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ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs)
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JULIE BISLAND: All right. Well, 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 19th 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? And I see a few. Ending in 232, is that Brian?

BRIAN BECKHAM: It's Brian Beckham. I'm on audio only.

JULIE BISLAND: All right. Great. Thank you very much. I would just like to remind everyone to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid background noise. With this, I will turn it back over to Kathy Kleiman. You can begin, Kathy.

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KATHY KLEIMAN:	Thanks so much, Julie. And welcome, everyone. Thanks for joining us today. So, the first thing we'll do is review the agenda. Updates to statements of interest and I'll also include a quick note about the ICANN meeting. First thing, reviewing the agenda, what we're going to be doing today is first reviewing edits that we made collectively to the Trademark Clearinghouse structure and scope recommendations. So, this is just. … We have one recommendation and we requested some edits. We'll take a quick look at those. And then we'll continue our review of a different document, the Trademark Clearinghouse individual proposals where we'll be starting with proposals 2 and 3 which we introduced last week. What we'll be continuing today the discussion both the recommendations and the context.

Of course, as you know... Oh, and then we'll continue on to, time permitting, the individual URS proposals. There's still a pending question from that.

But first let me check and see if there's any state updates to statements of interest. Anybody have any new hats?

Okay, seeing no hands, let me see if anyone has any other business items they would like to add to the end of our discussion.

Okay. So let me just share, most of you probably know that—and staff please correct me if I'm wrong—that the ICANN board is meeting UTC time this evening to figure out. … They've met with the heads of the SOs and ACs concerning the coronavirus and meeting in Cancun and I think the final decision is going to be made this evening. Julie Headlund, is that your understanding as well?

JULIE HEDLUND: I don't know that I would say a decision will be taken today but it will be discussed today. So, I'm sure there will be more information once the board has met. Thanks.

KATHY KLEIMAN: Terrific. And of course, we'll share that as soon as we know because our RPM Working Group meetings are right at the start of Cancun, ICANN 67 on Saturday, Sunday, and Monday.

Okay. So, let's move forward with finalizing discussion of deliberations on our recommendations for the TMCH structure. Julie, do you want to walk us through what the changes were here?

JULIE HEDLUND: Actually, if it's okay with Ariel, I'm going to suggest that Ariel does it. She's actually sharing the screen so it may be easier for her to do so.

KATHY KLEIMAN: Perfect. Thank you.

ARIEL LIANG: Thanks, Julie. The changes are not so lost. So, in the introduction paragraph, David McAuley had a minor wordsmithing suggestion as he put it. It's just to make the sentence more grammatically correct. So, the revised sentence, I'll just read it quickly. "This

section covers only the working group deliberations and recommendations for community input for which the working group reached preliminary agreement and on which it is seeking public comment." So, it's just grammatical correction.

And then the next revision is the beginning of recommendation one. There is a portion about whether the number one through three in the first paragraph sounds like open questions. So, the suggested edits is to delete the second part of the first sentence. So, then the documents reads now as "the working group considered the following aspects of the TMCH one, whether the TM [inaudible] should be changed or maintained" to "whether the current [inaudible] should be changed and maintained" and so on. So, it's just to delete the second part after [end]. So that's the second suggestion.

And then the third one is towards the end of page two. There's a wording after [structure] current balance of deterring bad faith registration but not good faith domain name application is to replace current with proper. So, we applied that change there.

And the next set of changes is under limiting the sunrise and claims RPMs to certain gTLD for trademarks containing dictionary terms. We deleted the question mark in the title already. And then the problem with the following paragraph is it's very long. So, we tried to divide them into two sentences. So, the new paragraph reads as "The working group had diverging opinions on this matter which concerned the availability of some of some [inaudible] trademark claims services for trademarks that contain dictionary terms." That's the first sentence.

And then the second one is "In the absence of wide support for a change to the status quo, the working group agreed that the scope of the sunrise and trademark claims RPMs should not be modified to limit the application to gTLDs that are related to the categories of goods and services for which the dictionary terms within those trademarks are protected." So that's the second to last set of changes.

And then we also added a footnote for TM [inaudible], to explain what it is. So, you can see it on the bottom of page two. So that's all the changes.

KATHY KLEIMAN: Terrific. Thanks, Ariel. And this follows the set of action item changes that we had asked staff to do last week. Would anyone like to comment or critique? Does anyone feel that their changes have not been properly included? If not, I will thank staff and I think we can close this document then for the initial report and move on to individual TMCH proposals.

Terrific. So, this is the individual TMCH proposals. I believe the title has been slightly modified. Is that the case, Ariel?

ARIEL LIANG: Yes, they have added individual to all the proposals.

KATHY KLEIMAN: Right. Making it consistent with how we're handling the URS. So last week Phil took us through TMCH individual proposal number

one and now we just … Towards the close of our session last week we began work, I think, really just reading TMCH individual proposals number two and number three, both of which concern design marks. And because they were read last week, I will just summarize. One is very short and one is longer.

So, the first proposal, number two, the first of the two design mark proposals says, "The TMCH provider, Deloitte, should be required to comply with the TMCH rules limiting the acceptance of marks into the TMCH database to "word marks".

TMCH proposal number three, the second proposal on the subject, is more detailed. It contains—and again I won't read it. You have it and you have the link in the chat. So, I'll just summarize it. It contains a definition of text. It wants us to use the word text marks rather than word marks and defines text marks. And then says the Trademark Clearinghouse guidelines should be revised as follows and this is new language that would go into the TMCH guild line. "An applicant to the Trademark Clearinghouse must include in its application a sworn statement that the trademark registration does not include a disclaimer as to any portion of the mark or if it does the text portion of the mark is not disclaimed in its entirety." And I'll let people read the rest of that.

Under number three, if we can go down a little farther. "Further, the Trademark Clearinghouse guidelines would be further revised to say the Trademark Clearinghouse shall not accept for inclusion marks where all textual elements are disclaimed and as such in the characters are only protectable as part of the entire composite mark including its non-textual elements."

And then for number four, the working grouping will recommend new grounds to the challenge procedure to help assess whether the underlying trademark registration was obtained in bad faith as a pretext solely to obtain a Sunrise registration.

So, I think—staff, correct me if I'm wrong— I think we're now beginning for the first time the discussion of the text of these two proposals before we get to context.

Mary puts in chat, "Just a reminder that the text of the proposals and rationale is text that was submitted so no staff edits or commentary. Staff only added contextual language for deliberations and questions for public comment." So, let's just see if anyone on reading these two proposals that we spent a lot of time on in the working group meetings of a few months ago, any clearly erroneous errors, anything that needs, that comes out as a clear error. Okay. Barring that, question to staff. Have we read the context yet? Or is that new?

JULIE HEDLUND: So, we did not have time last week to read through the context, if I recall correctly. And I think that people wanted to spend some time reviewing that as well before todays call. So, it's up to you. But we certainly can read through that if you would like us to.

