**ICANN Transcription**
**Review of all Rights Protection Mechanisms (RPMs)**
**Wednesday, 15 July 2020 at 17:00 UTC**

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JULIE:                          Good morning, good afternoon, and good evening. Welcome to the Review of All Rights Protection Mechanisms (RPMs) in All gTLDs PDP Working Group call on Wednesday, the 15th of July, 2020.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room.

I would like to remind all to please your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid background noise. As I reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior.

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

KATHY KLEIMAN:                 Thank you so much, Julie. Hello, everybody. This is Kathy Kleiman. Of course, this is our full working group meeting of the RPMs. Looks like a small group today, and maybe, as we head into the summer, this will

become the norm. But hopefully not. Hopefully, people will continue to join us today.

I wanted to do three … Well, first, let me ask for any updates to statements of interest.

Okay. Seeing none, I want to do three quick announcements. The first, for everybody in the United States, is I wanted to wish you Happy Tax Day. Hopefully, you have your filings in. I walked mine down to the post office this morning.

The second thing I wanted to do is announce that we have a new associate member of the working group. Brian Beckham and his wife have given birth to a baby last week, so we wish them all the best and great health and happiness. Brian, I hope you don't mind my sharing that.

Then—we'll talk about it at the end also … Yeah, it's wonderful news. Looking at the chat. Staff is going to post the e-mail of our new schedule for the rest of July and perhaps August as well.

Julie, could you just walk us through what's about to happen with the new Tuesday and Thursday meetings? We have cancelled the Wednesday meetings through the rest of July. So over to you for a quick overview. Thanks.

JULIE HEDLUND:　　　　　Thank you, Kathy. Just [to recap the message that we sent around earlier this week, given the amount of the work that the working group has before it—in particular that it will need to take up items deferred to

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it from Subgroup A and Subgroup B— the Co-Chairs along with staff, in reviewing the workplan, determined that there would need to be an additional working group meeting each week—so two weekly meetings—and moving to that schedule next week. In order to allow a day between those two meeting so as not to have them be back-to-back days, we picked up the time slot that had originally been used for Subgroup A (13:00 UTC), beginning on the 21st of July, then also the timeslot on Thursday that had been used by Subgroup B that start[s] on the 23rd of July at 17:00 UTC and continuing those two slots through the end of July—so also on the 28th of July at 13:00 UTC and the 30th of July, that Thursday, at 17:00 UTC. These are all 90-minute calls. We'll see how the working group is doing through its workload before we come out with the August schedule and determine whether or not there needs to be adjustments, although we do anticipate there will very likely be a need for continuing two meetings per week in August as well, given again that we're trying to accelerate the schedule to produce the final report by mid-September. In order to do that, we'll need quite a bit of work in August, too.

But this is what we have for July. Do let us know if you have any questions. Thank you very much.

KATHY KLEIMAN: Terrific. Thank you, Julie. So please set your calendars for these new times.

Moving on to our agenda, if you could post, please, we are, just an overview for what we're doing today, revisiting URS Individual Proposal

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#33. We have a new proposal on TMCH Proposals 4 and 5. So we'll be going back to that. Thanks for those who worked on that during the week and shared it. Assuming we finish this, then we do TMCH Individual Proposal 6 and 7, and, if we have time, we go on to Overarching Questions 1 and 4, skipping #2 because that's likely to have a longer discussion.

Julie, I think we should move on to URS Proposal #33. We spent a good amount of time on this last week when Phil was chairing, and we brought this back as promised. This was brought back to the coaches, to the leadership team discussion, on Monday.

Julie, would it appropriate to ask you for an update? I'll just read URS Individual Proposal #33. This one is that all current and future URS providers should be brought under formal fixed term contract with ICANN instead of the current arrangements—the MOU for URS providers. These contracts should not have presumptive renewal clauses. Then we had asked some questions about, what other elements might you have/might you want? But there wasn't a lot of consensus or support on these other elements. And there wasn't a lot of support, necessarily, for no presumptive renewal. But, Julie, do we have a summary coming out of the Co-Chairs' group on this?

JULIE HEDLUND:          Kathy, actually, I thought, as it stood, the Co-Chairs were going to report out themselves from their discussion earlier this week on Monday. I think that there was a suggestion for a slight modification to the proposal. We're just scanning through now just to show you all the

public comment deliberation summary from last week's working group meeting. The action item from that was for the Co-Chairs to have a further discussion on #33 and then to come back with a suggestion of how it might be modified in a way that might be more likely to gain consensus in the working group [inaudible] to be a recommendation. So, as you see before you, there's the summary of the deliberation from last week's working group meeting.

KATHY KLEIMAN:    Okay. Terrific. Thanks, Julie. I was wondering if Phil or Brian would like to speak to this.

