
ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs)
Tuesday, 27 October 2020 at 13:00 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

Attendance and recordings of the call are posted on the agenda wiki page:

<https://community.icann.org/x/UQjQC>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page:

<https://gnso.icann.org/en/group-activities/calendar>

ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the Review of all Rights Protection Mechanisms in all gTLDs PDP Working Group meeting being held on Tuesday, the 27th of October at 13:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the audio bridge, could you please let yourselves be known now? Thank you. Hearing no names, I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when that speaking to avoid any background noise. As a reminder, those who take part in ICANN multistakeholder process are to comply with the Expected Standards of Behavior. With this, I will turn it over to our co-Chair, Kathy Kleiman. Please begin.

KATHRYN KLEIMAN: Thank you so much. Hi, everyone. This is Kathy Kleiman and I hope you've had a chance to catch up on your sleep since the ICANN meetings the last few weeks. We are in our second to last

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

formal working group discussion meeting, and after this week we go on to the consensus call which we'll discuss in detail with Phil Corwin sharing on Thursday.

I wanted to say a special thank you to Terri and Julie and Andrea and everyone who supported us for so many weeks, months, and years in the working group with these morning, afternoon, and evening calls. So I wanted to make sure while I was chairing that I said that. Thank you.

Okay. We've done tremendous work and we come into the very last part of the final round. So first, let me ask: are there any updates to Statements of Interest? Any new hats that anyone had a chance to wear on these busy weeks as we attended the ICANN meeting?

GREG SHATAN: Hi, this is Greg Shatan.

KATHRYN KLEIMAN: Greg, go ahead, please.

GREG SHATAN: Hi. As of the end of ICANN69, I am now a member of the At-Large Advisory Committee. So that is my hat for the next two years.

KATHRYN KLEIMAN: Congratulations. That was a lot of 3:00 in the morning meetings for you, I think.

GREG SHATAN: Yes. Well, 3:00 was my noon and 9:00.

KATHRYN KLEIMAN: Everybody needs a new one, and black is still the new black. Thanks, Greg, for letting us know and good luck with everything. Maxim, go ahead, please.

MAXIM ALZOBA: I'm stepping down from the Standing Selection Committee for GNSO, basically, in a few days or right now, I'd say. It's reflected in my Statement of Interest on the GNSO website. Thanks.

KATHRYN KLEIMAN: Terrific. Thanks for sharing that. And thank you for your service in that important committee. Great.

I also wanted to see if anyone has anything for Any Other Business so we can allocate time at the end. Any hands raised for Any Other Business?

Okay. In that case, our agenda has been modified just a little bit. So you can see most of our agenda—number three, I'll just give a quick overview. Most of our agenda is dedicated to reviewing draft sections of the final report that should be largely very uncontroversial—the Executive Summary, the approach taken by the working group, community input, various annexes. But in the interest of transparency, the staff is reviewing all the changes with

us, and these changes really reflect what we've been doing in the last few weeks. So we will go through those together.

But before that, we did put out a call for factual changes and edits to the recommendation. We put out a call for Friday close of business for factual changes to the Recommendation sections, whether it was the recommendations or the context or the public comment. And then yesterday, we put out a call for factual changes to the sections we're going to be talking about below. So on Friday, we did get some edits and Paul Tattersfield had some suggested edits for us. So, Paul, are you with us on the call? We're going to spend no more than 15 minutes, and hopefully not even that, going through your edits and talking about them. We appreciate the conversation that took place as well on the list, which is a great way for us to do it. So, Paul, if you're with us, can you come off mute and just briefly take us through the edits?

PAUL TATTERSFIELD: Can you hear me?

KATHRYN KLEIMAN: Yes, I can. Great.

PAUL TATTERSFIELD: Brilliant. Thank you. Yes. When we started this process, we wanted to ensure that we had precise changes made and that—if we could scroll the page up a bit—we have the implementation language. That was the language which we worked with, and then we crafted the policy principles around the implementation

language. And we seemed to have moved further and further away from that precise language. I understand that the IRT needs flexibility and that sort of thing, but my worry is that in giving them that flexibility, we perhaps lose the precise nature of that language. And we see that in the context language that came with this recommendation as well. The other issue is –

KATHRYN KLEIMAN: Do you want to walk us down through the context language, Paul, which is below? Now we're looking at recommendation language. Okay. So the context language, let me just say, at least for me, I see strikeouts in red and new language in blue. I don't know if everyone else has seen the same colors. Paul, please go ahead and walk us through. The language isn't all that substantively dissimilar. So, go ahead, please. Why your edits help us.

PAUL TATTERSFIELD: Well, getting this right is quite hard and it took a lot of work getting the exact language right. And what's happening here is we're actually losing some of the new ones. I read Griffin's excellent comments on the list and I was going to post them today, but it's an hour earlier so I got caught out a bit. And what I was going to suggest was one it seems to be the most problematic; two and three, I think my language should be okay. I don't think there should be a problem with it. I understand Griffin's fear about not saying enough about trademarks, even though it is the dominant position. So perhaps we could just reword one and say trademarks and other source identifiers, which function as

trademarks, but not geographical indications and other forms of intellectual property. I think that would clear it up.

KATHRYN KLEIMAN:

Great. Thank you for introducing us. Let's go back up to the top, Paul. Also it already sounds like we can see the middle ground here, which is great. So let's go back up to the top. One of the things you're objecting to—and let me walk it through because I spent some time working on—is the term “TMCH Validation Provider”. Thank you to Julie Hedlund for posting us the notes from October 13. We didn't use this term “TMCH Validation Provider”. For those who live and breathe in this world, that's great and congratulations. But for those of us who don't, what we were talking about in the past were two in our notes of October 13 to reflect—and I quote from Julie Hedlund's posting of yesterday—“Staff will check as to whether it is ‘TMCH Operator’ or ‘TMCH Provider’.” So those were the two terms that we were talking about: TMC Operator and TMCH Provider. So I can see Paul Tattersfield's discomfort with TMCH Validation Provider. But, Paul, now that you've reviewed it at the end of the day, can you accept it? This is kind of a more formal, clear definition of Deloitte's role as opposed to IBM's role since they're both TMCH providers of sorts, but one provides the validation services and put things into the database, and one uses the database on the back end to run the TMCH, the Sunrise services. So can you accept that?

