ICANN Transcription

Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP WG

Tuesday, 22 September 2020 at 13:00 UTC

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JULIE BISLAND: Good morning, good afternoon, good evening. Welcome to the review of all rights protection mechanisms—RPMs—in all gTLDs PDP working group call on Tuesday the 22nd of September 2020.

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

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

KATHY KLEIMAN: Thanks so much, Julie. Hi everyone. Good morning, good afternoon, good evening, and I trust your September days are busy ones. Thank you for joining us for what for some of us is a fairly early morning meeting.

Let's take a fast look at the agenda and see if anyone has any changes they'd like to recommend or any additions to AOB. So today we have four items. We'll be reviewing the agenda of course and updates to statements of interest. Then we'll be looking at the overarching data collection recommendation. We've got what I think is some new wording, but staff will fill us in to review and think about. And then we'll be back to the document we were working on in our last meeting, the URS final recommendations, and we'll be starting at URS recommendation 4. Does anyone have anything to add to AOB, and does anyone have updates to statements of interest?

Julies, Ariel, if I miss any hands, please let me know. Okay, in that case, let's start. We're going into the overarching data collection recommendation. Staff, could you give us a quick overview? Have we seen this wording before? It looks familiar but I don't recall seeing this actual wording. Could you give us a bit of the history of what we're looking at here, please?

MARY WONG:	Kathy and everybody, this is a new recommendation and as you see in the title, it is for overarching data collection. This comes from an early set of working group discussions that preceded the work that the group did to work with the analysis group on the survey that was sent out sometime ago on sunrise and trademark claims. In the runup to that, including in the subteam work in various parts of the sunrise and claims and the TMCH, it was felt by a number of working group members that there was data that was provided to the group by various sources such as ICANN Org, Deloitte, and of course the Analysis Group, but that for purposes of its review and certainly for purposes of future reviews, that it would be helpful to have a particular set of data that was made available to future review teams. That's point one.

Number two, as you'll recall, the CCT review team was also conducting its work around the same time that this PDP started. It's concluded its work since, I think about a year and a half ago, and you'll recall also that this group did look at a number of its RPM-related recommendations because that was in the scope of its review. And for those who don't follow ICANN arcana, the Competition, Consumer Trust and Consumer Protection Review Team is a bylaws mandated review that has to be conducted every few years. This particular one would focus on the new gTLD program and that's why RPMs were within the scope of its review.

As it did not actually go into reviewing the RPMs because this was something that this PDP was doing, nevertheless, the CCT review team did come up with some recommendations. We've already talked about the ones that touched on RPMs in prior discussions. For today's discussion, I'd just like to point you to the four bullet

points at the bottom of this box where the CCT review team did recommend a number of data collection efforts that ICANN Org should engage in that cover more than just RPMs. They cover matters relating to certain aspects of DNS abuse as well as pricing, as well as the use of new gTLDs.

So taking those two points together, the staff has prepared this draft text for the working group's consideration to reflect, like I said, the early working group agreement that there ought to be an overarching data collection recommendation. Thanks, Kathy.

KATHY KLEIMAN: Great. Mary, if you could stay on the line, let's ask any clarifying questions that people have, and then I've got one before we dive into reading and discussion. So Mary, thank you very much for the background. Where in the final report do you think this might go?

MARY WONG: Kathy, this is something that the staff are still discussing because, as I think Ariel probably noted to the group a couple of calls ago, besides the categorization of the recommendations according to the various specific RPMs, there's maybe a couple of general recommendations and implementation guidance. So what we've done here is simply tag it as an overarching data collection recommendation because we don't at this point believe that it's relevant to a specific RPM. So it will be highlighted in the report as covering all the RPMs and not specific to one. I just can't answer to where exactly it's going to go at this point.

KATHY KLEIMAN: Okay. Thank you. Anyone else have any what we call clarifying questions to ask, before we begin to dive into the text itself? Okay, so Mary, let me recommend that we split this. I think we should read it. I know there's a lot of text here, but if we're being asked to approve this now, I'll take the recommendation and if it's okay, I'll give you the context. We'll just read through it and see if anyone has any issues, concerns, questions or recommended changes.

Okay, so the overarching data collection recommendation, in relation to the TMCH, the working group recommends that for future new gTLD rounds, ICANN Org collect the following data on at least an annual basis to the extent it does not do so already, and make the data available for future RPM review teams. And these are bullet points. The number of marks submitted for validation in each category of marks accepted by the TMCH, the number of successfully validated marks in each category of marks accepted by the TMCH, the number of labels generated for all successfully validated marks, the number of abuse labels, the number of marks deactivated in and removed from the TMCH, the breakdown of the scripts/languages represented in a validated and active trademark in the TMCH, and the number of cases decided under the TMCH dispute resolution procedure.

In relation to the URS, the working group recommends that ICANN Org explore developing a mechanism in consultation with the URS providers to enable publication and search of all URS determinations in a uniform format. In light of the recommendations from the Competition, Consumer Protection and Consumer Trust Review Team, the working group recommends that questions aimed at soliciting concrete and specific data

related to trademark owners, agents and registrants' experiences with the sunrise and trademark claims, RPMs and subsequent new gTLD rounds be included in the following data collection work as appropriate. And again, bullet points. Registrant surveys to be conducted pursuant to CCT recommendation 8, end user surveys to be conducted pursuant to CCT recommendation 11, studies to be conducted pursuant to CCT recommendation 26, and cost-benefit analysis and reviews to be conducted pursuant to CCT recommendation 28. Over to you, Mary. Thanks.

MARY WONG: Thanks, Kathy. I guess maybe, do you want to pause here to see if working group members—

KATHY KLEIMAN: I think it would be valuable just to have the context, so let's just put it all—

MARY WONG: Okay. And I notice a comment from Jeff about the abuse labels which we can certainly add a footnote, Jeff, because that refers to TM +50, and while Ariel's typing, if she can scroll down to the context—thank you, Ariel—so essentially, the context is similar to the summary that I gave, which talks in more specific detail about the reason why the working group is giving this recommendation which is in order to do a meaningful review of the RPMs, you require data both on a historical basis as well as on a going forward basis, and secondly that the dearth of data was also noted by the CCT review team. And there are some examples there of

some of the data that the working group sought and the sources of that data, including the Analysis Group and Delete and others.

KATHY KLEIMAN: Thank you, Mary. Let's open this up for questions. We've already had the first request from Jeff Neuman for a definition, which is great. That's very much in the pattern of what we've been adding to make sure everyone knows the terms that we're using.

Other thoughts, questions, ideas? I have a question. In the third paragraph, the last paragraph of the recommendation, in light of the recommendations of CCT RT, following data might be collected as appropriate .what would "as appropriate" mean and who would determine that?

