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ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs)
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JULIE BISLAND: Good morning, good afternoon, and good evening. Welcome to the Review of All Rights Protection Mechanism (RPMs) and All gTLDs PDP Working Group call on Wednesday, the 29th of January 2020. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. And if you're only on the audio bridge at this time, could you please let yourself be known now?

Just want to remind everyone to please state your name before speaking for transcription purposes and please keep phones and microphones on mute when not speaking to avoid background noise. With this, I will turn it over to our co-chair, Brian Beckham. You can begin, Brian.

BRIAN BECKHAM: Thanks, Julie. Welcome, everyone. Looks like we're a little bit lighter than normal on attendance, but if experience is any judge, then we may pick up a few people along the way. In any event, we're at almost 15 so that gives us enough to get started, I believe.

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So, welcome again everyone. Just a very brief update before we kick off with looking at the agenda. I, of course, was helping out last week Phil Corwin who is on the call is feeling a little under the weather, so we had to reshuffle things a little bit on the fly today. So, I will be chairing the first half of the call and then Kathy has agreed to come in so we can move along that way, if that works for everyone.

So, let me start by asking if there are any questions in terms of the agenda we have for today. Just a brief recap. So, that is to go over and clean up the few action items we left from last week. We made good progress on the sunrise and claims recommendations and questions. We had parked a few items to come back to and I noticed earlier today that David McAuley—thank you—David had made a few small edits on the document. There was one where there's a mysterious word, so will look for your collective help to figure out what word was meant there.

Then we'll move on to the recap of the decision on which URS proposals would be included in the initial report for community comment, which wouldn't … Of course, that doesn't stop people from commenting on matters that aren't included. Then, time permitting, we will move into looking at the URS draft text for the recommendations and open questions for comment.

So, let me first ask if there are any comments on the agenda or any updates to statements of interest. Okay. Hearing none. And of course, I think we have one or two people just on the phone. If that's the case, then, of course feel free to come in because you can't raise your hand.

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So, with that, we will come back to the document we were working on last week which was the sunrise and claims recommendations and open questions. Let's see. The first suggestion we have on the screen was … It looks like just a little bit of tidying to the text. A proposal from David McAuley. You can see it there on your screen [inaudible]. The working group members to oppose the expansion. So, this was, again, the idea that the sunrise could go beyond the exact matches of a trademark within the Trademark Clearinghouse. Then David proposed the text you see there for the folks on the phone the new text. Instead of "the working group members who opposed" it says "other working group members opposed the expansion" and then it lists a number of their concerns.

That looks like a [terribly innocuous] improvement, so let me ask if anyone has any concerns or other suggestions. Otherwise, thank you, David, for the suggested improvement to the text. Any comments on that small modification? David McAuley, please.

DAVID MCAULEY: Brian, hi. Thank you. I wanted to note that I made a couple of suggestions like this along the way. My only intent doing … For instance, in this case, I don't think it was actually a sentence before and these are sort of editorial tweakings or typo corrections as I saw it and I wasn't trying to make any change on substance. So I wanted to mention that background.

And I also should note that I wasn't able to go through the full document just because of the press of schedule and other matters yesterday. Anyway, thanks very much.

BRIAN BECKHAM:	Yeah. Thank you, David. And I think, especially with your prior work experience, that's always very useful pair of eyes on these types of matters. And I think this is a good example where it obviously doesn't change any meaning and the text is just a small improvement to the verbiage. Any questions or comments on the proposal? There again, for those not on the call, it's changing from "the working group members who opposed the expansion" to "other working group members opposed the expansion".

Okay, moving along. The next proposal. So, this is in sunrise recommendation number three. That was, in the absence of support for a change to the status quo, the working group did not recommend the creation of a challenge mechanism. So, in the explanatory text, for those not on the screen here, it says, "Some working group members opposed establishing such challenge mechanism," and listed some possible concerns, including but not limited to …

Number one is restricting registry/registrars name, lists, and pricing. And apparently previously it said NAE. So, that was simply a type of "name" is what it looks like. Does that make sense to everyone? So, it would say restricting registry and registrar's name, lists, and pricing instead of "NAE". So, just the "N" from "name" was missing. Okay, so just a typo. Thanks, again, David for the good eye.

The next one was on sunrise recommendation number five. And if you recall, there was a little bit of a question. There were two places in the document where the term "in general" came up and

the feeling on the call seemed to be that they were used in a different sense in each of those respective places. This one seems to be kind of a catch-all. The next one had a different meaning.

I think, Ariel or Julie, I don't know if you had anything to add. Maybe you went back over some of the transcripts and could help us. The proposal here is to remove the words "in general". So, instead of "the working group recommended, in general, that the current requirement for the sunrise period be maintained," it would simply say, "The working group recommends that the current requirement for the sunrise period be maintained." Ariel?

ARIEL LIANG: Thanks, Brian. Just to provide some explanation to the suggestion. Staff checked the records of the working group deliberations. We believe the wording "general" was added there. Originally it was to reflect "some working group members [inaudible] proposal to increase the notification period based on a number of gTLDs that are scheduled to launch concurrently." But that proposal didn't receive wide support from the working group and it wasn't even posted as a question for community input.

So, staff suggestion is to remove this "in general" term because it's not linked to any specific question. However, we have captured this particular proposal in a high level in the deliberations section under "context" so you can see we have mentioned that one working group member proposed to increase the notification period but the proposal didn't receive wide support. That's how we try to mitigate that question. Hopefully, this is helpful.

BRIAN BECKHAM:	Yeah. Thanks very much, Ariel. That's a helpful explanation. It does seem that this is an instance where the language seems superfluous and it would be just as well to remove it. Let me ask if … Again, thanks for going back and looking at the deeper record, Ariel and Julie.

Let me ask [inaudible] explanation in particular there were any lingering concerns from our conversation last week or whether it looks like we can go ahead and remove this "in general" reference in the text here. Any questions or thoughts on this?

All right. Hearing none, I think we'll take that as a noted item to remove that reference to "in general".

The next item for clean-up—thanks, Ariel, for scrolling. I believe it was the case where we simply moved the entirety of this text. I think we combined recommendations one and two. [That's right].

