathered. Again, this is information that has been pulled off the wiki. Also we'll cover the cover page which is also just a boilerplate language on the 11th.

So according to the schedule, we'll be complete with everything by the 11th and should not need to have the meeting on the 12th. Because the report is due on the 18th, staff will have final preparation of the report that we'll need to complete following the 11th of March and that will take us to the point of getting the initial report published on the 18th. So there will not be a meeting on the 18th of March. There will not be anything to discuss as we'll be publishing the initial report as planned. Thank you, Phil.

PHILIP CORWIN: Thank you, Julie, for that comprehensive review. Let me ask, are we going to be sharing the comment tool with working group members before we wrap up?

JULIE HEDLUND: Yes. What we'll do is we'll send the link and what we'd like to do is just ask people if they have any concerns that they might have about usability of it. Not the content because the content is the content of the initial report. So that's just being pasted in but any points they might have about usability of it. So that's not actually a

topic item on the agenda but it is something that we'll do over the list and if people have questions, we can certainly address them in one of next week's meetings.

PHILIP CORWIN: Yeah. Just to let members know briefly, that's a new format for comments that makes it much easy to review the comments. For each recommendation, you can check support with minor change, support with considerable change or oppose. Then there's a comment box below to indicate anything you want to put in there. The co-Chairs on a Monday call with staff had some concerns that it seemed to ask for comments that were more negative rather than positive, and I think that language issue has been addressed. But everyone is going to get a chance to look at it and comment on it, but it will allow for much more. Rather than the kind of scattershot essay input that ICANN used to get on a PDP recommendation, this is going to be much more uniform, much easier to analyze and see where the community is on each of the recommendations and questions and proposals. With that, I think we can probably get into work today.

KATHY KLEIMAN: This is Kathy. May I join the queue?

PHILIP CORWIN: Yes, Kathy.

KATHY KLEIMAN: Okay. I wanted to note something for everyone which I saw on the ICANN page. It has to do with the timing of the meetings next week, especially for those of us who are staying in our homes. Right now if you look at Cancún Time, it is the same as Eastern Time. But on Saturday we're going to spring forward and Cancún does not. I just wanted to let everybody know that if you're on the East Coast or the West Coast, whatever it is, add an hour to whatever you're syncing because the times will not correspond next week even though they do this week. Thanks.

PHILIP CORWIN: So, Kathy, you're saying that here on the East Coast in the US, we spring ahead Saturday night?

KATHY KLEIMAN: Yes. That's my understanding. And that Cancún does not, it stays at current time.

PHILIP CORWIN: Okay. All right.

KATHY KLEIMAN: So that local time is one hour behind us if you're in the East Coast.

PHILIP CORWIN: Basically, that means if something starts at 1:45 Cancún Time like our meeting Monday, that it starts 2:45 Eastern Time, 1:45 Central, 11:45 Pacific, right?

KATHY KLEIMAN: That is my understanding. Could staff confirm? Great.

PHILIP CORWIN: Okay. So that's interesting because I was thinking it was the same time as Cancún. Thank you, Kathy, because I would've been joining the call I guess an hour early, which is better than joining an hour late.

KATHY KLEIMAN: My pleasure.

MARY WONG: Phil, this is Mary from staff.

PHILIP CORWIN: Yes, Mary?

MARY WONG: Since we're on the subject, just so people know, the full ICANN meeting schedule has been published on the website that's also a mobile app. If you look at say the web schedule, there is a way that you can export the schedule that you can customize into your local time zone. So I just wanted to let folks know that in case that's helpful for those in different time zones.

PHILIP CORWIN: Thank you, Mary. Okay, we're a quarter hour into the call. Let's get to substance now.

JULIE HEDLUND: John McElwaine has his hand up.

PHILIP CORWIN: Okay, John. Go ahead.

JOHN MCELWAINE: Hey, thanks. I hate to belabor this but I am confused. So staff had sent around times for the meetings earlier and they noted UTC and Eastern Time. Do we know whether that Eastern Time took into account Daylight Savings Time? It's either right or wrong depending upon the answer to that.

JULIE HEDLUND: Hi, if I may address that, Phil?

PHILIP CORWIN: Sure.

JULIE HEDLUND: Yes, the time shown in that e-mail was Eastern Daylight Savings Time. So we noted that in the e-mail – let me correct that and make it more clear – was that the Cancún times were EST and that would make them then an hour earlier for the East Coast for those who have moved to Eastern Daylight Savings Time. But

we'll resend that message and try to make that clearer because there's still some questions about it.