KATHY KLEIMAN: Yes, could you? Because I think we have Brian on the phone. It's probably worth reading as we discuss it, so please.

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JULIE HEDLUND:	Sure. I can read it and I'll just ask Ariel to shift the screen as I go. So, the context of the rationale provided by the proponent of TMCH proposal number two.

Some RPM PDP working group members have found a problem. Number one, the RPM PDP working group members—and I should note that … Let me just go back and note that this is the rationale. This is the rationale verbatim that was provided by the proponent. So, this is different from the deliberation section. Just to show as an example to go further down, there is then the working group deliberations on both these proposals. So, what I'll be reading here is directly out of the proponent's actual text. So not edited by staff at all.

So, back to number one. The RPM PDP working group members have learned that Deloitte is accepting the words of design marks, composite marks, figurative marks, stylized marks, mixed marks, and any similar combinations of characters and design collectively "design marks". Two, however the rules of the application guidebook together with STI rules adopted by the GNSO Council and the ICANN board expressly limits the acceptance of marks into the TMCH database to "word marks".

Number three, accordingly Deloitte is not following the applicable rules adopted by the GNSO Council and ICANN board for TMCH operation. Number four, whether the current rules should be changed are a separate issue from whether Deloitte is currently complying with the applicable rules that working group by consensus can determine that the current rules should be [inaudible] and presented the GNSO Council and ICANN board with an expanded set of rules that Deloitte or any future TMCH

provider must follow. That is the rationale for proposal number two. Shall I move to...

Oh, I'm seeing in the chat, she said, "When we finish number two and three could we go back to Mary's edit at the end of number one where she has a minor suggestion?" So, we'll do that, Susan. Thank you.

On to the rationale provided by the proponent of TMCH proposal number three. In section 3.2 of the Applicant Guidebook describes the marks that may be accepted into the TMCH database as "word marks". However, the term "work mark" is not to defined in the AGB. This has created ambiguity and the potential for misunderstanding. Specifically, it appears that marks may have been accepted into the TMCH database where all the words in the mark have been disclaimed. B, this ambiguity should therefore be clarified.

And so, the next section is the working group deliberations on both proposals. So, in March of 2017 at ICANN 58, Deloitte, the TMCH validation service provider, provided the following information to the working group on how it handles design marks. First bullet verification focuses on words in a design mark but not the design aspect. Note example from TMCH guidelines.

Bullet two disclaimers to exclusive use of marks are not factored in; verification process involves only matching factual data against corresponding trademark certificate. No legal opinion provided by TMCH on exclusive use.

Bullet three, verification of generic words also are matched against corresponding trademark certificate. Bullet four, some jurisdictions do not distinguish different types of mark, e.g. word versus figurative/design mark; no separate statistics on design marks per se.

On to the next paragraph. The working group had diverging opinions on the appropriateness and adequacy of the TMCH validation service providers' handling of design marks. In light of Deloitte's response some working group members thought that they could support either proposal. The working group notes that TMCH proposal number two essentially calls for the elimination of design marks in the TMCH, whereas TMCH proposal three does not propose elimination. It calls instead for clarifications regarding applicable definitions and usage.

The working group believes that additional community input will be helpful in assisting the working group to determine whether there is a need for a policy recommendation to address the issue of design marks.

Working group question for public comment. The working group seeks community input on both proposals in order to determine the extent of support for TMCH proposal number two or TMCH proposal number three. In addition, the working group welcomes suggestions for ways to reconcile the two proposals if possible.

And then I'm noting Susan's request to go back to the end of number one.

KATHY KLEIMAN: But now we are on two and three. Thank you, Julie, for reviewing that. And it's this co-chairs' opinion that this is actually a very good summary of what was weeks and weeks of discussion in the working group. But let me open it up for comments. Susan, go ahead, please.

SUSAN PAYNE: Thanks, Kathy. So, a couple of comments really and they possibly could be addressed in two different places and I think it would be helpful to do it in two places.

I think we need to make it clear for the community that the rationales that are being provided are the rationale of the proponent. I know it says that but it's not clear, particularly in the introduction, that there has been no editing by anyone, by staff or whatever, or indeed that it's not clear that in some, or maybe all, cases the actual rational itself is not agreed as being a factual statement by all members of the working group. And I think we need to make that clear.

And then in respect specifically TMCH proposal number two. When we come to numbered item number two in the rationale, there is a reference to the rules of the Applicant Guidebook together with the STI rules adopted by the GNSO Council and the ICANN board. And that would be an example where there is what I think some of us would consider to be a factual inaccuracy in the rationale in that the STI recommendation were not rule. They were recommendation. And whilst the GNSO Council and the ICANN board both did adopt them for the purposes of going forward, it was made very clear that that was for the purposes for public

comment period, and so the Applicant Guidebook provisions actually reflect the final outcome, if you like, after a public comment period and after the feedback from the community was incorporated.

I'm not disputing that the rationale says this and that's absolutely fine, but I think we need to make sure the community is aware that there are these differences of option.

So, in addition to the suggestion that I made that way make a change to the introductory language right at the beginning before the introductory paragraph right at the beginning of the section, I think we should also have something in the deliberations section that identifies that some working group members take issue with this characterization of the STI recommendations.

KATHY KLEIMAN: Okay. Thank you, Susan. Let me ask staff. How did we handle proponents rationale in the individual URS Proposals? Could you remind us?

JULIE HEDLUND: Mary Wong actually has a comment [inaudible] addressing issues—

KATHY KLEIMAN: I'll read the chat comments in a second. But will you tell us about URS and how—

JULIE HEDLUND: Well, the rationale was presented in the same way it is here in that it's presented as the individual proposal rationale. And then there's the context which is the working groups deliberations. As has been requested, if working group members have clarifications or error corrections in the deliberations description, that should be included.

So, to the extent that we may have missed the point that there was a disagreement concerning—where there were some concerns expressed among some working group members with respect to the rationales of the proposals. And I do recall that that was part of the discussion. I think we, staff, can go back to the transcripts of those discussions and make sure that is pulled out and included in the deliberations.

KATHY KLEIMAN: Thank you

JULIE HEDLUND: That's consistent with what we did for URS as well. Sorry.

KATHY KLEIMAN: Okay. Fair enough. So, let me read what Phil Corwin has said— and he's now chaired two of our reviews of the recommendation. "In regard to the ongoing review, I understand that the working group should be reviewing, and if it feels necessary or appropriate, revising staff drafted language on deliberations in question for public comment. But do we need to review the

explanation provided by proposals proponent? We have little to no latitude to revise such language." Thank you, Phil.

And then Mary to Phil. "To address Susan's concern perhaps we can have a specific paragraph at the top of the section highlighting the fact that while the working group agreed to put the individual proposals and their rationale as submitted out for input, the working group has not agreed to either the accuracy of or the views expressed in the proposals." And it looks like that would address Susan's issue.

But let me ask and see if anyone has any questions or wants to support or not support this proposed way forward. So, explaining that it's very much the proponents rationale, and in cases where the working group might have disagreed, highlighting that as well.