Staff, can you tell us what we're looking at, please? Oh, is this Mary's posting of yesterday? There may be hands raised. Let me check with someone. Okay. I see Griffin's hands raised. But first,

whoever posted this, would you like to explain what is highlighted?
Mary, go ahead, please, and then Griffin.

MARY WONG:

Kathy, it's Mary, I'm from staff. I will be speaking to this particular issue on behalf of staff. I just want to note before explaining the highlighted text that the role of staff is to facilitate the working group's discussions, and in that role, we're not just scribes. We provide subject matter expertise when appropriate and we also will provide clarifications and, if necessary, potential corrections for the record. That is part of our role and this is what I will be doing today.

Ariel switched over to this in relation to what you were just saying, Kathy, as to the Validation Provider terminology. As she noted in the chat, that's been used throughout the final report in portions that have been distributed and now completely by now, I believe, to the working group, as you said, is the distinction between validation and providing the database service. A similar term was used in the initial report back in March, and so to be absolutely clear as well as consistent, particularly where we're talking about recommendation texts, the staff strongly recommends going with the term "Validation Provider" in this case.

KATHRYN KLEIMAN:

Sure. Thank you, Mary. But I'm sure you could see that it is a new—at least for those of us who haven't been living and breathing the final report—it comes in as a new term. Sorry, Griffin, if it's okay, I want to go back to Paul Tattersfield for a

second to see if we may be in violent agreement here. Paul, are you okay with the new term, or do you want to continue to discuss it? We only have a few minutes.

PAUL TATTERSFIELD: I think perhaps we should discuss it.

KATHRYN KLEIMAN: Okay. In that case, I'm going to call on Griffin, and then on you. Griffin, go ahead, please.

GRIFFIN BARNETT: Thanks, Kathy. I really don't know why we're debating this. I mean, it's a term that has been defined. You know what it means. It's very clear. It provides additional clarity and accuracy and what we're talking about here. I really cannot have any objection, to be honest. And I put my other intervention about the other proposed change that Paul had suggested on the list—I guess it was yesterday—which will [inaudible] to the other red line that we were looking at earlier. And again, I frankly just don't think those changes are more accurate in capturing our discussion and the nature of our recommendations and kind of views and so forth than what was already there in the draft text that was initially there. So I don't want to rehash everything that I wrote in my e-mail but I really have to scratch my head as to why we're entertaining this.

KATHRYN KLEIMAN: Okay. Thank you, Griffin. Paul, go ahead, please. And also Rebecca Tushnet, if she has thoughts because she was also one of the key drafters of this recommendation and worked very hard on it. And we all—many, many people—worked on it. Paul Tattersfield, addressing both this term and the recommendation, and then let's go down to the context modifications below.

PAUL TATTERSFIELD: Right. Dealing with the term, I mean, the TMCH Validation Provider, what they actually do is they authenticate contact information and they do the verification of trademark records. Verification is very different from validation. It seems to me that that would be a backward step for rights holders, and especially in light of the lengthy working group discussions on what members felt should and should not be in the TMCH database and the necessity to draft the specific clauses to actually reflect the working group members' intentions.

KATHRYN KLEIMAN: Okay. Okay. Sorry, Paul. Hold on, hold on. So you think the term should be TMCH Validation/Verification Provider, but let me just check that we're talking about the same group. You're intending to refer to the front end. You're intending to refer to Deloitte, right?

PAUL TATTERSFIELD: I think it should be TMCH Provider or Operator, whichever you prefer. But the point is what they actually do as that function is they authenticate contact information and they verify trademark records. The actual validation of the trademark actually occurs at

the trademark office. So I think a lot of people will be misled and would believe that the validation rights holder's marks are actually being validated by the TMCH, and that's not what they're supposed to do. I think it's quite a dangerous term and I think we should stick with TMCH Provider alone.

KATHRYN KLEIMAN: But, Paul, doesn't that create an ambiguity as between Deloitte and IBM because we have to TMCH providers as we meticulously and a great time cut works through early, early in our work. One is the front end, one is the back end. So we do have to distinguish between the two of them, right?

PAUL TATTERSFIELD: I think you're right. And I think it should be TMCH Provider and the TMCH Database Provider, because the database provider isn't public facing.

KATHRYN KLEIMAN: Okay. So let's look at the definition that we've asked staff to provide. This is new. This is in the background section. This is footnote number four. So it's being used the first time the term TMCH Validation Provider is offered and for lack of any better—let me go ahead and read it. "TMCH Validation Provider is the official term to refer to the provider that operates the following functions of the Trademark Clearinghouse: the authentication of contact information and verification of trademark records. This term is used throughout the RPM PDP Phase 1 Final Report. Deloitte has been appointed by ICANN Org as the TMCH Validation Provider,

which operates the Trademark Clearinghouse verification services that check trademarks submitted for entry into the TMCH against the substantive and other criteria set out in the TMCH Guidelines. The other function of the Trademark Clearinghouse is the storage of trademark records in a database in order to provide information to the gTLD registries. IBM currently administers and operates the Trademark Clearinghouse database with which Registry Operators and registrars interact, i.e. to offer the Trademark Claims services and the Notifications of Registered Name.”