So, you see on the screen none of the actual words have changed. Just the trademark recommendations number one and two have been merged. The reason was both of those went to the notion that the claims notice itself merited some improvements in terms of readability for the end user. And rather than … Although there was a suggestion that we could kind of combine those into one recommendation at this late phase of our work, we thought it may be just as well to combine them so to note confuse the reader and make them see that those are together. There's a little bit of overlap in the language, but at least they're, let's say, physically tied together in the chart.

Again, no actual changes to the text. Just simply cutting and pasting and moving these two recommendations to be side by side in the document. Any concerns with that? Again, as Ariel is moving down on the screen, that goes not only with the recommendation but also the explanatory context. Obviously, it makes sense if we're going to move one, we move them both.

Okay. Seeing no comments on this shift to pull these together, the next proposed change, this looks like …. I think I was responsible for making the suggestion. It was along the lines of David McAuley's first suggestion. There was a small confusion around the exact text and what it meant. So, this was just a proposal to more accurately reflect that the claims notice itself would include a link to a page where people could find different translated versions of that claims notice in a language that may be easier for them to understand. So, this was just a little bit of textual clean-up.

For those of you not on the computers, it said previously "where feasible, the claims notice can include links on the ICANN Org website to translations of the claims notice in all six UN languages." So, a little bit of a choppy sentence. The proposed text is that it would say "the claims notice should include a link to a webpage on the ICANN Org website containing translations of the claims notice in all six UN languages." Any thoughts or questions or concerns on this small textual edit to the reference to a webpage where people can find the claims notice translated?

Okay. I'm seeing none in the chat, and of course people who are just on the phone, feel free to speak up at any time.

Moving right along, this is trademark claims recommendation. It was previously five. It would be four since we've merged to earlier. This is actually just an addition of a note in the actual recommendation itself but above the context. So, I'll read it for people that are just on the phone.

The recommendation itself is that the mandatory claims period, which is for 90 days, be maintained. So, the additional note says, "Note, some working group members asked for public comment on potential exemptions, which would then not be subject to a claims period of any length. See trademark claims question two." And I believe those refer to the different types of qualified launch periods where, for example, a geo-TLD could allocate names to public services and that sort of thing. So, this was really just a referral to, if I'm right, on the trademark claims question to a referral to that question. Any concerns or thoughts on the addition of this explanatory text?

Just having a quick look. I don't see any hands in the chat, so moving right along. And just to note that we've picked up some attendance from the start, so that's a good thing.

Let's see. Right down to the end. I'm a little fuzzy on this one. Ariel or Julie, do you … So it just says "just switching the questions number". So the text itself hasn't changed, if one of you guys maybe could confirm that. This is just moving the text to a different location on the document.

ARIEL LIANG: Yes. We just switched question on and two, but the text is exactly the same. The reason we're switching the order is when we put everything in the one section, it's the overview of questions and [inaudible], it just seems more intuitive to ask the first question about the exemptions first and then ask the second question next. It's just simply switching these two questions in [a location, not the initial report].

BRIAN BECKHAM: Okay. I will happily defer to … You guys have a lot more experience pulling these together. That seems to make sense. And again, just for those who are not on the screen, the text itself hasn't changed. It's just changing the numbering. That seems to make sense. If it makes it easier for the reader, then that's no bad thing.

And just to mention that Kathy has joined. Welcome, Kathy. Kathy, just for your benefit, I mentioned that Phil was a little under the weather so you and I are going to split the duties here. So, welcome. Ariel, is that the end of this document or was there something further down?

ARIEL LIANG: There is one more footnote regarding manually hand-registered domains. So we just provided some explanatory text about what this means.

BRIAN BECKHAM:	That's right. So, just to recall, the idea was for certain types of TLDs, there could be exemptions where certain types of domains could be excluded from the claims period, so there were references to highly regulated strings like DotBank, things of this nature.

There was some text in the question which referred to manually hand-registered domains and I think there was a little bit of a question last week as to what exactly that meant. So, this footnote goes to define that, if you will. I'll just read it for the benefit of those who are not in the Zoom.

It says, "Manually hand registered domains literally refer to the domains registered manually at a registrar by hand. In other words, it is the practice of registering a new domain name without the use of automated robots or automated computer systems that search for and register domain names." Those domain names are purchased new and not on an after-market system. In the context of trademark claims question number two, it refers to the domain name that is registered manually following the specific registry policy.

So, I think really the operative part of that for purposes of our trademark claims question is the last sentence there which refers to the specific registry policy. So, if there's a restriction—for example, DotBank limited to financial institutions—then pursuant to their registry policies, if First National Bank of Alabama comes along and wants a registration, then that would happen manually, pursuant to the registry policy. Any questions or suggestions concerning this text? Any ideas for improvements or does this seem to sufficiently capture the reference to manually hand

register domains in regulated TLDs that would be exempt from the claims period?

Okay, I'm not seeing any hands. So let me see just by way of a last call if there were any questions with respect to our final pass through this document today. Let me also ask Ariel and Julie if there might be anything that I overlooked.

Not hearing anything. Okay, thanks, Julie for confirming in the chat, and Ariel, that this was all covered. So, that wraps up the final pass through this sunrise and claims recommendations and questions for comments document. So, thanks, everyone. Thanks, especially David, for the attention to detail with respect to some typos and wonky wording.

That takes us to the document where we've captured … If you recall, there were the 30-some-odd proposals for various improvements or changes to the URS. We went through a process whereby we kind of vetted the level of support for including those. Of course, the original idea was to see whether there wasn't any discussions whereby we could kind of coalesce around actually morphing those into a recommendation. That, of course, being one of the primary tasks of the PDP working group. And [failing] that, the idea was to go through and see where the ones that had insufficient support to be put forward as a proposal, versus one where even though there might be a split of opinion, whether that's 50/50 or something else, that at least there was sufficient interest to put it out for public comment and see what the public thought about that.

So, with the help of, of course, you all and the working group, we went through over the course of a couple calls and assessed those levels of support or objection. We, with staff and leadership and our liaison, John McElwaine went through and looked over all of the notes and came to what we think are the summaries of the conclusions of the working group on these.

So, with that, I don't know if it's necessary strictly to read verbatim each of the recommendations. Perhaps, we can try to summarize those and run through this document.

I think the majority of them were retained for publication and then there were a half a dozen or so where we felt there was just simply insufficient support to include those, even as proposals. Again, of course, that doesn't prevent people from weighing in on those in the public comments in any event.