Okay, that looks like a good way forward. Then let me open this up to anyone else who wants to comment on these two recommendations, and particularly on the working group deliberations section of the materials. Phil, go ahead please.

PHILIP CORWIN: Let me clear … I just wanted to make sure, given the time pressures we're under even with the extended timeline, that where we have language which we really have no ability to edit where someone said, "This is my rationale for my proposal." I don't think we have any latitude or even limited latitude to amend it. I think we'd have to clear that with the proponent. So, I hope we don't spend a lot of time reading that part of the text. Really, we should be, as we did with the URS individual proposals, revealing the

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contextual language and focusing on that. And then if there was a particular explanation where working group members feel there is a factual error, we can note that in the contextual language, so that the community is aware of that dispute.

KATHY KLEIMAN: Terrific. Thanks, Phil. And it looks like that is a good rule for going forward based on how we've done things in the past and also the… Somebody is not on mute.

PHIL CORWIN: We're getting background. Someone needs to mute. Okay.

KATHY KLEIMAN: I think someone did. Thank you. And it looks like Susan and others support this. So, a good way forward.

PHIL CORWIN: Thanks.

KATHY KLEIMAN: Any other comments on the context of the two proposals—proposals number two and three? Any hands that I'm missing? Okay. Terrific.

Then let's go onto proposal number four. It's actually proposals number four and five, which are both proposals and fairly long

ones, on geographical indications. You'll remember we spent a lot of time here on these.

Brian, you're the only one on the phone, so let me ask you a question if I might. No, actually David. It looks like David... For people on the phone do you want to hear this word for word or can we kind of skim the individual proposals? We'll read the context.

BRIAN BECKHAM: Hi, Kathy. Sorry to jump in. For me, it's fine to summarize. I think we've seen this on more than one occasion so a refresher versus verbatim reading seems to make sense in light of our time constraints.

KATHY KLEIMAN: Thanks, Brian. And I'll give it my best shot to give a good summery and hope you're feeling better. So, thanks much. Okay. Let's go back. I know Susan wants to go back to number one. Let's do it after we get to the end of the document, then go back again to the beginning. Okay.

So, TMCH proposal number four. I'll read this then pass it on to staff for context. So, proposal number four. One of two proposals.

Geographical indicators, in this case, GIs may not be registrable in the TMCH database used for sunrise or trademark claims in the theory that they are marked protected by statute/treaty. If they are not also eligible for the TMCH database as trademarks, any GIs presently in the TMCH database should be removed.

Number two. Other marks that constitute intellectual property [inaudible] are not eligible for sunrise or trademark claims. If and when the TMCH provider adds ancillary databases covering "other marks" it should revise its public facing materials to make this distinction clear.

Number three. Proposals for amended language in the Applicant Guidebook. And we've got some new language in bold. 3.2.3 any wordmarks protected by a statue or treaty in effect at the time the mark is submitted to the clearinghouse for inclusion, this language should be amended to read 3.2.3 Any word mark protected by statute or treaty in effect at the time the mark is submitted to the clearinghouse for inclusion: the wordmark protected by statute or treaty must be a trademark. And an explanatory footnote will be added.

Trademarks, there is a definition. Trademarks, service marks, collective marks, and certifications marks.

And then an offering of 3.2.4 clarifying other marks that constitute intellectual property, and what won't be included in the TMCH. There are modifications to lots and lots of different language. Please take a look at it here. And then expressly for reference current 4.1, there should be no bar—this is all the way down at the bottom of the page now. So, bar on the Trademark Clearinghouse service provider or other third-party service providers providing ancillary services on a non-exclusive basis.

Okay. Then, TMCH individual proposal number five. The second on the subject. So, 1.0, the main database function of the TMCH is for trademarks, specifically trademarks registered at the

national/regional level. Trademarks protected under common law which are confirmed by court decision in trademarks protected under national or international laws by statute or treaty.

It highlights in 1.1 the main database function of the TMCH should be solely used for supporting the mandatory RPMs including trademark claims and sunrise. The trademark claims and sunrise mechanisms are mandatory RPMs for the protection of trademarks. Other signs or source identifiers, such as geographical indications or appellations of origin, shall not be included for protection in the mandatory sunrise or claims periods unless such GIs or appellations of origin are also independently registered as trademarks.

And then this as well highlights that the TMCH provider in 2.0 may provide ancillary services including the creation of ancillary database or databases as long as these services and any data used for these services are kept separate from the main clearinghouse database. And then it talks about ancillary services and voluntary rights protection mechanisms.

If anyone wants, we can read all of this further, but as Phil noted, this language doesn't change because it does come from the proponent. Does anyone want to comment on these recommendations before we go into context? You can also comment on them after we look at context. Okay. Julie, let me hand it to you for a review of context please.

JULIE HEDLUND:	Thank you. This is Julie Hedlund from staff. I'm actually just going to the working group deliberation. So you can see the rationales provided here by the proponents for Proposals #4 and #5. But unless anybody wants them read, they are again taken verbatim from the two proponents and we could focus on the context which is the working group deliberations.

So, moving ahead to that – and this is the deliberation on both proposals. Again, this goes back to March of 2017 at ICANN58 as was also noted for Proposals #2 and #3. "Deloitte (the TMCH Validation Service Provider) provided the following information to the working group on how it handles the categories that marks. The first bullet: 'Marks protected by statute or treaty' is a separate category of marks within the TMCH. Second bullet, the TMCH Guidelines describe Deloitte's process for validating and accepting submissions in this category. Third bullet, as part of this process, Deloitte does not distinguish between 'geographical indicators' or 'designations (or appellations) of origin' and other marks that may be entitled to statutory protection. Fourth bullet, as of February 2017, 98 such marks had been submitted and 75 had been successfully validated. Due to Deloitte's validation process, it was not possible to tell how many amongst the 75 validated marks constituted 'geographical indications' as that term may be used in national or regional laws and treaties."

Next paragraph. "The working group also discussed the nature of national, regional and international legal protection for these marks, which are not necessarily the same as or equivalent to registered trademark rights. In light of Deloitte's response and the

working group's discussions, the working group agreed to include the above two proposals in the initial report for public comment."

Then there's the working group question for public comment. "The working group seeks community input on both proposals, in order to determine the extent of support for either TMCH Proposal #4 or #5. The working group also welcomes suggestions for ways to reconcile the two proposals, if possible."

KATHY KLEIMAN: Great. So some guidance right at the end for people's comments. They can comment on either one or both and/or try to help us reconcile them, which is one of the reasons these proposals are going out for public comment is for guidance from the public.

Any hands, any discussion, any changes, recommended changes to the context? I looked up one thing which was to remind us of March 2017, ICANN58 was in Copenhagen, and you remember we were in a big room and Deloitte was [inaudible]. Looking at the comment, I think this context very well describes the discussion, the issues, and what we're seeking. So absent any other comments. We'll move on.

