
ICANN Transcription

Review of all Rights Protection Mechanisms in all gTLDs PDP WG

Tuesday, 28 July 2020 at 13:00 UTC

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JULIE BISLAND:

All right. Well, good morning, good afternoon, and good evening. Welcome to the Review of All Rights Protection Mechanisms, RPMs, in All GTLDs PDP Working Group call on Tuesday the 28th of July 2020.

In the interest of time, there will be no rollcall. Attendance will be taken by the Zoom room. I would like to remind all to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid background noise.

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With this, I will turn it over to our co-chair, Kathy Kleiman. You can begin, Kathy.

KATHY KLEIMAN:

Good morning, Julie. Thanks so much for joining us, everyone, on what may be a hot summer day wherever you are. First, I wanted to check for updates to statements of interest. Does anyone have an update as we go into the end of July?

I also wanted to congratulate anyone who was part of the planning of the IGF U.S.A, which was taking place last Thursday and Friday. I think we have members who were part of the planning of that. It was outstanding and, for a virtual meeting, really engaging and exciting. So, thank you for that.

You'll notice that we canceled last Thursday's meeting due to unavailability of the co-chairs and also knowing that a number of members were probably going to be at the IGF U.S.A meetings.

So, that means we have even more things to do today. And so we go in, now, to number two of our agenda. Our agenda is pretty comprehensive. One of the reasons we're putting so much material in is in hopes that we can get through it, but recognition that it is a lot.

But we had some meetings earlier in the summer where we came up short. We finished our agenda long before the end of scheduled time, so we don't want to do that. So, we put it all in and see how far we can get.

So, for item number two, we're beginning a new phase of our work. This is a review of the URS individual proposals number three, 15, and 22. As you know, with the individual proposals, we put them out there and they had a high bar to see if they could come in. None of them were recommendations.

Now, we reviewed them and some of them ... But we'll talk about it with the individual proposals. But that high bar remains because these are still individual proposals coming in and we're still looking for a broad cross-section of the community and broad working group support to move them forward.

So, let's start with URS proposal number three. I was hoping, yes, that we could go to the public review tool very quickly. Nope, public review tool, please. The other one. Thank you. Just very quickly so you could see, when last we met this was the issue for the URS individual proposal number three, which had to do with extending the registration period for a year at commercial rates to allow time for appeals. Okay. Now to the summary, please.

So we're switching, now, to the public comment analysis of the individual proposals that staff has prepared. As Steph has highlighted, Griffin Barnett volunteered to propose a revised formulation for working group consideration. Griffin, this might be a good time to ask you—and can we put it on the screen?—what that proposal is, because I think it's not going forward, but I don't want to speak for you. Griffin, are you with us? Come on down.

GRIFFIN BARNETT: I am. Thanks, Kathy. Hopefully, you all can hear me now.

KATHY KLEIMAN: Definitely.

GRIFFIN BARNETT: Yeah. When we last discussed this proposal, the impression that I had was that there was a specific problem that it was intended to address, which was the fear that a domain that was the subject of a URS proceeding, after a decision was rendered, that domain could subsequently expire before the conclusion of the 14-day URS appeal period, which could potentially undermine the ability of a losing party in the initial proceeding to, basically, have an effective appeal. Because if the registration were to expire then, obviously, it would be practical issues in changing the status of the domain, pursuant to any appeals.

So, having understood that that was the problem that this initial proposal was attempting to address, I think there were a lot of questions or, perhaps, concerns about the clarity with which this proposal was actually reaching that problem.

And so, I think people recognize that that was, potentially, a legitimate problem, but that the way that the proposal was drafted didn't necessarily convey or reach a solution that made a lot of sense.

When we were discussing it before, I had suggested a revised formulation that was very simplistic, just to say that there should be an opportunity to renew a domain if the domain was going to expire during the appeal period.

I think I was sort of voluntold, apparently, to revise this. Maybe I volunteered to revise this. I don't know that I volunteered. But in any case, I did take a more detailed look into this particular problem.

I think, ultimately, the conclusion that I reached was that we don't actually need a proposal here, the concern being that if a registration could expire during the 14-day appeal period, that would be problematic.

But what I think we all were forgetting is that, pursuant to ICANN rules, there's an automatic 30-day redemption period after the listed expiration date of any domain name registration, during which the domain can be redeemed.

So, the point is it doesn't expire and then suddenly it's gone and there is no way for it to be held throughout the appeal period because we have that 30-day redemption period during which it can be redeemed.

And so, the conclusion that I reach is that, ultimately, we don't need a solution here because the 30-day redemption period is sort of our safety net that kind of gets us through the end of that 14-day period, even if the expiration date were to fall during that period.

So, that's the conclusion that I reached. I basically explain that, here, in this paper. And so my suggestion, here, is that, because of that, we don't actually need this proposal and that we don't consider it further. Thanks.

KATHY KLEIMAN: Thanks, Griffin. I'll just read the last line: "Thus, because the domain name can be redeemed in order to preserve the status quo for the duration of a URS appeal, we can likely eliminate URS individual proposal number three."

I, personally, would like to thank you for your research and analysis on this. I appreciate the deep-dive. And anyone who wants to speak to this, it's on the table now not to proceed forward with this for all the reasons Griffin so eloquently laid out. Zac, go ahead, please.

ZAK MUSCOVITCH: Thank you. Likewise, Kathy, I'd also like to thank Griffin for his research on this. Omitting something because it's already dealt with is an elegant solution. I just have a couple of questions to make sure that I fully understand why this can be omitted.

One is—and Griffin, this is more or less direct to you—you see the line that says "registrar may accept such renewal and a registration." Is that an issue? If it is, if that word, "may," is changed to "must," does that fix the issue?

And secondly, this is more of a general question about how this works. If the domain name is locked because of the URS, can a registrant extend the registration order to commence an appeal, technically? Thank you.

GRIFFIN BARNETT: Thanks, Zak. Yeah, the quote there is from the URS technical requirements, and all it says is that "the registrar must follow the normal domain name lifecycle for a URS-locked domain. If the

domain name registrant elected to auto-renew or restore the domain name registration, a registrar may accept such renewal and/or restoration.”

I’ll note that there is, basically, the same requirement for the registry using, basically, the same wording. And so, you’re looking at the portion that says a registrar may accept such a renewal and a restoration, etc., etc.

And I think this is really here just to confirm that nothing really changes about the domain name’s life cycle, even if it’s locked pursuant to a URS proceeding. I think the concern is a registrar can ... Even under normal circumstances, it doesn’t have to accept a renewal or a restoration.

And so this, basically, just restates or, I guess, sort of reconfirms the existing fact that, even though a domain name might be locked pursuant to a URS proceeding, the life cycle of a domain basically remains the same, as if it were just any other domain.

So, I don’t think anything necessarily changes, here. I think all of this is just to confirm that the normal life cycle continues, and that’s where the redemption period comes in. Obviously, because the normal life cycle continues, we can rely on that redemption period.

So, I hope that answers your question, again. This is a proposal that was not mine to begin with, and so I’m just trying to, based on discussions that we had had previously which seemed to clarify what the problem was that this was initially intending to address ... Again, ultimately, my conclusion is that the redemption period will

allow us to overcome the envisioned problem without requiring any further changes.

ZAK MUSCOVITCH: Kathy, if I may just ask a short follow-up to that?