JOHN MCELWAINE: Thank you. So, just for everybody on the call, then those call times were off and what we were talking about is correct and we all need to readjust. But we'll look for that e-mail. Thank you.

JULIE HEDLUND: John, I just wanted to correct that the times are not off per se. The times listed for the slots are the times listed at Cancún Time, and then just a preamble to that just notes that the times were Cancún Time EST but the US will switch to EDT. The EDT times are not listed in the e-mail, only the Cancún Times are listed. What we may have to do is put Cancún and UTC since UTC has been the standard that we've been using for times so that those not in the US can more easily calibrate.

PHILIP CORWIN: Okay. So basically, if you're like me and you already put the sessions you want to cover in your calendar, now you have to go back and move all of them back an hour because we haven't considered the clock moving ahead Saturday night. Okay. I think we've exhausted the subject of time zones and can move on to RPMs.

So here we are in URS individual proposals. Am I correct, staff, that this is language we haven't reviewed previously?

JULIE HEDLUND: This agenda item is just to go over the action items that were captured from last week, so just to have staff speak to the changes that resulted from last action items.

PHILIP CORWIN: Okay. Why don't staff go ahead and speak to them? We'll see if everybody is okay with the changes.

JULIE HEDLUND: Thank you. Ariel's got sharing her screen. Ariel, I'm wondering if might want to move through the items that have been changed. Everybody can go to the document yourself at the link that we've just put into the chat.

ARIEL LIANG: Thanks, Julie. I'm happy to walk everyone through the changes. I just want to note that in the introductory paragraph that Justine Chew has provided some editorial suggestions. I just wanted to call out, and they're not substantive, I think we can incorporate them.

The first one is second paragraph. She suggested to replace the highlighted phrase was "as to their treatment," instead of saying, "whether and how to publish these individual URS proposals for public comment." I'm not sure whether that's clear enough but I'm happy to hear what other working group members thought on that. Basically, this paragraph is just to provide you a context how the

working group has decided to publish 17 out of the 36 proposals for URS.

Then the second part she suggested is to replace the highlighted sentence with "of the 36 proposals." I think we can incorporate that just to show 17 out of the 36 are going to be published in the initial report to make it clearer.

PHILIP CORWIN: Okay. Let's stop there before we move on. Just to my view, it's just a personal opinion. I think Justine's second proposal to insert the 36 proposals is good. On the first one, it's open. Other working group members I think the language we have already is a little bit more detailed than her proposed replacement. So my personal view would be to stick with what we have, but the floor is open if people feel strongly about this.

No hand and no voices. Let's move on to the next item area where you have some comments.

ARIEL LIANG: Thanks, Phil. These we don't need to visit right now. These are basically the introductory paragraph that can be at the beginning of individual proposals rather than repeated in the URS and TMCH individual proposal section. So we can visit these comments when we look at the whole report on the 11th.

PHILIP CORWIN: Okay.

ARIEL LIANG: I saw Griffin has a comment in the chat about Justine's comments. I'm just going to read it quickly. "Frankly, unless any of the text capturing how decisions were reached is egregiously inaccurate or misleading, I don't want to devote a lot of time and energy to reviewing it line by line, but maybe that's just me."

PHILIP CORWIN: Let me say again just speaking personally, I would agree with Griffin. I think as we conduct this review, the language on the screen may not be exactly the way one of us would've written it if we were the author but I think what we're looking for here is, is it something grossly incomplete, is it incorrect, is it biased in some way? If it's not that kind of egregious problem, we should just probably stick with what we have, unless there's a helpful addition like Justine's suggestion on the prior page to make the statement more comprehensive by noting that it was 17 of 36 proposals that are being published.

Continue, Ariel, please.

ARIEL LIANG: Thanks, Phil. The first change is on page 3. What we did is to add a footnote to indicate where to find the technical requirements, the URS high-level technical requirements, the URS procedure, and URS rules. So we just add these footnotes and the link here in case some readers want to read more.

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The second change we made is also a footnote. I will just quickly scroll down to the part. That's a footnote on page 12. That's basically talking about the proposal #31, it stems from one of the overarching charter questions in the PDP and that's the overarching charter question #4. So we just spell out what this question is about and also noted that the working group is expected to consider this after the initial report public comment and include any response in the final report, so to use the language that you saw last week in the annex for charter questions. That's the second change. Then the third –

PHILIP CORWIN: Those are good. We're basically adding footnotes that lead to more background information for community members if they want to go there or/and that provide more clarification. So, good work.

ARIEL LIANG: Thanks, Phil. Then the third change is also adding a footnote to the reference of ICANN's MoUs with URS providers. We have included the links to all the MoUs with the three URS providers in case anybody wants to check them.