MARY WONG: Thanks, Kathy. I'll just try to catch up. Basically, it's not so much that this particular one says exact data, but that those four surveys and studies should include data work that's relevant to RPMs. And the reason why we put it "as appropriate" is because these are quite large undertakings as I mentioned earlier. There is no clarity at this point as to when they will be done or how they will be scoped. A number of these recommendations actually are still relevant to CCT reviews that are still pending before the ICANN board. In other words, the ICANN board deferred action on them when they first came up and while they're expected to probably approve them after some scoping, at this point, that hasn't happened to some of the CCT recommendations.

So essentially, this is worded the way it is to first of all not get ahead of ourselves, and secondly, not to be out of scope for our PDP, but thirdly to make it clear that if, when and as the ICANN Org goes about conducting these surveys and studies following the ICANN board approval of any pending recommendations, that RPM-related data will be folded into the surveys. And presumably, of course, they'll be handled by ICANN Org, but some of it may be done through an external vendor, for example.

KATHY KLEIMAN: Terrific. Thank you, Mary. Looking for other questions or comments. Jeff and then Susan. Jeff, go ahead, please.

JEFF NEUMAN: Thanks. I think on the second set of data, the last four bullet points, I think we need to—if we look at those actual recommendations, recommendation 11 is really, that recommendation was geared towards ICANN Org and future CCT review teams. It wasn't directed at RPM. So I think that shouldn't go in there.

And then I think number 26 which is geared towards, I think, collection of costs required to protect trademarks, the only thing there is I would get the view of the team on time frames because I think the CCT review team said that a next study should be done within 18 months of the CCT review team final report, which it may already be 18 months, an then every subsequent 18 to 24 months.,

So I think it would be helpful to get a little bit more into detail on these recommendations and take out 11. Thanks.

KATHY KLEIMAN: Thanks, Jeff. In light of some of these comments, it sounds like this may be coming back to us for a final review. Okay, Susan— Jeff, if you can double check that staff is noting your comments as you wish, because you know a lot about this area. Susan, go ahead, please.

SUSAN PAYNE: Thanks, Kathy. And thanks to Mary for your explanation. I'm a little bit uncomfortable about this, and some of it relates to the comments Jeff's just been making, not because I necessarily think that we as a group wouldn't make this recommendation—and indeed, as you've said, in the course of our work, we have said that there have been problems with data, but I kind of feel like we're making a recommendation relating to things like CCT recommendations that none of us have looked at in the context of this.

And so I sort of feel this requires us all to have a bit of an opportunity to properly dig into whether these are recommendations we're comfortable with. And I'm not trying to derail this at all. As I say, I'm very supportive of this, but I feel like I'm being asked to support something that I'm not prepared to support in the sense of I haven't done my research, and we haven't, as a group, discussed it.

And indeed, Mary's explanation of what "as appropriate" meant, the explanation you gave us, Mary, was really helpful, but kind of isn't what's reflected in the wording of "as appropriate," because if I understood you correctly, you were saying if this work that the CCT has recommended goes forward, then we're suggesting the following is also considered to be included. But that's not what this says. So I feel like it's not ... I think it's a bit unclear as to whether we're saying that we're making positive recommendations that this work should happen or whether we're saying if other work is going to happen, then we'd like this added in. I'm not quite sure what the answer to that is, but again, I don't think we talked about it.

KATHY KLEIMAN: Susan, good points. Thank you. And I note that Paul McGrady puts in the chat, among other things, who's the sponsor of this additional recommendation. But Mary Wong's hand is next in the queue. Go ahead, please.

MARY WONG: Thanks, Kathy. The staff completely understands the concerns and the comments that have been raised, and as I said in the chat in response to one of Jeff's questions, we basically erred on the side of being inclusive and cautious for exactly this discussion that you're having. We tried to phrase the recommendation in such a way that if you were to amend or drop part of it, for example, if you wanted to reword the paragraph relating to the CCT review team, if you wanted to drop one or more bullet points or you wanted to drop the recommendation altogether, you could do so without

actually having to change the rest of it, which relates to for example TMCH and URS.

But to Susan's question—and I get that the "as appropriate" wording is maybe a little bit too general, because to your last point, the intent here is that we the RPM working group would like RPM-related data to be collected as part of future work to be done under the auspices of the CCT review. So please include us. But it really isn't up to this group and the PDP to dictate exactly how that work should be done, in no small part because, as I mentioned, those surveys are going to be conducted in the future pursuant to further ICANN board action.

So there is a lack of clarity there, and we were struggling a little bit, I'll say, to try to phrase this in such a way that, A, it would not overreach on the part of this group, and B, that while we're going to be putting a placeholder for future work under the CCT, it also doesn't constrain that work too much. So maybe more work needs to be done to the phrasing here. Like I said, you might want to amend or delete this.

To Jeff's question about recommendation 11, I will also say that that is probably, of the four bullet points, the one that concerns staff the most, because as you said, that is not necessarily specific to RPMs, it actually is about consumer trust, it's a very big survey. And the other point I'll make, not just about this bullet point, but about all of them, is that these are going to entail quite significant costs on the part of ICANN Org. So obviously, anything we add, even though it's within the scope of our remit, will add to the costs and resources required to do that particular survey.

So to everybody—and I think Paul McGrady had a question. This is not so much a sponsored recommendation but it is a follow-up action that staff had to produce a data-related recommendation. And as I said, this is for your discussion. So the last thing I'll say is that I did put a link to the CCT recommendations in the chat. We can circulate that, and if you do end up making a recommendation that refers to the CCT recommendations, we can certainly either add that to the context or put it in a footnote.

Actually, I did have one final point. As Jeff said, it is the last two bullet points here that are the ones from the CCT team that are directly relevant to RPMs. The first bullet point is about registrant survey, so while not directly referencing the RPMs, it is very similar to some of the surveys that this group has talked about. And as I said, it's the second bullet point that probably concerns staff more than the other three, but we thought we'd add it here just for your discussion and for inclusiveness. Thank you.

KATHY KLEIMAN: Mary, before you leave—and I do see the hands in the chat—procedural question—and asking with my co-chair hat on, which is—and also hoping the co-chairs will comment as well. So, what is the standing of this new text that's labeled recommendation? Following up on Susan's question. Do we want to treat this as an individual proposal that still needs substantial support and minimal opposition to go forward, and then to be considered for a recommendation? Because it's not a recommendation yet. It's pointed out it doesn't come from us.