So, the first one is the recommendation that the URS would have a statute of limitations. You see that there was significant opposition noted in the charts, so the decision was not to publish that.

Let me just say, of course, we've gone through this exercise where we did get feedback from you all. So certainly feel free to speak up if you think we've completely missed the mark on one of these. We tried to really capture what we thought was the agreement of the working group on this. We don't really want to open up a wide discussion, but if you feel like we've just completely missed out on how the discussions went, then of course feel free to speak up.

The next one was a recommendation regarding … I guess the best way to describe it would be … Sorry, to go back to a question that Michael Graham is asking in the chat, the introduction is intended for GNSO review and that publication. Michael, do you mean the introduction on the physical beginning of this document?

I see David and Kathy are raising their hands. I'll just read Michael's comment for those that are not in the Zoom. It says, "The introduction is intended for GNSO review and not publication?" That's a question. "I ask because where we note the two asks, we have not included that we are asking for comments and an indication of support. This should be before the request to provide suggested revisions. Am I understanding the context of this document? The introductory notes. See fourth bullet." And it's two sub-questions.

The fourth bullet is that none of the individual proposals rose to the level of working group recommendations. So that's simply a factual statement. And then of course the second bullet is, with respect to these proposals that will be included in the report, we're asking the community to suggest modifications to those proposals that may get us across the line for purposes of a consensus recommendation." I think that's an accurate capture of where this is.

Let me first call on Ariel and then I see Kathy and Michael Graham. Ariel?

ARIEL LIANG: Thanks, Brian. And thanks, Michael, for the questions. So, where it says "staff envisions" when we publish the individual proposals in the initial report, we can provide some background text about how the working group had this process of submitting the individual proposals, how the working group delivered on them and what does assessment process look like and what are the general questions the working group wants to ask pertaining to these individual proposals. So, we will provide that contextual language as introduction for that section, so that the readers will understand what the working group is asking regarding a review after these individual proposals. So, hopefully, this is helpful.

And then when you see the actual sections, you will be able to provide comment to the language and provide suggestions. [It's not that clear]. Thank you.

BRIAN BECKHAM: Thanks, Ariel. Kathy?

KATHY KLEIMAN: Yeah. Can you hear me, Brian?

BRIAN BECKHAM: Yes.

KATHY KLEIMAN: Terrific. Thank you for chairing the first half. I really appreciate it. Hi, everyone. So, this is effectively a time out. We've been reviewing the actual language going into the initial report for the

sunrise and trademark claims recommendations. We're about to review the working group deliberations and recommendations on the URS in our next document.

But, Brian, wouldn't it be fair to say this is really a time out to provide follow-up and feedback to the working group itself on the table that we had been working on, on the individual URS policy recommendations?

So, this is not the text. This is …. No way. This can't be the text that's going out for the individual report. This is the feedback to show you where the working group co-chairs individually, collectively, came out on the decision to publish or not to publish. And as Brian mentioned, John McElwaine was in that meeting as well.

But I can't see how this text would not come back to us once staff has put context around it, questions around it, taken these individuals proposals out of this table and put them into the initial report. So, I'm sure we're going to see a draft again of this material and of the section that will be in the initial report. Do you agree, Brian?

BRIAN BECKHAM: Yeah. Thanks, Kathy. Michael, maybe I can just hopefully answer Kathy's question and then call on you. I'll also maybe look to staff to confirm my confirmation. My understanding was that this was sort of a summary of the proposal, and if you remember, there was the sort of one or two page template document people could use to actually submit the proposal.

So, I imagine that what staff may do for purposes in the initial report would be to actually refer people to the full proposal from the proponent, so that they have the full text. I don't know, Ariel or Julie, if you can maybe confirm that understanding or confirm that I am completely off base there. Maybe I can call on … So, I'm seeing from Julie, it says, "Correct," in the chat. So, thanks for confirming that we would of course refer people to the full text of the proposal from the proponent. So, this is just sort of a summarized version on the screen here. Michael, let me call on you. Michael Graham?

MICHAEL GRAHAM: Yeah. Can you hear me?

BRIAN BECKHAM: Yeah.

MICHAEL GRAHAM: Oh, good. I guess it's just a question of this wording. I understand that the text that's on the screen now is going to be part of this that we present to the GNSO and I'm just thinking … So, to be clear, the fourth bullet point down, none of the individual proposals, etc. And then we lay out the two things that the initial report is intended to do. One, ask the community to suggest modifications and encourage them to consider opposing proposals.

The one thing that we haven't included in this, I would, for clarity, even though it's sort of referred to above, is that we're going to

ask them for their general whether or not they believe that the proposed action should be taken. Some warning along that line because we're asking them to make modifications so that it's acceptable without asking them whether or not they believe it should be considered or not. So, I think we've missed that first question. That was the only thing I was bringing up. Thanks.

BRIAN BECKHAM: Yeah. Thanks, Michael. If I could just share my understanding, you're saying that what we want to say in soliciting feedback from this is to kind of give people the options to say, "Please let us know whether you …" I'm just off the top of my head thinking, for example, a) agree with the proposal as written b) disagree completely and would reject the proposal outright or c) would propose the following modification for consideration. Something along those lines?

MICHAEL GRAHAM: Yeah. I think that would be appropriate. I just wanted to make sure that that first question was asked somewhere or that we say to the Board, because I understand this is not the final draft for the public comment, but that we say to the Board, "That is our intent. This is what we're going to be asking."

BRIAN BECKHAM: Yeah. I completely agree. We want to know whether people agree, disagree, or can make suggestions to get these into recommendations. Phil?

PHIL CORWIN: Yeah. And thanks to my two co-chairs for helping out because I'm a bit under the weather today. But just to clarify—and I think Julie put in the chat—this is not the final text. We're revealing what we're proposing to put in the initial report regarding these individual proposals. This is the co-chair's report back to the working group that after the survey, after the working group discussion of each of these proposals, the co-chairs then met with staff in two separate meetings. We discussed each of the proposals, looked at the levels of support, and this is the co-chair's decision which will be final unless someone on the working group feels strongly that we've left something out that should go out for explicit comment, though comments not barred, on the result of that process.