KATHY KLEIMAN: Sure.

ZAK MUSCOVITCH: Yeah. Thank you. So, Griffin, I follow exactly what you're saying. I get it. Do you think, though, there is any reason we should consider changing the word "may" to "must" in the second part of that quote? I'm just trying to envision why a registrar/registry may not accept a renewal. Maybe it could be clearer or maybe leave well enough alone. Thanks.

GRIFFIN BARNETT: Yeah. I mean, I personally don't think we need to change it because, again, all it's saying is that nothing about the current existing rules surrounding the treatment of a domain name, whether it be a registration renewal or redemption, changes.

So, I don't think we need to change it. And I think we're considering the scenario, here, where the initial URS proceeding is over and, assuming a complainant has prevailed, the domain name will be suspended and the losing respondent in that proceeding would then have that 14-day period in which to appeal.

Now, I guess you could have a scenario where, if the domain name was going to expire in that period and the prevailing complainant doesn't extend the suspension, then you could have a situation where you'd have to rely on the 30-day redemption period.

But again, I think that happens at the registry level, anyway. And so, again, I don't think we need to change any of the wording, here, because I think you have that safety net, regardless. That's my understanding, at least.

KATHY KLEIMAN:

Okay. Griffin, Zak, thank you. I'm seeing agreement to your proposal at the end of this piece. Griffin, from David McAuley, "Does anyone not agree with the analysis provided and that we don't need to move forward with this proposal, per Griffin's recommendation?" And again, "With thanks for his research and analysis on this," and, "it's good to know that these situations are covered."

Okay. Terrific. Then let's follow the same pattern as we move forward, looking first at our public comment tool for 15, and then 22. Griffin has also taken on—Griffin, you were busy this week, thank you—looking at the URS proposals—15, please—for 15 and 22. I believe they have been merged, now, into a revised and consolidated URS individual proposal 15/22, which we'll look at in just a second.

I just wanted to take us through, very briefly ... Take a look at this. It's hard to read because it's small print. This is URS individual proposal number 15 that has to do with penalties for repeat offenders and high-volume cybersquatters. I'm not going to read all

of this because some of this is now revised or put into the consolidated proposal.

Can we also look at URS individual proposal, from the same public comment tool, 22, please? This is the proposal we all remember talking about, the URS incorporate a loser-pays model. You can see where the support and lack of support came down on this.

Staff, if someone can put a link into the public comment tool into chat, people can take a look at it if they want. I think we should go to the public comment analysis tool, which has separate analysis for 15 and for 22.

Basically, for 15, our public comment deliberation ... Just so you know, I'm working off of paper because this is so small on the screen. I'm waiting for it to stop at 15. Right. So, our initial deliberation.

We agreed to preserve 15 and 22 and consider potential integration to see if a fully baked unitary proposal could gain consensus support as a working group recommendation, subject to further working group discussion about the new language.

And so, in collaboration with others, Griffin agreed to drill down into the comments and propose a revised formulation for working group consideration. I just want to go a little farther down to those bullet points.

Just wanted to note, briefly, some of the issues, views, and concerns that were raised on URS proposal number 15. You can read it right there, too: "The proposal would fundamentally change the nature of the URS and create a completely new registration

administration procedure. Given the default rates and identity theft issues, the proposal is useless to the complainant. There are already higher response fees for URS proceedings.”

You can read the rest of it but Steph has done an excellent job, I thought, of summarizing the concerns which should be addressed. Of course, in a consolidated proposal, if we want to overcome this, the concerns that the public—you know, members of the working group who responded on behalf of groups, as well as the public—laid out.

Let’s go down to individual proposal, same document, number 22, please. So, we have the same ... Yeah, exactly. So, our working group deliberation, the same conclusion, here, that this will go off to Griffin to merge 15 and 22, given the synergy. And same thing, based ... Let me go to where the bullet points are.

So, Griffin is suggesting ideas for refinement could include” loser-pays could potentially be an appropriate penalty; loser-pays could apply to both URS parties; filing fees and response fees could be a specific item to be paid in loser-pays. Please read the rest.

Skipping down to that there were diverse views and concerns, as you saw from the donut expressed on this, that there are bad actors on both sides and we need to provide balanced, graduated solutions.

“Loser-pays model may be great for well-intentioned trademark holders, but it is easy to be abused when no infringement is occurring. However, there are already penalties for abusive complainants and complainants already pay filing fees, even if they

lose. The loser-pays is just an attempt to inject cost into an allegation, and that will mean letters threatening costs to acquire domains not reasonable or appropriate for the URS.”

And the CPH comments, third bullet point: “The proposal does not set limits on the loser-pays principle.” There are more, but let’s go to the consolidated proposal 15 and 22, that Griffin provided. Once again, Griffin, if you would come on and guide us through? Please assume that not everyone has had a chance to read this. It is summertime and we all do our best. So, please take us through, and thank you very much.

GRIFFIN BARNETT:

Yeah. Thanks, Kathy. Yeah. So, I just want to give a brief additional prelude before I dive into the substance of this revised and consolidated proposal. So, having been involved in some of the earlier discussions that we had on the initial versions of these two proposals, 15 and 22, I understand there was a lot of opposition, I think, to each of them kind of standing alone in the form that they were initially presented.

But based on those discussions, I came away with a sense that there were some concepts in each of them that could, potentially, if reconfigured, garner additional support.

And so, I wanted to take the opportunity, at least, to see if combining things and reconfiguring things in this way might get us closer to something that could garner enough support to make it on as a potential recommendation.

And so, basically, what we've done here is we've taken the concepts of repeat offenders and high-volume cybersquatting that were described in the initial proposal 15, and then, rather than the suggested penalties that were initially included in 15, which I think were in the more unpopular part of that proposal, we basically took that out and then, instead, replaced it with the sort of limited loser-pays concept applicable only in situations where these two types of activities are found to occur.

And so, let me actually read what's here in the proposal. The proposal, essentially, is this: "The URS should be amended to include an express provision that, in cases where a losing respondent is found to be a 'repeat offender' or engaging in 'high-volume cybersquatting,' the losing respondent shall be required to reimburse the prevailing complainant for the filing fee in the URS proceeding. These elements must be specifically alleged by the complainant in the complaint."

And then, again, we present definitions for "repeat offender," which we've revised a little bit to say that a repeat offender shall be defined as a losing respondent in a URS proceeding where the same respondent has previously been the losing respondent in at least three previous URS proceedings.

And the definition of "high-volume cybersquatting," here, shall be defined as a specific finding by a URS panel that ten or more domain names in a single URS proceeding have been subject to URS suspension, or any other remedy here and after added to the URS.

So, these definitions are similar to the ones that were initially presented in 15, but I think the thresholds in each case may have been refined a little bit. A lot of the public comments, I think, particular on these concepts in 15, many of them were not necessarily rejecting the ideas that additional penalties should attach for some of these more egregious cases, but they were taking issue, a little bit, with how they were defined and what the penalties were.

So, I tried to take that input on board in terms of rejiggering the definitions. Again, taking from the loser-pays concept in 22, a lot of the feedback was, basically, what are the parameters of loser-pays? Is it limited to filing fees? Does it include other fees, or administrative costs, or even attorney's fees?

