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ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs)
Thursday, 30 July 2020 at 17:00 UTC

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TERRI AGNEW: Good morning, good afternoon, and good evening. Welcome to the Rights Protection Mechanisms (RPMs) In All gTLDs PDP Working Group call, taking place on Thursday, the 30th of July, 2020, at 17:00 UTC.

In the interest of time, there'll be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge, could you please identify yourselves now?

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

With this, I'll turn it back over to our Co-Chair, Phil Corwin. Please begin.

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PHIL CORWIN:	Thank you very much. Welcome, everyone, wherever you are today. Let me, as always, ask if anyone has updates to their statement of interest.

I don't see or hear anyone raising that. Of course, follow the ICANN expected standards of behavior. Just be polite and respectful.

Let me also announce—I'm going to ask staff to type this into chat for those who arrive later—that the Co-Chairs have reviewed the timeline, and we will be holding two meetings per week (90 minutes each) throughout August. Let me say we'll be challenged to make our September 15th preliminary deadline even on that schedule, but of course we chose that mid-September timeline so, if it did slip—if we couldn't make that—we could still have several more weeks to make a date for delivery of our final report by our promise to GNSO Council to do so by October 15th. We don't foresee any obstacle to delivering that final report and completing Phase 1 before ICANN69.

With that, on today's agenda, you may have heard me speaking to Michael Karanicolas. We're going to be skipping Item #3—review of TMCH Proposal 7—today because that's a joint proposal from him and Jason Schaeffer. Michael has to drop off in a few minutes and requested a postponement of that discussion to the next meeting. That still leaves us with four somewhat meaty, substantive items.

So let's get going on Item #2, which relates to two separate TMCH proposals, both of which deal with the general issue of, should geographic indicators be allowed to be registered in the TMCH

and get the associated RPMs? I believe I'm correctly stating that our prior discussions on this point indicated that there's fairly broad agreement within the working group that GIs should not be listed in the TMCH but also that they can be listed in ancillary databases for whatever additional protections a particular registry operator might choose to provide to them.

With that, we do have a proposal from three members of the working group on the screen right now. I don't know which of them wants to present, but the current order of business is to review this proposal and see if it can gain sufficient support within the working group to put this issue to rest.

With that, who wants to present on this proposal?

TERRI AGNEW: Phil, this is Terri. Before somebody steps forward, I am so sorry. I see somebody joined with a phone number ending in 235. Are you able to identify who that is?

PAUL TATTERSFIELD: I am. It's Paul Tattersfield.

TERRI AGNEW: Thank you, Paul.

PHIL CORWIN: Okay. Well, Paul and you Professor Tushnet and Claudio DiGangi are involved with this. I don't know if this is your proposal or a joint

proposal, but someone needs to present it to the working group members to initiate discussion. So is that something you wanted to undertake?

PAUL TATTERSFIELD: I'm happy to do that unless Rebecca preferred to do it.

PHIL CORWIN: All right. Well, I'm not hearing from Rebecca, so why don't you start? Of course, she's welcome to chime in. So please go ahead.

PAUL TATTERSFIELD: Right. There's a slight difference in color. Where we got from the green-ier blue was where we got to on Tuesday. So I think there's pretty much agreement to get that far. So 3.2.7 was the first change, and we added in "and word marks protected by statute and treaty" in the definition of word marks.

3.28 is just confirming that sunrise and claims services available through TMCH are limited only to marks under Sections 3.21, 3.22, and 3.23 and they're further gated by sections by Sections 3.25 and 3.26.

The final addition is 3.29. Nothing in Section 3.2 shall exclude the TMCH provider and the registry operators from offering additional voluntary services to marks holders—e.g., via ancillary databases. Any marks admitted pursuant to Section 3.24 which do not also qualify for submission under Sections 3.21, 3.22, or 3.23 shall be held only in the ancillary database. These last three clauses don't

actually add anything substantive. They just confirm what should happen in the earlier clauses.

That's it. Thank you.

PHIL CORWIN: Thank you, Paul. I'm going to kick off with one technical comment and then open this language for discussion. Looking at 3.27, this is not a substantive comment, but I think the way it opens ["]Word marks here],"] and then goe[s,] "include," is somewhat ambiguous and confusing. The word here might indicate just in this subsection, not for the entirety of 3.2. The word "include" might not be exclusive. It could say it includes this but not necessarily excludes other interpretations.

So I would suggest that it be revised from a technical viewpoint to put word marks in quotes, to strike here and include … And to say "Word marks is defined as …" Again, this is just a lawyer/technical comment, but I think it would avoid any potential future disputes over the meaning of that critical subsection of this proposal for your consideration.

With that, I'm going to step back and open the discussion to other working group members. Let me see if we have any hands up.

I see Greg Shatan's hand up. Greg, please go ahead.

GREG SHATAN: Thanks. I appreciate the work that has gone into this. I think, on a completely conceptual level, I am at least roughly aligned with the

proposal, but I have a number of problems with the way that this is laid out that, I think, make it either rife for misinterpretation or actually result in what I would hope are unintended consequences. I think first we're starting talking about standards for inclusion in the clearinghouse. I think it's not clear enough from the beginning that we're making a distinction between the trademark clearinghouse database, which is only for trademarks (using that term broadly), and that there are ancillary databases that can be offered by the operator but which are not part of the trademark database. So it's unclear. When we talk about TMCH and clearinghouse and ancillary databases, the whole terminology is, as far as I can tell, not consistent, not standardized.