And the result was that about a third of the proposals will not be explicitly listed for public comment, but we understand that some of these proposals need more contextual explanation than others so that the community understands what they're being asked to comment on, what the import is, and we'll be seeing that perhaps section of the initial report at some later date. This is mainly just to report back to the working group from the co-chairs on our final determinations. Thank you.

BRIAN BECKHAM: Right. Thanks, Phil. Just to recap, Julie has mentioned that context will be provided in the initial report, so I think we can kind of take Michael's suggestion, if I can call it an action item to sort of round out the context for people so that they know what these

proposals are and what we're asking of them. Good suggestion. Obviously, the more clear we make it for people, then the better feedback hopefully we get.

Okay. So, maybe we can move on to the second which was the proposal from Claudio DiGangi relating to some sort of a class complaint I think is probably the best way to describe it, and of course there were differences of opinion on this but at least it was deemed to have sufficient support to ask the public what they thought of this proposal, so the determination was to include this.

The next was a recommendation that the URS policy would be changed to include a legal contact, and of course a lot of the discussion focused around the fact that, although that may sound like a sensible idea and there wasn't a legal contact in the WHOIS or RDDS, there were also concerns raised by some attorneys who represent parties. So, in the end, there was strong opposition to including this and the determination was not to include this in the initial report.

The next was an operational fix from Kristine Dorrain. Let me look at it quickly. So, this had to go to a provision in the URS that impacted the ability of a registrant to change content on the web page during a certain portion of the case, so this was a proposal to update some of the language in the URS to address that I suppose on an almost technical level, and the sense from us was that there was sufficient support in the working group to include that for purposes of public comment.

The next item was a recommendation to amend the URS and UDRP. And I'll just mention here that all references to the UDRP

of course are moot. We're looking at the [inaudible] here. The idea was to amend the response time depending on the longevity of the registration of the domain name itself. You see there was virtually no support for that, so the sense was that that wouldn't be included in the report.

The next recommendation was from a group of it looks like about ten people there. It had to go to what I think I would summarize as an effort to kind of streamline the different types of review and appeals processes under the URS. I think there were two or three different avenues under which different types of an appeal could be invoked and the proposal was to somehow bring those together. If that's inaccurate, one of the proponents can correct me. But the sense was that there was sufficient support to include that, to ask the public what it thought about that recommendation.

The next one, of course, you all will remember. There was substantive discussion around the right threshold and some of the implementation considerations, but the proposal itself went to the response fee threshold in URS cases to move it from 15 to something else. Of course, people can have different opinions about what that something else should be, but there seems to be sufficient support to at least include that to ask people what they thought, if it should be different. Should it be lower, higher? At least there was sufficient support to ask people to help us answer that question.

The next proposal was a policy recommendation. This went to the notion of the creation date versus the registration date for a registrant and there was a proposal to change from the registered in bad faith standard to a created in bad faith standard. There

seemed to be virtually no support for including that proposal, so the sense was that that wouldn't be included in the initial report for publication.

The next recommendation—and I'm just trying to keep an eye on the chat. Please speak up if I overlook a hand. The next recommendation was that the losing respondent couldn't re-register the same domain name, and of course there were different opinions on the merits of this proposals, but there was deemed to be at least sufficient support for including this in the initial report.

The next recommendation, it looks like there were actually two recommendations, both of which went to the consequences of repeat offenders, and so there was at least sufficient support. There was obviously questions about implementation details but there was at least sufficient support it felt to include this for publication to ask if people couldn't help us address this question.

Moving right along to the section on remedies. There was a proposal for an operational fix and this was a proposal from Maxim Alzoba. I think this was an idea of moving some requirements or instructions to registries from one document to another. I think the idea was that this is unquestionably in front of the contracted party that needs to take action on it. So, the sense was that there was wide support from the group to include this for public comment. So, Maxim, again in the chat is just saying this was for sake of clarity. So, the sense was to include that in the initial report.

The next proposed operational fix was it looks like it goes to the concept of renewing the domain name. If you remember, if a domain name is suspended pursuant to URS case, that can be renewed for a year once that registration lapses, so this proposal went to that. And there was wide support in the group to include that.

The next recommendation came from again a group of proponents. This goes to a question of whether there should be a right of first refusal, and I see there's a companion proposal to extend the suspension period from one to five years. So, while there was some disagreement on the merits of this, there was at least, it seemed to us, sufficient support from the working group to include this for purposes of public comment.

The next was a proposal that all of the suspension pages would be delivered In HTTP and HTTPS versions. And it looks like, based on the notes, that was effectively [mooted] by providers addressing that. So the sense was that there wasn't much utility in publishing that, and so the group decided to exclude that.

The next goes to there were three related proposals on appeals. One made reference to some sort of a notice provision under British Columbia law. The next was that if the appellant in a URS case couldn't find a cause of action in their local court, that the first decision would be set aside. Next I believe was to always refer people to the jurisdiction of Virginia or one of the courts in the United States.

The sense, although there was some discussion around these, there was significant concerns and opposition, so it seemed the

sense of the group was that these were not right for publication in the initial report. Of course, that doesn't stop people from having opinions and providing those to us in the public comments, but the sense was that these weren't right for publication in the initial report. Rebecca Tushnet?

REBECCA TUSHNET: Thank you. I'm kind of discouraged to hear that, especially since there was discussion of these individually and also as reflecting a general problem that people acknowledged, which is that there are people who can't get review of this decision.

I am seeing a sort of distressing pattern here and I query whether this is actually a sort of majority support requirement which is … I said it all along. The working group has never clarified the standard for this, and unfortunately that seems to me to be reading to a fairly clearly biased set of results. Thank you.

BRIAN BECKHAM: Okay. Thanks, Rebecca. I think maybe what I can say is, of course, it's correct there was a lot of discussion around these, a lot of objections, some support. I know maybe it doesn't squarely address the question and I would of course invite my co-chairs, Phil and Kathy and staff, and council liaison to chime in if they felt appropriate.

But of course this is, almost by definition, something where it's not crystal clear in any given case. We didn't want to sort of do things [inaudible] by numeric vote, that sort of thing. So we sort of did our best to size up consensus for this.

You'll see there was a note on the screen there that, at least for one of these, there was slightly more support for publishing the third of these three proposals, but the feeling was that these weren't right for inclusion in the initial report. I see Phil and then Rebecca again. Phil?