Claudio, there's a long … Do you want to come online and tell us what you're proposing? You need to dial in.

JULIE HEDLUND: Just to note, with respect to Claudio's suggestion, we have not been making any changes to the proposals. The proposals are – they stand as written. So, we're not really sure what to do with this

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KATHY KLEIMAN: I'll just summarize for Brian who's on the phone that Claudio Digangi who I believe is the proposal writer of the second GI proposal is seeking to add more text to his proposal, and it's my understanding with my co-chair had on that we had closed these proposals sometime ago. Let me ask Phil and Brian to comment, if you would. Thanks. Phil or Brian and then we'll have –

PHILIP CORWIN: Yes, this is Phil. My understanding was that we had closed out the ability to edit those rationales for proposals quite some time ago. I'd be concerned about allowing that to be reopened and perhaps having multiple suggestions from proponents who want to add language and getting into working group discussions about that additional language and getting off track. Thank you.

KATHY KLEIMAN: Thank you, Phil. Julie put into chat confirming that for the procedures, the proposals are closed to edit by the proponents. Brian, would you like to say anything? And then we'll call on Susan.

BRIAN BECKHAM: Sure. I think I tend to agree with Phil and Julie. I think we gave quite a bit of air time to try to make changes to see if we can bring

this around and, unfortunately, we weren't able to do that. So I think we probably have to draw a line under this. And of course, we have public comments and if we can make changes on the [inaudible] of that and bring these recommendations and that's what we're all here for.

KATHY KLEIMAN: Terrific. Thanks, Brian. Calling Susan and then Claudio. Susan, please.

SUSAN PAYNE: Yeah, thanks. I'm only skimming through Claudio's suggestion as you're all talking about it. But I'm wondering if actually what he's really hoping for is just something that gives members of the community an understanding of what the existing language says so that when they're commenting on these proposals relating to geographical indications, they know what the AGB says. Because that does seem to me to be what he's suggesting is something that just flags what Section 3.6 of the AGB currently says, and maybe that could be done as a footnote.

KATHY KLEIMAN: I'm not sure, so let's ask Claudio what he's trying to accomplish here. Claudio, go ahead, please. Could you read us what you're trying to insert and where you're trying to do it and why, please? Because we're doing this all standing on one foot right now. Thanks. Go ahead. Claudio, if you're speaking, we can't hear you. Go ahead.

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JULIE BISLAND: Sorry, Kathy. Go ahead, Claudio. I think we're muting and unmuting you. One moment. Okay, try now. Claudio, you should be unmuted. Sorry, Kathy. I'll try to troubleshoot.

JULIE HEDLUND: In the meantime, Kathy, to the extent that Claudio may not be able to see what's going on in the chat, there was a suggestion from staff that perhaps this could be added following Susan's suggestion that perhaps this could be added as a footnote in the context deliberation section. So we're not actually changing the text of the proposal, but it could be added for context as a footnote in the deliberation section.

KATHY KLEIMAN: Then we have to go through it. We can't just add it. Is this correct? "Geographical indications and Appellations of Origin may be recorded in the TMCH as per the existing rules outlined in Section 3.6 of the Applicant Guidebook, which states: 'Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in Sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any registry operator chooses to provide.'"

Personally, I'm not sure that that says the geo … I thought part of the whole question that we're dealing with is the question of what the existing rule is saying, what they mean. I think we should be

reviewing this a little more closely. Let me check some of the messages. Susan, is that a new hand?

SUSAN PAYNE: Yeah, Kathy, it is. Just to say I certainly wasn't suggesting if we did have a footnote that there should be any sort of editorialization or assertions in there. I was wondering whether Claudio's concern could be addressed by literally a footnote that pointed to a particular section the AGB that he thinks perhaps people might need more information about. So, not something that says essentially that would effectively only cover language that's involved, not something that is someone's interpretation. I feel like I'm arguing for something that isn't something I've actually proposed, so I'm going to stop now.

KATHY KLEIMAN: Thank you. Thanks for your comment, Susan. Phil, go ahead please.

PHILIP CORWIN: Yeah, adding to my prior comment, I have no objection. We shouldn't be in any way editing the proponent's original rationale. If we're talking about a mere footnote to the section staff drafted section on working group deliberations which references a factual element, which in this case is an exact quote at the Applicant Guidebook, I don't object to that. If a working group member thought that that particular footnote needed to be supplemented by further references from the other parts of the Guidebook, that'll be fine. But of course, when the public comments on it, those in

favor of geographic indications are going to cite that section anyway and make their best case there. Those opposed to the entry of GIs are going to give their own rationale, including citing anything in the Applicant Guidebook that backs them up. So I don't think this is a major point, adding a footnote like this. Thank you.

KATHY KLEIMAN: Let me ask you. The footnote appears to be both actual text from the Applicant Guidebook as well as commentary on that text. It seems appropriate to add the text itself but maybe not the commentary?

PHILIP CORWIN: Yeah. I would leave out the … I'm not sure if I'm speaking as a co-chair in a personal capacity right now. I would leave out the non-highlighted language and just start with, "Section 3.6 of the Applicant Guidebook states," and then just quote it. That way you're leaving the interpretation to the community members and they can make of it what they will. And it seems to say that in some cases, GIs might be okay, in other cases not. We'll see what kind of comments we get. I know there's strong feelings on both sides of this issue.

KATHY KLEIMAN: Indeed. As we've heard. Thank you, Phil. That's a good suggestion. It looks like that follows what people are saying in the chat, what Susan said as well, and what Claudio is looking for. So, good. We now have our footnote. Any other commentary on the

context of this individual TMCH proposal? Terrific. Moving right along.

Let's go to Proposal #6. I'll read it and then turn it back over to Julie for context. "The Trademark Clearinghouse database provider or providers shall be contractually bound to maintain, at minimum, industry-standard levels of redundancy and uptime. To further ensure the effective delivery of the Sunrise and Trademark Claims services, the following implementation guidance shall be provided to the Implementation Review Team that will be formed to advise ICANN org on implementation of those policy recommendations that are ultimately approved by the GNSO Council and the ICANN Board."

First bullet point, "Consider the advisability of requiring that more than one provider be appointed and," second bullet point, "Review the work of the Implementation Advisory Group that was formed for the 2012 New gTLD Program to assist ICANN org with developing the specifications for and design of the Trademark Clearinghouse."

Julie, over to you for the context of this proposal.

JULIE HEDLUND: I'm not going to read the rationale because again that is as provided by the proponent, but I will read the working group deliberation which is the context.

"This proposal concerns the operation of the Trademark Clearinghouse Database (currently administered by IBM). Where Deloitte operates the Trademark Clearinghouse validation service

that checks trademarks submitted for entry into the TMCH against the substantive and other criteria set out in the TMCH Guidelines, IBM operates the resulting TMCH Database with which registry operators and registrars interact, e.g. to offer the Trademark Claims service. In this context, some working group members expressed concerns about operational considerations due to there being only a single provider. However, the working group did not develop a specific recommendation to address this issue."