I think the entire section needs to be very clear that there is a database that's the Trademark Clearinghouse database that is limited to trademarks and that there is an ancillary database that may be offered by the operator but is not the Trademark Clearinghouse database and that that ancillary database would be where geographic indications go. In the way this reads now, that is not at all clear and, indeed, I think is completely unclear. I think this is really just a drafting concern, but I think the devil is in the drafting, especially given the misinterpretations that happened last time.

I think then [I'm] concerned about 3.2.4. We're talking about marks and indications. If we're trying to distinguish between marks that are going into the Trademark Clearinghouse database and geographical indications and the like that are going into an ancillary database, I think here we can't lump them together because the whole point of this is to separate them. If, by the

"clearinghouse" we're referring to all databases, then I think that needs to be clear. But there then needs to be something clear that defines the Trademark Clearinghouse database that forms the basis of sunrise and claims services and then the ancillary database that is not. So I think that needs to be cleared up entirely.

We still don't have any clarity about "word marks protected by statute or treaty" actually means, and I think that needs to be clarified and should be clarified to mean marks that are expressly and individually protected by a statute or treaty, such as Big Brothers of America, which is protected by a congressional statute, and not by alternate schemes that are put in place by a statute or treaty because all protection schemes are put in place by a statute or treaty.

Then, in 3.2.8, the sunrise and claims services are not available through the TMCH. Again, that's a drafting concern, but we need to be clear about what comes from where.

That's as far as I go right now, but I think, if this is done right, it should be clear what goes where. If it's not, then we're just going to be in a worse problem than we started with. Thanks.

PHIL CORWIN: Thank you, Greg. What I'm hearing from you, although the focus is different [and] similar to what I just said to Paul, is that, conceptually on the substance, you think we're in general agreement within the working group but that this still needs some wordsmithing, some more involvement, until members feel that it's

technically been perfected to a sufficient degree where we can all agree on the final wording.

Kathy, I'd seen your hand—oh, it's back up. I'm just going to call on Mary for one moment to let her intervene, and then I'll call on you, Kathy, for further comment.

KATHY KLEIMAN: Great.

PHIL CORWIN: Mary, go ahead, please.

MARY WONG: Thanks, Phil. We had a slight e-mail exchange with Paul and Rebecca. I believe it was yesterday. A lot of the discussion was really to follow-up on the points made on the last call. We wanted to supplement that call with a couple of extra observations that we hope are helpful. One is that we checked in with the SubPro PDP work with respect to the changing of the AGB text. Because the AGB was developed during implementation for the 2012 program round, staff did wonder if it would be better for a PDP working group to proffer suggested changed text or to proffer policy principles with or without suggested changed text. For SubPro, I believe that there's only on instance where the group is recommending adding to the AGB text.

So our first observation, which we also made to Rebecca and Paul, is that, regardless of whether the working group wants to go

forward with this form or some other amended form of suggested AGB text, it also include very clear policy principles so that the IRT is left in no doubt about what you intend. I think that's what Greg's points cover. For example, a policy principle could be something that's been stated several times—that the Trademark Clearinghouse, for the purpose of sunrise and claims, is only intended for trademarks.

Another possible area where Greg has touched on it is for marks protected by statute or treaty. We went back to the previous comment periods for the 2012 round, and it appears that this category really came about due to governments' and IGOs' consent for trademarks that would be in the class of, say, the International Olympic Committee or the Red Cross movement—in other words, those kinds of trademarks that may or may not be nationally registered but that clearly have statutory protection as a trademark.

The third point was on the ancillary database, which I think Paul and Greg have already explained. This is intended to allow the TMCH provider and any registry operator to offer additional voluntary services. So they can go into the clearinghouse, but they will be stored in a separate database, and they cannot be used from trademark claims and sunrise.

Fourthly and finally, I think the only thing that we will say here is that it's still a question as to who has to decide whether something is or is not a GI, whether something is or is not a covered by a statute or treaty as a trademark. I believe Paul and Rebecca put some thought into that as well.

So just four observation from staff. Thank you.

PHIL CORWIN: Thank you, Mary. Not to recap everything you said, but I think the most important thing was you're telling us that SubPro's approach and staff's recommended approach is not to try to amend the Applicant Guidebook in this phase of our work but to recommend clear and broad principles that should guide the rewriting of the Applicant Guidebook in regards to this. Of course, the first of those would be that only marks which are trademarks should be allowed to be registered in the TMCH to be eligible for trademark claims and sunrise registration for RPMs.

REBECCA TUSHNET: Can I raise my hand?

PHIL CORWIN: Who's that?

REBECCA TUSHNET: Rebecca Tushnet.

PHIL CORWIN: Yeah. You're in line.

Was I correct on that, Mary?

MARY WONG: That's correct, Phil. Since a lot of effort has gone into crafting these proposals and drafting these pieces of text, we certainly don't want to discourage the working group from including any final text for incorporation by the IRT into a future AGB, but we do feel that some clear policy principles at the very least should be what the working group includes in your recommendation.

PHIL CORWIN: Okay. Thank you. What I have now is Kathy followed by Massimo followed by Rebecca. So, Kathy, go ahead.