And so, we've really narrowed it down to make clear that it only would be a reimbursement of the actual filing fee. And again, further narrowing it to only those cases where these additional egregious elements are found. And so our hope is that, by distilling it down in this way, there may be an opportunity, here, for additional support.

And another big question from those discussions was, actually, is something like this feasible to implement? And while I question the idea of jumping ahead to implementation, we did recognize that this needs to be a practical idea in order for it to succeed.

And so we've also outlined, here, beneath the meat of the proposal itself, some potential ways that you could implement something like this. And so, we presented three options here, if we can scroll down just a little bit farther? Great. That's great.

Again, we presented three possible options, here, about how it might be feasible to implement something like this. Obviously, the ultimate goal is to recover the reimbursement of the filing fee in the event of a prevailing complainant.

I do want to, also, make clear—and I think you noted this earlier when you were recounting some of the earlier comments and discussion—there were also concerns raised that this is one-sided.

But I want to remind folks that there is, basically, no cost for a respondent to participate in these proceedings, except in the very limited instances where the response fee threshold is triggered, and that's at 15 or more domain names.

But otherwise, there is really no cost to participate for a respondent, and, on top of that, there are already penalties built into this system for abusive complainants. So again, this is aimed at balancing some of those penalties and some of those factors out for the benefit of complainants on the flipside.

KATHY KLEIMAN: Could you take us through the three options, just very quickly now? I'm aware of time. Thank you for this.

GRIFFIN BARNETT: Yes. I am getting to that. I just wanted to add that context. So, option one, the possibility would be to use transfer of the applicable domain name as a collateral against payment of the fee by the losing respondent.

So, under this approach, in the event the necessary elements are established, upon notification of the URS decision the registrar of record for the disputed domain name shall be required to contact the respondent to indicate that they will have 15 calendar days in which to confirm a valid payment method from which the filing fee reimbursement payment will be made, and advising the respondent that if no such confirmation is made then the registrar must transfer the applicable domain names to the complainant.

If the registrar does not receive such confirmation then, in lieu of the filing fee reimbursement, the registrar shall, instead, transfer the domain names to the prevailing complainant as effective payment in place of the reimbursement.

Option two. Another possibility is for the registry operator to collect the renewal fee for the subject domain names from the registrar at the normal renewal date, but where the registrar shall also charge the payment method on file for the domain name, the applicable URS filing fee, akin to a redemption or similar post-expiration redemption fee.

Once the payment is received by the registry operator, the filing fee portion shall be issued to the dispute resolution service provider and reimbursed to the complainant, based on payment details provided by complainant, to the dispute resolution service provider following a successful URS proceeding in which the requirement is triggered.

In cases where the complainant has elected to extend the URS suspension for one addition year beyond the initial registration period, the reimbursement payment would be issued less the applicable renewal fee that would be charged to the complainant.

This would be consistent with URS technical requirements, registry requirement ten, registry-registrar agreement requirements, and registrar requirements two and three. And those are, again, in URS technical requirements. In the event the payment method on file with the registrar is no longer valid, the same processes outlined in option one above could be used.

And then, finally, option three. Another possible implementation approach might be to require registry operators to make direct payments and obtain a corresponding credit against their ICANN fees. Credit should be issued quarterly and payments should be made by ICANN to the registry in rare instances when the credits ... Can we scroll down? In rare instances where the credits exceed registry fees owed in any quarter.

In this way, ICANN would effectively be covering the costs of these payments. The total number of URS cases in a particular year has not exceeded 300 and assuming that all complainants prevail in all cases and that all cases include a proven repeat offender or high-volume cybersquatter and that all URS filing fees are \$500, this would create an ICANN budget impact of \$150,000, which is well within a reasonable limit.

Obviously, the actual budgetary impact would be much lower as filing fees are generally lower than \$500, there are generally far fewer than 300 URS cases in a given year, and most cases would likely not involve a repeat offender or high-volume cybersquatting.

This approach would avoid the need to involve the registrar, which is more in line with the nature of the URS as a procedure primarily implemented at the registry level.

While this option might have a higher likelihood of actually recovering and paying out the reimbursement, it lacks the deterrent effect against the actual losing respondent that the other options would have, so there would need to be further consideration given as to how to include an element of deterrence against a specific respondent while also utilizing this mechanism to ensure the reimbursement of the payment is actually made.

KATHY KLEIMAN:

Griffin, thank you. Why don't you stay on? Let's queue things up for questions and comments. Griffin, I'm going to start with the first question. Did you work with anyone across the aisle on this? Just wondering. It's an invitation we've made to others. Did anyone else work on this with you?

GRIFFIN BARNETT:

No. I drafted it primarily on my own. I did discuss it with some other folks within the IPC, for example, to refine it. But again, we were under a fairly short turnaround time, and so I didn't have the opportunity to reach out to other folks to weigh in. My expectation would be that this would be the opportunity for other folks [inaudible].

KATHY KLEIMAN:

Terrific. Thank you, and thank you for that comprehensive presentation. Please raise your hand. If you're on audio, please let me know if you want to speak. Rebecca, go ahead, please.

REBECCA TUSHNET: Just checking, am I coming through?

GRIFFIN BARNETT: Yep.

KATHY KLEIMAN: Yes.

REBECCA TUSHNET: Okay. So, I just don't think any of this has moved the ball. So, a couple of things overall. I still don't think that the need for this has been shown. So, the proposal, I think, effectively dodges the question of, how do we know that these people are repeat offenders by just saying? Well, we're not going to have any discovery mechanism.

But it means, I think, that in practice the only people who are actually likely to be targeted by this are the ones where there are ten or more domain names in a single proceeding. As I read the proposal, it looks like that planning could be made because there were ten domain names or more in a single URS proceeding, and then at the end of that you're a high-volume cybersquatter. So, that could definitely happen.

But those are all defaults, anyway. So, we're not talking about something that is a crazy amount and we're not talking about something that has been identified as a problem that is deterrable other than by having the URS. And I think that matters, especially given the proposed remedies.

So let me just say, briefly, a couple of words about each one. So, first of all, the first one, because these are all defaults, what this is a proposal to do is actually a proposal to make the URS a transfer proceeding. So, that is a really bad idea. The URS was conceived of as a separate thing from the UDRP. If you want a transfer, file the UDRP.

Also, it has no relationship to any kind of deterrents and no particular relationship to anything that the trademark owner might want. So, if you want the transfer, then this is a fine remedy for you. If you don't, if you just want the suspension, no improvement has been achieved. That doesn't seem like a good idea.

But definitely a sub-rosa transfer, which is basically what this is, is a really bad idea. It fundamentally changes the nature of the URS. We already have the UDRP. Let's not do this.

Option two. I have a bunch of things to say about this but I do want to flag that, on my understanding of my countries' consumer protection law, merely putting in the contract that you can sort of impose a charge on them if a third party takes an action is not going to be enough.

I don't think we've had nearly enough level of legal review of the legal exposure this has for registry operators for saying that they will take extra fees out of your account if this is triggered.

Option three. Right. This is just a proposal to have ICANN pay for the process and not to have trademark owners pay. I have no particular feelings about it but it's definitely not anything that will change the incentives of cybersquatters. So, I don't think that

there's a point, I don't think the case has been made, and I'm happy to talk in greater detail about any of the three options. Thank you.