PHILIP CORWIN: Right. Am I correct? All these additions, these footnotes came out of suggestions from working group members on a prior call. Correct?

ARIEL LIANG: Yes. That's correct.

PHILIP CORWIN: Great.

ARIEL LIANG: The next one is actually a kind of a repeat, is adding footnote to URS procedures and URS rules because contextual language for the proposal #34, we did mention URS rules at the beginning. So we just want to make it easier for folks to access the content.

That's all the changes we have made. By the way, I have read, "Incorporate the changes that agreed by the working group during the call last week," so that's why you haven't seen additional red lines, but they were incorporated on the fly during the call, so it's already incorporated.

PHILIP CORWIN: Okay. Unless there are any comments or questions on that, we can move on from that section of the report. So what do we have next?

Okay. This is something I don't believe we've seen prior. This is the section of the report dealing with the Trademark Post-Delegation Dispute Resolution Procedure where we had some … that was the first item we dealt with and it was interesting because we're trying to evaluate something that's never been used and figuring out whether it's superfluous or needs change. I'm not going to read all of this but we did make a recommendation that

the Rule 3(g) be modified, to provide expressly that multiple disputes filed by unrelated entities against a registry operator may be initially submitted as a joint complaint, or may be consolidated at the discretion of the decisional panel. And then there's an explanation for that. We don't need to review that language, it's already agreed to language.

JULIE HEDLUND: Phil, excuse me. Mary has her hand up because she can provide some helpful context at how we arrived at the recommendation and the working group discussion of TM-PDDRP.

PHILIP CORWIN: Okay. Why don't you go ahead, Mary? And then we'll hear from Susan.

MARY WONG: Great. Thank you, Phil, and thanks, everyone. This is Mary again repeating my recurring role of popping back into remind people of things that we did previously in this PDP. And for this one, the Trademark PDDRP, we are going back a little bit in time because you'll recall that this was the first RPM that this working group tackled starting in 2016 and your deliberations pretty much concluded around the time of, I believe, the Hyderabad meeting which was later that year, and then a small group worked on refining the agreement that was reached in Hyderabad into the recommendation that you see here, which as Phil has said, it is really about consolidation of various complaints against the registry operator or the filing by several complainants of a single

complaint. Although we don't have all the members of that small group with us anymore, we do have a few and primarily amongst them is Brian Beckham, who when this came up in the working group up to Hyderabad and for the small team that met subsequently had provided quite a lot of detail and suggestions.

That's the first thing that the background and the fact that by Hyderabad or in Hyderabad, the working group agreed that if any recommendation was going to be made on the TM-PDDRP, it would be and it will be on this particular topic. That is the filing of joint complaints or the consolidation of several complaints. There were of course other suggestions and proposals that were discussed, but ultimately it was either agreed that those were not timely because no complaint had been filed and has been filed to date, or that there simply wasn't enough evidence or reason to change the procedure as it's written. So that's the second point of background that I wanted to make.

The third point – I see Susan has her hand up and I don't know if Brian would like to join to offer his comments – but the third and final point from the staff side is that this is not specific text for the actual recommendation. What you see in the box here on the page that the working group has seen before, because while the working group did agree and while the drafting here we hope reflects that agreement as well as the work of the small group that followed, it will be helpful if working group members could see that this does reflect their understanding of what was agreed. And like I said, if Susan or Brian want to jump in, please do. Thank you.

PHILIP CORWIN:	Okay. Mary, just to clarify, all the language in the box for Recommendation #1 is language we have not previously reviewed and agreed to?
MARY WONG:	That's correct, Phil.
PHILIP CORWIN:	Right. It's staff drafted language, which to the best the staff's ability reflects and explains what we decided to do on this but it's something we should give a careful review of.
MARY WONG:	Absolutely.
PHILIP CORWIN:	Susan, did you still want to speak? I don't see your hand.
SUSAN PAYNE:	Thanks, Phil. I don't know how I managed to take my hand down. I didn't really mean to but I did put a comment to say I just had a particular comment on one of the footnotes. It may be that this isn't quite the right time to raise it, so I just wanted to put a placeholder.
PHILIP CORWIN:	Yeah. Why don't you hold that thought? Brian, if you want to say anything, just shout out. Otherwise, I'm going to –

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BRIAN BECKHAM: Yeah.

PHILIP CORWIN: Go ahead, Brian.

