ICANN Transcription

GNSO Review of all Rights Protection Mechanisms in all gTLDs PDP WG

Thursday, 08 October 2020 at 17:30 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the Review of All Rights Protection Mechanisms in all GTLDs PDP Working Group meeting being held on Thursday the 8th of October at 17:00 UTC.

In the interest of time, there will be no rollcall. Attendance will be taken by the Zoom room. If you are only on the audio bridge, could you please let yourselves be known now? Thank you.

Hearing no names, I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. As a reminder, those who take part in the ICANN multi-stakeholder process are to comply with

the expected standards of behavior. With this, I will turn it over to our co-chair, Phil Corwin. Please begin.

PHILIP CORWIN: Yeah. Thank you very much, and welcome, everyone. Today is another milestone as we close out this PDP. This was our last discussion of substantive items. Next Tuesday we have two sessions at ICANN69 to begin our review of the final report.

Just a reminder: if you haven't yet registered for ICANN69, you do need to do so to join our session or any other sessions. Are there any updates to statements of interest? Yes, Kathy. Yeah, there is a short break next Tuesday between the meetings but they are, essentially, both back-to-back.

Hold on, I'll tell you in a moment what time those are. Yeah. They start at 8 AM Eastern Time, which is 12:00 UTC. The Hamburg times are a little confusing as they're different from UTC. It's a different European time zone. But, at least when I go to the ICANN website, it gives me the start and finish times in my local time zone.

Our agenda today—and we only have 56 minutes to get through it, but we should be able to—we're reviewing revised converted individual URS proposal 28, followed by revised URS Recommendation 9 and converted individual proposal 34.

These have been pretty well digested. There has been extensive review and comment on the working group e-mail list, and they should be just about ready for acceptance. And finally, we're considering the proposed small team one recommendation for the Approved Launch Program, ALP—that's what it stands for, it's not

the mountains in Europe—and it's a one-sentence recommendation.

There are some considerations with that one which I'll discuss to set it up when we get to it. With that, let's get right into converted individual URS proposal 28. Ariel, are you able to update us on what, if anything, is new here, and what the feedback was from working group members on the options they were presented with?

ARIEL LIANG: Yes, Phil. I am happy to provide a quick overview of what the status of this recommendation is. So, as you can see on the screen, the green text indicates two versions of a reworded recommendation. I believe, from a staff point of view, these two versions both have received support based on the mailing list exchange. I will just read that.

Option A is, "The working group recommends that the URS rule six be amended to add a requirement that each URS provider shall publish an effective examiner conflict of interest, COI, policy that the provider reasonably enforces against any examiners who violate such policy." That's the first option.

And then the second option is, "The working group recommends that the URS rule six be amended to add a requirement that each URS provider shall have a published and effective conflict of interest, COI, policy that the provider reasonably enforces against any examiners who violate such policy."

So, in essence, both options are saying exactly the same thing, it's just a slight wording difference. So, based on what the working group's preference is, we can choose one option out of the two.

PHILIP CORWIN: Okay. Thank you for that, Ariel, and thank you for confirming, because I was wondering, that they essentially say the same thing, just the words they use are a little different. Speaking in an individual capacity, I probably prefer option A, just because I always prefer saying, generally, that less is more and, if we can say the same thing with fewer words, it's better written. Is there anything else we need to review in the language below this, or can we open it up to working group discussion?

ARIEL LIANG: Just a quick heads-up that we updated the contextual language, this paragraph you are seeing on the screen now, basically to rephrase the recommendation itself, but nothing substantive, and we should just focus on the recommendation language.

PHILIP CORWIN: Okay. Let me open it for discussion. I think I see some comments in the chat, people wanting further wordsmithing. I hope we don't have to go there. These are the two options we've had on the list that people have commented on, and I think we need to make a choice between them. In the end, there is flexibility in the joints, anyway, for the IRT to implement this. I don't think there is a major difference.

So, let's open it up for discussion. I'm seeing preferences for option A in the chat. All right. Well, all the chat comments so far seem to favor version A. Again, I think we've got enough context here that the IRT can figure out the rest. So, unless there is strong opposition to version A over version B, I'm going to propose that we adopt A, and if someone has a problem with that we need to hear from them now. Mr. Beckham.

BRIAN BECKHAM: Yeah. Hi. Thanks. I just wanted to mention, in the e-mail that I sent, I had proposed dropping it at that. The reason is I am a big fan of trying to say less and economy of language, and I felt like, the part about the provider enforcing, frankly, it's redundant.

I mean, either you have a policy and you enforce it or you don't. If people feel it adds something, so be it, but I didn't feel it really added anything to the concept of the conflict of interest policy. So, just leave it to vote or e-mail discussion, whatever you decide. Thanks.

PHILIP CORWIN: Yeah. Thank you for that, Brian. Rebecca Tushnet, and then Kathy after her.