Okay. So, Paul, I think that is a definition that is—I’m seeing a lot of stuff in the chat, which of course I’m not reading because I was reading this—but to Paul and Rebecca, it looks like this is a definition you’re looking for. And quickly to Phil and Paul McGrady. Phil, go ahead, please.

PHILIP CORWIN: Can you hear me, Kathy?

KATHRYN KLEIMAN: Yes. I can, Phil.

PHILIP CORWIN: Good. I’m speaking in a personal capacity. One, I want to note that we’re almost at the 15-minute mark. Two, I want to note that Paul kind of feel too it should be on its own on this point when you look at the chat. And three, as we’re seeing on the screen, TMCH Validation Provider is the defined term throughout this report for Deloitte, and changing it in one area of the report now, when it

remains the same in the rest of the report, will only introduce confusion for the implementation review change. So I really don't understand this here. So far as these other changes in the context language, I agree with what Mary sent out yesterday. We need to retain number one in [parentheses] as prepared in the report. Paul has proposed substitute introduces legal inaccuracies. I can live with two and three, but we need to wrap—I'm not saying support for him. He seems to be on his own and we need to wrap this up and move on. If we can't resolve it now, we take it to the list and wrap it up on Thursday. Thank you.

KATHRYN KLEIMAN: Thanks. Phil, before you go, how much time do we have to wrap this up? Do we have two or three more minutes?

PHILIP CORWIN: I would give it no more than that.

KATHRYN KLEIMAN: Or else time's up. So let's give it two or three more minutes. It seems we can close it up. Thanks, Phil.

PHILIP CORWIN: Redefining terms at this stage of our work makes no sense to me.

KATHRYN KLEIMAN: Okay. First, I wanted to thank Paul as I've done in the chat for flagging that we needed the definition here and that the term had

changed. But per Rebecca's comment, Professor Tushnet's comment, let's go down. Staff, can we go back to the original document and let's look at one, two, and three of the context? The call is to get the context language right. And if we can compromise quickly and get this right, that would be great. Phil, I'm thinking that's an old hand.

So here what we have is not a line edit per se but kind of a slight rewrite of things. Staff has raised some kind of factual concerns about number one. Does anybody want to speak in favor of number two and three as revised? Rebecca or Paul. And then, Griffin, I see your hand. Rebecca, go ahead, please. Thank you.

REBECCA TUSHNET: Thank you. I'll just say out loud what I have said. It turns out to be really easy to introduce ambiguities. So my preference would be for something as cut-and-paste as possible. I think Paul's proposed language works. These are all terms that we've used before. But if we can't reach agreement, I honestly think we should cut and paste because it turns out to be really easy to screw this up, which is what how we got here in the first place. So I would prefer not to have new terms or slightly varying uses of terms in the context language. I think it would encourage deviation from the language that we worked very hard on. Thank you.

KATHRYN KLEIMAN: Rebecca, before you go, staff language for number one is "Mandatory RPM should be only for trademarks, not other types of

non-trademark marks, including geographical indications.” Can you live with that?

REBECCA TUSHNET: I think it’s confusing. It introduces marks, which is a concept that we’ve shied away from defining as it turns out, so I think it’s actually less good than the alternatives. I think everyone understands my position. Thank you.

KATHRYN KLEIMAN: Yeah, but we’re looking for language.

REBECCA TUSHNET: Yes. Sorry. I think Paul’s suggested language is fine. Or a straight-up cut and paste I think would actually reflect best where we ended.

KATHRYN KLEIMAN: Okay. Paul briefly, and then Griffin briefly, and it looks like this is going to bounce off to the list.

PAUL TATTERSFIELD: Quickly to try and take Griffin’s language and add it to my language in one and say, “Trademarks and other source identifiers which function as trademarks, but not geographical indications and other form of intellectual property.” I think that’s a good compromise. I think that covers everything. Thank you.

KATHRYN KLEIMAN: Paul, if you want to put that into the chat, that'll be great. Griffin, go ahead, please.

GRIFFIN BARNETT: Thanks. My main issue with Paul's suggested revision here was his change in part one from "Mandatory RPM should only be for trademarks," to "Mandatory RPM should only be for word marks." That's a big change and I don't think it accurately reflects the background and discussion here. So that was my main concern. If we retain "Mandatory RPM should only be for trademarks," and then go on to say, "not other types of non-trademark designations, etc.," that's less of a concern to me. And I think as long as we make clear that, in the other sections, other types of non-trademark designations perhaps is a bit more accurate and less confusing. But that's my main concern with that.

KATHRYN KLEIMAN: Okay. So you're willing to go with some language in two and three, which appears to be pretty minor. So non-trademark designations. Maybe put in chat if that's okay. Let's work on this. I think we're going to have to take this offline now since we are over time. Griffin, thanks for the wording change. We see the discomfort of Paul Tattersfield and Rebecca. Let see if we can make everybody comfortable with this context language that on a recommendation everyone worked so hard on. So thank you, everybody, for the good faith editing. Let's go on to easier stuff.

Staff, where's our agenda? What should we do? Okay. So now we're going to go through probably very quickly on a number of sections that are in the report. For some of us, they may be new sections because we haven't gone out and read them yet. For others, this has existed for some time. And staff is going to go through, hopefully, and highlight where the changes are and maybe I'll add some editorial commenting on some of it as well. Ariel, can I turn this over to you?

ARIEL LIANG:

Okay. Thanks, Kathy. So much of this Executive Summary, you've already seen in the initial report. We're using some of the content and repurpose them for this section. So for example, the Background and the text underneath is pretty much the same as what's in the Initial Report. And then under Deliberations and Initial Report, this content is new, but it's not super new because it's just talking about the procedure of the working group's deliberation. And so the first paragraph talks about the charter question and the working group started its work by refining them.