Phil, go ahead, please. Thank you.

Phil, if you're speaking, you may be double-muted.

PHIL CORWIN:    When of these days, I'll remember to double-unmute rather than just a single unmute.

KATHY KLEIMAN:    It feels very unfair.

PHIL CORWIN:    Yes. I always unmute my phone but sometime I forget about clicking on my screen.

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As you called on me as a Co-Chair, I don't recall the Co-Chairs reaching any firm conclusion on this, so let me share my personal view, which is the same one that I expressed in the Co-Chair discussion. Maybe it'll be a good way to kick off discussion. When I look at the proposal, the one thing that's clear is that the proposal is for the current MOU, which I would observe is a form of contract. It's a rudimentary contract, but an MOU is an enforceable document. The current MOU is open-ended. Once accredited, a URS provider doesn't have to go back in any … There's no requirement for them to go back and get reaccredited for ICANN. There's no requirement for ICANN to review their performance on any periodic basis.

So I think the one thing that's clear from this proposal is that the contract, whether it's an MOU or something more elaborate, should have a fixed term and, towards the end of that fixed term, ICANN should evaluate the provider's performance during it and factor that into making a decision on whether a new contract or renewal or however it's done [and] whether the URS provider should continue to be accredited to provide that DRP service.

The presumptive renewal … Personally, that's a registry agreement concept. I'm not sure it's applicable to DRP providers. In any event, if you're going to have periodic review and a decision made on past performance, I think it's probably not worth debating the key things to get a regular review of the provider's performance.

So far as what additional enhancements or elements should be added to the current MOU to make it a more robust contract, I have to say that, while we did ask for comment on that and we got some suggestions, I

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don't see how … Many of the suggestions we received were identical or similar to proposals or concepts that were visited within this working group in the form of developing working group recommendations or individual proposals. I don't see how any individual proposal, other than maybe going from open-ended to fixed term … To bring any of those concepts … I think, to the extent they were revisited and are represented in working group recommendations going to consensus call, well, those are enhancements of the current agreement, and we've done quite a few. But I don't see how we can bring them based on just responses to a question on an individual comment.

That is a bit longwinded, but in the end, I think, if we're going to conclude anything from this it would be that going to consensus call should be a proposal, a working group recommendation, that the agreements between ICANN and the DRP providers for the URS should have a fixed term and that ICANN should review past performance when considering extensions or renewal of the contact. I really don't think we can further based on the responses we received to this individual proposal.

KATHY KLEIMAN:          Great. Thank—

PHIL CORWIN:            But, again, that's an individual view and not a representation of any agreement reached among the Co-Chairs. Thank you.

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KATHY KLEIMAN: Phil, before you leave, would you like to move that forward as a recommendation? We are the full working group but we're doing the first pass here. I agree, not as a chair but having been in that meeting, that this as the summary that you've said. Changing the open-ended to a fixed term with regular review of the URS providers particularly at renewal time was what we discussed, even if there wasn't full agreement, because that's not what our goal was at the Co-Chairs meeting. Would you like to put this forward as a recommendation?

PHIL CORWIN: Well, yeah, this is wordsmithing on the fly, but I think, very simply, one way to approach it would be to say, "All current and future URS providers should be brought under a formal fixed-term contract with ICANN, with ICANN required to review performance during that term prior to making a decision on extension or renewal of the contract"—something like that.

KATHY KLEIMAN: Thank you, Phil. I know staff is taking note. Thank you. Given that we discussed this extensively in the last meeting and that it has now been boiled down to its essence, do we need more discussion? I'm asking everyone assembled. Do we need more discussion or is this one that we can go ahead and raise to the level of something to be considered for recommendation consensus call?

Brian, go ahead, please. And hopefully you're getting some sleep.

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| BRIAN BECKHAM: | Yeah. Thanks. We're figuring it out. I hesitate to say this, but I'm not sure if this is really a comment in a co-chair or personally capacity. I feel it's more the former. I feel, with this one, unlike some of the other ones, if people on the call will recall, where there seemed to be some public comments there in response to a proposal that some rounding off some rough edges could get that across the consensus finish line, this doesn't feel like it's in that same category. I feel like we're wandering back into a substantive discussion. |
| | So my suggestion would be to leave it as is, put it to the group for purposes of consensus call, and let it do what it does. |
| | I would just note, on the substance, that I completely agree with Phil that a MOU is a contract. If you look at an MOU for URS providers—to be clear, WIPO is not one—there's a clause which allows ICANN to terminate that agreement on 60-days' notice after an assessment of non-compliance with the MOU. So I feel like this one didn't quite have the, let's say, public comments which would help shape it in a more consensus-oriented direction. So I would just leave it as is and let the working group take a vote on it. Whatever happens, happens. Thanks. |
| KATHY KLEIMAN: | Okay. Brian, before you leave the call, so you want the text as it is with the no-presumptive renewal and all of that, rather than as with the rough edges filed down the way Phil did it? |

BRIAN BECKHAM: Well, the reason I say that—I apologize; I'm on my phone, so I can't flip back and forth between the Excel sheets—I think most of the comments went to more substantive concerns with providers and things of that nature versus merely the timing aspect of it. So it didn't feel like this rounding off that rough edge of the presumptive renewal really was at the core of the public comments. I understand why Phil suggests that: to see if that's some sort of a middle ground. I probably would look at it a little differently, but if that's what people on the call find a good way forward, then so be it.