KATHY KLEIMAN: Terrific. Thanks. I actually have a question. Was there some evidence that we had that if we did that maybe should be cited here or some problems of unavailability of the TMCH during Sunrise or Trademark Claims? I'll just open up that question as we open up the discussion. Who would like to comment on the context in the working group deliberation language?

Okay, so let me ask staff. And let me ask Maxim also. Was there some kind of evidence? Was there some kind of problem that arose that we might provide a little insider data on, maybe something that was shared with us in a public forum that provides some additional background on this proposal?

Maxim says, "There were periods of unavailability. Dates were provided during the discussion."

So, would it be appropriate to go back … Maxim, go ahead, please.

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MAXIM ALZOBA:	Do you hear me?

KATHY KLEIMAN:	Sorry, I was already on mute. Yes, we can hear you.

MAXIM ALZOBA:	There were cases where they were not publicly available on ICANN website or Deloitte. Cases were strictly between the ICANN, the TMCH, and the registry. In one of the cases, TLD was launched and there were suggestions. The [TMCH says] it wasn't available because of some technical issue. Basically, IBM did something to firewalls which disallowed files from registry to pass. And this resulted in some registrations which had to be reversed. Thanks.

KATHY KLEIMAN:	So, Maxim, you're saying that there were some registrations that had to be reversed. Can you say why? Is it because it was actually an underlying original registration during some period of unavailability of the database?

MAXIM ALZOBA:	It wasn't during the Sunrise phase.

KATHY KLEIMAN:	Julie is saying that we don't have any data on this, anything specific that we can cite.

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Mary, go ahead please. Maxim, is that a new hand? Mary, go ahead please.

MARY WONG: Hi, Kathy and everyone. And thanks, Maxim. We're not obviously disputing that Maxim did provide the anecdotes that he just mentioned again. But as Julie had said in the chat, this was not data that the working group obtained or verified, and the working group does not go out to obtain any additional data that could demonstrate the breadth of the problem. So for those of reasons, staff did not include this one data point in this part of the report.

KATHY KLEIMAN: Okay. Should we be including some data pointing to the anecdotal that there were times when there were problems accessing the databases? Comments, anyone? Because it would seem to me that if that's the case, then it's more than just expressing concerns about operational considerations due to their being a single provider. It includes some existing downtime with that provider. But I will leave it to the working group. If anyone has any suggestions, please put them into chat. If you have any other points to raise, please raise your hand. Otherwise, we'll move forward.

Okay, Proposal #7: "In order to foster robust accountability, and in order to ease operational and commercial challenges flowing from a dearth of information about what is in the TMCH, the TMCH should transition from a closed database to an open and searchable database."

Over to you for context, Julie.

JULIE HEDLUND: On the working group deliberation, "The Working Group had diverging opinions on whether the TMCH database should remain confidential or become open and searchable. Several working group members noted that, while general transparency and openness may be beneficial to good faith actors (e.g. informing them what domain names they should avoid registering ahead of receiving a Claims Notice), they also thought that rights-holders may have legitimate reasons for wanting to keep the TMCH database closed, including the risk of thereby disclosing commercially sensitive information such as trademark value and brand strategies. On the other hand, working group members who supported this proposal thought that allowing the TMCH database to be searchable could yield information that may be used to flag trademarks that ought not to have been included, e.g. via objection proceedings initiated with the TMCH provider."

Marie Pattullo has a comment on not to have been validated. "Validated by whom? Clearly the TMCH provider can't reexamine a registered trademark. Only IPOs/court could do that."

KATHY KLEIMAN: Great. Thank you, Julie. Thank you to Marie who commented as requested on the document. So, any comments here? What would people like to say on this, the last of our individual TMCH proposals? Although I know we are going back to the beginning of the document.

Susan, go ahead please.

SUSAN PAYNE: Hi there. Just noting Marie's comment, I wonder maybe would it make sense to use some slightly different terminology? Maybe if were to say something like database could be searchable to yield information that might be used to identify trademarks for a challenge process – I can't think of the terminology – for challenging the validity of the record in the TMCH or something like that. Because that's really what we mean, isn't it? It's not that they shouldn't have been validated per se. There are some challenged processes that exist and the argument has been that it's not possible to take advantage of them or it's harder to take advantage of them when you can't search the database.

KATHY KLEIMAN: Great. So, some commentary really in last sentence. Thanks, Susan. Phil then Michael. Phil, go ahead please.

PHILIP CORWIN: Phil for the record, individual capacity. These aren't big points, but one, I don't know if we ever characterize the degree of divergence. But my recollection is that we had sharply diverging opinions on this particular issue. I don't know if we ever had an adjective like that to characterize the degree of divergence or whatever the right word is there.

I believe also that besides the one about why didn't people see what trademarks are there to see if they think they should've been

challenged in some way, I think other commenters at the time – we discussed this – may have suggested allowing searchability would assist potential registrants and avoiding triggering Trademark Claims Notices, but I'm a little hazy on that.

They're both minor points. I'm fine with the language as is, but I just wanted to raise those. Thank you.

KATHY KLEIMAN: Great. Thanks, Phil. In addition to challenging validity, potential registrants might be trying to do due diligence and also to avoid existing marks and Trademark Notices in existing registrations.

Michael, go ahead please.

MICHAEL KARANICOLAS: I think that Marie's point is a bit of a mischaracterization of the point of finding additional information. It's not limited to those kinds of challenges. It also speaks to the broader benefits of finding things that are included in the database that shouldn't be for one reason or another or to uncover abusive registrations, problematic registrations, gaming the system. So I don't think it should be changed along those lines. I think it should just be left as is. Frankly, I wasn't going to reopen things, but if we are editing text, then I would suggest that it also be edited to reflect the fact that the so-called commercially sensitive information is already available on a trial and error basis. Thanks.

KATHY KLEIMAN: Okay. But are you proposing some specific language?

MICHAEL KARANICOLAS: I am proposing that it should stay as is. Thanks.

KATHY KLEIMAN: Okay. I hope Michael won't mind if on behalf of the working group I congratulate him on becoming a father in the last few [weeks].

MICHAEL KARANICOLAS: Sorry. I'm not sure if you can hear that in the backend.

KATHY KLEIMAN: Okay. We have a new working group participant. He's a month old. Great. Okay, one proposal is to keep it as is. Other proposals are to clarify it a bit.

Jason Schaeffer notes, "Yes, there was significant divergence, and searchability and transparency was a major issue."

It looks like we've added the word "sharply" to the first line here: "The Working Group had sharply diverging opinions."

Michael, your hand is still up. What do we think? Do we leave it the way it is or do we really begin to add…? If we're adding, Ariel – I think Michael said as I was taking notes, uncovering abusive and problematic registrations, if we're detailing this.