BRIAN BECKHAM: Sorry. Thanks, Phil. I'm on audio. Just to support what Mary said, this of course goes back in some time. I believe this was a proposal by Claudio DiGangi – I don't know if he's on the call – and there was some discussion around this. WIPO as a provider, we saw, strictly speaking, this wasn't necessary because one of the rules – I don't remember if it was maybe 6 or 13 speaks to consolidation as does the WIPO supplemental rules on the TM-PDDRP. This was just to kind of get some assurances by way of recollection. This was, in effect, codifying what was arguably already practiced that was provided in the existing procedure. That was all I wanted to add. Thanks.

PHILIP CORWIN: Okay. Thank you, Brian. I recall now that I think the rationale was that bringing one of these Post-Delegation Dispute Resolution Procedure actions was rather costly and that if a registry operator was a truly bad actor, either directly engaging in infringement or actively encouraging it by registrant said it would be more likely to have that conduct curbed if trademark owners could join together if a group with them were equally adversely affected.

I'm hesitant to read every word here but let me take most of you except for those you on the phone can read it, but let's go over it briefly and see if anyone has concerns about anything. In here I already went over the first paragraph which simply says that we're recommending the rule be modified, to provide expressly that multiple disputes may be initially submitted as a joint complaint or consolidated by the panel at its discretion.

Second paragraph explains that the recommendation is intended to clarify the fact that the PDDRP permits the joint filing of a complaint and the consolidation of complaints even if unrelated entities against a registry operator where it has engaged in conduct that has affected the complainants' rights in a similar way, and it will be equitable and procedurally efficient to permit the consolidation.

Third paragraph says that to the extent that a PDDRP dispute provider's current supplemental rules may not permit the filing of a joint complaint or the consolidation of several, the working group recommends that they amend their supplemental rules accordingly.

Then it says for the avoidance of doubt, the working group notes that: (1) the filing of a joint complaint or consolidation is to be permitted only where: the complaints relate to the registry operator's conduct with respect to the top or second level of the same that gTLD for all complaints; and all the trademark owners in the case of a joint complaints to be consolidated have satisfied the Threshold Review criteria.

So they all would have to pass that bar before they can consider joining together. We're consolidating and so notes for avoiding doubt that the recommendations intended to apply to two distinct situations: one where several trademark owners join together to file a single complaint, and the other where several owners file a separate complaints but request that they be consolidated.

Then there's these two footnotes. One references a definition from the TM-PDDRP language. I presume that's from the Applicant Guidebook. Yes, it is. The other one list the current providers for this procedure, which so far remains unused, but those providers are available. Susan, I think this where you can speak to footnote 2 and also I'll recognize Kathy after you.

SUSAN PAYNE: Thank you very much, Phil. Yes. You may all think that I'm being unduly nitpicking but I was reading the sentence that refers to footnote 2. I was reading that as footnote 2 would be taking me to the provider's current supplemental rules. Then I clicked on the link that's there and it does do that, but I requires me to jump through a number of hoops in order to get there. Because if I click there, I get a listing on the ICANN website of who the providers are, which is as I realized as I'm looking at it now, what that footnote is actually saying it's showing people. Then for each of those, I can then click. So I clicked on the link for WIPO and it just takes me to a general page on WIPO, and then I have to find the rules. So I found it a bit frustrating because I was trying to look at the current supplemental rules and I had to do a bit of work to find them. So I thought perhaps it would be helpful to keep the reference that is there but maybe also to just add in an actual link

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to each of the providers' supplemental rules so that people can find them easily without having to do a bunch of searching.

PHILIP CORWIN: Good suggestion, Susan. Probably most people commenting won't go do that much background research but I think with a couple of minutes of staff work, we can save a lot of collective time for those who do. Thanks for the suggestion.

Kathy? Your hand just went down but the floor is yours.

KATHY KLEIMAN: Thank you. Coming off mute. I definitely agree with Susan that we don't want people digging and that's our new standard is to put footnotes and so people can find things easily, which is great. I also think everyone should read this closely. I do think we should come back to this because it's our recommendation language and we should all be reviewing it closely. I don't understand #1 for the avoidance of doubt the working group notes. I'm going to read it and explain where my questions are, and maybe people have some phrasing. But I'll just remind everyone that like the working group, the co-Chairs are just seeing this for the first time as well. We don't see this material ahead of time. Staff holds the pen.

The filing – the joint complaint of consolidation is to be committed only where: (1) the complaints relate to the registry operator's conduct with respect to the top or second level domain or the second level of that gTLD for all complaints. What does that mean? Of course, it's going to be the top or second level for all

complaints. I don't understand the commonality that's required here.