Then the second paragraph talked about the working group published its initial report for public comment, and the number of recommendations and questions and proposals posted on the initial report for community input. Following that paragraph, just talking about the number of comments received from contributors and the types of contributors provided public comment. Then after that is kind of the high-level overview what types of final recommendations the working group put forward in its final report. So there's three types. One for new policies or procedures, one

for maintaining status quo, and one for modifying existing operational practice.

The paragraph after that is a summary of overarching data collection-related recommendation, so it doesn't fall into that three categories, but this one just to have a quick summary, the background and origin of this data-related recommendation. And then another quick note, some recommendations contain implementation guidance language and referred to the specific section in the final report for details. Then on another quick paragraph to provide an overview of the consensus designation are for the final recommendations. As you can see the content is TBD. We will fill this out after the consensus call completes.

So following that is another quick paragraph just to talk about the working group also referenced CCT-RT recommendations, as well as the EPDP Phase 1 recommendation and the Wave 1 report. And additional detail can be seen in the background section in the final report. The final two paragraphs under this Section 1 is talking about the working group does not have a formal recommendation related to the ALP but does provide some suggestions in this regard and that is placed under the Charter Question Annex for additional details.

Then after that is the working group didn't have a specific recommendation for additional marketplace RPMs and then point to the section for additional detail for its deliberation. And here you can see TMCH Validation Provider is first mentioned in this final report. So we inserted this footnote that Kathy walked through earlier. It's not in Background but it's an Executive Summary, here to provide the definition in this section.

So following this section is the Conclusions and Next Step. That's just a boilerplate sentence. It's a standard sentencing, "The final report will be submitted to the GNSO Council for consideration and, if approved, forwarded to ICANN Board for approval as an ICANN consensus policy." The final section is such you highlight some additional relevant section in the final report and call that to the attention of the reader. We just kind of expanded on the second bullet point to mention that the six overarching charter questions is also contained in the Charter Question-Related Annex and the reader is welcome to reach the conclusion of the working group regarding these charter questions. So the other content is the same from the initial report.

So that's all for the Executive Summary. I know there are a lot of chat in the Zoom room. I will look at that afterwards. Thank you.

KATHRYN KLEIMAN:

I don't think the chat relate to the Executive Summary so I think we're good. I think it's continuing the former discussion. Ariel, thank you. This may be the easiest part of our work is kind of taking a fast look at the Executive Summary. Technically factual changes to this were due yesterday, but if anyone sees anything glaring, please let us know. Otherwise, it's really more for our review to see what we're putting out to the public. I like this new definition. Whatever the term is that we decide on, I like the new definition. So thank you for adding that. Any comments on this? Any hands raised? If not, thanks, Ariel, for the excellent presentation. Let's go on to the next item, which I think is approach taken by the working group. Yes. Okay. Similarly, Ariel, could you walk us through this?

ARIEL LIANG: Of course. Thanks, Kathy. Again, much of the content of this section is the same as that in the initial report, and I will just highlight what's new here. So the first one, what you'll see Annex G Community Input is just for staff to confirm the numbering of the annex is correct when we compile all the sections together in one report.

Then the second part that's highlighted is under the Sub Teams section, the introduction of the different sub teams and their functions. So we added number six. And if you recall, there were two sub teams that were tasked to review the public comments on preliminary recommendations and provide suggestions for consideration by the full working group, so we added that here and that was created after the public comment closed. Accordingly, you see we added the two bullet points for the subgroup A and subgroup B's wiki and mailing list for the record.

Following that is Data Gathering and Review section. Similarly, we want to check the Annex numbering is correct after we compile the whole report. And then you see there's highlighted paragraph here and that's just another time to summarize the origin of the overarching data collection-related recommendation because we are in the Data Gathering and Review section. So we think it's helpful to also mention that there's a particular recommendation in that regard.

KATHRYN KLEIMAN: Ariel, can I ask you a question about this?

ARIEL LIANG: Sure.

KATHRYN KLEIMAN: Okay. Although the working group engaged in extensive data collection analysis efforts during its deliberations and encountered challenges in obtaining sufficient quantitative data as opposed to anecdotal reports concerning the effectiveness of Phase 1 RPMs—absolutely true. But is there anywhere where we talk about the analysis group report and that we started with a certain amount of data?

ARIEL LIANG: Yes, because this particular paragraph has been repeated several times in various part of the report. In the Background, there's a section about data related to exercise, and then under the overarching data collection recommendation, the contacts also provide that additional details. So this is just another iteration and we don't think it's necessary to copy-paste the exact content several places in a report. So here we just put a high-level kind of summary here. The reader will definitely find the mention of analysis report and all these things in the final report. And you can see under this section, there are so many bullet points that mention the data the working group has reviewed and analysis group's report is included there.

KATHRYN KLEIMAN: Great. Thank you. Thanks for taking the interruption. I didn't want to bring us back here. Back to you. Thank you.

ARIEL LIANG: Thanks, Kathy. So after that, the final new section is under Charter Questions. Here is a paragraph that's also repeating that the working group did ask public comment for the six overarching charter questions and received input. And during its finalization of its final recommendations, it has taken into account the public comment received. It also points people to the Annex of the Charter Questions to look into the detail of the working group's conclusion for all these charter questions. So that's the final part that's new.

KATHRYN KLEIMAN: Coming off mute. Certainly, we did spend a lot of time on the charter question so that's an important paragraph to include. Going back to one of the first things that you said, the additions of subgroups A and B doing the first pass on the public comments, we cannot forget them. With that we could provide flowers, accolades, or drinks to David McAuley, Zak, and Paul McGrady for being the Chairs of those subgroups, did such a phenomenal work. Any thoughts, reflections, edits, or should we go on to the next section?

Okay. I think the next one is an Annex of Community Input. Back to you, Ariel.