KATHY KLEIMAN: Thanks. I just wanted to translate some acronyms first that Mary used, and rightly so. The IRT is the Implementation Review Team that will be implementing the new rules for the Applicant Guidebook, the new rules for application. We're doing a small piece of that. The Subsequent Procedures Working Group is doing a large piece. So the IRT implementing the AGB is taking the Implementation Review Team, which executes the details of the broader policy principles that both of our working groups will create, and then writing them into the Applicant Guidebook.

This idea of broader principles, I think, is okay. It certainly wasn't what was discussed on Tuesday. So I think what we're seeing here is a good-faith effort and answer some of the issues/technical questions that Mary Wong raised on Tuesday, which I think has been done well.

If we want to abstract further into principles, that makes sense, too, but I think there's general agreement on this. I think in IRT

we'll find, in general, that what's put down here will be useful. I'm not seeing any huge disagreement.

Phil, I also wanted to point out that you had called on Rebecca earlier but she was having some technical trouble, so I'm glad she's available online now. I don't know if she wants to speak to that earlier slide versus the current slide. Anyway, thanks.

PHIL CORWIN: Okay. Well, we'll get to Rebecca in a minute Massimo, please go ahead.

MASSIMIO VITTORI: Thank you. One question for the proponents and for staff about the meaning of additional voluntary services, which could be also claims services/sunrise or should be different from the ones that are normally under the Trademark Clearinghouse. Of course, they will not be obligatory, but in case some operator will be [vested] to offer claim or sunrise, will they be allowed to do so under this proposal? Thank you.

PHIL CORWIN: Massimo, let me respond. This is only in a person capacity. It's just a personal observation, certainly not a ruling by a Co-Chair. In our prior discussions of private RPMs offered by various registries, the working group was unable to agree on whether or not they should be permitted or whether they should be restricted in scope, so I think that would leave the field open for a registry operator to have quite broad discretion if they wished to offer such an

ancillary service for geographic indicators to do so in a manner that they wish. That's just my personal view, but I'd be dubious that this working group would be able to agree on restricting the scope of such protections if a registry operator wished to provide them. We certainly have had no proposal to that end up to this point in time, so it would be a very late entry for consideration. I don't know if that's helpful, but that's just my view. I think it's probably best if we stick to what we can agree on—the broad principles incorporated within this language—rather than wandering into new subjects.

With that, Professor Tushnet. By the way, I enjoyed your remarks at yesterday's McCarthy Institute on the booking.com decision.

REBECCA TUSHNET: Thank you. I have a couple things to say. One is about the AGB in particular. I'm not sure I understand Mary's point to the extent that it's an objection to proposing language. She says, "Well, the other groups have only done it once, so we shouldn't do it at all." Maybe we get one. This is, I think, the only one, so that actually seems roughly consistent with what's been done. I think the problem that we are trying to solve demonstrates that principles are pretty much not enough because, I think, everyone is actually in agreement about what was intended and then it turns out it wasn't what was done, which is why I think there's a felt need for some actual enforcement. I certainly think that it would be fine to specify that "recognized by statute or treaty" has to be specifically recognized by statute or treaty. That's a fair point. But I think we can elaborate more in what we say in support of the recommendations. But I actually think we're getting close to

something that's workable, and I think there's a demonstrated problem that means we shouldn't just [pass off] general principles because we already have those general principles and it didn't happen.

So I'm certainly willing to go back and tweak the language a little more. I think it can be done. It's not actually completely unprecedented to have a definitional section that, in the middle, defines something else. It's not best practices, but whatever. [We can say, "]And you're not even allowed to call it the TMCH, if that is really a sticking point.["] But I will point out that I learned just the other day that the PTO used to register a subset of copyrights. They were still copyrights. It was just their job with respect to labels. It's not the worst thing in the world to have the thing called the TMCH as long as it's trademarks that are getting sunrise and notice and not the other stuff. But, if that is too offensive, I think we can fix it under the current structure. But I think we should. I don't think we should put it off to some other group. So I hope that they have the same consensus. Thank you.

PHIL CORWIN: Thank you, Rebecca. Again, speaking in a personal capacity, I would tend to agree with you. This may be the exception that proves the rule. I think we're close to language that could be acceptable broadly within the working group. I didn't hear Mary saying we shouldn't do it. I think what I heard her say is that there should be some preamble, some statement, of the broad principles that this proposed language for IRT consideration and adoption is trying to implement.

Greg, is that a new hand or an old hand?

GREG SHATAN: That's a new hand.

PHIL CORWIN: Well, then, please go ahead because it's the only hand that's up.

GREG SHATAN: Thanks. I would take Mary's comments a little more positively in a sense that, first, I don't think that the current policy statements are clear enough and that clarity, whether it's a preamble to this text or done in some other way, is actually important at a policy statement level. We may also be a little bit more not quite bound up by trying to edit previous language in this fashion, because I think, while that's important, I think what's important is to set the stage, which is really the policy level, which is really what we should be doing: making policy recommendations. If we want to recommend ways to carry those out to implement them in text, that's viable, that's appropriate. But what we really need to do is get above this wording and state what we're stating. I don't think it's a matter of offensiveness to say that we're going to call the Trademark Clearinghouse the thing that has trademarks in it and call the thing that doesn't have trademarks in it something other than the Trademark Clearinghouse. I think we're really just trying to be clear here.