REBECCA TUSHNET: Thank you. So, we put that in because other people complained that, without that, it wasn't clear who was going to enforce it. I agree that it's implied but I think it makes sense to make it explicit if there is going to be objection otherwise. So, that's all. Thanks.

PHILIP CORWIN: Thank you. Kathy.

KATHY KLEIMAN: Yeah. Ditto to what Rebecca said. In option A, it's more than just publishing, it is enforcing. So, I would keep both. Thanks.

PHILIP CORWIN: All right. Well, are there any further comments? My call here is that, since there were multiple members of the working group supporting A as written, and since it's implicit anyway, it's probably fine to have it be explicit, and it clears up any future confusion about who the enforcement body is. So, it provides a little more direction to the IRT on that. So, I think we go with option A, unless someone feels compelled to comment further. It's option A as written. All right. Ariel, we'll go with option A as it was presented to the full working group and commented on. We're not editing it.

ARIEL LIANG: Yes, got it.

PHILIP CORWIN: Okay. Let's go onto the next and final URS issue. Ariel, I'll let you tee this up once again.

ARIEL LIANG:　　　　　　　Thanks, Phil. So, what you see … The updated language for this recommendation is in the bullet points under implementation guidance. The second bullet points we added were applicable. That is incorporating, I think, Brian's comment here.

And then, the third bullet point, we also adopted Brian's alternative sentence, and we believe that has received support from the working group, so I'll just read it: "If a translation is ordered, as long as the original submission meets the word limits in the original language, the translation of the original submission may nominally exceed the proscribed word limit. For the avoidance of doubt, the translation may not introduce new facts or arguments which may be contained in the language of preceding submission."

But I do want to flag that, from staff's view, we are wondering whether the word "may" after "translation" is precisely reflecting the working group's intent here. Should we use a "must" or "shall" as alternative wording? But we just flagged this for a question for the working group to consider.

And then, the following bullet point, that's providing additional potential guidance to assist URS examiners in deciding whether to deviate from the default language in the context of a particular proceeding.

So, I'll just read the sub-bullets underneath, and that was incorporating the working group's feedback for the additional potential guidance. The first one is "the language requested by one of the parties."

The second one is "the predominant language of the country or territory of the registrant." Third, principles articulated in the relevant section, presently 4.5, of the WIPO Overview, and then, we have a footnote for that: "the language used by the registry, and/or predominant language of the country of the registry, if different from that of the Registration Agreement."

And the fifth bullet, "The language used by the registrar and/or predominant language of the country of the registrar, if different from the language of the Registration Agreement." And finally, "The language/script used in the domain if it is an internationalized domain name." That was based on some feedback comments in Tuesday's call. So, we have tried to reflect all of these bullet points discussed by the working group here.

And I do want to note that, based on the action item from Tuesday's meeting, staff was asked to confirm with Renee as to her comment regarding this particular recommendation. So, Renee has provided her comments and we circulated her comments on the mailing list. I won't read them all here as Renee is also in the meeting today, but I'm displaying her comments for this recommendation on the screen. So, that's it from staff.

PHILIP CORWIN: All right. I want to give everyone time. Can you leave this e-mail from Renee on the screen for another 30 seconds so everyone has a chance to read it and take away whatever guidance they feel is appropriate? All right. Thank you. Let's go back to the current draft language and open this for discussion. I see Kathy's hand up.

KATHY KLEIMAN: Hi, Phil. Hi, all. I think we have made a mistake. Let's go to the history quickly. Phil, I'll try to do this as quickly as possible. We had a widely-agreed URS recommendation number nine which involved choice of language for URS providers. We have now replaced it with a mandated … With something from an individual proposal. And again, we know the procedure here. An individual proposal has to rise high to be a recommendation. In this case, it is supplanting a recommendation. I think we've made a mistake.

So, it says that the working group recommends that the URS rules … And again, this is the individual proposal. This is not URS number nine, which had a number of factors to be weighed for determining what the language might be. And it says here that we're going to make it the language of the Registration Agreement.

So we raised last week, "Wait a second. Does the form even know, or do the providers of URS even know, what the language of the Registration Agreement is?" And Renee, in her e-mail, said, "No, we do not seek Registration Agreement information from a registrar in URS proceedings."

So, I don't think we move forward with this. We roll it back to the URS recommendation number nine, which we had agreed to, with the factors. And the new wrinkle in this piece is, from this individual proposal, not to replace it and suddenly tell the providers they have to do backflips in order to get the Registration Agreement. That doesn't seem fair at all, and certainly not something we agreed to.

But the new wrinkle is these bullets points where we give the parties some small ability, limited to 250 words, etc., to be added to the evaluation process of what language. That's the new wrinkle, here. But replacing this with something that's just, frankly, inconsistent with how things are done and inconsistent with our recommendation, doesn't make sense. I think we have to roll it back to number nine, and then bring in the new parts of this individual proposal. And I think we can do it really quickly.