ARIEL LIANG:

Thanks Kathy. This is another boilerplate Annex to be included in the final report and we're following the final report template. So the only new section here is we added the public comment forum on the initial report. And the text under here, they are not really new because we're just repeating what you probably saw in Executive Summary about the number of recommendations and proposals and questions published in the initial report for public comment. So that's the first paragraph. And then the second paragraph talks about the public comments received from the 55 contributors, and then we linked to the Google Spreadsheet that display all of the comments. Then the final paragraph talks about the working group used a set of public comment review tools to deliberate on these public comments, and then the link is to the wiki page where we posted all the tools for the subgroups and the working group to review public comments. So all this content is pretty much standard and factual and that's pretty much it.

KATHRYN KLEIMAN:

I guess we don't want to add any editorial commentary that in the very dark days or the early closures of COVID, we still got 55 comments, which is rather extraordinary. But I guess we don't have to add that or footnote it. Thank you, Ariel. Any edits, thoughts, questions from anyone in the working group? If I miss a hand up, please let me know. Okay. Thank you so much. Okay. Community Input, we go on to the Annex of Working Group Documents.

ARIEL LIANG:

Thanks, Kathy. Again, this is pretty much the same content and what we add here are the additional tools and documents the working group used during its deliberation of public comments. First highlighted in this, that's new. We just want to put that the working group used a number of documents to also review and analyze public comments.

Then under the URS Documents, the first bullet point is new and that's the document related to the EPDP Phase 1 Recommendation #27 Wave 1 report. You'll probably recall that there was a table that was circulated to the working group mailing list and was referencing the working group meeting in August in regard to these Phase 1 EPDP recommendations, so we added this here for the record.

Following that is a whole new section. It's the Public Comment Review and Analysis Documents. So all these bullet points are referring to the public comment review tool, the Google Spreadsheets that you probably remember, as well as the Analysis document where we recorded all the sub groups' and working group's deliberation on these public comments and summarized them on those Google Docs. So we just included all of them here for the completeness of the record. So that's pretty much it for the new content in this section.

KATHRYN KLEIMAN:

We can only imagine how many scholars in the future are going to go through our tables and analyze what we did 10, 15, 20 years from now. So thank you. So the Public Comment Review and Analysis Documents then have kind of the whole process that we

worked through, the TMCH, the Sunrise, the Trademark Claims, and the PDDRP for Trademarks. There was a lot of work there, that's about two years worth of work. So thank you for that new section. Anybody want to take a longer look at it? Otherwise, I think we're almost at the end. Go ahead, Ariel. Thank you. The Status of This Document.

ARIEL LIANG:

Thanks, Kathy. So this content will be put on the cover page. We're actually the cover of the final report. So it's just to provide a very quick sneak peek of the content of the report. So status of document, that's a boilerplate content just saying this is the final report of the Phase 1 RPM PDP and covering the RPMs applicable to the gTLDs launched under the 2012 New gTLD Program and has been submitted to GNSO Council for its consideration. And the preamble is talking about what are the main content in this final report. It's including the recommendations, the three types of the final recommendations, their implementation guidance if it exists, and associated consensus levels of all the final recommendations. And then also another sentence to highlight some additional sections in this final report, including the deliberation related context, and background for its final recommendations. So these are pretty standard, just based on template kind of content.

KATHRYN KLEIMAN:

It does look pretty standard. Any comments, edits, thoughts? Terrific. Thank you. And finally, Next Steps.

ARIEL LIANG: Thanks, Kathy. As you can see, the Next Steps is just one sentence—oh, actually, two—and talks about the final report will be submitted to the GNSO Council for consideration and approval, and if adopted, will be forwarded to the ICANN Board for consideration and potentially approved as ICANN consensus policy. So that's it for the Next Steps.

KATHRYN KLEIMAN: Great. Thank you. Are there any other sections? Well, first, any comments on this very short section? So we go out to the GNSO Council for consideration/approval, and then up to the ICANN Board. And if it goes through then most of what we've decided becomes ICANN consensus policy.

Wait. Actually, let me ask a question. The URS does not become ICANN consensus policy. Is that something that should be noted in Next Steps?

ARIEL LIANG: I see Phil and Griffin have their hand up. But then from staff's perspective, it shouldn't be noted in particular. Perhaps Mary or Julie can provide a further input on that point. But I note that Phil and Griffin have their hand up.

KATHRYN KLEIMAN: Thank you for noting that. Phil, go ahead, please. Thank you. Phil, if you're speaking, we can't hear you. Alas, we still can't hear you.

Let me go ahead and call on Griffin, and then we'll circle back to you. Griffin, go ahead, please.

GRIFFIN BARNETT: Great. Thanks, Kathy. I just wanted to note something that maybe is a potential ambiguity in this section. The first sentence says, "Will be submitted to the GNSO Council for consideration and approval," and then later we say, "Will be forwarded to the Board of Directors for its consideration and potentially approval as an ICANN consensus policy." Does that mean potentially as in the Board may potentially approve it, or potentially as consensus policy? I find it a little confusing, a little bit inconsistent with the first sentence where [inaudible] that the Council would approve it. So I just wanted to point that out.

KATHRYN KLEIMAN: Can I just ask—and I haven't asked staff of this—how would you phrase it, Griffin, so that it makes sense?

GRIFFIN BARNETT: I can't work that out on the fly here.

KATHRYN KLEIMAN: Okay.

GRIFFIN BARNETT: I guess I would just say the final report will be submitted to the GNSO Council for its consideration and potential approval. So add

the word “potential” for approval. If adopted by the GNSO Council, the final report will then be forwarded to the ICANN Board of Directors for its consideration and potential approval.