I do agree with one of the comments in the chat. This is a personal comment. I feel like this is really a solution in search of a problem. Thanks.

KATHY KLEIMAN: Okay. It sounds like, if we're going to move anything forward based on what Brian and Phil have said, I believe, as members of this working group, we could bring forward both the full individua URS proposal and the clarified, refined version that Phil put forward and see if any of that goes forward to consensus.

I'm not sure we need to talk about this further, but if other people want to, we're certainly here.

Hand up from Julie. Go ahead, please.

JULIE HEDLUND: Thank you, Kathy. Just to clarify something for the staff, what we've been doing or trying to do in capturing the working group's

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deliberations on these proposals is to note those that rise to the level of a recommendation for consideration in the consensus call, not something to be considered for further working group discussion but moving it then, if it is indeed a working group recommendation, on to the consensus call.

I'm a little confused because here we're suggesting to move to two possible recommendations for further working discussion? Because it doesn't make sense to us to have, say, two separate and very similar recommendations going to consensus call. So I'm not sure I understand what the direction is. Thank you.

KATHY KLEIMAN:     Julie, can you post—Susan, I see your hand is raised—the donut and the comments on URS Individual Proposal #33? Thanks. Let's remind everyone that there was a question that asked about additional elements, but it wasn't the main focus of this proposal. The main focus of the proposal was that all current and future URS providers should be brought under formal fixed-term contract with ICANN instead of the current arrangements. Then it went on with that the contracts should not have any presumptive renewal clauses.

Can you page down to some of the comments of support? Those that did support it—again, we reviewed this at length last week—are a range of both commercial and non-commercial group (the [B]C and the NCSG), and it just seemed like a step towards accountability, reading the [Yale] comments. The common theme of the comments seemed to the fixed term, not having an unlimited term, not the presumptive renewal,

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which I think I where Phil gets the refinement from. So we do have a lot of support on that. As Phil mentioned as I echoed, there didn't seem to be a lot of support on any additional elements.

Susan, go ahead, please.

SUSAN PAYNE: Thanks, Kathy. I put my hand up before Julie really started talking just because I'm really confused about what we're doing. You've sort of clarified, but I'm not quite sure why we would put two proposals to a consensus call. I mean, what would happen if we got consensus on both of them? I don't understand what our process is. I thought the idea of these individual proposals to see whether they, from the comments, were getting sufficient support and, if necessarily, that, as a group, we would have to discuss them further and make them into a recommendation or not. But I don't see how we can just randomly start tweaking them and not discussing them and then put in two different versions to the group for a consensus call. I'm just sick and confused about the process here. Really am.

KATHY KLEIMAN: Okay. Thank you, Susan. To Phil's question in the chat—"What is the other proposal being referenced?"—Phil, I believe Brian came on and said he wanted to see the full Individual Proposal #33 go forward.

So let me ask. Feel free to raise your hand. Feel free to do it in the chat. We have two proposals. One is to go forward with the full URS Individual Proposal #33 and bring that to our review under

recommendations and for consensus in that final call. The other is to bring the streamlined, shorter version that Phil talked to us: ending the open-ended terms of the URS MOUs and coming up with fixed-term contracts with regular review of the URS providers.

Zak, go ahead, please. And, Phil, I'm assuming that's an old hand, but if I'm wrong, please leave it up. Zak, go ahead, please.

ZAK MUSCOVITCH:          Thank you. It looks like Phil's language has a very good chance of being agreeable to many working group members. It takes out all the responses to Question 1 in terms of additional elements. It excises the tricky presumptive renewal complication. What we're left with is pretty widespread support from the public comments.

So I think that, if there's people that actually support the individual proposal as written, they should make their voices hear now. But I suspect that there aren't any that support it as written. Putting it forward as written is just setting it up to fail.