Then (2) all the trademark owners in the case of a joint complaint or complaints to be consolidated have satisfied the Threshold Review criteria specified in Article 9 of the TM-PDDRP. We have not referenced Article 9. We have not referenced what the Threshold Review requirement is. I think using the Susan Payne rule, we should make it easier for people to find this, but I think because it's part of the criteria, we should reference what it is and explain.

I don't understand #1 at all and what the requirement is. That's having gone through these discussions and shared some of them. Thanks, Phil. Back to you.

PHILIP CORWIN: Okay. Thanks for that, Kathy. I see Mary has her hand up.

MARY WONG: Thanks, Phil. Thanks, Kathy. This is the kind of clarification that we're looking for. Obviously, with all the other sessions and the report, not necessarily wordsmithing just to make it read in a certain way, but if something is not clear then we should certainly make it clear. For this, particularly number one, first of all, we can and we should add a reference to Article 9 of the procedure. Secondly, what we were getting at here with respect to Roman 1 is that because you're either looking at several potentially unrelated entities filing a joint complaint, or potentially asking a panel to consolidate several different complaints filed by different

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trademark owners, it has to go to the same conduct. And not just to the same conduct but to the same gTLD and the same level of that gTLD. So that's the commonality that we were trying to do and we can look at clarifying that. So that's for Roman 1, that really, it is commonality and is not just because it's a complaint directed against the same registry operator.

For Roman 2, the Threshold Review criteria in Article 9, that was something that was discussed quite extensively but by the group that followed the Hyderabad meeting and just to summarize – and I may need some help here from Brian or others – this is more than just an administrative check, it is to make sure that the complaint satisfies certain very specific criteria in Article 9 and the small group felt that was very important, that if something was going to be combined or consolidated that you didn't let one trademark owner slip in – pardon my expression – if that trademark owner didn't satisfy the same standards as everyone else. So I hope that's helpful.

BRIAN BECKHAM: This is Brian.

PHILIP CORWIN: Go ahead, Brian.

BRIAN BECKHAM: Maybe I can try to help out. I think just to have these broad points, again this is something that in effect codifies something that's already possible under the procedure itself, so it's nothing earth-

shattering in that sense. Then just to build on what Mary said about the Threshold Review, just to refresh people's memory, the Threshold Review – there were sort of different layers within the PDDRP and the Threshold Review to put it in US terms would be something along the lines of passing emotion to dismiss. So this was a gate you had to get through before you had a panel to review the merit of the case. I do agree with Kathy. The language there, again just listening on the phone, I don't see it but that language about at the top and second level didn't seem like it may need a little bit of clean-up. But the proposal itself, again to be clear, we didn't think it was strictly necessary but it in effect codifies an existing practice. Thanks.

PHILIP CORWIN: Thanks, Brian. Let me suggest since Mary has already indicated that item #1 under this avoidance of doubt, introduction is going to be – staff is going to revise it to try to make it a little clearer. Even though these materials were sent out to working group members Monday, we know that not everybody reads all the materials prior to a call, the call is where people really focus. Since we're going to get some revised language back from staff, I would suggest that on this and similar items that we haven't viewed before that we discuss on this call that we hold them open for working group members to get back on the e-mail list by Friday. Upon rereading them they have any further suggestions or concerns, once again if it's not exactly the way you would have written it, I don't think we want to get bogged down on wordsmithing. If you think something important is missing, something is misstated, something is biased, something is just confusing rather than clarifying, that's the kind of

input we're looking for. Then anything that new language from staff and any comments from other members we can review on a subsequent call and wrap things up. Is that an acceptable way to proceed? Or does anyone have concerns or objections to that, which is just holding the discussion open until Friday on items we discussed on this call and doing a final review of staff modifications and those suggestions on a future call, which should be sometime next week.

All right. I'll take yes for an answer. Let's go to the next page. This is all new contextual language. Once again, I'm not going to read every word but you can follow along with me and particularly for people only on the phone, this is the context language.

The recommendation specifically concerns the following rule of the TM-PDDRP Rules. The rule, I'm not going to read all of it. It says that if a complaint is filed against a registry operator against whom another PDDRP is active, the parties to both disputes may agree to consolidate. Then it says, "See the Provider's Supplemental Rules."

It continues that the – I'm not going to say TM-PDDRP every time – I'm just going to say TM or PDDRP was designed to allow a trademark owner to file a complaint against a registry operator over certain forms of behavior claiming that one or more of its marks have been infringed, and therefore it was harmed by the registry operator's manner of operation or use of the TLD.

At the top level of the TLD, the requisite conduct by the registry operator must cause or materially contribute to – I think it should be "either". The word "the" doesn't make any sense. To either 1)

taking unfair advantage of the distinctive character or the reputation of the complainant's mark, 2) impairing the distinctive character or the reputation of the complainant's mark, or 3) creating a likelihood of confusion with the mark.