I'm also going to recommend that we sever and create two draft recommendation language, that we sever it after the second paragraph, so after "In relation to the URS, the publication and search of the URS determinations," we draw a line under that and make that one recommendation, because it's squarely within the scope. I think David McAuley was talking about this in the chat. Squarely within the scope of what we've been discussing. And that we separate out the CCTRT recommendation language as a separate recommendation to be examined separately. That may help people in their review. But one thing we have to think about is what's the status of this, but it looks like we'll be we'll be coming back with edits. So let me ask for people to comment on what I've said, and I'll call on Rebecca and then Paul. Rebecca, please.

REBECCA TUSHNET: Thank you. I hear Paul McGrady and Susan's and some of the other concerns expressed. I appreciate Mary's answer about where this came from, but I actually don't think it actually answered the question. So there are a couple of individual and working group recommendations to which this could theoretically be tied. For example, the mechanism in consultation with the URS providers to enable publication, search of all URS determinations in uniform format actually does have an echo with a previous individual recommendation. We spent a fair amount of time on it, and I have to say I certainly support this, but I feel like it's quite odd to have an entirely staff-drafted recommendation with no connection to stuff that we the working group have done. And I'm basically uncomfortable with it.

That being said, they generally seem like good ideas. Certainly to the extent that they can be tied to things that they've actually done, they seem good. But in that regard, one thing that's glaringly omitted from the list of data collection is data about the notices. So for us, from what we have done, we should put that in if we're going to do this. Thank you.

KATHY KLEIMAN: Rebecca, before you get off, what types of notices are you referring to? Are these URS notices, trademark claims notices?

REBECCA TUSHNET: My apologies. Trademark claims notices. Thank you.

KATHY KLEIMAN: So you'd like to see a bullet point about trademark claims notices and collecting data on that?

REBECCA TUSHNET: Yes. Assuming that we do this, which, just to be clear, I'm not sure that we should. Thank you.

KATHY KLEIMAN: Traffic. Thank you very much. Paul, what are you thinking?

PAUL MCGRADY: Good morning. Thanks, Kathy. Thanks, Rebecca. I didn't raise my hand to respond to what Rebecca just said, but I think I should,

which is I think that the issue of how good the claims notices function could be stuffed into end user surveys to be conducted pursuant to recommendation 11, whatever that is. So I don't know that we necessarily need to change the language to capture that, we could just make it clear that that's something that we wanted to know, like, "hey, you got a claims notice and we noticed that you didn't actually go forward and register the second-level. Was it because you were made aware of IP rights and you decided not to do it, or you were afraid ..." Whatever.

So I think Rebecca's thing could be stuffed in here somewhere. There's a lot of room in what this is saying. I guess my question really is, this is coming at us pretty late in the process. Is it, when there's a review team, that they can just hand this to a PDP regardless of where the PD is and the PDP just has to adopt it? Is that the way review team recommendations are handled? Are they able to get adopted through some other means [inaudible] direct action by the board? It's just not clear to me—

KATHY KLEIMAN: I apologize for interrupting. I don't know if others heard it. I lost a few sentences of what [inaudible] back a paragraph.

PAUL MCGRADY: Sorry. Hopefully you can hear me. So my question is when we have a review team produce something like this, is the means of having that adopted that it's handed to whatever PDP seems to be most closely aligned on the subject matter regardless of where the PDP is in the process, and then the PDP has to adopt it? Is that

how these things get adopted? Are there other methods of it being adopted? For example, could it go to the board independently?

I don't understand the process of why we're seeing this now and what our obligation is now at the late stage. And I also think that because it is late, if these things are good ideas, there are a couple of things that could be done. One, it could be pushed into the rechartering of phase two. It doesn't really fit with what exactly we had in mind for phase two, but we are counting the days here in phase one. Or one would assume that if people were abusing the trademark clearinghouse, that would be part of DNS abuse and therefore could go into a new PDP on DNS abuse that everybody is saying is coming down the pike.

So I don't think that if we punt on this, we necessarily have killed it. I just think it might need to find a home where it could be looked at more thoroughly because we really don't have time.

That having been said, like Rebecca, like Susan, I don't see much in here that's all that horrible, I'm just concerned about the process, which seems very rushed to me. Thank you.

KATHY KLEIMAN: Great. Thank you, Paul, for the comments, and I'd like to have staff schedule this for our leadership meeting tomorrow morning so that we can continue the discussion with the co-chairs and liaison. We have Jeff, Mary, and Brian. Jeff, go ahead, please.

JEFF NEUMAN: Thanks. I first want to say that we should not be as hard on staff for writing a recommendation. I think at the end of the day, ICANN staff are stakeholders as well and they're being asked by many different corners to do many different things. So if ICANN staff wants to write a recommendation or a proposal for the group to consider, I think, more power to them. I don't think we should hold anything against staff for writing this recommendation. I think they deserve a lot of credit.

Second thing is I agree with Kathy's notion of treating the first set of data different than the second set of data, that the first set of data seems very much on point, noncontroversial, and if we can figure out how to word something on notices as Rebecca said, then I think that's fine. And frankly, I know it's a little bit late in the process, but if it makes sensed and it's not very controversial and we're able to define it, then let's put it in there because it was something this group discussed very early on and it just makes a lot of sense. But the second part on responding to the CCT review team stuff, I just see a lot of problems with that because I think we should strive to be as specific as we can on the exact set of data that we are asking, and otherwise, these studies can get extremely expensive and it's left to someone else to interpret at some later point. Thanks.

KATHY KLEIMAN: Thanks, Jeff. Appreciate the comments and the discussion and context. Mary, Brian, and I'm going to add myself in the queue as well. And recognizing time—we've been on this for half an hour, and we're going to be seeing this again. So I think we've raised a

number of issues, and we'll be coming back to this. Mary, go ahead, please.

MARY WONG: Thank you, Kathy, and t yes, everyone, for your comments. We do realize of course that this is something that in terms of precise wording, it's coming at a time when we're trying to close on the report. I just want to emphasize again that this was basically a follow up action that staff had, and in terms of timing, it made sense to have it as you're wrapping up all your recommendations, having gone through each of the RPMs very specifically. So while there was probably no good time, this was probably the only time, and as I said, this is not a staff proposal, we didn't sit down and think, "Oh, we should write a data recommendation." This was in essence a follow-up action.

To the point about the trademark claims, I do want to explain that there may be some difficulties with crafting a data recommendation about the trademark claims. We completely agree that this was a topic that the working group discussed quite extensively. However, in terms of collecting information about trademark claims, our question will be, from whom and how. The expense and difficulty of doing even an end user survey to say, "Did you receive a trademark claims notice," I think we went over that ground when we were developing our own surveys. If you're going to get basically pings from the trademark clearinghouse in terms of the claims notification information service, or the CNIS, that data, as the Analysis Group found, is relatively inaccurate because it doesn't actually show the actual number of claims notices that were sent. And of course, none of that data actually

shows the effect of the claims notice as the Analysis Group also found.