I take your point about the consensus policy. I guess anything that’s adopted by the Board—does that make it automatically consensus policy? I guess the consensus policy can be that something isn’t the consensus policy, I don’t know. Maybe. Do we even need that? I don’t know. I know it’s sort of formulaic.

KATHRYN KLEIMAN:

Okay. Just a quick note, anything adopted by the ICANN Board is not automatically consensus policy. Consensus policy, as I understand it, through the GNSO—I think it may be different to the ccNSO—is something applicable to all gTLDs. So the New gTLD Program, by definition, was not consensus policy because it didn’t apply backwards to legacy TLDs. But anybody can correct me if I’m wrong on that.

GRIFFIN BARNETT:

Sorry, guys. This is Griffin again. I just wanted to come on again quickly just to note Paul McGrady made a good point, I think, in chat. I don’t know, maybe it is or maybe it isn’t, but we’re talking about the next steps here and really the one next step is submission to GNSO Council. Do we even need to include the second sentence about what happens after that? Or ... I don’t know. Again, I’m just kind of thinking on the fly. But again, I don’t have a strong feeling either way but anyway.

KATHRYN KLEIMAN: Excellent point, Paul McGrady. Or maybe a period after “for its consideration” period, without talking about what the status would be of that approval. But there’s support for removing the second sentence. Excellent. Phil, can we can we hear you now? Alas. Staff, can do we a dial out to Phil?

PHILIP CORWIN: No, no. I’m back.

KATHRYN KLEIMAN: You’re here. Excellent.

PHILIP CORWIN: Yes. I only unmuted once, not the double unmute. I think I’m agnostic on whether we keep the second sentence or not, but I’m troubled by the use of the term “consensus policy”. One, it’s not the report that becomes policy, it’s the recommendations in the report and that distinction. Second, we only considered one of the RPMs to become a consensus policy, which, in my understanding, that term is something that’s mandatory for all gTLDs and that was the URS. While it had substantial support, there was a substantial opposition that didn’t make it over the line. So I think that term “consensus policy” is misleading when the recommendations are for modifications of the RPMs that will apply to the next round of new TLDs, but are not mandatory for legacy TLDs. So we need to do something with that sentence to eliminate any possible confusion created by that term “consensus policy”. Maybe we could just end it “and potential approval” and stop there. I don’t

know. I think that clause introduces potential misunderstanding and confusion. Thank you.

KATHRYN KLEIMAN: Terrific. Thanks for everybody's commentary on this. Over to Mary. And this is one of the reasons we do this together, it's very hard when you're drafting these things to see everything. So over to Mary. Are you happy with the edits that are being offered?

MARY WONG: Thank you, Kathy. It's Mary from staff. Thank you, everybody, for the suggestions. As we've noted in chat, we will check for any inconsistencies to make sure that things are as clear as possible, in addition to any kind of spelling or grammatical or typo errors. With respect to this particular paragraph, I just want to explain that this was taken from the template that was used for other PDP final reports, including the EPDP. But in looking at it—Ariel, Julie, and I—we're glad that we're having this conversation as well with you all based on what you've raised.

One difference, of course, is that in this particular PDP, we do have a number of recommendations to maintain the status quo. As Phil noted, there was a specific question about consensus policy for, say, the URS. So one of the things that we do want to highlight is that we think it is important to preserve the mention of the sequence. That is that the GNSO Council first has to approve the recommendations in the final report. Secondly, under the Bylaws, these are then sent up to the ICANN Board for its consideration and approval. So our suggestion is that we will take

back all your comments, certainly remove the mention of the “ICANN consensus policy” phrase and rephrase it such that that is no longer there but preserve the sequence from Council to the Board.

KATHRYN KLEIMAN:

Coming off mute. Thank you, Mary. It looks like there’s support for that. What I’d like to suggest is that on Thursday, we expressively look at this paragraph since so many people put in their comments and thoughts to it. Just very quickly go through whatever the final language is and take a look. Thank you for scouring the rest of the document for any of this kind of template language about consensus policy. Because as Phil said, we’re applying to the new rounds of gTLDs. That’s where these policies will apply. Terrific.

So Phil says, “Should we add anything about IRT implementation if the Board approves?” And Mary responds that probably it won’t be necessary as an IRT isn’t mandatory. But it’s very needed in this case, especially as our—I’m not saying Mary’s wrong—but just an Implementation Review Team will be absolutely critical as our recommendation from the RPM Working Group merge with the Subsequent Procedures, rules for the rest of new gTLD’s Subsequent Procedures has been talking about the IRT for years now. So we are definitely going to a major Implementation Review Team on this.

Okay, terrific. Well, we can end early or maybe put to bed a few issues that are outstanding. But first, to staff, is there anything else you’d like to present? It does look like we are at the end of the sections we agreed to review. Let me just check that with you.

ARIEL LIANG:

Yes, that's all we have. All of the sections of the final report have been reviewed. Just a heads up that after the consensus call completes, there will be an Annex dedicated to the consensus call designation and staff will put together that content after the process finishes. And another section of the final report is Minority Statements. That will also be compiled after the minority statements are received, and that will be included in the final report as well. But as you can understand, we don't have the content yet. But just a heads up that there were two additional Annexes to be included in the final report.

KATHRYN KLEIMAN:

Good point. Thank you very much for letting us know previous of coming attraction, things we will be reviewing as we wrap up. Since today is one of our last two discussion sessions, I am reluctant to end early if there's still work that we can do. So what I would like to recommend is that we use at least some of the remaining time to go through—Zak raised a question. Zak Mucovitch raised a question, which is an interesting one. It has to do with changes to the language of a recommendation. It seems to rise to the level of an important question, if Zak wants to pursue it. And also, perhaps we can go back to the language of Paul Tattersfield and Professor Tushnet and see if we can put that to bed, for lack of a better term. Zak, did you want to follow-up on the question that you raised about URS Recommendations #3 and 4? I know this is coming out of the blue. If staff has it, maybe we can take a look at it. But would you like to comment on that? You raised a question about language being changed, I think.