At the second level of the TLD, the affirmative conduct by the registry operator must constitute a substantial pattern or practice of specific bad faith intent by the registry operator to profit from: 1) the sale of trademark infringing domain names; 2) the systematic registration of domain names in that TLD that either takes unfair advantage of the distinctive character or the reputation of the complainant's mark, two, impairs the distinctive character or the reputation of the mark, or three, creates a likelihood of confusion with the mark.

I'm going to stop there, catch my breath and see if there's any comments on anything I've covered so far. Okay, good. It seems pretty straightforward to me and accurate.

Continuing on. Rule 3(g) of the Rules specifically allows for the consolidation of complaints where, during an ongoing proceeding, a second complaint is filed against the same registry operator. The working group's recommendation, if approved, will clarify that joint complaints filed in one single complaint at first instance, or multiple complaints by several trademark owners against the same registry operator are permitted to be consolidated, even when the complainants are unrelated entities. However, the complaints must relate to conduct by that registry operator that affects all the complainants similarly, and at the same level (top or second) of the gTLD, and must all have successfully passed the Threshold Review required under the procedure.

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All right. Just noting … Where's that footnote at the bottom page? Where does that come in? Okay. That footnote notes that WIPO, which is one of the dispute resolution providers for this submitted a possible mark-up of the Rules that can be used as a starting point for the IRT that will be convened if this recommendation is approved. Thank you, Brian and WIPO.

Okay, moving on past that paragraph. At the time the working group reviewed the DRP, and at the time of publication of this initial report, no complaints had been brought under the procedure. Although the working group discussed a number of possible reasons why the procedure hadn't been used, as well as possible justifications to the criteria (whether a standard of willful biased blindness could be justified based on any observable conduct), it concluded that there was no evidence to clearly demonstrate a single or primary reason. It also concluded that, at this stage, there was insufficient agreement to make substantive changes to the DRP.

So this is the only change we're recommending to just clarify that a group of trademark owners if they've got the same beef with the registry operator can consolidate at the beginning or if there's a number of separate complaints alleging the same misconduct that they can be consolidated the discretion of the dispute provider.

I believe that's probably all we have on this. Is that correct, Ariel?

ARIEL LIANG: Yes, that's correct.

PHILIP CORWIN: Okay. The floor is open. If you have any concerns about any of that language other than the clarification that staff has already committed to coming back with, now is the time to voice it. Or else we can – other than that coming change, clarification, we can put this one to bed. No hands, no voices? Let's move on. So we'll look forward to reviewing clarifying language from staff probably on one of the calls next week, it will be a wrap-up item.

Okay, this is a section on Additional Marketplace Rights Protection Mechanisms, the so-called private RPMs. Again, this is new language so I'm going to take everyone through it. If you think something is incomplete, incorrect, biased, make your voice known.

MARY WONG: Phil, this is Mary.

PHILIP CORWIN: Yes, Mary?

MARY WONG: Just a quick note before you take us through the document that this particular section is included for completeness and for information because there is no preliminary recommendation or proposal from here for reasons that hopefully the working group remembers, including the fact that much of the work that came out of the subteam and the working group on this topic made its way into the Sunrise and Claims surveys and the review there.

PHILIP CORWIN: Okay. So, yeah. We didn't make any recommendations on private RPMs but this is to document that we did have some consideration of them.

MARY WONG: Correct. And why we did.

PHILIP CORWIN: Okay. So let me take everyone through this. It starts: "In addition to the ICANN-mandated RPMs – and then a parenthetical names them – the working group discussed a number of additional rights protection mechanisms that several registry operators and the TMCH validation service provider had voluntarily adopted, separate from and in addition to ICANN's requirements."

Then it continues, the working group's purpose in looking at these additional marketplace RPMs was not to conduct a policy review, which would have been outside the scope of the PDP. Rather, we sought to understand the nature and mechanics of these additional mechanisms, as its charter mandated that the working group consider the interplay between the mandatory RPMs, their collective fulfillment of their intended purpose, and their aggregate sufficiency.

Then we've got additional sentence in pink. I'm not sure who added that but it says, "This necessarily required the working group to have an appreciation of the wider landscape." I might put

in the term "wider RPM landscape" just to make clear that's what we're looking at.

Continuing. "In May 2017, in preparation for the working group's discussions about the additional marketplace RPMs, the co-Chairs prepared an initial set of questions that were further refined by an Additional Marketplace RPMs Subteam. The Subteam's final set of proposed questions" – and there's a link to that final set of proposed questions – "were submitted." That is a link, correct?