Any other comments on this? It looks like we're leaning towards revising the sentence to have more details, which may or may not

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help the public. If we're adding more details, can I suggest that we do a paragraph break before the sentence? "On the other hand." A paragraph break just to help people read it. In other places, we've done shorter paragraphs.

Any other comments on this last of our proposals? We welcome Benjamin as an adjunct member. Congratulations.

Okay, then last comment going once, going twice on Proposal #7, and we'll go back to Proposal #1. Julie, hand up. Go ahead please.

JULIE HEDLUND: Just to confirm, it's staff's understanding then that we're not editing the now two paragraphs and then splitting them into two paragraphs and adding the word "sharply" in front of "diverging" which is Phil's suggestion? It's not clear to us where we came down to. There were people saying that they should not be edited, or if we were editing then there were a number of other edits to be captured.

KATHY KLEIMAN: This is really the working group's decision. Thank you for pointing that out, Julie, that we're still in ambiguity. Would the working group – would we prefer to have more detail in the deliberation or keep it the way it is?

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JULIE HEDLUND:	Kathy, just noting something in the chat where Susan was suggesting a simple change to address the question that Marie had. That would be to change the word "validated" to "included," and then no other wordsmithing would be necessary. And David McAuley's saying, "I think Susan and Michael just agreed a solution to this issue." And Claudia's agreeing.
KATHY KLEIMAN:	Okay. So, we've reached agreement. I kind of liked the list but that was a personal opinion. If everyone else is in agreement, then we're done and I guess that list goes away—that side list of points. Very good. Back to individual TMCH proposal number one. Susan, I think you had an edit. It wouldn't be to the recommendation, right, but to the context somewhere. Walk us through it, please.
SUSAN PAYNE:	Oh, yes. I am on mute. Yeah. Really quick one to the red bit of text that's just right in the middle of our screens there, just to add the words "education materials—" rather, add the word "materials" after "education."
KATHY KLEIMAN:	Can you read the whole sentence, Susan, please?
SUSAN PAYNE:	The sentence would be, "The working group seeks community input as to whether, and if so how and by who, education …" and

then I would propose adding "materials about the TMHC and its services should be provided." I think that's what we mean. It's certainly what it is referred to elsewhere in the deliberations.

KATHY KLEIMAN: Okay. So, question for Susan or for everyone. "Educational materials" sounds like something substantive. Education itself could also be presentations, oral. Do we want one or the other?

SUSAN PAYNE: I don't know. I was going on the basis of the paragraph above, which talks about developing different sets of materials and indeed I can't recall now what the proposal itself said. The rationale says the TMCH already provides some level of educational material. That was why I was suggesting it. If you think it's … I thought it was a friendly amendment. Then you think it isn't, then I don't feel terribly strongly about it.

KATHY KLEIMAN: Thanks, Susan, for raising it. David McAuley says, "Not a big point here, either." Paul Tattersfield says, "Has a different meaning." I'm looking through material and seeing, "education and outreach," which is why I raised the issue I raised. Do we stay the same or do we modify? Any …? Okay. Thanks, Susan. Absent, we're going to take this out, staff—withdrawn. So, we'll just go back to the original wording that we originally reviewed. But that's the kind of reading that we're looking for so much appreciated.

I think that wraps up our TMHC individual proposals. And thank you to staff, who did an enormous amount of work in reviewing transcripts and pulling all this material together. And thank you to the working group for the extensive reviews of this material—the close review of our initial report.

Okay. Back to staff to introduce us to the third item on our agenda. Go ahead, please. Third substantive item.

JULIE HEDLUND:
So, this is the deliberations for the URS individual proposals. As you all may recall, and you'll see the link in the chatroom, the working group completed a review of URS individual proposals a few weeks back. And now, this is actually capturing the deliberations from that review. So, none of this should be new to you. It actually should be relatively familiar because it was not that long ago.

But this is now the section of the initial report that contains the summary of those deliberations on the individual proposals. And in particular, that is those proposals that the working group agreed to publish. So, these are only those proposals that the working group agreed to publish, if I had asked Ariel to go down a little bit further.

So, yeah. Wait, I'm looking at the … Hold on. Up a little bit further. Sorry. I'm looking where the comment is—just the note that Ariel's made, "This part can be moved to the introduction." But just as a reminder, what we're asking here is that the working group is seeking public comments on both the concept underlying each of the proposals as well as the details.

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So, same as with the TMCH individual proposals, we're putting these out for public comment. And we note here that based on this second round of assessment, the working group determined a published 17 proposals. And so, these are the 17 proposals.

And just moving down to the start of page two, Ariel. There's just a note that also this section with the context here can also be moved to the overview of proposals. So, this is the same approach for all proposals that we have the rational, the high-level summary on the working group deliberations, and then any specific areas where the working group is seeking community input. So, again, this mirrors what we've already looked at, with respect to the TMCH individual proposals.

KATHY KLEIMAN: Hold on, Julie. Let me ask a question, which is I think that we agreed, when we were looking at other similar documents, that we were going to hold off on making the decision about moving this part—Ariel's suggestion about moving certain sentences that might be overview, or comment overview, or background—that we're going to wait until we see the whole report put together because it's a little hard to move it into a section we can't really see in a context we can't really see it. So, maybe hold off on that decision for a little while. I think that's what we decided to do in other areas. Is that right?

JULIE HEDLUND: I think what we had planned to do is provide you all with the text, where we're suggesting it should be. And once you see that, it

should be more clear what we're suggesting here. But yes, we're leaving them where they stand for now, until we compile those other sections. And we'll have those ready for you all to be reviewing in Cancun as well.

KATHY KLEIMAN: Terrific. Thanks. So, keeping in mind but deferring discussion on it. Great! Okay. Back to you, Julie. Thanks, as we go forward.

JULIE HEDLUND: Okay. So, going forward, we're starting with individual proposal number one. These are just numbered in order, just for ease of reference for those who may wish to comment on them in the public comment period. They're not in relation to any particular ranking. It's just simple ordering for reference.

And so, to the context of proposal number one, there was very little discussion on this particular proposal. In the case where there was little discussion, we've simply noted that "there was wide support in the working group to publish the proposal in the initial report."

So, you'll see, as we go through these, that the deliberations … And if you remember, they were quite brief in many cases and, in particular, where there was wide support to publish a proposal, the deliberations were simply that there was wide support to publish the proposal. So, there wasn't really much more to capture.

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KATHY KLEIMAN: Okay. Any commentary on URS individual proposal number one? It's interesting. We've dealt with the proposals in many different orders, by subject, by complaint, and by number. We've changed them so we have to rethink this.

So, individual proposal number one, this notice of default via email—also via mail and fax. And the registrant will be prohibited from changing content found on the site to argue that it's now legitimate use and will prohibited from changing WHOIS information. Okay. Any commentary? Any thoughts? In this case, most of the context … Well, the proposal's unchangeable. The rationale provided by the proponent … Proponents should probably take a look at the rationale.

Julie, let me ask. Some of this is edited a bit, right, for the rationale provided by the proponent? We've gone back to the original proposals? Or is this taken straight out of the survey summaries that we've been working off of?