PHILIP CORWIN: Yeah. Thank you, Kathy. Kathy, I'll presume that all those comments were made in a personal capacity?

KATHY KLEIMAN: Absolutely, but also consistent with … We can't have an individual proposal knocking out an agreed-on and supported URS recommendation number nine. That doesn't make sense. [It's not personal].

PHILIP CORWIN: All right. Thank you for that. Mr. Barnett, I see your hand up.

GRIFFIN BARNETT: Yeah. Thanks, Phil. Kathy, with all due respect, first of all, your characterization of how we got to where we are now, I think, is wrong. There was wide support in the last call that we had to fold in Recommendation 9 into individual proposal 34, which has achieved

a fairly large and wide level of support within the working group to become a recommendation.

The two are not inconsistent. In fact, it has been discussed at length up to this point. Then, they can work together, and what we're working on now is properly integrating the core components of Recommendation 9, which I agree was well supported.

And so, your characterization that this is somehow supplanting Recommendation 9 I don't think is accurate. I think we're integrating the core components of Recommendation 9 into this combined individual proposal that has achieved support to become a recommendation, as well as the previously agreed Recommendation 9.

And yes, of course, Renee is going to say that providers don't currently seek this information from providers, because that's not the rule. They have existing language of proceeding requirements, and so this would provide a new rule under which, first of all, complainants would be identifying the language of the Registration Agreement, which is typically what's done in the UDRP context under the corresponding rule there, subject to the ability of the examiner to confirm that.

So, if we update this rule, then there would be, potentially, a new step in the process to confirm that. But again, that's completely knowable in advance, as I have explained several times now up to this point, by identifying the registrar in the WHOIS information and, from that, you can then determine their Registration Agreement and, therefore, the language for that.

So, I frankly have to disagree with, basically, how you have characterized where we have gotten to up to this point and how we have gotten there, and your characterization of, or your suggestion that, we somehow roll all of the work that we have done up to this point, which had wide agreement … So, yeah. Those are my comments now. Thanks.

PHILIP CORWIN: Kathy, is that an old hand or a new hand?

KATHY KLEIMAN: No, it's a new hand. Again, I don't understand how we have an individual proposal final recommendation to agree to something nobody is doing. So, I'd love to know, if Renee is in the meeting, does this turn anything on its head? To me, this doesn't make any sense. URS providers deal with registries. UDRP providers deal with registrars.

Renee confirmed that in her … I'm not trying to make trouble for anybody. I'm also just not trying to make a rule that doesn't make any sense. We seem to have supplanted a rule that we agreed to that did make sense, a recommendation, with something that seems to add time … Anyway, let me defer to the expert in the room. Griffin, if I'm mischaracterizing, I'm trying to be as honest as possible. Okay.

PHILIP CORWIN: Yeah. So, thank you, Kathy. Renee, you're next, but I'd like to ask you to address specifically, if this proposal before us is adopted with

the current language, would that change anything about forms process? You can say whatever else you want, but I would be particularly interested in that perspective. So, please go ahead.

RENEE FOSSEN: Thanks, everyone. So sorry that I missed the excitement last week. As far as changing the process, I certainly would. I tried to allude to that with my comments in the e-mail that, if we have to reach out to the registrar in addition to reaching out to the registry, that's going to add time.

And I understand that this will be a rule, now, and it will be something that's going to be baked into the process, but I guess where the burden lies would be my concern. If we have to contact two separate essential entities to get verification of information, which is what they're required to do, it could add time to the process.

So, that's my main concern with the Registration Agreement requirement. Yes, it would change our procedures and it could potentially add time to the process, which is supposed to be rapid. That's my concern. Thanks.

PHILIP CORWIN: All right. Let me ask this. I hear you saying you're not doing this now, and if this became the rule, someone would have to identify the language of the Registration Agreement, and, if you had to do it, you as a URS provider, it would add time and expense to the process. I believe Griffin said that he expected that the complainant would investigate that and state it in their filing. I see something from him in chat, there.

RENEE FOSSEN: I raised my hand again. We would still have to verify it. We can't rely on what the complainant is alleging to be true. We have to verify it with an official source.

PHILIP CORWIN: All right. I'd like to hear from other working group members so the burden is not all on this co-chair to decide how to proceed. Zak Muscovitch, and then Griffin again. Zak?

ZAK MUSCOVITCH: Thanks, Phil. So, just to continue the discussion, this is more for clarification with Kathy. So, I'm looking at the old URS recommendation number nine on a different screen. It says that the working group recommends that, as implementation guidance, the URT develop guidance to assist URS providers in deciding what language to use during a URS proceeding and when issuing a determination.