PHIL CORWIN: Yeah. Thanks, Brian. With regard to number 18, I wanted to say a couple of things. I don't know if you can see for 18 there was virtually no support either in the survey or the discussion. So, this was not [inaudible] with any significant support among the working group. [inaudible] the current …

Some of these URS proposals, the co-chairs [inaudible] that the URS is a narrow supplement to the UDRP and the fact that on a proposal on something like right of appeal is not being addressed in the URS portion of phase one of this RPM doesn't mean that it's not something that should be addressed in phase two. That will be up to working group members. But the URS is a supplement. The tail shouldn't wag the dog.

And current ICANN policy is to guarantee that where registrants do have a right to appeal, they can exercise that right by filing a notice that they intend to seek court review. In fact, appeal is the wrong word because in a jurisdiction like the US where the anti-cybersquatting act makes an appeal available to a registrant who is either domiciled in the URS who has chosen a US-based registrar for their registration, that is a completely [inaudible] proceeding. The court does not look at the prior UDRP at all. It

looks at the relevant statute law and whether or not infringement has occurred under that law.

So, the co-chairs understand that access to the court is an issue of concern to many members of the community, while recognizing that ICANN is not in a position to tell nations to adopt laws that would facilitate that. But I think this is a subject we'll probably get a robust and focused discussion in the UDRP phase two of this working group. Thank you.

BRIAN BECKHAM: Thanks, Phil. Let me just say I've noticed there's some comments in the chat. I don't want to cut people off but I think we were probably hoping to steer clear of diving too deeply into merits on these. So, if it's okay Cyntia, we'll just note your comments are in the chat and leave it there. Maybe I can call on Rebecca and see if we can't move on from these three, and if it's okay with the group, I will for the next question, which will be as to the different proposals on [inaudible] models, turn it over to Kathy Kleiman.

So, I think Phil is an old hand and then I have Rebecca, and maybe we can move on from these and turn over to Kathy.

REBECCA TUSHNET: Thank you. So, again, I've got to say this is not filling me with any confidence about the standards that have been applied. So, I know, Brian, that you used the word consensus to describe what counted as sufficient, despite the fact that we've said many times that consensus is not the standard. And I think that reflects that it's proven essentially impossible not to slip back into some sort of

majority or consensus approach, despite the fact that people were asked to submit proposals that address real problems if they're not workable.

And something that I note that did not prevent a bunch of other proposals from clearing the bar, right? The feasibility concerns, like from many things the IP Constituency supported, which is fine but it has to be applied equally. If feasibility concerns are something to raise in feedback, then have them raise in feedback.

As it is, it sounds like we're saying, "Well, the URS is supposed to be quick and dirty, so you can't have an appeal from it." That seems wrong. And I understand that appeal is not necessarily the right word. You can't get a court to decide the issue because we did it so quick.

But the real problem here I think is the standard [inaudible] which nobody has still coherently articulated. Thank you.

BRIAN BECKHAM: Yeah. Thanks, Rebecca. And I will just say for myself maybe if there's strong reservations about this, we can take that on board the next time we get together as co-chairs, with staff, and the liaison and discuss this. I can only say I appreciate everything you've said and for whatever it's worth, I also have some serious personal questions about some of the advisability of some of the different recommendations that have made the cut as well as ones that didn't. This is something where I hope people will indulge us a little bit. We're human. We've done our best to kind of not only size up what we feel is the sense of the room—I apologize if I

slipped into the word consensus because I know that's kind of a defined term in the ICANN process.

Maybe this was what we felt was the sense of the working group here and we can of course take this on board the next time we get together. Maybe with that, if it's okay, I myself need to move along. I'll remain on the call on the audio only. At this point, I'm sorry, I need to turn over the chairing duties to Kathy. Kathy, I just want to make sure you're on the phone and able to take over.

KATHY KLEIMAN: I am on the phone, Brian. Thanks so much for delaying your departure and continuing to join us by phone. And of course hoping Phil feels better and glad he's with us by phone. So, I am ready and able, especially if my audio is clear. Ready and able to take over.

BRIAN BECKHAM: Loud and clear. Thanks, Kathy.

KATHY KLEIMAN: Great. Thanks, Brian, for leading us through so much material.

PAUL MCGRADY: Kathy, this is Paul. Can I get in the queue when you get a chance? I apologize.

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KATHY KLEIMAN: Sure. I'll put you in the queue but I was going to say something as we're transitioning. But Paul, it sounds like you want to reference 18, 19, 20. I did want to say [inaudible]. There was considerable discussion in the leadership team on these proposals. And based on what I just heard Brian say, which I support, that these proposals should go back to the leadership team in lieu of the working group discussion today or another review. That's exactly why we brought forward the decisions to publish or not to publish back to the working group was for this kind of cycling through, this kind of review, this kind of final double check with the working group.

So, I support Brian's call to bring this back to the leadership and ask staff to note that as an action item—18, 19, and 20. Paul, over to you.

PAUL MCGRADY: Thanks, Kathy. Sorry. I'm on the audio bridge only. Obviously, [inaudible] is what it takes [inaudible] these items back. I would like the record to reflect that there was not substantial opposition to the decision made by the co-chairs not to include these. There was one voice only that raised concerns about it. Some of the things that were said were [inaudible] decision that somehow people are denied a right to go to court to an appeal if they lose is simply not the case. The law of each jurisdiction is the law. ICANN can't influence whether or not somebody has [inaudible] rights appeal in the place where they live or the place where their registrar is located.

I think that [inaudible] with the idea that the outcomes here are biased. I think our three co-chairs are doing the best that they can. Just because you don't get your way doesn't mean that it's biased.

So, as the co-chairs take this back, I just want them to really consider whether or not one voice means that one person raising concerns about these is sufficient to undo all the very extensive conversation that the working group has had on these which led the co-chairs, at least initially and hopefully permanently, to decide not to put them out for public comment. I don't think one voice should be allowed to undo the rest of the working group's work. Thank you.

KATHY KLEIMAN: Great. Thanks, Paul. Let me read what Phil wrote and then I note a lot of hands are raised, which will stop our progress forward, but of course we will call on people.

So, Phil wrote, "Consensus was not the standard and many individual proposals that did not have majority support in the survey among working group members are being put out for community comment. But proposals that have virtually no support and significant opposition …" I assume Phil was going to continue are not being put out for public comment.

Cyntia, Rebecca, Greg, John McElwaine. Go ahead, Cyntia please.