So it seems like the only group from whom you can collect data about at least the number of claims notices actually sent, would be the registrars, and there's at least two issues that would encounter [within that.] One is that there is not necessarily a way to compel registrars to do that, and if we were to say that as a policy recommendation, then that goes back to the issue of this being a new recommendation entirely that the public has not seen, that the registrars have not seen, and that may entail a further consultation, at least with the registrars, or god forbid, a public comment period, because as I said, the only group that can provide data on the number of claims notices actually sent would be the registrars.

Secondly, another reason that you might want to consider is that even if you were able to compel the registrars to provide that data, it may not necessarily show the effects that the working group was seeking to find when we were going through our deliberations. So that may be a little bit too involved, but I know that this is something that the working group discussed a lot, so I just wanted to provide that background for why we, in talking with our operational colleagues who work with Deloitte and others and who worked with Analysis Group on their review felt that it would be very difficult, if not insurmountably difficult, to add something about the claims notice. Thank you.

KATHY KLEIMAN: Thank you, Mary. I have some questions, but I know Brian has to leave for another meeting. So Brian, go ahead, please, and then we can go to Mary.

BRIAN BECKHAM: Thanks, Kathy. I heard, Kathy, your suggestion to take this to the leadership meeting. I was going to merely suggest, in light of the conversation, one way through this may be to—I don't know what the appropriate vehicle that whatever team or group is going to look into the CCTRT recommendations, but instead of saying that this working group—that being the RPM working group—recommends, we could say we recommend that these four CCTRT recommendations be brought to the attention of the appropriate team that's tasked with looking at those. In other words, we're not endorsing them, we're just saying they should be brought to the attention of the appropriate group that's going to look at those. Thanks.

KATHY KLEIMAN: That makes sense to me. Thank you, Brian. If staff could capture these comments as they come in from co-chairs as well as working group members, including for the CCTRT discussion that Brian just had. So in that case, I think I have my hand raised. I want to make a comment in response Mary. I think IBM would know all of the trademark claims notices that are sent out since that's their side of the database.

Bu the question I was going to raise was to Renee, who I believe is on the call. And you don't have to answer it now, but at some

point, the second paragraph, "in relation to the URS, the working group recommends ..." Here, I'm not sure, I don't remember discussing this, that ICANN Org explore developing a mechanism in consultation with the URS providers to enable publication, search of all URS determinations in a uniform format.

So my question was, did we discuss this? And if not, should we be reaching out to the URS providers to talk about cost and feasibility? Is this asking a lot or a little? I'm not sure. But if Renee is on the call, listening, it's something open. Otherwise, I'd like to do it when we get back—and in fact, this may actually be a division to three. One is a data collection recommendation, one is a URS provider's decision formatting recommendation, and the other may not be a CCTRT recommendation, but we'll take this up, we will get this back. Any other comments before we leave and return to—thank you for the discussion of this. And clearly, there's more to discuss. But fascinating, and part of it is, what data we leave for the future PDP working groups that come in to review this. So I'm glad we're going to leave them some data.

Mary, go ahead.

MARY WONG: Just really quickly to try and help wrap this up. To the question about IBM, Kathy, they would not know the number of claims notices that were sent out. They would know the number of pings on the CINS, but that is not equivalent to the number of claims notices actually sent. That's data that only registrars might have, and as Jeff was—

KATHY KLEIMAN: [inaudible] Mary. That doesn't correlate with my recollection of what we learned about IBM. So let's just go out as a factual matter and double check.

MARY WONG: We did check that, Kathy, with our colleagues who work with IBM, but we're happy to give a written comment to the list if that's helpful. And secondly, to the point about the URS question to Renee, that really is the reason why we've tried to phrase the recommendation the way it is rather than say that a mechanism must be developed or that a mechanism must look like that, simply because there may be some cost and operational concerns, not just on the Org side but certainly on the provider side as well. Thank you.

KATHY KLEIMAN: Sorry, Mary, which part of this three-part recommendation are you referring to?

MARY WONG: The URS determinations.

KATHY KLEIMAN: And Phil, I see some comments in the chat. Is there anything you'd like to say? And let me call on Roger Carney and then let's move on to our main document. Roger, go ahead, please. Oh, perfect, commenting from the registrar perspective, please.

ROGER CARNEY: I'm sorry. Maybe I need a one-minute quick review of that. I was kind of distracted. But on the claims notices, the discussion seemed to be around if registrars presented or not. Registrars don't know if there's a claim or not. So we actually query the registry every time to see if there's a claim notice on it. So actually, the registries would know how many claims notices were presented as well, because they tell us to present it or not.

KATHY KLEIMAN: Okay, so the registries would know and the registrars might know. Thanks, Roger.

ROGER CARNEY: And as far as how many got used, obviously, that's known as well by the registry and the trademark database as well. Thanks.

KATHY KLEIMAN: How many got used, how many—

ROGER CARNEY: How many registrants actually approved it.

KATHY KLEIMAN: And click through it or—

ROGER CARNEY: Right.

KATHY KLEIMAN: That would be known, you said, by the registrar? I'm just taking notes.

ROGER CARNEY: That would be known by the registry. Registrar would know as well, but the registry would know because it gets submitted to them.

KATHY KLEIMAN: Is that something IBM would know, or Deloitte?

ROGER CARNEY: Let me back up. That's not actually true, I guess, because there are scenarios ... A registrant or a potential registrant may accept the notice but then not purchase the domain, for whatever reason. So I guess registrar would still be the only one that would know those, but any of them that are accepted and then processed, the registrar, registry and trademark database would know, if that makes sense.

KATHY KLEIMAN: Yes. Thank you very much, and thank you for commenting. Jeff and Phil, and that should take us out of this issue.

JEFF NEUMAN: I just want to clarify something that Roger said. So the registry sends back, basically, a response through EPP that there is a claim. The registrar then presents the claim notice to the prospective registrant, and then the registrar submits basically a time stamp and acknowledgement or basically a registrar certification that it sent out the claims notice and that it was accepted by the registrant.

So the registry may have some data, but ultimately, the registry is relying on the certification that the registrar actually presented the notice as the registrar is supposed to under the agreement. So the registry never knows that an actual notice goes out, it just gets some data from a registrar certifying that the registrar sent the notice. And of course, yes, the registry would know if a domain was purchased, but the registry couldn't say for a fact that the registrant got the notice. All it could say is that the registrar certified it sent the notice and that it got the appropriate passthrough. Registry never knows for certain, it has to trust the registrars that they're doing their job.

ROGER CARNEY: That's correct, Jeff. And just to give one more detail, the registry provides the registrar an ID and the registrar actually goes to the trademark database and gets the exact notice to display. But yes, you're right, no one actually knows, and it would have to be a compliance thing, probably, to prove it if the registrar actually displayed it or not.