KATHY KLEIMAN: Thank you, Rebecca, for taking us through the document. I see lots of hands being raised, which is great. Jason, go ahead, please.

JASON SCHAEFFER: Hi. Can you hear me?

KATHY KLEIMAN: Loud and clear.

JASON SCHAEFFER: Okay, great. Thank you. I think this proposal exemplifies an overarching issue that we face as a challenge as this group, because we all agree that bad behavior should be deterred and we're all in agreement that that should be the overarching goal of everything we're doing here. Nobody wants to countenance cybersquatters.

However, Rebecca has raised some very good points. I have some big concerns about burdening a registry operator with these costs. I don't think that's appropriate. I don't think burdening ICANN with the costs is appropriate either, although I certainly understand why Griffin would have made that suggestion.

It's a solution for a problem that I think we need much more time to really evaluate. If we really want to tackle this issue, we're not going

to be able to do it here, this way. But I think lack of deterrents ... If you want to deter the bad behavior then you have to find a way to deter the bad behavior.

When you're dealing with these bad actors, you're not going to be able to do it this way because they're just going to walk away. They're going to use false registration methods, they're going to use many different ways to subvert the issue.

So, I don't think we actually end up solving the problem. And in fact, this may increase/create different problems, as Rebecca noted, that are unintended. So, I guess that's a long way of saying I don't think this gets us there, but I am all for finding a solution, but I think it's a larger question.

When we poke through each of these little issues, we begin to see, well, this really doesn't solve the problem. We have a tough job ahead of us to figure out how all of these systems can be done to prevent cybersquatting while not creating other issues for ourselves. Thank you.

KATHY KLEIMAN:

Thank you, Jason. Appreciate the comments. But with my co-chair's hat on, noting that we are at the end of the road in terms of time. We are on a tough timeline. And so, this is the proposal before us. Steve, go ahead, please. Steve Levy.

STEVE LEVY:

Thank you. I want to address a couple of things that both Rebecca and Jason have said. I'm in favor of the proposal, so I'm supporting

Griffin, here. Rebecca mentioned that we would be changing the fundamental nature of the URS by making it a transfer mechanism, whereas the UDRP serves that role.

I fully understand the perspective because one of the concepts, here, tat Griffin is proposing would be a transfer. But I want to highlight the fact that it would only be in these extreme cases where very specific facts are proven. So, I don't believe that this is suddenly changing the fundamental nature of the URS. It's really just the very minority of cases. So, I don't think that should be a major concern.

As far as deterrents, the relative cost for registrants compared to the costs of brand owners, I don't think I have to explain that to anybody here. It's many, many multiples. It's exponential. And so, to Jason's point, the registrants should be deterred in some way if they are, in fact, recidivist cybersquatters.

They might come up with false registration methods and just walk away, as Jason said. But at some point, somebody has got to be paying the registrar. So I would think that, perhaps, we could involve the registrars in finding a way to tap the registrants to pay some of these fees, or at least losing the domain might create some of a deterrent. I know it doesn't really seem to deter some folks, even with the UDRP.

Again, I think we really need to keep in mind the relative costs from the cybersquatter to the brand owner. And again, just to Jason's point, in terms of burdening the registry operators or ICANN with the costs, if you feel that is not fair, again, this is just one of the possibilities that have been proposed here.

I think the other methods are reasonable. And also, to Griffin's point, even if it is, in a relative sense, unfair to the ROs or to ICANN, the numbers here are miniscule, the times that that would actually happen, because it would be a tertiary fallback position.

So, in the times when these penalties would be applied, it would really only be there as a backstop. So, I don't feel it would be that unfair. So, basically, that's my statement in support of this proposition. Thank you.

KATHY KLEIMAN:

Thanks, Steve. Appreciate that, and going through that in detail. Jay, go ahead, please.

JAY CHAPMAN:

Thanks, Kathy. I appreciate what Griffin is trying to do, here. It seems to me, just reflecting back to when we first discussed these matters back in June, that this was a ... Frankly, I was kind of surprised that it even made it out of the discussion there, back in June, when we first discussed it, just because there was such overwhelming opposition to it, absent mostly trademark-related interests.

Griffin, I guess, held on and wanted to go ahead and come back and review this, or have it adjusted somewhat to be able to review it, so here we are. I appreciate, though, what we've had in the last three or four weeks where we've really come to this simplistic viewpoint to say, is this going to get consensus? At this point, I don't see how that's going to be possible on this particular ... The

combination of the two proposals, here. I just don't see how that's going to happen.

Getting into the weeds of this thing, I have no interest at all, or desire, to protect high-volume cybersquatters, or cybersquatters, period. But the way I think I view this, just from a registrant's point of view, is that it's kind of the potential ... It's kind of a gateway drug into other things where good-faith, legitimate registrants are going to get abused and hauled off into these things, and the last thing I would want to do is do anything that would be, again, this entry level into what could potentially become some sort of a plaintiff's contingency fee bar chasing URSes.

And again, we've got a lot of other things involved in here. Is URS going to be considered consensus policy? Is it going to be applied to .com and other legacies? Things like that. When you put all that together, for me, this just doesn't make sense. So, I'm not for this proposal. Thank you.

KATHY KLEIMAN:

Thank you, Jay. I appreciate the discussion here. Oh, we've got two more people in the queue, Jason and Zak. And then, I guess we should talk about what we do going forward. Of course, you're welcome to address that, as well. Jason, go ahead, please.

JASON SCHAEFFER:

Thank you, Kathy. I'm noticing in the chat a lot of comments about this is a big problem we need to address. And then, I'm also seeing that the comments clearly recognize that this is a very limited subset of cases.

So, which is it? Is this a big, rampant problem, or is this a limited subset of cases that would only apply in very, very limited circumstances? Again, I think we all agree we have to solve the problem of cybersquatting.

But if we're talking about such a limited subset of cases that this would apply to, I think we have to err on caution and say, "Wait a second, we're trying to create this solution to something that is a very small subset of cases that the [complainants bar] would not be able to take advantage of very often."

So, given that, this really, I don't think, solves the overarching issue. The underlying issue is really, how do we tackle cybersquatting and how do we do it in a fair and appropriate manner? If we're opening the door up to other issues that Jay raised, that Rebecca raised, I don't think we're doing a good job as a working group because we're ignoring the problems.

We're giving a treatment to a patient and causing side effects, or unintended side effects, or consequences that we probably shouldn't be doing. So, I'm happy to talk about it further, but let's talk about the realities and what we're doing here.

KATHY KLEIMAN:

Thank you, Jason. I don't know that anybody is on audio, so I'm assuming everybody can read the chat as it goes through. Zak, go ahead, please.

ZAK MUSCOVITCH: Thank you. I just have some brief remarks. First of all, I think that this revised proposal is a marked improvement from the previous one. It's reasonable and credible and provides three different options. So, I commend it, and Griffin and the people who worked on it, in that respect.

I haven't fully digested it, and the utility of making any remarks at this point, after hearing that there is significant opposition to this, is another issue. But I think that these proposals leave some unanswered questions. Not unanswerable questions, just unanswered. For example, how do registrars feel about their proposed role in the process of collection of funds and the dispute resolution providers' disbursement of those funds?

Also, I have concerns about the fact that most URSeS are defaults if it, by definition, involves high-volume repeat offenders. The likelihood of collecting the funds from them, as in option one, is, as a lawyer I used to work for would say, "Slim to none, and slim has left town."