CYNTIA KING: Hi. This is Cyntia. Can you hear me?

KATHY KLEIMAN: Yes, Cyntia.

CYNTIA KING: Okay, great. So, I just want to say that I understand and feel for Rebecca's concerns. I really do understand that when it seems like there's a lot of folks on the calls who represent one group, some of the proposals were not popular with that group, it feels like a preponderance of folks that are saying no. So, some people might intuit that this means that there is some support and that the proposal should go out.

But if I could just point out that these specific proposals—the three that we're talking about right now—were discussed ad nauseum in the sub-teams, then again on the full working group calls. We have the surveys and we had discussion afterward of the surveys. And overall, these three proposals were, by and large, found to be not consensus proposals and had very great concerns with whether or not they were even doable.

As a matter of fact, if I'm not mistaken, there was even a discussion with the GNSO about some of the proposals and there was some pushback there.

So, in terms of these three proposals, I believe that the "no, do not publish" was a decision made with the overall picture in place and not with an idea that there's a specific group of people that are trying to depress overall proposals.

So, I understand the feeling, but I think we're spending a lot of time talking about something that we've actually discussed ad nauseum beforehand, before now. And the overall picture is that these three should not be published.

My personal feeling is that the last of these three was the most palatable and I might be interested in getting some public opinion on that one. But the rest are simply—all of them are problematic and not doable and I think that we should let the overarching discussion of this be the guide. Thank you.

KATHY KLEIMAN:　　　　Thank you, Cyntia. Back to you, Rebecca.

REBECCA TUSHNET:　　　I'll try and be quick. So, actually, I think Paul did a great job of illustrating precisely my procedural concerns, which is it turns out if you don't show up to every single one of these meetings—and people differ in their ability to do that and they differ in how deep the field is in terms of their constituency. If you don't do that, then something that you support can go away because it wasn't reiterated.

I don't want to do this, the substance of it, again and again. But the standard, as it is being applied, seems to me to be, well, could other constituencies possibly support it? If that's really the standard, then a bunch of other stuff shouldn't get published either. But it really shouldn't be. These are individual proposals. These are not working group proposals, in which case I completely agree with Phil's standard. We probably shouldn't

publish something that we don't think we can actually get support for.

But I think this whole process has illustrated the structural problem compounded by the fact that the standard here is vague and not actually in line with what an individual proposal ought to be. Thank you.

KATHY KLEIMAN: Thank you, Rebecca. Greg, briefly please, and then John McElwaine and Phil will wrap us up and we will go on. Greg?

GREG SHATAN: Thanks. Can you hear me?

KATHY KLEIMAN: Yes.

GREG SHATAN: Great. First, the whole idea of individual proposals is somewhat novel to this working group and not really contemplated in the charter as far as I can recall, and therefore in a sense, there's not a lot of precedent for publishing these sorts of things. Typically, what's published is the work of the group and not the work of an individual. So, I think we attempted to find some middle ground in terms of that that was allowed for somewhat broader publication than would be if you just said that everything had to be adopted by the group as a proposal.

And in terms of what has happened in many other working groups, when dealing with the preliminary report [save] where you can't use the term consensus, it's similarly loose, whether you would say gaining traction or temperature of the room, whatever it may be. This is not different or somehow perverse. Maybe this is something that the GNSO needs to look at in terms of PDP 3.0 or the like. But I think what we're trying to come up with here is a fair way of dealing with proposals that re really not the work of the group and where we never said we were just publishing everything. The decision was that we were not just publishing everything.

So, I don't think that there's a question of who showed up when. In fact, in some cases, I voted to put out to publication proposals I disagreed with but which I felt were well formed and worthy of getting discussion out there. These are not those. And they're basically in some ways on false assumptions that we have not, say, fully debated. [inaudible] a right [inaudible] de novo review "appeal" for every decision. That's not something that we've decided exists or not. Maybe that's a question, but that's certainly not [inaudible] question.

The general idea of throwing out arbitration, again, is not something that gave a lot of traction, to use a term that's been used in a number of places. So, I think lack of traction should [take] where they should go, [inaudible].

KATHY KLEIMAN: Okay. Thanks, Greg. I don't actually remember URS but I do know de novo review is part of the lifeblood, the earliest of the UDRP

representations and commitments. John McElwaine, go ahead, please.

JOHN MCELWAINE: Hi. I just wanted to provide a little bit of context for the working group with my liaison hat on. So, we are, as a working group, under scrutiny. I just had to submit an extension request for the work product of this working group and the three co-chairs worked very hard to try to determine whether each of these proposals had made it to level of wide support. I believe that's what the test was. Although I think it's good that we're discussing all of these points, we have to at some point acknowledge that debate needs to come to an end, and if we do have any issues, it needs to be brought up in public comments. We've heard that a couple of times but I really just want to encourage people let's put a pin in this one. The co-chairs can talk about it. But it is important for us to move along and continue to show to the community that we're making progress. Thanks.

KATHY KLEIMAN: Great. Thanks, John. And Phil, let's wrap up here. Thank you very much. Go ahead.

PHIL CORWIN: Yeah. I'll be very brief. Just want to stress again, the co-chairs, when we discussed these, looked at not the substance but at the views of the working group members expressed in a survey, expressed in meetings. We had a biased [tort] publication if there is any question about something.

The other thing is that this is just asking the community to comment. When we get to the final report, we have a very clear standard for being a consensus to be adopted as ICANN policy, which is consensus which means unanimity or near unanimity and we all know that most of these proposals are never going to reach that level but we're giving them all a chance to gain community support and be shaped by comments from the community. Thank you.

KATHY KLEIMAN: Great. Thanks, Phil. We're giving many of them a chance to be shaped by the community and commented on. But thank you and thanks for the wrap up and thanks for the discussion as we, I think, continue to follow Brian's suggestion that we take this back to the leadership team, now much more well informed. Thank you.

Okay, let's go forward. Because I have a hard copy here, I can read a little more easily. We're in the section on cost and cost allocation models. We have two policy recommendations grouped together, number 21 and 22, that both basically are asking the public to comment on a [inaudible] model. And the agreement of the co-chairs was to group these together and to go ahead and publish for public comment. Any input? Any thoughts? If not, let's move forward.