So I think Mary was trying to guide us—not limit us but rather indicate what would ultimately be the most useful thing for the IRT

to have: a clearly set-out policy basis. Whether we end up being the exception somehow that gets a change to the AGB, which would be to go through the SubPro Working Group or whether things are done otherwise, what's really important is to get the policy set out clearly. I think we somehow get a little bit caught up in the fact that we're negotiating implementation text when we should be making sure that it's clear what it is that this text is setting out to accomplish. Thanks.

Phil Corwin seems to have left, probably not of his own free will.

PHIL CORWIN: I'm still here on audio. My Zoom room just disappeared. So I'm going to need to try to … Hold on. Let me … If you'll bear with me a moment, the technology—

KATHY KLEIMAN: Phil, Mary has her hand raised, and I have a question in the chat room to Greg about that maybe he wants to help the drafting group tweak a bit.

PHIL CORWIN: All right. Why doesn't Mary speak and then, Kathy, why don't you read your question? Meanwhile, I'm going to reconnect and attempt to do so.

KATHY KLEIMAN: Great. We'll keep everything going.

PHIL CORWIN: Yeah. I can hear everyone. I just lost my screen.

KATHY KLEIMAN: Mary, go ahead, please.

MARY WONG: Thanks, Kathy, and thanks, Phil. Just really quickly, yes, indeed, as Greg said, we really are not objecting to anything. That's not our role. We're also not trying to limit the working group. We're just looking ahead to implementation. As I said in the chat, the Applicant Guidebook, if the last one is anything to go by, might be a pretty large document. It is an implementation document, so anything that a PDP working group, whether this or SubPro or anything else, suggests eventually is all going to have to be turned into language for the AGB. So our thinking was that, if the working group does agree on this language, it will probably be even more helpful to have policy principles that [inaudible] so that we'll know, when we get to actually launching the next round, that there's absolutely no doubt that the final AGB language reflects what we're trying to do here and what the intent was.

KATHY KLEIMAN: Terrific. Thank you, Mary. I don't know if Phil is back on.

PHIL CORWIN: Okay.

KATHY KLEIMAN: Okay. Back to you.

PHIL CORWIN: I'm still hearing. What's happened is that my VPN has crashed. I'm trying to reconnect. Then I'll be able to rejoin the room. But keep talking, Kathy.

KATHY KLEIMAN: Okay. Terrific.

PHIL CORWIN: [inaudible]. I'm flying blind at the moment.

KATHY KLEIMAN: My pleasure to be able to help a little bit. So it sounds like we're moving into violent agreement, if I read the comments in the chat and listen correctly.

                     So, Phil, if you agree, then the question I'd raised in the chat was that maybe Greg could help the group that's drafting go forward to this next step that Mary should be looking for. Greg responded, "Kathy, happy to help."

                     So, at the risk of stepping too far—Phil, I note there are no hands raised—do we move this forward now to the next step (to the recommendations) and have this drafting team then work on this broadened policy statement but in agreement with language that

we're seeing here but looking for that clarification and more explanation and context? Can we revisit it when this comes up for recommendations, or does it need to come back now to the working group? With that, I'll turn it back to you. Again, no hands raised and nothing else in the chat.

PHIL CORWIN: Hold on one moment. All right. Let me say—I'm still having a connection issue here; I'm going to have it resolved in a minute— is that what I was going to suggest is that I think it'd be premature to call the question now on this recommendation before we have final language, but I'm very confident, based on prior—and this— discussion, which I think has been very productive, that we're going to reach agreement. I would therefore request that the three folks who drafted this to review the transcript, take my technical and Greg's technical remarks into account, as well as Mary's remarks, and bring us back something hopefully by next Tuesday for posting that reflects that input. Then we can give everyone 48 hours to discuss it on the working group list and take it up at the following meeting.

Would that be an acceptable way to proceed?

PAUL TATTERSFIELD: That's fine by me.

PHIL CORWIN: Rebecca, is that good for you as well?

REBECCA TUSHNET: Fine by me.

PHIL CORWIN: Okay. I appreciate Greg's willingness to interact with you on this. Let's move on to the next item then and put this one aside. We'll come back to it probably next week.

I'm getting my virtual private network back, and that should [permit] me to get back in the room momentarily.

Meanwhile, Kathy, can I hand off to you for the next two or three minutes until I'm back in? I apologize for this technical issue.

KATHY KLEIMAN: Sure. Not at all. I'd like to ask staff to make this a little bigger, if they could. All because we're skipping TMCH #7 on Michael's request, we are moving on to Additional Overarching Question #3. It's a simple question. It is certainly not a simple answer. The question is, how can cost be lowered so end users can easily access RPMs?

The link to the full document Ariel just posted in the chat room. I'm just going to read the comment highlight. Thanks to staff for making it big. You can make it even bigger if you want. "Due to extensive comments for cost-cutting ideas, staff did not attempt to include the individual highlighted comments here due to concerns of duplications. However, staff found that these comments contain one or more of the non-exhaustive themes below." Again, the

question is, how can cost be lowered so end users easily access RPMs? Thoughts about financial support for end users and registrants from developing countries about non-financial supports that have the effect of lowering cost to these end users. Some allocation of funds from ICANN to offsetting costs to the RPMs. Subsidy of the processes of registries, registrars, and ICANN would aid in lowering the fees and improving access. Opening up the TMCH database. Resources made available for registrants to make it easier to defend without a lawyer. Redressing the balance of financial burden in the URS process. I'm going to skip "eliminate URS" because that's not a possibility. RPMs delivered by third-party service providers are open to competitive tenders. And there's some others. So that's an overview of the wide range in responses we got to a very wide-ranging question.