KATHY KLEIMAN: Right. Thanks. The last thing I'd just add, and then I'll be quiet, is some registrars actually, once they sent out the first claim on an item, they actually cache that or save that so they don't necessarily have to ping their clearinghouse every single time. So it depends on how the registrar implemented it. But all of this is to say that this data is, I believe, definitely worth collecting to the extent we can. And I know it's late in the process, but if you sort of get rid of that second set on the CCT review team recommendations, I do think it's wise for this group, the RPM group, to which some of the CCT review team recommendations are specifically geared towards, respond to it even though it's a little bit late.

I don't think it would take much more than, even if it's a small group created, a week to go through and figure out the data elements.

KATHY KLEIMAN: And with all this new factual information to help us remember how the underlying technical structure works of this notification process, we do need a little more time to go over it. So roger and Jeff, thank you for refreshing our recollection, as well as adding new information to this. And I'll note that Jeff is one of the designers of the system, and probably roger, too, but I'm not sure.

Okay, Phil, lots of discussion in the chat. I don't know if you want to respond to that about some of the value that this data would have and being comprehensive about it, but last word goes to you on the subject, until we return to it again. Go ahead, please.

JULIE BISLAND: It doesn't look like Phil has audio.

KATHY KLEIMAN: It doesn't, does it? Can someone do a dial out to Phil?

JULIE BISLAND: Yeah, give me a couple moments.

KATHY KLEIMAN: Okay, then we will pause and we'll read the chat, which is quite dynamic right now. Would be good to have the data. Yes. I'm not sure exactly what data Paul's referring to. Phil says, "I'm on the phone and unmuted at my end." Staff, could you try to unmute Phil? He may be double muted.

JULIE BISLAND: I did try that. There is no microphone or phone on my end. So I'm going to try to dial out to him.

KATHY KLEIMAN: Phil, we are going to try to call you. We cannot see your microphone. We see your hand raised, we see that you're in the room, but there's no live microphone that's shown on our participant diagrams. Thank you, Paul. The data on why a potential registrant doesn't register after they get a claims notice.

That would be interesting as well, how many claims notices go out and then—

PHILIP CORWIN: Can you hear me now?

KATHY KLEIMAN: Yes, excellent.

PHILIP CORWIN: All right. I had joined the Zoom room and crashed. I was back in, but whatever. Anyway, here's what I want to say. And this is in an individual capacity. Well, semi-individual. Let me say this with my co-chair hat on: if the group wants to do whatever it wants, including excising the CCT language but add some language about trademark claims data, I have no objection as long as it does not require any additional time. We've got a project change request before council in two days and this co-chair does not intend to sign another project change request. We need to wrap up this working group within the extra 40 days we're requesting.

Having said that, in individual capacity, I think even if every potential registrant—if a potential registrant has no account with the registrar they've gone to to start a registration process for, let's say, apple.whatever, and they go to a registrar, if they have no preexisting account and intend to register at the point of purchase, the registrar is not going to know who they are. If they have a preexisting account and they've logged in, the registrar will know their identity. But if Apple is in the TMCH for computer services

and personal devices, those goods and services, and if the potential registrant abandons the registration they've initiated after receiving the claims notice, we're still not going to know whether the claims notice performed its intended purpose of deferring, deterring a domain registration where the intended use was infringing, or whether the potential registrant was unduly intimidated or scared off when they had a perfectly valid, non-infringing use. It would take some kind of follow-up, and then you'd say, "Oh, did you abandon that because you intended to infringe Apple's trademark with your domain?" Who's going to answer that question truthfully if they had that intent?

So we can get the data, but in terms of determining whether the URS had its intended effect or an unintended effect, I don't think it's going to tell us much of anything. So I've no objection to its collection so long as it doesn't extend the time of this working group, but I really don't see what the beneficial use will be beyond knowing the total number of claims notices generated and the total number of registrations that went through to completion despite receipt of the claims notice. Thank you.

KATHY KLEIMAN: Perfect. Phil, thank you for your comment with your co-chair hat on and without your co-chair hat on. So, great. Everyone, thank you for the discussion of this. We will see this gain. Staff, please schedule this for our leadership call tomorrow. We will see it back, I think, as one, two or three recommendations, and then we will decide whether we want it to go forward as a recommendation. I would ask staff when you circulate this to please flag it especially for the group, and let's circulate revised language as soon as

possible so people have as much time to consider it, work together offline and think about it so that we wind up with great data for those who are in future PDP working groups and review teams.

Great. Thanks. And moving on—thanks again for the discussion. It's an important issue. So now we move on to URS final recommendations. We are starting at page five on the recommendation previously known as number four. Let's read the revised text quickly. Let me remind everyone—and correct me if you think I'm wrong, but we've already reviewed this final recommendation language. Once we had some revisions, and now we're going kind of for a final review to send it up for consensus call. Do the edits reflect what we discussed in the working group?

So the working group recommends that ICANN Org establishes a compliance mechanism—or mechanisms—to ensure that URS providers, registries and registrars operate in accordance with the URS rules and requirements and fulfill their role and obligations in the URS process. The working group recommends that such a compliance mechanism should include an avenue for any party in the URS process to file complaints and seek resolution of noncompliance issues. Specifically for implementation guidance, as implementation guidance, the working group recommends that the IRT consider investigating different options for potential compliance mechanisms such as ICANN Compliance, other relevant departments in ICANN Org, a URS commissioner at ICANN Org, a URS standing committee, etc., and—harkening

back to our last discussion—developing metrics for measuring URS providers, registries and registrars in the URS process.

And then the context—staff, could you tell us—the context does have some new language. Can you tell us about this new language, please?

ARIEL LIANG: Kathy, I can walk the working group through the new language. So the paragraphs that you see that are [not] highlighted, these were essentially the same context from initial report, and then the part that's highlighted is the new language, but they're not exactly new because they're reflecting the working group's deliberation on public comments, and that resulted in the revision of the recommendation language. So basically, the first paragraph is talking about the working group's agreement that this recommendation is not intended to create redundancy to existing complaint mechanisms and also noted that there's one public comment from ICANN Org regarding an existing complaint form for URS and that Internet users and providers can use to submit to ICANN concerning registry operators' noncompliance to enforce a URS action or decision. So that's the first paragraph, and then the second paragraph is also reflecting working group's deliberation and agreement that there's a lack of clarity and understanding regarding how existing compliance mechanism work in ICANN and also lack of understanding or clarity regarding how to enforce compliance of URS providers.

The third paragraph is talking about that ICANN Compliance is responsible for enforcing contractual agreements with contracted

parties, but providers are governed by MoUs which may be different. So that's the summary of the working group's deliberation on this point.