Number 23 was one policy recommendation in the same category, to permit registries and registrars to recover reasonable administrative and compliance costs from URS providers and that did not … The co-chair team did not have sufficient support for

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publication. Any comments? Any input? If I'm missing any hands, please yell, put in chat. Oh, Rebecca, go ahead please.

REBECCA TUSHNET: Sorry. That was actually old. I'll take it down.

KATHY KLEIMAN: Great. Thank you. So, any comments on that? Then let's move to language. We know we've got some language issues. So, this was proposal #34, that the URS should be amended to incorporate in full rule #11 of the UDRP rules regarding language of proceedings. And we decided to publish this. It may be complementary to other things we're doing in terms of language but this also will be going out for public comment. Any thoughts? Any concerns?

Okay, let's go forward then to #26. This is to revise [inaudible] seven of the URS policy to reflect the following: that each provider should publish a roster of examiners who are retained to preside over URS cases specifically and identify how often each one has been appointed with a [loop] to the respective decisions. And we agreed to publish that.

Number 27. This is a revision of URS Rule 6 going out for public comment, 6(a), that each provider should maintain and publish a publicly available list of examiners and their qualification by way of publishing a current curriculum vitae (CV) updated on a regular basis. The decision was to publish.

Okay, moving into URS provider Section M, specifically on conflict of interest. Policy recommendation #26 to again revise URS Rule 6. Each provider shall ensure compliance with a panelist conflict of interest policy. And the conflict of interest policy should be developed by the working group and applied to all providers. So, the decision was to publish.

URS providers—it says no applicable subheading. And this is individual proposal #29. All URS decisions should be published in a standardized, machine-readable XML format to complement existing formats of decisions. Decision was to put this out for publication. Let's see what the support or the concerns are.

Okay, next. Section N, alternative processes. Possible alternative to the URS, e.g. summary, procedure in UDRP. Interesting. Okay. So, number 30, to implement mandatory mediation step modeled on Nominet's mediation system. And the decision was made not to publish this proposal, this individual proposal. Let me pause and see if there are any comments on this. And I remember some extensive discussion on this.

The next one is under "other" and it's #32, proposal #32. That the URS be eliminated as a mandatory policy for new gTLDs. And the decision was made not to publish.

Coming into the finale. We've got two more proposals. The section is no applicable section or subheading. Proposal #31 by David McAuley. And I'll just read it: for the sole purpose of the sharing that the subject is included in the initial report for the solicitation of public comment. I am proposing that the working group put out for public comment the issue of whether the URS should be common

ICANN consensus policy. And we did agree to publish that. Any thoughts?

Okay. the final proposal we're looking at is #33. All current and future URS providers should be brought under formal, fixed-term contract with ICANN instead of the current arrangement which are MoUs for URS providers. And the decision was made to, yes, publish this proposal.

And that brings us to the end of the table that our working group has been working through for so many weeks on individual URS proposals. And the report back from the co-chairs and leadership team to the working group on these decisions for publication. It looks like we've got three to take back. But other than that, it looks like there's general agreement with the decisions that were made for publication and not … And thank you again and again to the working group for the amount of time that was spent on these really interesting, diverse and wide-ranging proposals from revisions to the URS.

Okay. And that brings us back to our regularly scheduled review of the initial report. Actually, where are we on time? 2:15, so we're good.

Now we resume what we started with, except instead of summarize and trademark claims, we are now going on to our URS deliberations. Unlike sunrise and trademark claims, this is the first time we are seeing a lot of this material, if I remember correctly. So, we're not going to rush through this as quickly, and we will of course be continuing this next week because there's no way we're going to get this done in 15 minutes.

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Let me just pause and ask staff whether there was … Since I wasn't here at the beginning of the meeting. Is there any other business for the end? Do we need to reserve five minutes or so at the end of the meeting or can we run this current discussion to 2:30 Eastern?

ARIEL LIANG: Kathy, this is Ariel. Julie, unfortunately, got offline due to network issues, but I don't believe we have any specific items for AOB, so we can go straight to 2:30 for this item.

KATHY KLEIMAN: Great. Thank you, Ariel. So we've got another 15 minutes for discussing. Ariel, do you want to present this briefly? Then I'll start taking us through the recommendations and context.

ARIEL LIANG: Sure. Thanks, Kathy. So the way staff developed this document is similar to the sunrise and trademark claims for the recommendations and questions for community input. These are not new content because the working group has visited the language and we reconfirmed the language through several calls. That was in November and December of last year. So, these are not new content.

And what could be perceived as new but really not new is the contractual language under each of the recommendations and questions for input. The way we developed this content is by referencing them super consolidated table. Some of them may

remember that. It was a consolidated table [presenting] all the findings and data the three URS sub-teams have analyzed. So, we look at the context from that table and also the transcripts of the working group deliberations of these recommendations. And that's how we developed the contextual language to provide a brief summary of the background to illustrate the deliberation of the working groups.

This shouldn't be controversial. And of course in the appendix that the initial report will provide length to all the working documents that the working group has used and also the sub-team has used to provide further details, including the links to the transcripts if they want to look at them. So, the context is really a summary.

KATHY KLEIMAN: Ariel, before you leave, I've got a question for you. The first two paragraphs don't explain to the public what the URS is, what the Uniform Rapid Suspension is, what the current rules are, how to find it, how it's used. There's no summary here. Is that something that's anticipated in the initial report? It would be very useful to a larger audience.

ARIEL LIANG: this is the same as sunrise and trademark claims. We don't provide background knowledge of those RPMs in the deliberations section. If necessary, we can try to find another place to provide it but we have links to all the URS rules and procedures and supplemental rules. So, we just want to make sure this section

was focusing on the deliberation and not to bundle it with other textual, like a background information. That can be elsewhere.

KATHY KLEIMAN: Where elsewhere in the initial report is it?

ARIEL LIANG: We can discuss this among the staff team and figure out, but definitely not in the deliberations section.

KATHY KLEIMAN: Okay. I think I'd like to recommend that there be a reference to it, though, so that people can come in kind of at any point—this is going to be a long report—at any point and be able to find basic references to what they're looking for, whatever their level of knowledge in the ICANN process because that's what I like when I'm reading other people's very technical, detailed reports. And I think our report may attract a larger audience and we expect [inaudible] questions. So, if you could put that down as a question from me, whatever [inaudible] on that.