So, it's effectively a transfer, but that doesn't necessarily make it wrong considering who it's targeted against specifically. But the second thing that I heard that concerns me is what Rebecca mentioned, which is, is this compliant with consumer protection law? Maybe it is, maybe it isn't, but that's another ... Not unanswerable question, but just an unanswered question. Thank you.

KATHY KLEIMAN: Okay. So, where do we go with this, now? Has this passed the very high bar that is required of individual—

PHILIP CORWIN: Kathy, can you hear me?

KATHY KLEIMAN: Phil, is your hand raised? But go ahead.

PHILIP CORWIN: I'm having tech issues. I got my room closed and I'm having trouble getting back in, but I did want to speak to this.

KATHY KLEIMAN: Absolutely. Good. Perfect timing.

PHILIP CORWIN: What I want to say ... Not focusing on the substance, and I want to thank Griffin for the work he has put into this and his very creative approach. But having said that, from a procedural standpoint, and I'd welcome any staff input, there is a lot that's new in this proposal.

This is basically an individual proposal coming in at the 11th hour which has three distinct elements, one of which is domain transfer in a very specific circumstance/very limited circumstance, but domain transfer is an issue in which we were not able to get consensus within the working group.

The second is for new requirements for interactions between registry operator and registrars that both the Registries Stakeholder Group and Registrar Stakeholder Group have not had an opportunity to review and comment on.

And the last part of it would set a precedent for ICANN, in certain cases, to pay for the bad acts of registrants, and I would think that ICANN Org would want to opine on that.

So, speaking from a process viewpoint rather than a substance viewpoint, I'm not sure we can entertain and move forward a proposal of this type, because while it's creative, while it is trying to address a proposal we previously looked at, and I believe those were individual proposals, it's a new individual proposal on which affected constituency groups, and ICANN Org, and other parties have not had an opportunity to provide any feedback.

So, from that procedural standpoint, I'm not sure that we can move forward with something which is not just a refinement of a prior proposal but has several distinct, new elements that it wouldn't be responsible for us as a working group to make any final decision without another round of comment, for which we simply don't have time.

So, again, I want to thank Griffin. I don't want to in any way downplay the concerns of those who support this or those who have qualms about it from a substantive viewpoint. But from a procedural standpoint, if something was coming from the other side that the IP interests didn't like, I would have the same position that there is so much new in this proposal that, from a procedural standpoint, the

window may have closed for us to consider something like this.
Thank you very much.

KATHY KLEIMAN: Phil, don't get off the phone yet, okay?

PHILIP CORWIN: I'm not getting off. Again, I'm locked out of the rooms.

KATHY KLEIMAN: Sorry to hear that.

PHILIP CORWIN: My little thing is going around in circles for the last five minutes but won't connect.

KATHY KLEIMAN: Can I ask you a question?

PHILIP CORWIN: And I don't want to reboot. Yeah.

KATHY KLEIMAN: Okay. And the same question to Brian Beckham, who I know is in the room, as well. I see a number of hands raised, now. One hour on this individual proposal, timing-wise, how much time? If you have any thoughts on how we proceed procedurally, from a chair point of

view, that you want to share, I'd appreciate them, because I think we could be here for the next half-hour.

PHILIP CORWIN: I'm at a great disadvantage in that I can't read any of the comments in the chatroom right now because I'm locked out. I wouldn't want to prematurely cut off discussion, so I would urge those who still want to speak to this to do so but in a brief manner.

But I have to say that I'm personally, taking my co-chair hat off, dubious that we can reach consensus on this matter, particularly on this call. But from a procedural standpoint, I've just expressed my concerns that if we allow this proposal extended consideration then we open the door to other new individual proposals coming in at the 11th hour. Thank you.

KATHY KLEIMAN: Thank you, Phil. I'm going to jump the queue and call on Mary, please, Mary Wong. And then, we have Susan, Griffin, and Paul. I do see the procedural question in the chat. I'm hoping Mary may be addressing it. Mary, go ahead, please.

MARY WONG: Thanks, Kathy. I was putting up my hand for staff and I think Julie is going to speak from our end.

JULIE HEDLUND: Yes. Thank you. So, procedurally, what staff would suggest is similar to what we've done for proposals four and five, which we'll

be hearing from Rebecca and others shortly, and for which Paul Tattersfield has suggested some revised language, is that we could allow a week for the various proponents and opponents to Griffin's proposal to, perhaps, come together in a compromise position proposal for the working group to consider next week, if they were willing to do so.

KATHY KLEIMAN:

Okay. That's a proposal. Again, people should be reading the chat. There are a lot of things going back and forth. Okay. The call is for quick comments. Susan, Griffin, Paul McGrady, and then next steps. Susan, go ahead, please.

SUSAN PAYNE:

Yeah. Thanks. Hi. So, I'm a bit disappointed, mostly, really, at Phil's comments. Phil, I totally get what you're saying, but to now be categorizing this as a whole new proposal and, therefore, raising objections on a kind of procedural basis seems to me to beg the question, why, then, was Griffin told to go away and do this?

We talked about these two proposals, the individual proposals, and some of the comments were that they were unworkable, they didn't suggest a path for collecting a way to make the loser-pays, they weren't sufficiently clear on a mechanism, they were unimplementable.

And Griffin very kindly volunteered to go off and look at this, and was tasked with doing so. And then, when he comes back he's told he has created a new proposal and we have no time to think about all this.

Frankly, at this point in the proceedings, let's just do one or the other. Let's not send people off to spend hours of their time doing extra work, which is really just busywork if, then, when they come back, they're told it's a waste of time.

KATHY KLEIMAN:

Thank you, Susan. Personally, with my personal hat on, I think the effort was worth the time, and then we're trying to see if we can carry it forward. But I look forward to seeing what Griffin says, briefly, because you've had the floor for a long time, and then Paul and Brian. And maybe we can wrap this up and figure out next steps. Griffin, go ahead, please.

GRIFFIN BARNETT:

Yeah, thanks. I put my hand up to make comments similar to those of Susan's. It's very disheartening to have been given the opportunity to come back with a revised version of a proposal only to hear that, procedurally, there are concerns because there are new ideas integrated into the proposal.

I mean, I think that was the whole point, to try and present some fresh ideas to reach some of the questions and problems that were raised in connection with the original version. So, with all due respect, I'm quite puzzled and disheartened to hear that that would be a potential hurdle to further consideration of this.

Now, I understand that there have been substantive concerns raised, and I think that's fine. Most of the substantive concerns I've heard relate to the transfer component of one of the three options.

Now, I know that there have been others raised, as well, about whether this served the deterrent effect.

I think it would serve that effect, again, targeting the most egregious cases as this is so limited. I think there is some merit to considering that, but I'll leave my comments there for now and let others speak. Thanks.

KATHY KLEIMAN:

Thanks, Griffin. Paul, go ahead, please. Briefly, please.

PAUL MCGRADY:

Thanks. So, I'm concerned about what Phil said because, setting aside poor Griffin who spent time working on this that he could have spent with his family, I'm concerned about what this means for what's left ahead of us, because the subgroups spent lots of time trying to find where the new ideas were so that we could send them onto this group.

But now we're being told that, any idea that is new, we don't have time to consider, which then leaves us with only old ideas to be considered. But if they're old ideas, then why are we bothering with this? Why don't we just pull the lever and publish this report tomorrow?