I'll just remind you, if you weren't the person in your group that filled out these forms, having gone through the forms, that this was towards the very end. We had done the TMCH recommendations. We had done the URS recommendations. We've gone through the URS and TMCH individual proposals. Then we had these overarching and charter questions that came in at the tail end of these forms that we had asked people to fill in. So we're now in the final lap.

Phil, let me just check and see if you're back in and you want to take over or whether you'd like me to continue.

Okay. Not hearing from Phil, I will ask if anyone—

PHIL CORWIN: Hold on. Can you hear me now?

KATHY KLEIMAN: Yes.

PHIL CORWIN: I'm still having difficulty getting in. But I wanted to say is, when I review those comments that you just quoted at some length, Kathy, I really didn't see anything very new that hadn't been brought up within the working group. So I'm not sure that there's anything for us to proceed on here that would override our previous inability to reach any broadly supported recommendation on this point.

KATHY KLEIMAN: Okay. I'd like to ask just briefly, in attempting to provide an overview, if, staff, you could go down to the red bar. We have a number of groups that respond about costs and ideas. We have a few that respond that cost is not an issue, if you see the red bar. So the CORE Association, Richard Hill, Yale Law School Initiative: "Basically, we don't believe cost is a main issue here," which may be a sign of success in having kept some of these costs down.

Let me ask if anyone wants to speak to any of the specific comments that have been filed. Maybe, staff, let's go back up and look at some of the green ones. If there's anything here … I see there's some in yellow as well. Actually, we don't have the donut here, but I'm seeing a very, very long list of contributors who do not provide any comment. So I just wanted to let you know about

that. Is there anyone who wants to provide any insight? Somebody is not on mute. Again, staff, can we go back up to the top to the green? Is there anyone who wants to highlight any of the cost-cutting ideas that were raised? Did anyone see any new ideas here? Is there anything we could or should be doing for developing countries as Article 19 raises? Does something rise to the level of something we should be moving forward on or thinking more about and to Phil's idea that there may not be too many new ideas here?

Phi, just so you know, there are no hands raised in the chatroom on this. So, again, the question is, is there anything we should pulling out of this to move forward or think more about?

Phil, nothing in the chat—

PHIL CORWIN: Kathy, I would say on this one, if there's no comments, if there's no suggestions for doing something, that we close it out.

KATHY KLEIMAN: Okay. Good. Let's do that, but let's do that with … ALAC does have … Maybe it's worth reading. I'm just reading the green and the ALAC comment. "Many individuals and smaller businesses, as well as brand owners in developing economies, have the same concerns as larger or better-financed trademark owners, but many may not have the experience and wherewithal to make use of the RPMs. There could be financial supports of subsidies to open the RPMs to these end users. But, on that, there are also non-

financial supports that have the effect of lowering cost for these end users, some discussed in the recommendations."

Anyway, there is a call here for the increased offering of translations, translation services, educational material, model submissions, helplines or chats, and even pro bono legal representation. I note that some, although not all, of these are indeed part of our recommendations, including educational materials and translations.

Griffin, I see, says—let me read—"The only potentially new idea I'm seeing here is the idea of subsidies for certain users of the RPMs, but I'm not sure it's worth focusing on this."

One theme I am seeing here—Griffin, I'll pause to see if anybody wants to take that up further—is this concern about access on both sides, I think, from the global south: the cost issues does seem to be an issue from developing countries. But I'm not sure there's [anything we do] more than keep that as an underlying concern.

Okay. Phil, I think we can move forward.

PHIL CORWIN: Well, good. My situation is I'm back on the Internet but my Zoom thing says it's been connecting for the last three minutes and the little wheel keeps spinning. So let's just proceed to the next item. Kathy, I hate to impose this on you, but until the technology cooperates, I'm locked out of the room.

KATHY KLEIMAN: Great, with the apology that I haven't read … I read a number of these things in preparation for Tuesday but not necessarily in preparation for today because I didn't think I was chairing. So I'll do the best I can, Phil.

PHIL CORWIN: Thank you.

KATHY KLEIMAN: We are waiting for the overarching question and general content question to come up on the screen. I don't know if other people can see it. "Ariel says the spreadsheet is still loading. Internet is slow as it is." Okay.

So this is interesting: a general content question. It's a little hard to know exactly what that is, but let's take a look at it. "Are there any additional recommendation that you believe the working group should consider making? If yes, please provide details below." Talk about a broad question! Here we do have a donut and a snapshot. We've got the general content Q1 snapshot where we have some people … The answers … Let's see. "Not to expand the URS." So you've got a combination of what to do with the URS. Looking down into the comments, there are some comments about not expanding it (the URS) to include—or probably all of these additional RPMs—the legacy TLDs, [like] .com.

Another set of questions: about 5% of the answers talked about opening up the TMCH database and also not accepting design

marks or GIs. So talking a little bit about what we were talking about earlier.

Let's see. There's some references to a globally protected mark list. There are some enhancement and guardrails on the PDDRP (Post Delegation Dispute Resolution Policy) that we dealt with so long ago.

Let's see. Does anybody want to comment? And does anybody want to dive into some of the details of what we're looking at here of this broad range of responses that we got from a relatively small group of people? 76.4% of our responders, of our commenters, did not respond at all to this question. So let me see if any hands are raised.