MARY WONG: Yes. That's correct, Phil.

PHILIP CORWIN: Okay. I just want to make sure it wasn't …

"Were submitted to the full working group in September 2017. Following the Council's approval of a funding request for professional surveys to be conducted on the Sunrise and Trademark Claims services, the working group set up a new RPM Data Subteam to conduct preparatory work for those surveys. The subteam reviewed the discussions about the additional marketplace RPMs and used relevant information derived from them to formulate guidance for Analysis Group, who had been contracted to conduct the Sunrise and Trademark Claims surveys in 2018."

That's the end of this page. Any comment on any of that before we move on to the next page? It seems rather narrative and we do have a footnote down there which says, "At the time of the

working group's discussions, these additional marketplace RPMs were offered by the registry operator Donuts." It notes its acquisition of Rightside and additional RPMs. "And Deloitte, the TMCH Validation Service Provider which was offering its own service as well as the additional RPMs developed by registry operator Minds & Machines." Just more detail in the footnote.

Is there any further language on this or is this the entire section on marketplace RPMs?

MARY WONG: That's it, Phil.

PHILIP CORWIN: That's it. So if anyone thinks anything is missing, incorrect, slanted, now is your chance to raise your voice.

Griffin asked, we've tended to use footnotes with the links. I think his question whether that link should be changed to a footnote. Is there any style consistently … and I think Mary responded, "Good point, Griffin. We'll check for consistency." Yeah, we have the same approach. That's why I wasn't sure it was a link because I haven't seen the links in this report. Prior we've had footnotes with links.

JULIE HEDLUND: We do normally put the links in the footnotes so we'll go ahead and do that in this case too. I think that's consistently what we've done. But we'll check for consistency as well.

PHILIP CORWIN: Okay. I think we're done and can move on to the next topic.

JULIE HEDLUND: Again, I'm putting my hand up, Phil.

PHILIP CORWIN: Yes?

JULIE HEDLUND: We'll move to just briefly introduce you the background section. We don't have the text ready yet because we are making some additional changes to it but we can speak to the text just to let you know what is the format and the structure of that section, and so you understand why it's there and the information that we're including there. I don't know, Ariel, if you want to do that or if you'd like me to –

PHILIP CORWIN: Okay. So all this is new language that we haven't seen before and it's not yet complete. It's not yet ready for full working group review. Is that correct?

JULIE HEDLUND: Yes. That's correct. But I should say new language isn't really quite the right way to describe it. It's not recommendations, it's not proposals or questions for public comment. It is actually

background, most of which has been taken from the original issue report and from the wiki. So it's not new text in that we've made up new things. It's text that reflects the background on the working group pulled from other sources and [brought into this place].

PHILIP CORWIN: Okay. Let me ask, we are at the top of the hour. We have 30 minutes left. Is this the last item of the day for today's call?

JULIE HEDLUND: It is.

PHILIP CORWIN: All right. So we're going to review it for the purpose, I believe, the best use of this time would be to provide input to staff as they finalize this language. This isn't in the final form yet but it's pretty well long and as we review this, how long is this background section, might I ask since I can't scroll down?

ARIEL LIANG: Perhaps I can just take over from Julie because I'm controlling the document. It's 17 pages but please don't feel too worried about the length of that because as Julie mentioned, a lot of these content is a repeat from the final issue report of the RPM PDP. So perhaps I can just give you a very quick introduction and because it's a lengthy document then the working group hasn't reviewed it, we will send out the link ASAP and you can review it.

PHILIP CORWIN: Okay. No one has received this document or link to it up to now, no one on the working group?

ARIEL LIANG: Yes, that's correct.

PHILIP CORWIN: All right. I think probably the best thing here, we're not going to get through 17 pages of text in 30 minutes, so I think, Ariel, if you want to lead us through and explain the structure, the key points that are made, where it's kind of new descriptive language, where it's simply reproducing things … I think I noted that one section simply reproduces a text of the separate recommendations report so there's no need to review that part because it's just a replication of what's in the report later on. So why don't you just proceed and take us on a guided tour through this background and then we can come back and we encourage working group members to review it as soon as the link is distributed, which I think it will probably be right after this call, and then encourage working group members to submit any thoughts on proposed changes or clarifications using the e-mail list so that we can look at a final version reflecting that feedback on our virtual ICANN calls next week.

ARIEL LIANG: That sounds good, Phil. The guided tour begins now. Basically, the background section is divided into two big subsections. One subsection is about the issue background, so providing

explanatory text what RPMs are, how they were developed, what are the overall process.