The next one is basically summary of the deliberation of public comments that the working group noted there's an underlying desire and common sentiment calling for consistency, predictability and implementability for compliance mechanisms. And ICANN Org's comment confirms that such recommendation is necessary.

The final paragraph is talking about working group's agreement that it's unsure which specific mechanism will be appropriate, so that's why it's recommending future IRT to investigate different options. So that's basically a summary of the working group's deliberation of the public comments and provided some context to a slightly revised language to the recommendation.

And the public comment review section is basically recapping the same thing that you see in the context, so I won't repeat here.

KATHY KLEIMAN: Thank you so much, Ariel. I really appreciate it. Let me just read out loud the last of the highlighted paragraphs, because it seems to kind of summarize what we're talking about.

The working group is unsure which specific mechanisms would be appropriate, it recommends that a future IRT investigate different options. In addition, the working group recommends that the IRT review ICANN Org's practices to ensure that the contracted parties operate in accordance with the URS rules and

requirements and fulfill their role and obligations in the URS process.

So overall, we're giving a lot to the IRT to do. So kind of an underlying question. Is that fair, is that right? And is this new language that staff has prepared and added—thank you very much for that—consistent with the goals and intent of our final recommendation language? Which we should go up to, definitely. Staff, could you re-put the link to this document into the chat so everyone can go there and scroll up and down at will? Maxim, go ahead, please.

MAXIM ALZOBA: [inaudible] last paragraph, if the recommendation is to review—basically, it recommends to review all the URS-related compliance cases. I'm not sure if it's a big number of cases, but most probably, it's a huge task in itself and might be too much. Thanks.

KATHY KLEIMAN: Sorry, Maxim, before you go off, might be too much for ICANN, for the IRT?

MAXIM ALZOBA: I mean for IRT. To review all the cases, you have to pull all the documents related to it. And being a person who is responsible for such situations, it could be hundreds of pages of text. It's a separate task, basically. Thanks.

KATHY KLEIMAN:	That's an interesting point, Maxim, that there seems to be a discrepancy between the recommendation, which is kind of a moving forward language, this is what we will develop in terms of compliance mechanisms, versus maybe a backwards looking or research role of the IRT suggested in the comments, which IRT may or may not have the ability to do, the resources and time to do.
	And Griffin points out, what is the point of reviewing previous compliance cases? So if staff could add a comment on the side of this new language. I think there's kind of general agreement. Let me know if anyone disagrees, that we are not asking the IRT to review previous compliance cases, we're not asking them necessarily to dig through ICANN Org files on this. Does anyone disagree with that?
	Okay, so a review to clarify that would be good. Let's go back up to the box, the final recommendation language, please. These are small changes, they reflect what I remember of our discussion. Does anyone disagree? Since this is the language that we'll be voting on the consensus call.
	Okay, great. Thanks, Susan. Jeff, go ahead, please.
JEFF NEUMAN:	Thanks. Sorry, I'm still stuck on, if you scroll down to the highlighted text where it says—I'm fine with the recommendation language, but the highlighted text that says ICANN Org's public comment confirmed that enforcing compliance against providers falls outside the scope of its compliance process. I guess my

question is, so what? Yes, it's outside the scope of what their current compliance department does, but that's not ... Our point is that they need to establish a process to ensure that its vendors—whoever they are—comply with MoUs or contracts or whatever you want to call them. I just don't really see the relevance of ICANN Org confirming that its current contract compliance department doesn't believe it's within their jurisdiction.

KATHY KLEIMAN: Hold on a second, Jeff, if you would. Ariel, I think Jeff is talking about the sentence after the one that's highlighted.

ARIEL LIANG: Yes. I do understand Jeff was referring to that. I'm highlighting that here because it's just flow from this and it's about there's a lack of understanding with regards to enforcing compliance of URS providers, and ICANN Org's public comment kind of supplements that point, saying it falls outside the scope, but it wasn't clear within the scope of which entity.

KATHY KLEIMAN: Could you highlight the next sentence though? So Jeff, to your comment, it falls outside the scope of its current compliance process. Jeff, are you suggesting but we should figure out a way for someone to be reviewing ...?

JEFF NEUMAN:	Yeah. Thanks. This paragraph is just so wishy washy. It's not basically saying [inaudible] of the recommendation is providing the context that the IRT or whoever needs to figure out a way that ICANN does enforce this. Regardless of what department they assign it to, they need to enforce this.
KATHY KLEIMAN:	Right. Ariel, could you capture that in the comments next to this sentence? Because I think it does fill in a gap that's there. Susan, go ahead, please.
SUSAN PAYNE:	Thanks. Same point. I do think when you read this text, Kathy, you said current compliance process, which isn't in the text, but actually, I think it should be, because I think that does at least partially help. This is the point of the recommendation, is we made a recommendation that was basically there either isn't a mechanism, or if there is a mechanism, it's not well understood, it's not being utilized or it's not effective. It may be a combination of all of those things. Whatever it is, this needs to be fixed. That's what our recommendation is. So I think at a minimum, it ought to say current compliance process, because the whole point is maybe ICANN Org doesn't have a process for enforcing its contracts, or be it their MoUs, with the providers, but they should have and need to have.
KATHY KLEIMAN:	Terrific. Thanks, Susan. I think we are in agreement on this. So we've got some clarifying wording and we'll be looking for some

more on that. If anyone disagrees with the direction that we're going to clarify and add this understanding, please let us know. Maxim, go ahead, please.

MAXIM ALZOBA: By definition, compliance is the process of ensuring compliance with the text of the contracts, agreements and policies surrounding. If we don't add wording of URS, like saying that if the current compliance process is not enough to ensure that URS is working, basically, we will have a loop of the compliance department checks the letter of understanding with the provider, and if something is not enforceable but the situation is still in compliance with the text of contract, maybe text of contract doesn't allow to enforce URS procedures. But if we don't add something saying that if the current process doesn't allow full compliance with the URS, not just with the text of MoU. Thanks.

KATHY KLEIMAN: Terrific. Thank you. And I'll note it might be ICANN Legal that's working on the enforcement of the MoUs. So if we found that it's outside the current compliance process, it can either go into the current compliance process, or someplace else.

Actually, Griffin's raising questions about Maxim's point. So Maxim, you're welcome to come back on and suggest ...

MAXIM ALZOBA: What I meant, for example, you have MoU perfectly written, but some articles don't allow to, I'd say, force the provider to follow

some particular sentence in the URS. Then compliance department can do nothing about it, because if the MoU written the way where it's not required, the other party can say, yeah, we don't care. And it's not enforceable by compliance department because all they can do is ensure that the process or documents follow the text of MoU or the agreement. Thanks.