And then, I go back and look at rule nine of the URS. Rule nine of the URS says that URS procedure specifies the language in which the notice of complaint is transmitted, but then the complaint itself shall be submitted in English. The response can be provided in English or in the language used in the notice of complaint.

And so, if that's what the existing rule is now, we can have a notice in Mandarin Chinese, a complaint submitted in English, a response in Mandarin Chinese, determination in the discretion of the examiner which language to do it from, because it says, "The

examiner shall be fluent in English and in the language of the response and will determine in which language to issue the determination in its sole discretion."

So, that's the existing rule, now. And then, I gather from the original URS Recommendation 9 that we were asking … Which, as Kathy did point out, it was a working group recommendation with tons of support. What the recommendation says is the IRT should consider developing guidance to assist the URS providers in deciding what language to use during a URS proceeding.

So, I take it from that that what we were recommending, or what we currently are recommending, for that matter, is that some guidance to determine whether rule nine should be changed … Is that what it is?

And if that's the case, then we are giving some possible things for the IRT to consider, such as the question we just asked Renee, whether it's possible to ascertain the language of the Registration Agreement, principles articulated in section 4.5 of the WIPO Overview, procedures followed under the UDRP.

We've given them a bunch of options to come up with a solution to replace and improve option nine, but not giving them the actual directions. That's my understanding, and it may not be correct. So, I'm seeking clarification to understand where we're at. Thanks.

PHILIP CORWIN: Okay. Thank you, Zak. That was useful. And now, I'm seeing language in the chat that the guidance should be to the examiner,

not the provider, raising further questions about whether this proposal is ready to be adopted. Griffin, and then Renee.

I would really like to start hearing proposals, given that this is supposed to be our last substantive meeting. I hate to wordsmith on the fly but, if we can fix this now and adopt it … Because I'm not sure there is a procedure that lets us come back to it once we're considering the final report. Griffin, and then Renee.

GRIFFIN BARNETT: Yeah. Thanks, Phil. So, putting aside the … Well, I guess, just to respond to the question in chat about the provider versus … So, I think the existing draft language that we had referred to guidance to the panel. Perhaps that panel should say "examiner," if that's the proper term. But what I was saying before, I think … I didn't see a reference in terms of the IRT guidance to providers, unless I'm missing it. but I agree, we should make it directed to examiners, I suppose.

In any case, to return to the point about, how can the providers confirm the language of the Registration Agreement? So, in the UDRP context, where, obviously, we're drawing this rule from, in the standard complaint, there is a section on language of proceeding where the complainant includes an assertion as to the language of the Registration Agreement.

I would defer, probably, I guess, to Renee or Brian as to whether there is a layer of verification that's done by the provider or by the examiner as to whether that sort of assertion as to the language of the Registration Agreement, which is typically included as … We

always included an annex to our UDRP complaints with the Registration Agreement in it as support for that assertion as to what the language is.

Now, there may be a step where they actually verify that with the registrar. Honestly, I'm not 100% sure. But if that's the case, I don't see why that couldn't be done in the URS context if we adopt this rule. I understand that the URS primarily operates with the registry operator, but there is going to be some level of registration information verification likely being done, given the changes to WHOIS with GDPR and so on.

That will necessitate that outreach to the registrar potentially, anyway, so it adds another day or a couple of days to the process to give us the predictability and the bright-line rule, here, that we're looking for. I don't see that as particularly problematic.

And so, to the point earlier that this is not something that's currently being done, sure, because that's not currently the rule. So, this is obviously for looking to what the process would look like and how it may change if we were to adopt this rule, which, again, I think there was a lot of agreement before that this is a preferable approach because it gives you a bright-line rule. Thank you.

PHILIP CORWIN: Okay. Thank you, Griffin. I believe, Zak, that's an old hand, unless you wanted to speak again, but yeah. So, it's Renee, and then Kathy, and then I'm going to see if we can get this to some conclusion, noting that we have 28 minutes left.

RENEE FOSSEN:	Thanks, Phil. I'll try and be very, very quick. I'm just going to start with my understanding of what recommendation number nine was supposed to address, and that was the issue that we had when we had those territories and countries where it's 51% of the population speaks this language, 49% speaks this language: where we're getting that information. Is there a valid source? Is there an accurate source? How do we deal with that?

And it's like I said in my e-mail. It's not a huge problem but, if we have an examiner that speaks the language that is 49% but not an examiner that speaks the language that is 51%, we'd prefer to assign it to the examiner that speaks 49%, rather than reject the case, because we can't take a case unless we have an examiner that speaks that language.

So, that's where I thought we were at with Recommendation 9, for context. And as far as Griffin's comment as to verification, yes, I suppose that could happen where we do have to verify that information and it could be something where we just go and get that information. We don't rely on it, as I said before.