No. Then let's—

PHIL CORWIN: Kathy, let me say, when I reviewed the comments shortly before the meeting, it seemed to me that most of them either dealt with issues that we've already discussed or are on our schedule to discuss, including URS as consensus policy. It's going to be on our schedule in about two weeks. So I didn't see anything new that we hadn't covered that was mentioned in those comments.

KATHY KLEIMAN: Okay. I do see a process improvement issue. I say it with a laugh, but I'm not sure it's funny and it may be something worth a pin in since we're used to dealing with substantive issues. There are some commenters who say, "Please don't use a Google form or

any sort of paginated HTML form in the future." They had trouble filling in this form. I think that is something that we should queue up for the end: is this a good way to conduct comment periods? Was this hard for people to do? And talking with staff about some of the concerns, some of the complaints, some of the people who had problems filing. And there was a handful.

Mary, go ahead, please. But really I'm not trying to queue up that discussion for now. I'm trying to queue it up for later because I know this was very much experimental. This was only the second time it was done and the first time it was done on this enormous scale of so many questions. Mary, go ahead, please.

MARY WONG: Thanks, Kathy. I put up my hand. Actually, now I'm going to speak as a member of ICANN Org staff that handles public comment proceedings for Org, just to say that this particular issue has been taken up internally, and we are looking at the use of different mechanisms to collect public feedback, not just by PDP working groups but by different parts of the organization. The good news is that the information transparency initiative for ITI that many of you know about, when it launches, will actually be on a different platform. We've already tested a lot of those improvements with many parts of the community. So our hope is that some of these issues—a lot of it, I think, was due to us trying to use whatever available technology we could to facilitate PDP discussions—will either not exist or be minimized in the future. But, as a result, this may be something that is outside the remit of a particular PDP working group. If it's something that this group wants to provide some feedback about, then our suggestion is that perhaps you

can do it through John McElwaine as the council liaison as feedback to the council for future public comment proceedings but not necessarily as part of a PDP report. Thank you.

KATHY KLEIMAN: Thanks. Mary, I'd like to read Lori Schulman's comment. "I agree about the form. The form is too much for most and nearly impossible for those not entrenched in ICANN policy. The space limits are not realistic. I appreciate that staff needs an efficient form of collecting, but this is not it."

I actually think we have every right to comment on the forms and difficulty that our commenters had. Mary, again, not to call anybody wrong, but for the sake of going forward in the future, let's not do it this way again. We know it cost some people an enormous amount of time. So I think that's worth capturing. I don't know if other people agree.

Let's see. Maxim's dropping off. Is there anything else … I'd like to see that captured as a concern, as well as Mary's response that we're going to use another platform going forward in the future, which is great. My understanding is that not everyone has access even to Google Docs around the world.

Zak, go ahead, please. Thanks for raising your hand.

ZAK MUSCOVITCH: Thanks. If we could just scroll to the summary of the comments from the Internet Commerce Association …

KATHY KLEIMAN: Do you know of that's in the red?

ZAK MUSCOVITCH: It's in the red. It's #2 in the red.

KATHY KLEIMAN: There it is. Thank you.

ZAK MUCOVITCH: There it is. Oh, there it is. Thank you. I get the sense that people are fatigued and rightly so. I have no intention of getting deep into this at this point. I just wanted to flag for the fellow members of the working group something in bear in mind particularly once we move to Phase 2. It relates to this comment from my organization, the Internet Commerce Association, which I'll read it. "The working group should consider whether it is preferable for all concerned stakeholders to fully integrate some intended features of the URS with an improved UDRP in order to provide a single and effective RPM that provides greater efficiency for complainants where there are clear and [inaudible] cases of cybersquatting as well as correspondingly greater protections for registrants who have bona fide interest in a disputed name, particularly where term is generic or descriptive." We could add to that as well in terms of protection for freedom of expression, etc.

The reason I'm highlighting to you it now—as I mentioned, to flag for you—is that I think, once we get to Phase 2—of course, it

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depends how it's chartered, etc., and who's in the working group—one thing I'd like the entire working group to think about, as I have been thinking about, is how we can find some solutions that address what is commonly known these day as DNS abuse, particularly when it comes to phishing and fraud and things like that, as well as protect bona fide registrants. I think both are capable of being protected, and I think that would be some improvement to the UDRP: to adopt some features of the URS. That might ultimately mean eliminating the URS because it's redundant because the UDRP deals with it.

So, as I said, I don't plan on getting deep into this, but I just wanted to let everyone know, if they want to chatter/discuss off-list/on-list with me personally—I get into this in Phase 2—I'd like us to try to find some solutions that benefit all stakeholders. I don't think it's mutually exclusive. Thanks very much.

KATHY KLEIMAN: Zak, before you get off, the summary of your comment may not be accurate. [inaudible] create another category here or some place else if other people want to bring this forward. It says "Not to expand URS, eliminate URS, more registrant protection." If you were to come up with a very, very short summary of your comment—I know we're short [on time]—what might it be?

ZAK MUSCOVITCH: [inaudible] to the right of it isn't my own language. That's just a shorthand identification of what category the comment fits into.

But you're asking, I believe, Kathy, what would be a summary of what I'm suggesting?

KATHY KLEIMAN: Encapsulation, perhaps, unless you like the one that's there.