So, I'd like to give Phil an opportunity to walk back what he said, because I do think that there were some new ideas that came out of public comment. If we don't look at those new ideas because we don't have time then public comment is a farce.

I don't think Phil meant to say something as sweeping as he did, so I'm going to put myself back on mute and hope Phil steps up and tells us that we're taking what he said way too far. Thanks.

KATHY KLEIMAN: Thanks, Paul. I'm hoping that Phil is hearing. I also want to note the Contracted Parties House is on the record with comments proposing proposal number 22, the loser-pays model, somewhat in anticipation that it appears. You can read the comments for yourselves in the public comment tool in anticipation that there are some additional procedural issues. So, Brian, it looks like the last word is yours. You're the last person in the queue.

PHILIP CORWIN: Kathy, I'd like to be behind Brian.

KATHY KLEIMAN: Oh, of course.

PHILIP CORWIN: My name was invoked. Thank you.

KATHY KLEIMAN: Thank you, Phil. Absolutely. I apologize. Absolutely. Brian, then Phil.

BRIAN BECKHAM: Maybe, Phil, do you want to go ahead? Because maybe it's more timely to react to Paul's comment, and then I can try to provide a little bit of input.

PHILIP CORWIN: Sure. Let me say this. It's the unhappy role of a co-chair to sometimes make parts of a working group unhappy, or the entire working group unhappy, and I was putting a thought out there for discussion.

But I think we should remember that, again—and I thank Griffin for his efforts—what we have here is, essentially, a new individual proposal with new elements that have not been surfaced before within this working group or with the community at a very late hour in our process.

It's an attempt to address two other individual proposals. Many of the people I've been criticizing may have raised concerns about why we're even putting individual proposals out for comment and further consideration, since they are proposals that could not get working group support in a broad way without significant opposition before we filed our initial report.

And our expectation was that most of the initial proposals put out in the initial report would not make it to working group recommendations. Frankly, I've been surprised how many have continued along. I think 90-95% of them would die and we have a higher percentage going forward.

But I don't see how, as a working group, we could consider adoption of a proposal, if we could get broad agreement on it, which I'm not

sure we can get for a proposal that includes a transfer mechanism in a limited circumstance, imposes new obligations by registries and registrars, and creates the precedent of ICANN paying for the bad acts of actors who have registered and used domains with ill intent without taking further comment from the community.

I'm not sure that this proposal can get broad support in this working group. But even if it did, I'm not sure we could responsibly put it in a final report without giving the community, particularly ICANN Org, which would have a financial commitment under this proposal to pay for the bad acts of third parties ...

And I think we can assume that the volume of URS will stay low and that the financial obligation would be very miniscule because many of the folks who would like to see this proposal go forward will probably be supporting URS's consensus policy when we get to overarching question number two.

And if URS became available at .com and .net with their 140/150 million combined domain registrations, we might well see a very significant increase in URS filings.

I've said what I've said. It was not meant to denigrate anyone. I don't think I envisioned, when Griffin volunteered and we said, "Sure, go ahead. Come back with something if you think it can fly" ...

But until you see it and see that there are three distinct new elements in it that I don't believe were raised before in this working group or as public comments, that there's just so much new, I question the propriety of bringing it up at this late hour, and there

could be other refinements of other proposals which don't cross that line.

But to this co-chair, there is an awful lot new in this individual proposal trying to reconcile two earlier individual proposals which didn't get working group support. And I think, maybe, at this point, let's just focus on whether this can get broad support without significant opposition in this working group, because I wasn't hearing it. Thank you.

KATHY KLEIMAN:

Thank you, Phil. I'm sorry you're having so much difficulty today. Brian, before I call on you, I wanted to raise one issue, also procedurally. We're talking about reconciling two earlier proposals, 15 and 22.

In my personal capacity, and with my co-chair hat off, I also have a question about URS individual proposal number 11, which was a request to the community to lower the response fee threshold from 15 domain names to three, on the idea that three showed a clear pattern of bad acts, basically, and that was soundly rejected. So, it seems to me that goes somewhat in the mix of what we're talking about here, as well. We've got Brian and Mary. Who would like to go first? Brian, I think it's your turn.

BRIAN BECKHAM:

Sure. Thanks, Kathy. I'm sorry. I've been trying to listen in the background. I've had to pop in and out a little bit due to some work obligations. But I just wanted to offer, for whatever it's worth,

hopefully it may be a little bit of a middle ground or breakthrough, a way forward, a few observations.

So, I think in terms of the concerns that a proposal was put forward, there were some public comments, the proponent was asked to go back and make some changes to that. My feeling is that there were two things that kind of jumped out at me.

One, I think ... And I fully appreciate—the time pressures and the day jobs—that, unfortunately, Griffin didn't have time to fully vet this with people who have expressed opposition on the call. Obviously, I think that could have been a good thing to help move this a little further down the road.

That said, since we didn't have that full opportunity, personally, I feel we haven't really fully vetted this proposal. I feel like there has been a lot of talking and not a lot of listening, and sort of unpacking whether we could actually come to a common ground on this.

I'm completely going off-script, here. I'm mindful of Paul's and Phil's intervention. Just a thought is whether ... And this is mindful, of course, of the CCTRT recommendations, which propose that Phase 2 look at the interoperation of the URS and the UDRP.

Of course, that was a question that came up early in my group, but we didn't really go down that path too far. So, that has been raised by CCTRT for consideration for, I'll say, this working group in Phase 2, assuming it's more or less the same working group.

So, one suggestion could be that there ... And I want to say, also, let's be real here, folks. There's a limited amount of time. We have committed ourselves to the council to deliver something. Maybe

that's not perfect, because if there were more time we could get a little further with this, but it is what it is.

So, maybe there's a little bit of time left for Griffin to reach across and see if he can't at least come to agreement on some of the high-level principles. Do people agree that cybersquatting, or high-level cybersquatting, or whatever you want to call it, is a problem and that there should be certain levers that can be pulled to address that?

I don't fully understand the idea of agreeing on that and then leaving to implementation. To me, I think this whole policy and implementation ... There is, in fact, an entire working group on this some years back. It sort of kicks the can down the road a little bit. I appreciate what people are saying.

So my idea is—if there is a possibility of agreeing on the problem and that there should be some way to address that, and to say we weren't able under the time constraints, whatever you want to say—to address that in this report that's going to council soon, but mindful of Phase 2 and, in particular, the CCTRT recommendation that we flag this issue when the question comes up of the interplay between the URS and the UDRP. I hope that's helpful. Thanks.

KATHY KLEIMAN:

Brian, before you get off the phone, let me ask ... So, the idea. Let me ... One hour and ten minutes. That it's kicking the can down the road is normally a negative phrase, but I don't think it is, here, that we might flag this for additional consideration in Phase 2. Is that your proposal?

BRIAN BECKHAM: I think that's the high-level summary, yes.

KATHY KLEIMAN: Okay. Good. Thank you. Okay. Mary, how do we move forward?

JULIE HEDLUND: Hi, Kathy. I can't raise my hand so Mary was doing it for me. Yes, certainly highlighting this for Phase 2 is one option. The other option that staff just wanted to remind everybody of—and I see that it's one that Griffin was also [able to]—was to allow a week for Griffin to get together with those who may oppose the proposal as it stands to see if there could be a compromise reached in that period of time. If there is no desire to do that, then perhaps the option is to consider integrating this into Phase 2 work, which I see Griffin is also receptive to.