And then, to [Susan's] comment, I have to scroll back up here to see what she was saying. I don't know. I guess I can't think of a reason why there has to be, that we have to get the information from the registry, but now the system is set up in such a way that the registry is the one that directs the suspension page.

So, we give them the address to direct suspension when it's over, so that would be a complete overhaul, basically, if we're switching from registry to registrar to get that information, because then, who

will ultimately …? We'd still have to be dealing with both, I guess is the comment there. Thanks.

PHILIP CORWIN: Thank you, Renee. Kathy, may I ask you to be as brief as possible?

KATHY KLEIMAN: Yeah.

PHILIP CORWIN: Thank you.

KATHY KLEIMAN: Okay. I don't think anybody was bargaining for a complete overhaul here, right? That doesn't … We could debate it for a long time. I think we're at the end of the road. So, what I'm going to do to your call, Phil, is, as an individual, harken back to our URS final recommendation number nine that's on the screen. Note it's a recommendation operating as implementation guidance. Perhaps not the best phrasing.

And recommend that we modify the second paragraph of it, "Furthermore, the guidance may include but is not limited to," and add to it the language, the bullet points, that we have adopted about the complainant and respondent being able to ask the examiner and input all those details about how they can get mauled in requesting a language for the proceeding.

Otherwise, I would keep number nine the way it is, because this is what we have reviewed, this is what we have accepted, this is what is consistent with current process, and we don't know what a complete overhaul will do or what the costs will change to if we change this dramatically. Thanks.

PHILIP CORWIN: Thank you, Kathy. Now the other co-chair, Brian. Brian, can you suggest a way we can get out of this box and close this out? [inaudible].

BRIAN BECKHAM: Yeah. Thanks, Phil. I'm going to try to offer the perspective of a UDRP provider. I appreciate that's different from the URS. I have tried, apparently in vain, to raise this on the list in the chat. But in my experience, I think the goal here is clear. We want to provide as much due process to registrants as possible.

And in my experience, the language used by the registry and the language used by the registrar … In some earlier version of this, there was even mention of the privacy proxy service and resellers. And I'm just worried that introducing the language used by those entities could actually undermine what we're trying to achieve.

And I've tried to give examples of I'm an English-speaker living here in Switzerland, which has three official languages. The registry may, for corporate/tax/whatever reasons be based in Luxembourg, and registrant is in China. Who knows? There are myriad versions.

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But what I'm trying to get at is I genuinely believe that introducing the language of these corporate entities in the registration chain actually risks adding confusion for both the parties and the examiner. If people want to include them because they feel it's useful … And maybe there's something I'm overlooking. Certainly, I don't discount that possibility.

Then I would only suggest that we make it clear that these are somehow kind of additional factors that the examiner is free to look at or disregard in the case's circumstances, because I think the last thing we want to do is burden the examiner with making a choice based on information that's just going to confuse them, which may have an adverse impact on the registrant's ability to actually respond to and defend the case that's filed against it.

I hope that helps. I'm happy to try to answer other questions, but I have been trying to make this point for some time now and it seems not to be landing anywhere. So, that's my last attempt at trying to bring some clarity on that, based on our UDRP experience. Thanks.

PHILIP CORWIN: Okay. May I ask staff to go back to the language of 34, which is what we have to decide on now? And let me also ask staff, if we don't resolve this now, do we have any ability to come back and discuss a final version? Aside from intruding on our review of the final report. Julie.

JULIE HEDLUND: Hi. So, we have, in some cases, resolved language over the list. But given that there is still some disagreement, at least now, in

today's meeting, on the approach for whether to combine these two proposals, and/or how to combine them, it seems to me that we would probably need another meeting, at least some time in another meeting, to review and discuss revised language to the extent that the working group can agree to revise language on this call. So, that would mean, yes, indeed, taking some time from one of the ICANN69 sessions to resolve this issue.

PHILIP CORWIN: All right. And let me ask one more thing. I don't know if you are Ariel is best to answer it. This was on the working group list for at least the last few days. What feedback, if any, was received on this revised 34, which ostensibly also combines number nine?

JULIE HEDLUND: Thank you. Certainly, Ariel can chime in, as well. But yes, we did. Staff sent revised language as an action item from the call on Tuesday, where the working group had agreed to combine the converted individual proposal 34 recommendation with recommendation number nine. And I think that Griffin had suggested some non-substantive changes. Actually, no. I take that back. I think that was another issue. Ariel, help me out. I don't think there was a lot of change to that. Please, go ahead.

ARIEL LIANG: Thanks, Julie. You covered it all. There is not much discussion, per se, this week on the mailing list about this particular recommendation, and the only thing we circulated is Renee's comment. So, the edits reflect the discussion during the working

group meeting and input from what working group members said in the meeting. So, not much input here.