JULIE HEDLUND: It's actually not edited. So, it goes back to the rationale provided by the proponent. It's taken straight from the original proposal, as Ariel has noted in the chat.

KATHY KLEIMAN: Okay. Terrific. Any thoughts on number one? If not, let's proceed to number two. Back to you, Julie. Thank you for walking through this new document.

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JULIE HEDLUND: Great. Okay. And then, I'll just ask Ariel to move down to the context for number two. And again, this is one where there was wide support in the working group to publish the proposal in the initial report. And the working group also agreed on a question to be included. "The working group particularly seeks public comment from the Contracted Parties House with regard to this proposal." It's not really a question. It's a request.

KATHY KLEIMAN: Julie, could you remind us what the proposal number two is?

JULIE HEDLUND: This relates to legal requirements that should be moved from the technical document, URS High Level Technical Requirements for Registries and Registrars to another document, URS Procedure or URS Rules. Then, there is an inclusion of the legal requirements language, specifically relating to the Registry/Registrar agreement.

"The alternative is to leave the legal requirements text but rename the URS High Level Technical Requirements for Registries and Registrars document as URS High Level Requirements for Registries and Registrars. In addition, on ICANN's page," and there's a URS, "change the document's title from URS Technical Requirements 1.0 to URS Registrars and Registries Requirements 1.0."

The rationale is, "To avoid confusion among Registries and Registrars, usually engineers read technical documents and legal teams read Rules and Procedures. Here, we see a legal

requirement to include particular text into Registry/Registrar agreement. This change will simplify the process of understanding the URS implementation for new registries and registrars and reduce the workload for ICANN Compliance/Legal departments without significant changes."

KATHY KLEIMAN: Okay. Thank you, Julie. Any commentary on this? This is well-worn paths at this point.

JULIE HEDLUND: And I'm noting, Kathy, that you're asking for … Yes. The link to the URS individual proposals was posted but I'll go ahead and repost it here.

KATHY KLEIMAN: Thank you. Great. And that way, people can read it at their leisure or have the larger version next to them. Okay. Proposal number three.

JULIE HEDLUND: Okay. And just to summarize, this is a proposal to "revise URS Policy paragraph 10 to reflect the following new provisions,"that, "There shall be an option for a successful or unsuccessful complainant to extend the registration period for one additional year at commercial rates," and that, "Notwithstanding any locking of a domain pursuant to paragraph 4.1, and notwithstanding the suspensions of domain name pursuant to paragraph 10.2, the

registrant shall be entitled to renew subject domain name registration and the registry shall permit same, in accordance with its usual commercial rates, for a period of up to one year."

And then, just with respect to the context and the rationale provided by the proponent, it has to do with "what happens when a URS decision is issued, for example, "merely one day prior to the expiry of the disputed domain name," and, "pursuant to paragraph 12.4 of URS Policy, an appeal must be brought within 14 days of that decision. Both complainants and respondents would, as a result, be unable to appeal under such circumstances unless they appeal in one day of the decision coming out, since the registration would expire before the end of the 14-day period."

The rationale goes on to talk about how URS Policy needs to correct this oversight to enable the appeal mechanism to work in all situations. Perhaps I won't read the rest of that. And I could just go to the working group deliberation, which is that, "There was," again, "wide support in the working group to publish the proposal in the initial report."

KATHY KLEIMAN: Thanks, Julie. I have a question. When it says there was wide support in the working group to publish the proposal in the initial report, is that based on general sense of the working group deliberations?

JULIE HEDLUND: Yeah. So, the discussion was really quite brief. In the transcript, which was quite short, and in the chat, there was support for

publishing the proposal in the initial report. There was no one against publishing the proposal in the initial report. And there was no discussion relating to concerns about the proposal or any questions that needed to be included for public comment.

KATHY KLEIMAN: Terrific. That makes it easy. Okay. You're doing the vast majority of the work so if you want to flip it, please let me know. But I think we're onto URS individual proposal number six. I'm looking for hands to see if anyone wants to comment. Okay. Number six.

JULIE HEDLUND: Thank you. This is Julie Hedlund from staff. This is a recommendation "to permit multiple unrelated complainants to bring a single complaint jointly against a single domain name registrant or related registrants who has registered multiple domain names by deleting the following procedure element within Section 1.1.3 of the URS Procedure, 'One complaint is acceptable for multiple related companies against one registrant but only if the companies complaining are related.'"

And the rationale is that "A single complaint against a single domain name registrant or related registrants should be permitted to be joined by multiple unrelated complainants. There's no practical difference between allowing a complaint based on trademarks that are owned by different but related corporate entities, as permitted in paragraph 1.1.3 of the URS Procedure, and allowing a complaint based on trademarks owned by different

but unrelated entities whose marks are similarly being abused by the same registrant.

"Allowing multiple unrelated complainants to bring a single complaint jointly will enhance the utility of the URS by reducing the cost burden on all parties, including providers, by avoiding duplication and maintaining focus on the scope of the abuse to multiple trademarks by one respondent registrant and, second bullet, streamlining the process, creating significant efficiencies and enabling the suspension of multiple domain names, abusing third-party rights."

The working group deliberation, "There was some support in the working group for publishing this proposal in the initial report. Some working group members expressed practical concerns about implementing the proposal." And in general, the determination, this went back to the determination by the working group co-chairs and the co-chairs agreed that there was enough support to publish this proposal.

KATHY KLEIMAN: Thoughts? Comments? Questions? Okay. I think there's general agreement that this is, as Claudia says, looking good. Thank you, Julie. Shall we keep going?

JULIE HEDLUND: Very good. Proposal number 11, "The response fee threshold should be lowered from 15 domain names to three because this is sufficient to demonstrate a clear pattern by the registrant, based on relevant URS precedent. In cases where the named

respondent is ultimately determined not to be the actual registrant of all of the domain names in the complaint, the fee would only apply if the registrant is confirmed for three or more of the listed domain names. Otherwise, no such fee would apply."

The rationale noted some statistics, that, "By 2018, six URS cases out of 827, 0.7%, have involved complaints listing 15 or more domain names to which the response fee applies. There have been 25 cases, including those six, out of 827 total cases, 3%, where the complaints listed five or more domain names and there have been 43 cases including those 25 out of the 827 total cases, 5.2%, where the complaints listed three or more domain names. URS precedence indicated that as few as three domain names can indicate a pattern of bad faith."

There's a reference there. "The threshold should be lowered from 15 to three domain names as a reasonable modification, given the case support for only three domains being required to establish a pattern."

The working group deliberation, "There was general support in the working group for publishing this proposal in the initial report but with some opposition. Some working group member expressed the concern that the proposed response fee threshold of three domain names is too low."

And thus, that resulted in a question for public comment that the working group agreed on. "The working group seeks comment on whether the current response fee threshold of 15 domain names should be lowered, and if so, what the new threshold should be."