KATHY KLEIMAN: Julie, don't get off the phone, please. Right. Griffin wrote in the chat, "I'm receptive to the idea of putting a pin in this and considering how we might integrate these ideas into interplay with UDRP in Phase 2." So, thank you for that, Griffin.

Julie, does that mean that staff would be writing up a summary of both Griffin's revised and consolidated URS individual proposals 15 and 22, along with a summary of today's discussion and that people can then review that in the materials, review that summary and make sure that it has some of the complicated, substantive, and procedural ideas, maybe help edit it, and then pass this along to

Phase 2? A question for you about the working group members working on the summary on this one, which they may want to do.

JULIE HEDLUND:

Thank you, Kathy. So actually, now that I'm looking at the chat, I'm seeing that Jason has offered to work with Griffin and Paul to see if there's a path forward. That would certainly be preferable to pushing this into Phase 2, since we do have volunteers who are willing to do that, say, to present something for the working group to look at next week.

And as far as what staff would be summarizing in any case, for the final report, it would be a summary of the discussion. We wouldn't be trying to summarize the proposals themselves because, as always, we're actually linking to the proposals themselves. But we are, indeed, summarizing the deliberations. Thank you.

KATHY KLEIMAN:

Brian, go ahead, please. And I have to say, I'm thinking, as others have, that we're spending a lot of time on this.

BRIAN BECKHAM:

[cross talk]. Yeah. Sorry, Kathy. That was actually an old hand, but I was typing something in the chat to respond to—

KATHY KLEIMAN:

Go ahead, please.

BRIAN BECKHAM: To Julie. I was going to say, sorry if I wasn't clear. I didn't mean that Griffin going and caucusing with some people was mutually exclusive or needed to be mutually exclusive with considering this in Phase 2.

The reason I say that is I think, just judging from the call here, it seems unlikely that we will really come to a final agreement on this in short order. So, it may be, let's say, factually and procedurally necessary, even with the good work that Jason, and Griffin, and others can do in the next couple of days, or week, to also say, "We've made a good effort at this. We didn't quite get it across the finish line, so let's see if we want to revisit it later." Thanks.

KATHY KLEIMAN: Brian, hold on a second. But to Phil's point that this involves registries and registrars—we would add registrants, as well—the idea that there isn't time to go out for public comment. Does that impact, given our tight timeline, where this might go, given that the three options kind of invoke issues that some have said should be going out to a much larger group?

BRIAN BECKHAM: Yeah. I'm sorry, I should know the answer to this. But does the final report go out for comment before it gets in front of the council?

KATHY KLEIMAN: I don't think so. It goes out for consensus call among the working group.

MARY WONG: Kathy?

KATHY KLEIMAN: Mary, go ahead, please.

MARY WONG: There is no mandatory requirement to publish a final report for public comment, but it is in the procedures as an option for the working group, should they feel the need to do so, and I believe that SubPro is going to do that.

KATHY KLEIMAN: Right. And I don't believe ... Well, SubPro is doing it because their interim report was really, really early and had lots and lots of options. Ours was much more final, had much more—

BRIAN BECKHAM: Yeah. Sorry to jump in. I would think that, or hope that, given the comments that have been submitted, we could reasonably infer, and that would form part of the work that Jason, and Griffin, and others would do.

In other words, they would fold public comments that we've already received into their work. Frankly, I think it's ambitious to think that that would be done. We would have a full discussion in the working group on it and we would come to a consensus agreement before publishing the final report. So that was, again, underpinning the

suggestion for putting a pin in and seeing if we want to come to it in Phase 2, noting the CCTRT recommendation.

KATHY KLEIMAN: Thanks, Brian. Phil, last word.

PHILIP CORWIN: Well, if it's the will of the working group to put the final report out for public comment then the working group, so far as my understanding goes, would be delaying the start of Phase 2 because, if we put the final report out for public comment, it has to be meaningful. I think we have to put it out for 30/40 days, the standard period, and then review the comments.

So, you're talking about adding several months, minimum, to the process of completing Phase 1, which would delay the start of Phase 2. So, it's the working group's decision, but that's part of the package if we do that.

KATHY KLEIMAN: Okay. It looks like there's a call for a small group. I would urge, if that small group does meet, we're not going to have time to spend another hour-and-a-half on this because we do have to go through ... And I would like to start the next one more item on our agenda. Griffin, very briefly, please.

GRIFFIN BARNETT: Yeah. I just want to take folks up on the offer to reach out offline to see if we might be able to refine this outdated version of the

proposal further, and perhaps we can [revert] something on the list for further consideration in the next week or so.

KATHY KLEIMAN: Okay. Let me note the high bar that it will take to move an individual proposal forward, and also the high level of thanks I have for Griffin, who has done so much work, and those who will be doing so much work in a short period of time.

Okay. Next item on our agenda, please. I'm not seeing our agenda on ... I believe it's moving onto the consolidated proposals of TMCH number four and five. Is anyone else seeing anything on the screen? I am not. Is anyone hearing me?

JULIE BISLAND: I hear you, Kathy. Julie Hedlund was sharing her screen earlier but I'm not seeing her in the Zoom room, now.

KATHY KLEIMAN: Okay. Terrific.

JULIE BISLAND: Ariel's going to recover.

KATHY KLEIMAN: Thank you. Great. So, late last night, I think something was circulated by Paul Tattersfield. Is he on the call today? This is returning to the combination language of TMCH four and five. I don't

know why my hand is raised. Griffin, I'm assuming that's an old hand, as well. So, Paul, you're on the line. I see Rebecca's on the line. Paul, would you like to come in and speak?

PAUL TATTERSFIELD: Yeah, I can say a couple of quick words.

KATHY KLEIMAN: Great. Thank you.

PAUL TATTERSFIELD: Sorry. Basically, this proposal was just simply to clarify the problems that proposals four and five were seeking to solve from Rebecca and Claudio. I think Kathy indicated on the call last week there was nearly a full house if we could get a consolidated proposal. There were a couple of people that had objections, and one was Massimo, and I believe he's on the call, and also Greg. I think he's on the call, as well.

KATHY KLEIMAN: Paul, before you get off the phone, what changes did you make since the version that we saw of this simplified language, this consolidated language, last week? What's the change since then?

PAUL TATTERSFIELD: There are just two small changes. Graphical indications and indications for the quality scheme are pretty nebulous. They seem to change and they vary from different parts of the world. But the

best way to describe them, I found, was to just call them “quality schemes.” The EU has drafted quite a lot of legislation in that area to try and consolidate marks. So, it’s just a catch-all phrase to catch them. I also took in Susan’s suggestion that we should indicate clearly that you could satisfy 3.2.1 and 3.2.2. The other change was just to define word marks.

KATHY KLEIMAN: So, do you want to read 3.2.7?

PAUL TATTERSFIELD: Yep. 3.2.7 was just word marks, here, include service marks, collected marks, and certification marks.

KATHY KLEIMAN: And could you quickly read 3.2.6 for anybody who is only on audio?