But I'm afraid I want to raise another wrinkle to this recommendation, and I'm perhaps just going to add headache to the working group, but I feel this is important to let you know ahead of time.

If you recall, there is another recommendation that the working group has already approved regarding maintaining the status quo of the translation of the notice of complaint to the respondent, and that's in the predominant language used in the registrant's country or territory, and that's not to translate that into the language of a Registration Agreement.

So, if the working group decides to go with the converted proposal 34, then there is, perhaps, some potential inconsistency with this particular recommendation, because they are both concerning translation and concerning the language used to communicate with the respondent. So, we just want to flag it here for your consideration. Apologies for raising another wrinkle to this recommendation.

PHILIP CORWIN: Yes. Thank you, Ariel, for further muddying the water. Kathy, did you have any reaction to Brian's intervention? And then I'm going to bring this to a conclusion.

KATHY KLEIMAN:	I wasn't sure what Brian's wording suggestion was, if any. I apologize.

BRIAN BECKHAM:	Yeah. Thanks, Kathy. I would, if I was holding the pen, strike all of the references to registry, registrar, reseller, privacy service, proxy service. As I've mentioned, I feel those risk introducing confusion and undermining due process. If people feel strongly … And I, frankly, haven't heard any reason why people think that that's important, to include those, by way of response to my examples, to show why they can introduce confusion. So, I would strike them.

KATHY KLEIMAN:	Okay. Brian, I can reply to that, if you'd like. No. That's what we spent all of last meeting fighting to put in because it's part of the original URS recommendation.

BRIAN BECKHAM:	Yeah. Kathy, can I finish, please?

KATHY KLEIMAN:	No, I'm sorry. I can't. I don't support this.

BRIAN BECKHAM:	Kathy, could I finish?

KATHY KLEIMAN:	Sure. Of course.

BRIAN BECKHAM: Thank you. So, the fact that they were in an existing something, somewhere, or we discussed them previously, frankly, to me, doesn't really get us across the finish line. Just because they're there doesn't make them right or useful. So, again, my proposal was to strike them for the reasons I have stated I don't know how many times now.

And if not, then I would make as clear as possible that these are factors that are completely in the panel's discretion to look at, because the last thing I think anyone wants to do here is to make the task of the examiner more difficult, or to short-change the registrant's possibility of responding in the language it's most comfortable with. Thanks.

PHILIP CORWIN: Okay. Let me bring this to a conclusion. Could we scroll back up to the start of this? I have one of my co-chairs and others saying we should be adopting number nine, not this revised 34. I have another one suggesting we strike a significant part of the language from this.

I have my own personal concern that this recommendation seems to open with saying that they adopt a hard-and-fast rule, subject to the entirety of the panel determine otherwise, and then there is a lot of leeway for the examiner to do that.

So, it's not just a hard-and-fast rule. And then, staff advises that this has to mesh with another separate part of the rules on translations. So, I just don't think we can wrap this up today. I'm going to ask staff to put it back on the list, and we will bring it back for final

discussion and adoption when the co-chairs feel with great certainty that we have final language that's going to be non-controversial and just accepted. We're not going to bring this up during our public working group meeting next Tuesday.

So, the earliest we'd revisit this is in our first meeting following the ICANN69 meeting. Sorry we can't wrap this up today, but I don't … And then, I heard the major URS provider saying this would, if adopted in current form, place a significant new administrative burden on them. So, it's just not ready for adoption.

Let's move onto our last issue. All right. This is the ALP issue. Let me try to set this up. It's a single sentence we're considering in the form of a recommendation. The sentence is simple: "The working group recommends there should be a transparent and predictable process to timely evaluate, approve, and reject ALP." That's Approved Launch Program. "Applications, outcomes, and process measures should be published."

My knowledge of this … We've had some discussion whether this is within our jurisdiction, but there is a provision of the Applicant Guidebook, and this is related to a deviation from Sunrise registration requirements.

I've heard concerns that there already is a process in the Applicant Guidebook, so that recommending there be a process seems to be redundant. The complaint we've heard is that there is a process but that the applicants who have tried to use this in the first round were unable to get timely feedback.

And so, it was a process without a way to really use it because of a time-lag in response from ICANN Org. I've heard ICANN Org has concerns about this. I'm not, personally, that concerned about it because, whatever we recommend, ICANN Org takes the lead in implementation, unless there were concerns that requiring the application to be published could go against the wishes of some applicants who might wish to keep their applications private. And also, I've heard concerns that this is a recommendation unaccompanied by any further implementation guidance or context language.

So I'm wondering, personally—and you don't have to respond to this—whether we need to make a recommendation on this or whether we just need a section of the final report, noting reports from first-round applicants that they could not get a timely response from ICANN Org permitting them to make use of the ALP, which rendered it null and void for their purposes, and that we need the IRT to create some type of assurance that applicants who want to use ALP can get a timely response from ICANN Org.