ZAK MUSCOVITCH: Well, I don't think it's the time to get in the details of how this could work, but what I'm envisioning here is that … Since we seem to have a few minutes, I'll just share with you a brief story. I bought a URS not so long ago involving a phishing site. It was terrible what was going on. People were ordering jewelry from an online jewelry store that was a spoof of the real jewelry store. People were sending money through PayPal and otherwise. So, ideally, the URS should be able to satisfactorily deal with this rather than have to go put the burden on the registrars, the registries, and the Internet service providers to determine when to disable a website or disable a domain name. But the URS really doesn't work very well for that. It worked eventually, but it takes too long in a situation like this, even the URS, which is relatively fast. Even when the URS is inexpensive and deals with [clear-cut] cases, it's still not quite fit for purpose in my view. So I think a solution should be found for that within the rights protection mechanisms.

On the flipside of it, from my stakeholders' perspective, there can be greater protections for bona fide registrants, domain investors, who trade in generic and descriptive domain names. And there can be very similar protections enshrined right into the UDRP. And there can be additional protections that enshrine a lot of what the

case law says about freedom of expression when it comes to domain names. I think that 99% of the cases will still be successful for the wrong trademark owner, but there would still be some additional protections for those bona fide registrants.

So I don't think it's a zero-sum game, and I'm not happy with the URS. I think it can be done better, but I don't want to [inaudible] to reinvent the wheel or second-guess ourselves at this point. That's why I just flagging it for further discussion down the road.

KATHY KLEIMAN: That's what I might say in that column: flagging this for Phase 2.

Anyway, back to you, Phil. Thanks.

PHIL CORWIN: All right. Yes, I'm back. It's been a very exciting 20 or 30 minutes. After my VPN crashed, I had to restore it. Then Zoom wouldn't cooperate and relaunch my window into this room, but I'm finally back, and I have followed the conversation.

Zak, thank you for those constructive comments. I do believe that, when we reach Phase 2—of course, the quicker we finish Phase 1, the quicker we can move on to Phase 2—there will likely be proposals to incorporate some suspension mechanism in the UDRP for egregious conduct like phishing or pharming or malware distribution. It's quite possible that Phase 2 could recommend some form of the UDRP which includes a suspension option that is recommended to replace URS. But that's going to be a couple of years from now. Right now, we have ahead of us a discussion

of Overarching Question #2: whether any of the RPMs should become consensus policy. So we're going to have that discussion on whether the URS should go to the remaining legacy TLDs coming up, I believe, in about two weeks.

Turning back to Content Question #1—thanks to everyone for their patience while I was flying bind—does anyone believe that there's anything new in here that we need to discuss? If not, we can move on to #2.

Ariel has her hand up. Go ahead, Ariel.

ARIEL LIANG: Thanks, Phil. Staff just wants to flag one particular item. It's related to another question that the working group is expected to address for the final report. I'm putting the initial report on the screen just to show you where it comes from. It's this question I'm highlighting here: how and to what extent does use of protected marks lists—e.g., blocking services—affect the utilization of other RPMs, especially sunrise registrations? So the working group is supposed to address that in the final report.

Related to the general content question, we did see that there are a couple of commenters that mentioned the protected mark list, so we just want to flag these comments and see whether the working group wished to discuss these comments.

PHIL CORWIN: Thank you, Ariel. Let me respond. It's my recollection, though it's been four years plus since this working group's Phase 1 launched,

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that we did engage in some discussions of mandating a GPML, and it did not appear that we would have any consensus within the working group for mandating that as an ICANN-operated or ICANN-sanctioned RPM.

On the other hand, we did discuss private RPMs which some of the registry operators provide the equivalent of a GPML for the registries the operate. I think we wound out where we're going to allow that to continue based on various views, but there's certainly no consensus to stop it.

So, on this question of how blocking services affect sunrise, if people want to discuss that now—I see Susan's hand up---blocking services don't actually register domains. They block domains from being registered so that, if an exact match of a trademark was blocked and if somebody else had the same trademark for some other goods and services, that sunrise registration wouldn't be available because it had already been blocked by … Say United Airlines blocked United, and United Van Lines wanted to register United.whatever at a TLD, which had a protected mark list approach/a blocking service. It wouldn't be available to them.

Let me stop there. Susan, did you have … Did your hand go away? Did anyone want to discuss the relationship between blocking services and sunrise registrations? The floor is yours, Susan.

SUSAN PAYNE:	Thanks, Phil. Sorry. I don't know how my hand went way, but, yeah, it briefly did. Just on [basically] those points, first off, my company was one of the ones that made a comment about the DPML and/or the GPML. We were asked in this question to identify if there were other issues that we felt the working group should address. This is one that I and my colleagues feel pretty strongly about, but that doesn't necessarily mean that I think this working group would get consensus on a recommendation on that. I think it's a great disappointment that it couldn't, but I'm not unrealistic. But we were asked the question, so we answered it.