KATHY KLEIMAN: Okay. This is certainly one we worked on extensively. Are people happy with the summary? It seems like a good reflection of our discussion and where we came out. Terrific. I'll pause just a second. I don't see any hands. If I'm missing anything, let me know. Julie, with 10 minutes to go, we can keep moving. Thank you.

JULIE HEDLUND: Thank you, Kathy. Individual proposal number 13 is, "The losing respondent cannot reregister the same domain name once it is no longer suspended." The context, rationale provided by the proponent, "Where a respondent loses their URS case relating to a specific string, it should not be permitted to simply reregister that name, once it is no longer suspended. This would help to prevent gaming of the system and unnecessary cluttering of the provider's workload with spurious or vexatious cases."

The working group deliberation, "There was some support in the working group for publishing this proposal in the initial report." And the working group agreed on a question for public comment, "The working group seeks public comment on the feasibility of enforcing the proposal, should it be implemented."

KATHY KLEIMAN: We're looking for any comments on individual proposal number there. I'm just going to say, I was looking for URS individual proposal number 12 because I thought that's what Maxim was commenting on. But Maxim, I don't think that is what you're

commenting on. We don't have an individual URS proposal number 12. So, Maxim, can I ask, in the chat, are you referencing our prior discussion of the individual TMCH proposals?

JULIE HEDLUND: Kathy, as Ariel notes in there, it was about the TMCH one and the reference to the anecdotal data that Maxim had included in an email.

KATHY KLEIMAN: Okay. So, maybe that's something we should talk about offline or on email, if staff could just make a note of that, that Maxim has again provided some data that might be appropriately reflected in the context of whatever number we were discussing when we were discussing it under TMCH.

Okay. Thanks and back to individual URS proposals. Any commentary on this one? Any thoughts? Any changes? Okay. Looks like we can do another one, Julie. Thank you for leading us through this. Go ahead, please.

JULIE HEDLUND: Thank you, Kathy. Individual proposal number 15, "The URS should be amended to include express provisions beyond the mention of a 'pattern of conduct.' In URS Procedure, paragraph 1.2.6.3(b), which provide additional penalties for 'repeat offenders and high-volume cybersquatting.' The definition of a 'repeat offender' should be any domain name registrant who loses two or more separate URS proceedings. The definition of 'high-volume

cybersquatting' should be any URS proceeding where the complainant prevails against a single respondent in a complaint involving 10 or more domain names.

"Once either of these standards are established, the penalties should include, one, a requirement that the registrant deposit funds into an escrow account or provide an equivalent authorization on a credit card with each new domain registration. Such funds should be dispersed to prevailing complainants in future domain name disputes against that registrant as a part of a 'loser pays' system.

"And, two, universal blocking of all domain registrations for a set period, for the registrant, i.e. blacklisting the registrant on a temporary basis. There may be other possible enhanced penalties that would also be appropriate. Such requirements could be included in updated URS rules, made enforceable against registrars via parallel updates to the RAA and domain name registration agreements of individual registrars. These obligations would be enforceable by ICANN compliance."

I'm noticing Paul saying, "Declarations are not consistent. Some are just to publish in the initial report. Some are to publish in the initial report to seek public comment." Yes. We'll make sure that that terminology is consistent, Paul. Thank you very much. We can make it clear to publish in the initial report.

So, the rationale provided by the proponent, "Habitual cybersquatting is a significant problem and registrants who have lost multiple cases or have been found to target numerous domain names are clearly not changing their activities based on such

losses. Enhanced penalties are needed to service a further deterrent against serial cybersquatting and patterns of bad faith and abusive domain name registration and use.

"Repeat infringers need little if any sanction. This should be defined as any registrant that has lost URS cases pertaining to, for example, two or more registrations. While, of course, this could be for many reasons and the registrant may be acting in good faith, sanctions such as a blocked guarantee being required for further registrations, which could be released after a new level of clean registrations is reached, will not be of concern to such a party. Other technical sanctions can be discussed for viability with the Contracted Parties House, which of course is also keep to promote a clean DNS."

Working group deliberation, "The working group confirmed that this proposal incorporated and superseded URS individual proposal number 14, of which its rational applied to this proposal. There was general support in the working group for publishing this proposal in the initial report. Some working group members expressed practical concerns about implementing the proposal."

The working group also agreed to include a question for public comment, "The working group seeks public comment on whether the proposed definitions of 'repeat offender' and 'high-volume cybersquatting' are appropriate and the feasibility of implementing that proposal."

KATHY KLEIMAN: With my co-chair's hat on or not, I'm confused mentioning a proposal that we're not actually referencing. Does anyone else share that? The reference under working group deliberations to individual proposal number 14 … We don't have number 14 here and it seems kind of inside baseball to reference it.

JULIE HEDLUND: I see Ariel has her hand up.

KATHY KLEIMAN: Ariel, go ahead, please.

ARIEL LIANG: Thanks, Kathy, for the question. The reason why we mentioned 14 is that when this proposal was sent to the mailing list, I believe the rationale was not provided specifically because it references the rationale of number 14. And so, basically, this is an updated proposal from number 14 that shared the same rationale. So, we just want to clarify that the text for the rationale is actually from 14. And we just want to make sure working group members know that. But if you think this could create potential confusion, we can just delete this sentence. But we want to stay true to where we get the rationale.

KATHY KLEIMAN: I think I'd find it confusing if I were a member of the public but I'm glad we reviewed it. I'm glad it was there for the review of the working group. So, that rationale's really from another … This is

one of our merged proposal's where we're looking at two very similar proposals from different proponents and we agreed, I think via the survey, to merge some of these.

So, it makes sense that we're looking at this. People can review. But I would … Does anybody object? I'd take out a reference to something that the public can't have any way of knowing what we did. Phil, go ahead please.

PHILIP CORWIN: Yeah. Let me suggest that we … I understand we don't want to confuse community members with that initial sentence that refers to a proposal that's not going to be published for comment. But that text in number 14 will be elsewhere in the initial report. Ariel has confirmed that it'll be in the appendix.

So, I would suggest taking that first sentence and making it a footnote to this paragraph on working group deliberations so it captures the reality that number 14 was similar and this final proposal that was approved by the working group supersedes it. So, it'll give the background but it won't be there at the beginning of the paragraph, confusing people. It'll just be as a footnote. So, that way it'll be complete but non-confusing.

KATHY KLEIMAN: Complete but non-confusing. Perfect. Thank you, Phil. Any other comments? David McAuley says, "That's a good solution." Any other comments on this? We are now at 2:29 and we certainly don't want to go any further.

Thank you, everyone, for participating. We covered a lot of ground today. And we will continue next Wednesday. Thank you so much. And thank you to staff for an incredible, incredible amount of work. And thank you to Julie for leading us through this. Take care, everyone. We'll see you next week and by then we should have a decision on what happens to our meeting in Cancun. Take care. Thanks, all. Bye-bye.

[END OF TRANSCRIPTION]