I've said more than enough. I open it to comment, noting that we have 11 official minutes left in this call. Surely someone wants to speak to it? Maxim, please go ahead.

MAXIM ALZOBA: If we do not make it a recommendation, we would be taking it into account. It's the only question. If yes, then it doesn't matter. We can leave it just in the text. But if we do not make a recommendation and it leads to the same ALP program, then it's going to be a problem. Thanks.

PHILIP CORWIN: Okay. Thank you for that, Maxim. Paul Tattersfield. I know he worked very hard on this.

PAUL TATTERSFIELD: Thank you. Yes, the same as Maxim, really. If it's going to be dealt with, and it can be dealt with with language rather than a recommendation, then that's fine. But this has been kicked into the long grass for a very long time. I mean, people were complaining about this back in 2012, 2013, 2015, and attending ICANN meetings, and submitting comments, and nothing has happened.

So, we really do need to see something happen. If we need a recommendation, then this is a pretty good recommendation, because all it is asking for is transparency. It affords …

I mean, the language is policy recommendation, rather than implementation recommendation, so the earlier language, and that's really the only main change, which means we cannot inadvertently overburden the GDS, or inadvertently constrain the ALP application process under even unexpected scenarios.

So, it goes give GDS and IRT a lot of flexibility to put in place metrics and make this process work—make it as transparent and predictable as possible. So, I would hope that we could quickly move this recommendation forward, and that's it. Thank you.

PHILIP CORWIN: Okay. Thank you, Paul. I think we all understand that there is some evidence that this has been a real problem. Julie, you have your hand up. Please, go ahead.

JULIE HEDLUND: Yes, thank you. One thing that staff wanted to point out to clarify is with respect to the current recommendation language. It's vague enough that the Implementation Review Team would need to try to, of course, determine how to implement this, and they would probably look at the current procedures—that is what you see also up there on the agenda, which is the Approved Launch Program and forms and the application review guidelines—to see if those were sufficiently transparent and predictable, and they might indeed decide that they are.

So, staff's concern is that this would go out as a recommendation but that the result would be that the IRT would simply decide to revert to the current process. So, I'd say that's not a staff concern.

I guess that's a staff point of clarity, that that could indeed be the case. And I think that the staff would agree that it would be quite useful to raise the issue in the final report as a point of discussion within the working group, but not as a recommendation or implementation guidance.

PHILIP CORWIN: All right. Let me ask you this, Julie, and then I want to hear from Kathy. If we don't do a formal recommendation, as in this one, there has been substantive concerns raised about the mandatory publication of an application. There has been a procedural concern

that it's unaccompanied, so far, by implementation and context language.

Is there some way that staff could prepare a highlighted section of the final report, since this does relate to Sunrise, noting that the working group received both public comment and feedback from working group members that, while there is an existing process for applying for an ALP, applicants who did so were unable to get a timely response permitting their actual use of the ALP, and that this needs to be corrected for the second round. Is that something that would be feasible?

JULIE HEDLUND: Thank you, Phil. Staff certainly can incorporate language into the final report to the extent that you have suggested. We'd also like to suggest, though—and I think this background is important to raise— that at the time that the applicants did have problems with the transparency and predictability, I think that this Approved Launch Program process and forms had not yet been developed.

And in fact, actually, you can see that the data on it is 12th November/13th. So, that is another point the Implementation Review Team would consider if this became a recommendation. They would note that, yes, it was recognized that there were problems in the first round because there we not procedures at that time, but there are now procedures that have been published, so one would not expect to run into the same problem that existed during the 2012 round.

PHILIP CORWIN: Okay. I see Kathy's hand up. Kathy? I saw your hand up before Paul.

KATHY KLEIMAN: Sure. Can I defer to Paul, and then I'll follow up? Thanks.

PHILIP CORWIN: All right.

PAUL TATTERSFIELD: Thanks, Kathy. Just to point out that there has only been one successful ALP application in eight years, so the situation hasn't really changed since 2012. Thank you.

PHILIP CORWIN: Okay. Kathy.

KATHY KLEIMAN: Yeah. Phil, I support your idea. Let me repeat it back and see. And I thank Paul Tattersfield, Maxim, and the small group that worked with them. This is a problem. We've been hearing about it for years, as you said, both in presentations before us during public meetings and in comment.

So, can we split the baby and, instead of making it a recommendation, make it formal implementation guidance with the context as you have laid out? Kind of a clear little section in our final report laying out this problem.

It can certainly note that there may be new rules and new procedures, but that when this ruled out in 2012 it was a real problem. And so, to that end, we recommend that those problems not take place in the next round. Thanks.

PHILIP CORWIN: Okay. Well, I think I'm going to leave it to staff to decide where … Yeah. Julie, I see your hand up.