Then as I scroll down, you can see we have individual sections to provide a little bit more details, background about each of the Phase 1 RPMs, so starting from URS and then to TMCH and then Sunrise Trademark Claims service and TM-PDDRP. Then the last one is Additional Marketplace RPMs. That just provides explanation of what they are, what they do. So basically this part of text from page 1 to page 6 are mostly copy-paste from the final issue report of RPM PDP and we didn't do much changes at all, so you can probably just quickly go through them and they're factual and shouldn't be very controversial. That's the first subsection.

Then the second subsection is about the process background. Basically, how the RPM PDP Working Group deliberate the things that it was chartered in 2016. So the overview is just to provide some general information about what the charter is covering, what the PDP Working Group is tasked to do. That language also comes from the actual charter from the working group so it's not new language. Then following that, we listed some process milestones of this working group, so basically when it started to meet and when the working group co-Chairs were selected and when each of the Phase 1 RPM has been completed. So we noted these key dates to provide a big stroke of the process. Then under that, for each of the Phase 1 RPM review process, we listed some key timeline or milestone dates to reflect the review process for each, so that's how you'll see on the screen. Basically, that's the structure.

Then the last subsection is related to work to the RPM PDP, that's down by the GNSO, the ICANN community, and ICANN organization. We have listed some important documents and review efforts prior to the PDP initiation that includes the Implementation Review Team in 2009 and the STI in 2009. We also listed the UDRP report and the staff paper. So these are the work done before the PDP was initiated.

Then the last part of this background section is the related work done after the PDP initiation. So that includes the independent review of the TMCH, the CCTRT, and then we listed the recommendations from CCTRT that's related to RPM. Then the last part is the EPDP. They have several recommendations that are specifically targeting RPM too. So that's how we wrap up this background section. That's it for the guided tour.

PHILIP CORWIN: Okay. This section appears to be a trip down memory lane combined with some additional background information. Members of the community may wish to read it but it simply explains the process and the background, the related developments. So it's related to the recommendations and questions and proposals for the community we'll be commenting on, as to comment on, but it's kind of secondary background information. What I would suggest – I mean the floor is open if anybody wants to share thoughts on the structure, anything else about this draft chapter or section. Now we'll take comments but it seems to me the most productive use of our time, beyond that would be to adjourn once we hear any preliminary comments and use the time we'd be saving to read this through in the next day or two once staff provides us with

the link, and make any suggestions for changing language or adding detail or adding something that someone feels should be in the background section and isn't there now and get that to staff by the weekend. Then we can come back and look at the final version of this on a call next week and sign off on it. I have to say on first review, it looks pretty accurate and comprehensive to me, but we've got a big group here with a lot of background knowledge and memory, and people may pick something up. Julie, go ahead.

JULIE HEDLUND: Thanks, Phil. I'm wondering, as an AOB, if you want to let working group members know of the status of the project change request?

PHILIP CORWIN: Oh yeah. Thanks for reminding me. The co-Chairs just got a word earlier today from Keith Drazek, Chair of Council, that Council has approved our change request. We do have the extended timeline, which is a good thing because we'd be in a hopeless position if we didn't get that. It's nice knowing that we're in very good shape to file the initial report by March 18 and put it out for comment, and then we'll press hard when we come back after that seven-week comment period to hopefully get the final report out by mid-September but we've got that extra month to mid-October if we need it. But we'll be operating at a timeline that projects to September 15, so if we bogged down anywhere, we're not up against the wall. So that was good news when we got it this morning.

Are there any comments right now on the structure and topics of this background section? All right, unless there are other items we need to discuss, I didn't hear any suggestions for Any Other Business. At the start it's 2:10 Eastern Time. We can adjourn now, give you back 20 minutes of your life and you can use those 20 minutes to – at one minute a page, you can read the 17 pages and have 3 minutes extra. But please, as soon as you get the link, give this section some attention, read through it. Let us know if you want anything edited or changed. Then we'll come back to it and sign off on it with any changes on a call next week.

With that, safe travel to virtual ICANN, whether you're just traveling digitally or actually going to Cancún if you have non-refundable tickets, and we look forward to wrapping up our work on the initial report next Monday to Wednesday. We have Thursday if we need it. We're in good shape here. So, thank you all. Enjoy the rest of your day. We'll see you on the call next Monday. Goodbye.

MARY WONG: Thanks so much, Phil. Thanks, everybody. Bye-bye.

JULIE HEDLUND: Thanks so much, Phil, for chairing. We do appreciate it. Thanks, everyone, for joining. This meeting is adjourned.

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[END OF TRANSCRIPTION]