KATHY KLEIMAN: Great. Thank you for clarifying, Maxim. Okay, so we're looking for clarifying language here about who can enforce the MoUs with the providers. So we're looking forward to that language coming back and being highlighted when it comes back, and we'll take a look at it in hopefully what will be a quick review round. Any other comments on this recommendation? Otherwise, moving forward to the bottom of page 7, if anyone's following, and this is the recommendation formally known as URS recommendation 6.

And here, we do have some new language. Good, I'm glad we can see both. So the highlighted language is new. The working group recommends that a uniform set of educational materials be developed t provide guidance for URS parties, practitioners and examiners on what is needed to meet the clear and convincing burden of proof in a URS proceeding.

Implementation guidance. As implementation guidance, the working group recommends that educational material should be developed in the form of an administrative checklist, basic template and/or FAQ. Specifically, the working group recommends that the educational materials should be developed with help from URS providers, practitioners, panelists, as well as

researchers/academics who study URS decisions closely. And here, all of this is highlighted new language. The working group suggests that the IRT consider the following.

One, reaching out to the broader stakeholder community, including provider/experts to assist ICANN Org in the IRT to develop these educational materials. Two, ICANN Org should bear the cost. And three, translation of the resulting materials should be provided.

Staff, could you tell us if there's any new language in the context or public comment review?

ARIEL LIANG: Thanks, Kathy. The context doesn't have new language. It's essentially the same as starting the initial report. And then the public comment reviews section basically summarizes that the additional green highlighted text is from the review of public comments. That's what the working group agreed to add these additional implementation guidance for clarity.

And also, the third paragraph I think is the working group notes the recommendation addresses the need to develop materials for URS parties, practitioners, examiners, and then there's another recommendation [inaudible] following that is intended to address the development of materials only for URS parties, and they are substantially different, so that why they're in two separate recommendations. So it's just to make that point clear. That's all for this recommendation.

KATHY KLEIMAN:	Terrific. Thank you, Ariel. And with my co-chair hat off, these changes to me echo the discussion, very closely reflect the discussion that we had and the requests that we had for changes in wording.
	Notice Jeff's hand is raised. I'm going to ask Zak to raise his hand because I see he's putting a lot of careful reasoning into the chat room and I'm not going to be able to read it all. So Zak, if you can come online and perhaps share it, that would be great. Jeff, go ahead, please.
JEFF NEUMAN:	Thanks. So the way this now reads is that we're expecting the IRT to develop the educational materials. Is that really our intent? I'm a little concerned that we're now tasking the IRT with developing the educational materials. I just don't think that that's necessarily needed for an IRT to get its work done.
	I agree with the part that whoever writes—that ICANN when they write it or sanction it, whatever it is, they should reach out to get assistance, but I'm just a little concerned that we're now making it the IRT's responsibility to do all of this.
KATHY KLEIMAN:	Okay. Jeff, I'll just note that this was very extensively discussed. So that is indeed the recommendation that we arrived at, to the best of my knowledge. And whether the IRT wants to outsource it and allow ICANN Org to do most of the work and then bring it back to the IRT is a different question, but this is accurate to after

many hours on this issue. But thank you for your comment. Zak, go ahead, please.

ZAK MUSCOVITCH: Thanks, Kathy. I'm hesitant to nitpick with these things because we're really down to the small strokes, but if we look at the implementation guidance, the original language says that the materials should be developed with the help of URS providers, practitioners, panelists as well as researchers and academics who study this. So we've defined who should be helping in the original recommendation, and then in the additional language under one, it's vaguer. The multi-stakeholder community, and then it adds providers, experts. So I'm just wondering what the basis for the additional language is if we've already seemingly covered it with the original language. Thanks.

KATHY KLEIMAN: Good question. Does staff have any recollection of the basis for adding the first, number one?

JULIE HEDLUND: So this was language, I believe, that was taken directly from the working group's discussion of recommendations that came out of the public comments. In fact, I think if we were to look back at that document, this was a recommendation specifically from a commenter. I forget who exactly. It might have been INTA. And the working group agreed that that was good language to add to the recommendation, pretty much as it was suggested.

KATHY KLEIMAN: Zak, unless you see a problem, unless you see some contradiction, if it's merely repetition, I think I would posit we might be able to live with that.

ZAK MUSCOVITCH: Okay. I'm all for living with things, Kathy. If you wanted to change it, we could integrate the providers, experts and broader multi-stakeholder community in the original language but doesn't seem to be a terribly big deal. Thanks very much.

KATHY KLEIMAN: Thank you for putting that out. Appreciate it. Okay, Griffin's saying he doesn't see any harm, and frankly, neither do I. So let's keep plowing through, unless anyone has any other comments on this. This does seem to be well trodden ground.

Okay, then we move on to page nine, and the recommendation formally known as recommendation 10. I'll just read it, and then staff can show us, because there is some new language here. The working group recommends that clear, concise, easy to understand informational materials should be developed, translated into multiple languages, and published on the URS providers' websites to assist complainants and respondents in URS proceedings. Such informational materials should include but not be limited to, one, a uniform set of basic FAQs, two, links to complaint response and appeal forms, and three, reference materials that explain the URS provider services and practices.

Staff, could you talk about the context? Thank you, [inaudible].

ARIEL LIANG: Thanks, Kathy. For the context, non-highlighted language, took directly from the initial report. Essentially no change. The highlighted part is new language, but that's reflecting the working group's deliberation on public comments. So if you recall, in the public comment, there was URS question number six is to soliciting additional implementation details or suggestions with regards to the development of the uniform set of basic FAQs for URS parties. So basically, that question informs the development of implementation guidance of this recommendation and that's why you see these bullet points here, is to provide these additional details based on the review of public comments.

And I'll just quickly read through these points. So based on the public comments review of URS question number six, the working group suggests a future IRT consider the following additional details in developing these uniform set of basic FAQs for URS parties. Point one is ICANN Org should primarily bear the cost of developing FAQs. Point two, the IRT which typically consists of community volunteers with support by ICANN Org staff can reach out to URS providers if they're not represented on the IRT as well as other additional interested parties outside IRT for input.

Point three, providers could share any existing materials with the IRT as a starting point for developing FAQs. Point four, ICANN staff can hold the pen and prepare the materials with input from members of IRT and other interested parties. Point five, there should be public comment opportunities for the public to provide

input for the draft FAQs, and the final point is the FAQs should not address the question as to what constitutes a clear and convincing standard of proof, because this topic is addressed by a different set of educational materials as proposed in the previous URS final recommendation that the working group just reviewed.

And then the public comment review section is a recap that these additional points in the context stem from the public comment in response to question six and that's the suggestions from public comment contributors.