Okay. We're going to read. I notice a number of people on the phone. Let's go ahead and read some of this.

URS recommendation #1. The working group recommends that the URS rules 3(b) be amended to clarify that a complainant must only be required to insert the public available RDDS data to the domain name or names at issue and its initial complaint. Furthermore, the working group recommends that the URS

procedure paragraph 3.3 be amended to allow the complainant to update the complaint within two to three days after the URS provider discloses the registrant data related to the disputed domain name.

Let's open this recommendation up for discussion. We'll go into context in a second, but is it readable? Is it usable? I'd like to suggest that RDDS go … We haven't gotten there yet, but become, in the recommendation, become WHOIS/RDDS data, which seems to be the term referred to below. Any other comments on the recommendation? Which of course will go out to the working group for discussion and review.

Okay. Then let's read the context this recommendation specifically concerns with—I think there's something there—with the following URS rules and URS procedure.

URS rule 3(b)3, provide the name of the respondent and all other relevant contact information from the WHOIS record as well as all information known to complainant regarding how the contact responded or any representative of respondent, including contact information based on pre-complaint dealings and sufficient detail to allow the provider to notify the respondent of the complaint, as described in 2(a).

Second bullet point. URS procedure paragraph 3.3, given the rapid nature of this proceeding and the intended low levels required fees, there will be no time to correct inadequacies in the filing requirements.

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So, these are the current rules. And I'll just summarize now. Given the GDPR, there were some questions about … A URS provider suggested amending URS procedure paragraph 3.3 to enable the complainant to modify the complaint within two to three days following the disclosure of the full information by the URS provider. [inaudible] of the registration data by the URS provider which would be coming in in turn. And here I add to the context from the registrar, most likely. [inaudible] also supported the suggestion of manually amending the complaint after submission. So this is the recommendation that we'd be putting out to allow that kind of amendment after the underlying information of the registrant [if found]. I'll give everyone a chance to look at what's on the screen. David McAuley, go ahead, please.

DAVID MCAULEY: Thanks, Kathy. I just, in the context, had a question about the context that's right there. Just a little bit above that paragraph on page one. And my question is do we want the word "requirements" there at the end of the second bullet or simply do we want to end after the words "to correct inadequacies in the filing"? Thanks.

KATHY KLEIMAN: I think you've got a good point. I think you're right. Inadequacies in the filing. Thank you for seeing that. Ariel, go ahead, please.

ARIEL LIANG: Thanks, Kathy and David. So, the rules and procedures that we quoted in the [context] are a direct copy/paste from the actual rules and procedures. So we will double check if we copy/pasted

anything wrong. But it should be the original language. We didn't try to modify this.

KATHY KLEIMAN: Great. Thanks, Ariel. Any other comments on URS recommendation #1 or would people like more time to review? We're hoping that people can take a little time to review in these busy, busy days that we all have, to review these documents ahead of time—again, for typos, for factual errors, for misquotes, for extra wording for anything. So, it's going to be hard to allow enough time on these calls. But let me just pause and see if anyone does need any extra time now. If not, let's go to URS recommendation #2.

The working group recommendations that URS providers send notices to the respondent by the required methods after the registry or registrar has forwarded the relevant WHOIS/RDDS data, including contact details of the registry name holder to the URS providers.

So, I believe this means holding the notices a bit until the contact data is actually obtained.

Before GDPR implementation, URS providers typically reference the contact details of the registrants in the WHOIS RDDS data in order to communicate with and transmit notices to registrant providers, also obtain contact information of the registrant via the complainant and registrant's website.

Since the implementation of GDPR, personally available information is masked in the public WHOIS/RDDS data. URS

providers rely on the registries and registrars to forward contact information and other relevant WHOIS/RDDS data of the registrant before they can send the registrant notices. Therefore, the working group proposed this recommendation as a result of GDPR implementation. This recommendation is also consistent with the EPDP Phase 1 recommendations number 23 and 27. See footnote URS recommendation #2.

And as you know, the co-chairs have been getting some communication from the EPDP via Council I think, so we're trying to be consistent in what we're doing with where the EPDP recommendations are going.

So, this is probably where we're going to wrap up for now. Any thoughts, comments, edits, fixes?

Okay. What do you think? With five minutes to go, should we launch into another one or hold here? I'll look for comments in the chat on that. Actually, it looks like staff has moved us. So, let's at least introduce URS recommendation #3.

The working group recommendations that URS providers must comply with URS procedure paragraph 4.2 and 4.3 and transmit the notice of complaint to the respondent, with translation, and the predominant language of the respondent via email, fax, and postal mail.

This recommendation concerns URS procedures 4.2 and 4.3 regarding the notice of [lock] of the registry operator and the notification of the registrant of the complaint. There's a lot to read here. Let me again check time.

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Okay. Let me read the URS rules in just a second. Let me go down farther [to the] context. So, now I'm down a little lower.

The working group discovered non-compliance issues with ADNDRC, a URS provider which did not translate the notice of complaint into the predominant language using the registrant's country or territory as required by URS procedures.

And I assume did not transmit the notice of complaint properly and again translated via fax and postal mail.

The working group also noted that URS providers are unable to use courier services to deliver mail to PO Box addresses and that some providers reported that sometimes they couldn't get things delivered at all via mail, fax, and email—which makes sense.

So, if we can go back up to the bullet points, what we're modifying here, recommending to modify is URS procedure paragraph 4.2 and 4.3 that say "within 24 hours after receiving notice of lock of the registry operator, the URS provider shall notify the registrant of the complaint, sending a hard copy of the notice of the complaint to the address that's listed in the WHOIS contact information and providing an electronic copy advising of the lock status."

There is more there and it talks about the predominant language that has to be used of the registrant's country or territory. Then, similar for email, fax, and postal mail. So, this recommendation deals with the questions about that translation.

Does anybody want to comment on that or shall we pick this up next week?

I agree. Let's wrap up now and we'll get started here. If staff could note that we'll start briefly on recommendation #3 for next week, giving everyone a chance to review it.

Thank you for allowing us to cover and working with us to cover so much information. Thanks to staff for drafting this outstanding initial report for us. Have a good week. We'll see you next Wednesday.

UNIDENTIFIED FEMALE: Thank you, Kathy. Thanks, everyone, for joining. Have a good rest of your day or night.

[END OF TRANSCRIPTION]