But in terms of the point that Ariel flagged, my understanding of where that question came from is in response to if we go way back to the staff report. There were a number of comments that pointed out that, if we are looking at utilization of the RPMs (the mandatory ones, so in particular the sunrise), you can't look at that in isolation without thinking about other mechanisms that might have been provided in a registry or on a portfolio registry basis that would negate the need for sunrise registrations. So essentially there are plenty of people who've argued that the sunrise has been a waste of time, hardly anybody utilized it, no registrations were filed, what's the point of it? I don't subscribe to that myself, but the point was—and the genesis of this question—was that you can't look at the sunrise in isolation. If huge portfolio registry operators offered blocking across their whole portfolio, then clearly people who took advantage of the blocking were not also going to be buying sunrise registrations. That doesn't necessarily mean that sunrise is a failure. It just means they were offered an alternative, and they chose to use the alternative instead. |

Now, in terms of if we can we answer that question, I don't think we can. I don't think we have any data. We've got very limited information about numbers of blocking registrations and so, so I don't think we have any data that really allows us to answer that question.

PHIL CORWIN: Thank you, Susan. I would tend to agree. We're not obligated to answer every question that might be posed to this working group. We are obligated to address the issues outlined in our charter, and we're completing that task. I'm not sure it'd be productive for us to spend a lot of time trying to formulate an answer to this. As you say, where blocking service is available and a trademark owner opts to use it, it takes away any necessity to do a sunrise registration since they don't have to worry about an exact match of their mark being registered in a particular TLD.

So, unless there's further discussion on this Content Question #1, I would propose that we move on and address Content Question #2 in our remaining 23 minutes, unless there's objection. I think we can probably complete that one as well in our remaining time today. Any objection to moving on to #2?

Okay. Thank you. #2: "Are there are any other comments you would like to raise pertaining to the initial report? If there are, enter your comments here. If you can, add the page number."

Let's scroll down quickly through this and decide whether there's anything we need to address. We've got quite a number of comments—stop there—which are pretty much the same: "Review

the URS and UDRP together." "Don't change the URS." Well, actually, we've agreed on some changes to the URS. I don't think we want to through them out after reaching broad agreement. "Eliminate URS[/]MCH." Well, we're not going to get consensus on that. But none of these are thoughts that weren't raised within our own discussions. "NCSG registry should not be free to add additional RPMs." We discussed that matter and we can't reach any consensus agreement to block private RPMs. So that group, I think, we've heard. We didn't agree on it. I don't see a point in discussing it further.

Let's move on to the blue group. By the way, these are just my interpretations. If anyone disagrees, when I stop talking we can hear from them. A bunch of groups said, "RPMs should protect consumers and patients." I guess that's in the healthcare field, but there's nothing more specific on that—how they should protect consumers and patients—other than, I would guess, the general proposition that infringing domains can harm consumers if there are health-related-harm patients, if they're being operated with evil intent and purpose.

The next one: registrant data consideration. What's that about? I think that's about access to WHOIS, which is being discussed in another working group, one that's actually completing their work today: EPDP 2.

Then we've got a bunch of—we can continue scrolling down—trademark owners who don't think we've accomplished as much as they'd like. I appreciate the sentiment, but we can only put forward recommendation on which we can get consensus agreement in the end.

Next group. Let's stop at this ICANN Org one. I had noticed that in my review earlier today. ICANN says the highlighted portion: "For purposes of establishing consensus policies for all TLDs, it would be helpful for the working group to ensure that a final report makes clear how the recommendations are intended to apply as requirements for contracted parties and the other entities supporting the operation of RPMs." It goes on: "ICANN Org encourages the working group to be as specific as possible and to clearly identify whether a recommendation is a suggested operational improvement [or a binded] consensus policy." I think those are useful comments, and I'm going towards support staff to make sure that we comply with that request as much as possible in the final report, which we will be reviewing in just a few weeks.

Then there's a comment about Google forms. Somebody said the report is a product of a captured working group. I'm not sure he thinks captured it. I see pretty broad representation in this working group.

Well, complaints. Well, I'm not sure [inaudible] those complaints. Let me say this. We've reviewed the comments we got. I didn't see anything in here that wasn't raised pretty much during our internal discussions leading up the initial report or anything that would suggest a new recommendation we should consider.

So I'm going to stop right there and see if anyone thinks otherwise and believes that these comments in response to Comment Question #2 raise some need for us to consider some further recommendation for consideration.

I'm not seeing any hands, and I'm not hearing any voices, so I'm going to take that as acceptance of the view that there's nothing here which suggests further action by this working group and that we can close out our consideration of General Content Question #2. So be it. #2 goes by the wayside.

I believe that completes our agenda for this call. Is that correct, staff?

JULIE HEDLUND: Yes, that does complete the agenda for today.

PHIL CORWIN: All right. Well, I want to thank everyone for bearing with me as I experienced technical difficulties. Thank goodness my audio wasn't disconnected during that trying 20 minutes. So I think we made good progress today on the language on geographic indicators, and we look forward to hopefully seeing some revised language posted by next Tuesday, which we can leave on the list for 48 hours for final consideration and comment by working group members and hopefully close out one week from today [.] We've set aside trademark/TMCH Recommendation #7 at the request of one working group member. We're going to take that up on Tuesday. Staff will be circulating the rest of the agenda for next Tuesday, I'm sure, within the next few hours.

That's it. We made some decent progress today. We're going to be, as I said at the beginning of this meeting, meeting twice per week, 90 minutes per meeting; the same: Tuesday morning on the

east coast/Thursday afternoon on the east coast. You know the UTC if you're in a different time zone.

With that, I'm going to give you back a quarter-hour of your life to enjoy a summer day. We'll see you next Tuesday. Have a good weekend.

[END OF TRANSCRIPTION]