PAUL TATTERSFIELD: Yeah. We have, “Protections afforded to word marks protected by statute or treaty do not extend to geographical indications and other quality schemes unless they also satisfy 3.2.1 or 3.2.2,” which, of course, are nationally registered marks and those that have been validated through [inaudible] and through a court of law or other judicial proceeding.

KATHY KLEIMAN: Great. And some of this wording was because of requests. Requests particularly with 3.2.6, there were some questions about

the wording, there. So, this provides some additional wording, with your notations below of where that wording comes from. Is that right?

PAUL TATTERSFIELD: It does, yes.

KATHY KLEIMAN: Terrific. Well, thank you. I know Rebecca is also on the call, so just before we open up to discussions, Rebecca, was there anything you wanted to add as one of the proponents?

REBECCA TUSHNET: I think that covers it. I did send a message to the list, which people probably didn't get a chance to read, about whether it would just make sense to put a cross-reference here saying the whole point is this is all about Sunrise and notice, and making sure that there is a distinction between what gets Sunrise and notice and what might be in something offered by the same provider but that doesn't. Thank you.

KATHY KLEIMAN: Great. Thanks, Rebecca. So, Sunrise and notice is what others might call Sunrise and Trademark Claims. Terrific. Massimo, you're first in the queue. Go ahead, please.

MASSIMO VITTORI: Thank you. Good afternoon. It seems I am the only one, probably, to defend the status quo, but before we entire into the details of this proposal, I'd like, really, to clarify two preliminary questions that I mentioned last time but I didn't have a response.

So, first of all, Deloitte, in its public comments, said that, basically, in defining the rules as they are today, they haven't breached any principle, any rules, and ICANN rules. So, I would like to understand which rule, eventually, has been breached.

And secondly, again, the two individual proposals four and five have not received support. So, can we now kind of merge both of them without giving the impression that, basically, this working group doesn't take into account comments from the public, including some important companies, some stakeholder organization? Not only origin but, I recall again, like [inaudible] marks. Thank you.

KATHY KLEIMAN: Massimo, since I don't see anyone's hand raised, I'm going to try to respond briefly on both, in my personal capacity. One is I'm not sure a rule has to be breached in order to clarify the underlying rules, and the other is something we talked about last week but, I think, before you came on the call, that if you look across the two proposals for a general support of the proposition, there was support from IPC, if I remember correctly, BC, NCSG, and the contracted parties. Mary, then Greg, then Paul Tattersfield. Mary, go ahead, please.

MARY WONG:

Thanks, Kathy. This time, I'm sticking my hand for staff but I'm going to speak to it. It's not in response to Massimo's questions. Sorry for the bad timing, there. Staff did go back and look at some of the earlier discussions around this portion of the AGB, as well as the earlier discussions of this working group. As usual, we do not have a view as to where these discussions should land. We just wanted to offer a few observations that we hope are helpful.

We are glad to see, obviously, that the group seems to be coming together and that there seems to be some sense that the mandatory RPMs that are run through the TMCH, that is Sunrise and claims, should only be for trademarks, and that there is also a corresponding [sense there] for other types of marks that, while these could be in the Clearinghouse, they should not be in the Clearinghouse for Sunrise and claims.

But they could be there so that the Clearinghouse provider, as well as registry operators, would have the opportunity to provide additional voluntary or ancillary services.

So, we want to confirm a couple of things about that. One is that that was the intent behind the original AGB inclusions of a lot of these other categories. I'm not talking about GIs, but simply the other marks that constitute intellectual property, preserving the ability for voluntary services by the provider or by registry operators. So, to the extent that you go for the proposal, that may be one distinction that you want to keep.

Secondly, we want to observe that when this group met with Deloitte and a couple of meetings with them, they raised the

question about who and how should determine if a statute or treaty protects a trademark, a mark, or some other indication?

So, that's something that the working group may want to consider, as well, in finalizing this language, as in whether you are going to leave it to the Clearinghouse provider to determine whether or not a mark that's protected by a statute or a treaty is or is not a work mark.

And thirdly, and similarly, the same question about, who is to determine whether or not something that is being submitted is or isn't a GI or other quality scheme? So, hopefully this ties together some of the earlier discussions and some of the background as the working group continues to work toward this. Thank you.

KATHY KLEIMAN:

Great. Thanks, Mary. Okay, everybody. We are at the four-minute mark, so I'm going to declare a lightning round since, clearly, we're going to be continuing this as the beginning of our next session on Thursday. So, a lightning round. Greg, Paul, Jason, you each get about three sentences or about 30 seconds. Greg, go ahead, please.

GREG SHATAN:

Thanks.

KATHY KLEIMAN:

And then, if you want to be first in the queue next time, I'm great with that. Greg, go ahead, please.

GREG SHATAN: Thanks. I'll reserve that. Briefly, I think this proposal is actually getting to a good place on a thorny question. I think the status quo, as Massimo claims, was a mistake in interpretation by Deloitte. This was never intended to bring in GIs into the Clearinghouse for the purpose of claims and Sunrise. So, I think it should be clear on the face of the statute or treaty that it is protecting a trademark.

So, I'll talk on this further, but I think that the status quo is not where we should be because the status quo needs to be fixed. And this is a better fix, I think, from the point of view of GIs, than the fix of just tossing GIs out of the system until some future time. Thank you.

KATHY KLEIMAN: Thanks, Greg. Staff, if we could list Greg, Paul, and Jason as first on the queue for next week, that would be great. Paul, a short comment, please?

PAUL TATTERSFIELD: Good to hear Greg's support. I mean, that's very appreciated. I was going to say something very much along similar lines, that the Applicant Guidebook did not mention geographical indications and it was Deloitte that chose to insert them when they drew up their own TMCH guidelines, and they have referred to those to evidence the need for them, and I don't think that's quite right. Thank you.

KATHY KLEIMAN: Thank you, and thank you for your concise comments. Jason, take us out.

JASON SCHAEFFER: Okay. Thank you, Kathy. I agree with Greg, and I was going to comment that I think this is getting us much closer to a resolution that needs to happen. So, I'm pleased by that.

I want to just raise the issue that I think this clearly indicates another reason why we should be revisiting question seven in conjunction with this: to try to find a reasonable pathway forward that would allow for some sort of auditing or oversight to make sure that this is functioning properly, that the claims notices are functioning properly, that the Sunrise is functioning properly, and that we're not having improper use of the TMCH. But we can revisit that, and I'm hopeful we'll be able to still have those discussions offline. Thank you.

KATHY KLEIMAN: Terrific. So, please think about the questions Mary Wong raised, particularly the proponents but every one, the questions and clarifications that she recommended be added. Mary, hopefully, those will be in the notes from today's meeting so everyone can read them. Let me confirm with staff that this will be the first item on the agenda for Thursday, for our Thursday 1 PM Eastern meeting. Is that right?

JULIE HEDLUND: Yes. Thank you, Kathy. It will be the first item on the agenda.

KATHY KLEIMAN: Terrific. Thank you, Julie. Thank you, everyone, for an active and robust discussion. Julie, do we have any other business, AOB?

JULIE HEDLUND: No other business. Thank you very much, Kathy, for chairing, even despite your hoarse voice. Very well done, and thanks to all for participating. We'll adjourn this meeting.

KATHY KLEIMAN: Back to our hot days of summer. Take care, everyone. Bye-bye. Thank you.

[END OF TRANSCRIPTION]