JULIE HEDLUND: Thank you. There isn't enough detail right now for this to be implementation guidance, really. I mean, at least, it would have to be changed, I would think, somewhat. When it was in the form of implementation guidance, we'll note that we took it back to GDS and a lot of the implementation was not feasible. It was problematic. So, we're not sure how we would get to this as being implementation guidance with what we have, here, at this point. And we also have noted that GDS has concerns with even just this as a recommendation, as to its feasibility.

PHILIP CORWIN: All right. Thank you, Julie. Here's how I'm going to resolve this for now. We have a recommendation with no implementation guidance, no context, concerns about the mandatory publication of applications. On the other hand, we know there were, at least at one point in time in the Phase 1 new TLD program, applicants who couldn't get timely responses from ICANN.

So, I'm going to ask staff to draft language for consideration by the working group on the e-mail list, and comment, that notes that we had input indicating that there was a real problem and that, because of the interplay between this and Sunrise, we need assurance that, in the next round, those second-round applicants who want to use the ALP process can get timely response from ICANN. So, I think … Yeah. Brian, I see your hand up. That's what I'm proposing. So, do you have something to say, Brian?

BRIAN BECKHAM: Oh, sorry. Thanks, Phil. I was just … Sorry. You mentioned earlier that this was a recommendation. I wasn't clear if we had reached that this was actually a recommendation or this was a proposal, or a discussion.

I thought that just as a kind of procedural question. Because if, based on the discussion we've had, it's not clear that there would be support for a recommendation. I think nobody disagrees with the principle, it just seems to be lacking specificity or clarity, as Julie, I think, rightly mentioned.

PHILIP CORWIN: Yeah. Thank you, Brian. I've noted, other than the concern about the mandatory publication of applications under the current proposed language, I haven't heard objection to this. Whether there is wide support, I don't know. But usually, when something isn't widely supported … We are at 2:30, so I'm going to hear from Paul, briefly, and then Greg Shatan briefly, and then we're going to close

this out. So, I ask your indulgence for another two or three minutes. Mr. Tattersfield, as brief as possible.

PAUL TATTERSFIELD: Thanks, Phil. We're caught between a rock and a hard place. If we suggest implementation language, we're told it may be too restrictive under certain [inaudible]. If we suggest policy language to achieve a predictable, transparent process, we run the risk of that being too vague. Well, we're told it's too vague.

I think I'm beginning to understand how the ALP applicants felt. There has been no objection from anywhere. It quickly gained consent within—in fact, unanimity—the small group. It's very popular. The only pushback seems to be from staff [inaudible].

PHILIP CORWIN: I'm hearing a lot of background noise. Could you please mute, whoever it is? Please proceed, Paul

PAUL TATTERSFIELD: Sorry. Yeah. There has been rapid support within the small working group. It was consensus. In fact, it was unanimity that was achieved very, very quickly. There has been no pushback from virtually anybody—well, from anybody at all, any working group members, or negative comments toward it—and the only pushback we've had is from staff. And as I've just said, we're caught between a rock and a hard place. Thank you.

PHILIP CORWIN: All right. Thank you, Paul. Greg, briefly?

GREG SHATAN: Thanks. I'm wondering if this could be rephrased slightly? Something like, "The working group encourages ICANN to develop a transparent and predictable process, etc.," or, "develop and implement." We could also put in the sentence before that, "The working group expresses concern with the unpredictable and long delays, etc., etc.," something just to set up for why we're saying this.

But I would think that, if we can make it an "encourage to develop," then it's neither strictly recommendation/strictly application guidance. I realize that's somewhat dilutive, but it seems to … Maybe it avoids both the rock and the hard place. Thanks.

PHILIP CORWIN: Okay. Thank you, Greg. I appreciate the constructive suggestion. But given that it's two minutes past our stop time, I don't think we want to get into wordsmithing here. So, what we're going to do is the staff is going to develop draft language for the final report, noting the evidence we received of the problem of getting timely approval and feedback from ICANN Org for at least some first-round applicants who submitted ALPs and the need to assure that, in the second round, there is a timely response so that it's not a mechanism that's available in an illusory way.

I'll ask staff to develop that, to run it past the co-chairs, and then, when the co-chairs think it's fit to do the job, we'll share it with the full working group for further comment. I'm sorry we have two final issues we have to put back on the list, but we can't be approving

things that aren't ready for prime time, where there still remain some significant concerns.

And with that, I thank you all and look forward to seeing you all at next Tuesday's ICANN69 back-to-back working group meetings where we begin our review of the final report and, of course, the two items that were held over from today. If we reach final report sections that they would be in and they're not ready yet, we'll come back to them as appropriate. So, thank you all, and enjoy the rest of your day. Thank you.

MAXIM ALZOBA: Bye-bye.

[END OF TRANSCRIPTION]