ZAK MUSKOVITCH: Hello? This is Zak, you can hear me okay?

KATHRYN KLEIMAN: Yes.

ZAK MUSKOVITCH: Thank you. So the other day I raised on the list a question regarding URS Final Recommendation #3 and URS Final Recommendation 4. In essence, what I was asking the group is it looks like the URS Final Recommendation #3 is exactly as we had contemplated and resolved in the recent calls on the language of proceeding issue. So in other words, this group resolved to change the procedure from one where the language of the proceeding ... We changed it so the language of proceeding is that of the Registration Agreement and we felt that that was the preferable route because at least it's the language that people signed up for when they signed up for their domain name. Then there's still an option for a registrant who objects to that to make his or her arguments with the examiner. And so that's perfect, Recommendation 3.

I think Recommendation 4 is also probably correct, but I asked the group whether it was the intention of the group to also change the Notice of Commencement. Because the Notice of Commencement was originally going to be in the predominant language of the registrant, and we had deliberated over that whole concept and we changed the language to actually reflect the provisions in the rule, etc. There is a perspective that's available

that Notice of Commencement should still be translated into the predominant language of the registrant, but the rest of the proceeding should be in the language of the registration group. But what Final Recommendation 4 does—and I think it’s probably correct, and Griffin and Cynthia who responded seem to agree with the Final Recommendation #4—what it says is that, “The Notice of Commencement shall also be in the language of the Registration Agreement, in addition to the language of the subsequent proceeding.” I guess it’s more of a clarification from staff was the idea here to ... Because I don’t recall us discussing Recommendation 4. I do recall us discussing Recommendation 3. Was the intention here, I think, by staff who may have reworded Recommendation 4 to make it consistent with Recommendation 3? That’s all what that is. Thank you very much.

KATHRYN KLEIMAN:

Thank you, Zak. And thank you to staff for calling this up. Let’s just ask, has there been a change to URS Final Recommendation #4? Obviously, it’s not a final recommendation until we adopt it. But has there been a change to the language in the text box since we last looked at it and accepted it? Like Zak, I seem to remember we talked about predominant language of the registrant. But let me ask him, maybe our recollections are fuzzy. Over to staff, if we could.

JULIE HEDLUND:

Thank you, Kathy. This is Julie Hedlund from staff. Mary, did you want to speak to this, or I can?

MARY WONG: Well, I just stuck my hand up for you. And I did want to note, additionally, that since this was not on the agenda, we apologize if working group members were not prepared for this. But, Julie, I think you're going to say exactly the same thing that I was going to say so please go ahead.

JULIE HEDLUND: Thanks, Mary. And I hope that's the case. As I've put in the chat, and as Griffin notes as well, this was discussed extensively by the working group when we were finalizing the recommendations, both the text for URS Recommendations 3 and 4. Staff captured the final language as agreed to by the working group and that is the language that you see. The working group had reviewed it, the changes from the working group were captured, and the staff has since not made any changes. So this reflects exactly what the working group agreed to.

KATHRYN KLEIMAN: Thank you, Julie. I'm noting Ariel's note that this is an updated recommendation and the working group is to prove the language. So I'm not sure we went through that step. It sounds like a good idea that we just flag this. Can we go back up to URS Recommendation #3?

JULIE HEDLUND: Just to interject, again, I hope to clarify. As it's noted, not only did we finalize the recommendations—so the working group

discussed them and staff captured those changes and those were all circulated after those discussions—but also, as part of the final review, the review of the final report text, staff also asked for working group members to raise any factual corrections or omissions. That discussion happened on the 13th of October. Nothing was raised concerning these two recommendations at that time. This is the text as of 13th October that was then also reviewed by the working group.

KATHRYN KLEIMAN:

Terrific. No blame being added. It's just a number of people's recollections, as David McAuley notes, that the language translation for #4 was into the predominant language of the country of the registrant. Can we go up to #3 briefly, which was very, very late language that we agreed to? "Late" meaning not late in terms of time, but late as in the order that we decided to this was, I think, when our final URS recommendation that we worked on which changes the language of the proceeding and makes it into the language of the URS, the administrative proceeding shall be in the language of the Registration Agreement.

My guess is that #4 was changed to reflect our agreement on #3, and that's what the note seemed to indicate as well. We're just flagging it for anyone who might have missed it. It does seem to be a major change. Does anybody want to comment on it? Let me check some of the things in the chat.

Okay. Zak, thank you for pointing that out. New facts are important too or old facts that people might have missed. Let's go back

down to #4, please, just to give everybody one more look at it. Now, the language of the notice will be in the language of the Registration Agreement as well as in English. The URS provider to transmit the notice of complaint to the respondent in English and translated into the language of the Registration Agreement. That's the consistency. Although for months, we were talking about it as the predominant language of the registrant because that's the current language of the URS policy.

Mary says, "To reiterate, the recommendations are consistent, and there were no new changes or language introduced by staff after the working group's agreement." Not implying that at all, I'm implying that the change to #4 based on our acceptance of URS #3 might not have been processed by everyone who had worked on these for so long.

So thank you to Zak for pointing it out. And thank you to the working group and staff for walking us through it. Anybody want to comment on this? Am I missing any hands? Phil, go ahead, please. It looks like Phil's hand is down. Okay.

PHILIP CORWIN:

I was going to say something but it seems like we're at the end of this discussion with no change. This is a language we reviewed previously, it seemed acceptable. There was e-mail exchanges between Zak and Griffin, where Zak—I don't want to speak for Zak, but he seemed relatively satisfied. Recommendation 4 ensures that the registrant is going to get the notice of complaint both in the English and in the language of the Registration Agreement they entered into. So they should be able to

understand the complaint one way or the other. So I think the registrant who's to respond to them in a URS proceeding is going to get meaningful notice, provided they've given accurate contact information. Thank you.