KATHY KLEIMAN: Terrific, Ariel. Thanks for going through that in such detail. It is my recollection that we did dive in and provide this detail based on very close review of the public comment, and to the question I might anticipate from Jeff about the IRT, this is very much seen as implementation detail for us, developing some nuts and bolts. And you'll note that ICANN staff may well hold the pen and then bring it back to the IRT, and the IRT in turn, through its own public comment processes which are already built into the system, will get additional input from the public.

So to the best of my knowledge, this is a very accurate reflection of what we asked staff to add to this recommendation, both its context and its wording. Actually, no changes to the wording. Anybody have any comments on this? Okay. I see none. Do you see anybody in the queue?

Seeing none, let's go on to something we may or may not be able to finish. We now go into what staff has titled URS

recommendations to maintain status quo. The URS final recommendation formally known as number three has some language changes in it. The working group recommends that it be mandatory for URS providers to—there's a problem there—with URS procedure paragraph 4.2 and 4.3 and transmit the notice of complaint to the Respondent with an accompanying translation in the predominant language used in the registrant's country or territory, via e-mail, fax, and postal mail.

And you'll remember our very long conversation about the language of the Respondent versus the language of the registrant's country or territory as being more easily found and used. So there is some problem with that opening sentence, so if anyone wants to suggest clarifying language, but before we get there, staff, could you please review the new context language that has been added, as well as any new language that may have been added to the public comment review?

ARIEL LIANG: Thanks, Kathy. So the new language in the context is basically reflecting the working group's review of the wave one report related to the EPDP recommendations because as you see in the recommendation itself is asking the URS providers to transmit the notice of complaint to Respondent via e-mail, fax and postal mail. That basically is kind of concerning the matter related to registration data, and that's why the first paragraph is talking about the current situation. So basically, after the implementation of GDPR, the providers will need to rely on registry or registrar to obtain the nonpublic contact information of the registrant, and so that's why there's a wave one report that clarifies that the

providers are only obligated to comply to basically send notice via the public contact information in the WHOIS RDDS but can also continue requesting the registry and registrar to provide the nonpublic registration data so that it can fulfill its obligation under the US rules and procedures for sending a notice to the registrant. And this additional context language is to clarify that working group has reviewed the wave one report and also confirm that this recommendation is consistent with phase one recommendations of the EPDP. So that's all this additional language is intended to accomplish.

KATHY KLEIMAN: Thank you, Ariel, although I'm a little worried about syncing up of the language. But let's see if anyone has any comments. Rebecca, please.

REBECCA TUSHNET: I find this insertion—which I don't think that we in the working group did—to be confusing and potentially contradictory. So we started with the principle that we want people to get notice, that's why we translate it. And the way that this has been inserted, it actually suggests that there's no obligation to go on and actually send the notice when you get the information in the appropriate language.

I think that's a bad idea. At the very least, if we're going to reference this language, we need to clarify that what we mean is that the notice should be sent to the person when the contact

information is disclosed. And I think the additional language has made that super unclear. Thank you.

KATHY KLEIMAN: Thank you, Rebecca. Is there anyone else in the queue? If not, I'm going to add myself to the queue because there does seem to be a contradiction between the added language by staff and our very next recommendation, the recommendation formally known as 2, which recommends that URS providers—this is the very next one under here, and maybe, staff, could you go forward and look at it?

Previews of coming attractions—and I recognize we have about five minutes left. Great. So the working group recommends that URS providers send notices to the Respondent by the required methods which are laid out in the prior recommendation, e-mail, fax, hard copy, after the registry or registrar has forwarded the relevant WHOIS RDDS data, including contact details of the registered name holder to the URS provider.

And under our public comments, we find public comment review that we've seen several times before, we find that this is the way the form is currently doing it now. So without my co-chair's hat on, I would echo Rebecca's query about the difference between providing notice to the publicly available WHOIS data and our very clear recommendation that you wait a day or two and provide the notice to the data provided by the registry and registrar, which we determined would probably be much more likely to actually reach the registrant.

Looking for comments, thoughts. So that would seem to delete this data that the staff discussion that's been added to both former recommendation 3—because the numbers have been crossed out—which now comes before former recommendation 2.

JULIE HEDLUND: Excuse me, Kathy, could you repeat that? Staff is not clear what you're asking to be deleted or why. Sorry about that.

KATHY KLEIMAN: I posit that we should delete everything that's highlighted, because it appears to contradict the recommendations as we debated, discussed and adopted them. Rebecca, let me ask, what is the recommendation that you're making to the text? Let me go back to you since you raised the issue initially.

REBECCA TUSHNET: Thank you. I think Zak, who actually was a chair of the subgroup, maybe able to speak to this even better, but I'm not opposed to a reference to this but I think we have to be super clear, our recommendation is, as you said, that you get the information that is available, and then use it, and it is not sufficient to send it to the publicly available information where there's a privacy service. Thank you.

KATHY KLEIMAN: Zak, your name has been raised. In the rules of other working groups, you have the right of first response.

ZAK MUSCOVITCH: Okay. Thank you. So I think I'm understanding and seeing the contradiction. Let me see if I got this straight. The working group's original recommendation was to say that once the data comes in from the registry that identifies the Respondent of the domain name, that is what is supposed to be used for contacting the registrant to give the registrant notice of the proceeding. So the additional language seems to muddy that somewhat by leaving open the possibility of sending notices prior to that underlying data being provided. And if that's the case, then that contradiction should probably be removed by omitting at least part of the highlighted language, for example, the bullet point just below the cursor I think would be one place to do it. Thank you.

KATHY KLEIMAN: Staff, could you highlight the firs bullet point? So to Julie's question, if I'm understanding Rebecca and Zak, this seems to contradict our recommendations which say to wait until you have the redacted data or perhaps privacy proxy data from the registries, registrars, and then you provide—because of course, there's cost involved in doing this notice process. So you wait to incur those costs and that time until you get the redacted data. So at the very minimum, it sounds like Zak is suggesting that this line be crossed out. And perhaps we should review this for more.

And I'm happy to say that we're at one minute, which means we're coming back to this, so we don't need to maker the final decision today. That's what I'm happy to say, is we don't have to make the final decision today, and we can work on this until Thursday where

we will resume our discussion of these notice provisions, URS recommendations three and then two.

Thank you for a very substantive discussion today on lots of different issues, including data and metrics, and have a good week until Thursday. Any last words from anyone? Thank you to staff for working so closely with us on all of this. Great. Take care, everyone. See you Thursday. Bye.

JULIE HEDLUND: Thank you very much, Kathy, for charging, and thank you all for joining. We hope you have a good morning, afternoon or evening. This meeting is adjourned.

[END OF TRANSCRIPTION]