KATHRYN KLEIMAN: Terrific. Thank you, Phil. Thank you, everyone. To the extent that people didn't know about this change, even if we discussed it, it's important that we all know what our final recommendations are and changes after we had talked about a final recommendation like #4 for so long and then revise it slightly.

Okay. Zak says, "All fine. Thanks, everyone." Yes, thanks, everyone.

So now, we still have half an hour in our meeting, which is an incredible luxury. So absent objection, and maybe even with some objection, perhaps we can circle back to Paul Tatterfield's edits with Professor Tushnet. I forget what number it was, but our discussion of the GI recommendation. I know staff is going to be looking for this. The fastest way to do this might be for people to suggest some quick edits after having had the better part of half an hour to think about it and see if we can decide, rather than losing half an hour, very valuable final time. But I see Mary's hand is raised. Mary, go ahead, please, and then Phil.

MARY WONG: Kathy, we will see to Phil but I'll just point out that Julie's noted in the chat that we have taken the action item to change the

contextual language per Paul's suggestion and Julie's reproduced that in the chat, but then I'll put my hand down and defer to Phil.

KATHRYN KLEIMAN: Great. Thank you. Let me read what's in chat.

PHILIP CORWIN: Let me read the action item before I say anything. Kathy, I think the proposal from staff was to keep—we're not looking at the language now on the screen so it's awfully hard to speak about it. We're still looking at the language guidance on the screen, not what's in the TMCH. But at any rate, unless we can get some quick acceptance by the proponents, so the recommendation that we adopted basically with Paul Tattersfield and Professor Tushnet. Now, I would not be in favor of trying to do any extensive editing on the fly, I think it's always dangerous to do so. We're doing it orally, there's very little time to reflect on it, doing it on the list right now. So I know Mary had a suggestion in the e-mail and I'm going to just try to find that if you'll bear with me.

KATHRYN KLEIMAN: Phil, it may it may be in the text. Apologies to everybody, it would just be nice to finish this up if that is possible, rather than leaving it for another day when we move in short of other discussions. I'm hoping that –

PHILIP CORWIN: Mary's suggestion on the contextual language, which is we're not changing the recommendation, was that we keep the report language after parenthetical one and probably could accept the proposed changes on two or three. If that's incorrect, Mary, you can correct me. But if that's acceptable to Mr. Tattersfield and Professor Tushnet, I think we can wrap it now. But if we're going to talk about any editing beyond that, I think we should take it to the list and work it out carefully with the ability of other working group members not on the call to weigh in and hopefully have something that's acceptable that we can just rubber stamp it with a mark of approval on Thursday. Thank you.

KATHRYN KLEIMAN: Thank you, Phil. Briefly, to Paul Tattersfield and to Professor Tushnet, would you like more time to review, or do you find the edits acceptable? I'll just note, Griffin, I thought had indicated that we might change "not marks" to "not designations" or other source identifiers. I'm not sure that language was there. So designations versus kind of the ambiguous word for marks, if I remember correctly. Professor Tushnet, Paul Tattersfield, the floor is yours if you want to comment briefly before we wrap up this call. Professor Tushnet, go ahead, please.

REBECCA TUSHNET: Thank you. I think we probably should circulate this to the list just to be sure. Other than that, I think my position on this is clear. Thank you.

KATHRYN KLEIMAN: Okay. If I understand correctly, this is now a combination of language that staff wrote and that Paul Tattersfield edited. I note that there's also the word marks in that first sentence. "During its deliberation, the working group coalesced around the following ideas. One, mandatory RPM should only be for trademarks, not..." And then the question is that, can that be a different word instead of marks. I see it's changed further down. Okay. We will circulate this on the list. Let me ask—oh, Paul, go ahead, please.

PAUL TATTERSFIELD: I was just going to say great idea, send it to the list, because we don't want to get something in there that's wrong. My wish was just that we use the language of two and three that I suggested before and we just put the new one in, because I don't think two and three were particularly contentious. I think Mary circulated it in chat today, the new one. So thank you.

KATHRYN KLEIMAN: I think staff has done that and I think that's the intent. So, Paul, please check and see if that's the case and confirm that on the list as this language goes around. But I think it's now a merger of context language. Thank you, everyone, as always, for the close attention to this TMCH recommendation. Let's go back up to the top of it for just a second because I don't think there are any changes, except that we've now defined what a TMCH Validation Provider is. Just so everyone could see it, this is TCMH Final Recommendation #1, with the last of the edits going on. I think that is our only open or even slightly open recommendation. Let me check. I don't think Brian's on the call. Should we close this

meeting or is there anything else to do? Let me ask staff as well. Or do we get to give everybody back 20 minutes of their –

PHILIP CORWIN:

Phil here. Subject to staff unless they have something—I'm seeing Julie saying nothing more to do. We can give everyone back the remaining 19 minutes of their life to prepare for their next Zoom call or whatever their plans are for the day. We look forward to wrapping things up with the final working group meeting on Thursday at the usual time and place.

KATHRYN KLEIMAN:

Usual time and place with you chairing the meeting, which will be great. A special thanks to staff for so much effort and attention and writing and editing and referencing. Incredible, incredible work. Thank you for sharing it with all of us and being so patient as we seek to understand it well and add our thoughts and edits.

So, everyone, wishing you a good day and a good week. We'll see you on Thursday. Thanks so much.

JULIE HEDLUND:

Thank you very much, Kathy, for chairing and thank you all for joining. This meeting is now adjourned.

[END OF TRANSCRIPTION]