The more viable course is to reach a compromise on this language, as Phil has proposed, which is fairly non-controversial: a fixed-term contract, which had wide support, plain and simple. So I think that's the one, if there's agreement amongst this working group, that should go forward alone, not one that there's no clear support on this particular call and one that would obviously just be set up to fail. Thanks.

| KATHY KLEIMAN: | Thank you, Zak. I appreciate it. Phil, perhaps the last word on the subject. Over to you. |
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| PHIL CORWIN: | Thank you, Kathy. I've got a bit more of my Co-Chair hat on right now for this comment. Let me say two things in response to Brian with respect. One, he said something which I've made the mistake of doing sometimes, too, about voting. We don't vote in working groups. We try to reach compromise and consensus. We don't take votes and count he yays and nays and decide things on that basis. It might be easier if we did, but that's not how we operate. |

But Mary was quite clear in our full working group call last time that this is in fact the consensus call process to a great extent. We're not going to come back to this again. We're going to come back to review a final report based on the discussions we've had that tries to reflect whatever agreement we've reached on a consensus basis.

So, on the basis of both process and efficiency, I would urge that we not send the question as posed in the initial report to be reconsidered again and to spend more time on it. I think we should make a decision now. What I've tried to formulate I think is the most minimal formulation that has come out to the community's response. My formulation doesn't require the MOU to be renamed as a contract. It doesn't require any additional elements. It gets rid of the very confusing and controversial presumptive renewal clause. All it says—we can work with staff as Co-Chairs on final form—is that the agreement between URS providers should have a fixed rather than an open term, and ICANN should review

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the provider's performance prior to extending or renewing the contract. It's that simple. It doesn't bring any new elements to that agreement. It doesn't require any new substantive clauses, just the one change. I'm trying to reflect the community comments, many of which were directed at things beyond the fixed term. That seems to be wherever the agreement lies.

So I do think, as a matter of process/efficiency, we should make a decision now. Can we agree on going to fixed-term from open-term, which I would suspect, in most cases, is going to result in renewal or extension for the provider? Or are we going to be unable to agree on anything? But I think sending the proposal as formulated in the initial report forward for more discussion that will repeat this discussion is not an efficient or proper way to go. We should fish or cut bait on this one.

KATHY KLEIMAN:     Thanks, Phil. I love that term "fish or cut bait" [inaudible] that we could all be fishing.

Paul and Susan for quick comments. We spent a lot of time on this. Even if we go with the minimal formulation, we will see it again on the [guitar]. So Paul, then Susan, for quick comments. Thank you.

PAUL MCGRADY:     Hi. I'm really sorry because I'm losing the narrative. I understand what Phil is saying. Does that mean that we are modifying the URS Individual Proposal #33 and putting that forward as a recommendation? Or is there another recommendation that we already put out to public

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comment that we are now further refining? If it is the latter, then can we—

KATHY KLEIMAN: It's the former. We're modifying what's before us, as we've done with many, many other individual proposals.

PAUL MCGRADY: Kathy, I'm not challenging that. I'm actually trying to get to something even more simple, which is I just want to make sure that whatever we're looking at on the screen is what we're talking about. That was going to be my question. So I'm sorry. I didn't mean to make you defensive.

KATHY KLEIMAN: Sorry. No—

PAUL MCGRADY: But whatever it is that we're refining, that's what I'd like to see. Thank you.

KATHY KLEIMAN: Actually, Paul, thank you so much for clarifying that. Staff has now moved to the summary materials, so let me just read it. It's small. "The working group is to consider this proposal. All current/future providers"—here we're talking about URS providers—"should be brought under a formal fixed-term contract with ICANN, and ICANN is

required to review performance during that term prior to making decision"—probably "decisions"—"on extension/renewal of the contract." So that's the language that we're looking at, just to bring it forward for when we look at recommendations overall. It's boiling down the essence of the comments—the comments that we received as well as the comments in this working group.

Susan, last word.

SUSAN PAYNE: Sorry. Forgot how to get off mute there. I'm just really struggling with this process. I really am. I don't understand why we're editing this individual proposal in a way that, as far as I can see, doesn't seem to be as a result of the comments we received. It's just—[Phil], very kindly—attempting to make an individual proposal perhaps a bit more workable than it started out as. But we've had a bunch of other individual proposals that equally could have warranted some improvements and very vocal calls on previous calls that, if someone wanted to put in an individual proposal and they wanted to get it adopted, they had to get it right the first time and there was no going in with a red pen afterwards. I don't really care which one we do, but we have to do the same one— [all of them]—but, at the moment, we ditched a ton of individual proposals because we couldn't go in afterwards and edit them to make them workable. So that's my first point.

My second point is I'm really uncomfortable with these donuts. We've raised this before. It looks great. There's a ton of green there, but you have to look at what the green is. Some of these comments in all of

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those sections are from huge organizations, they're constituencies, and they're groups that represent multiple people, and some of these comments are from some random person who isn't even in the working group. That's fine. They're entitled to a comment, but you can't weigh their comment and, [just like you say], "That's one for and one against." We've said this on multiple calls, and yet, every single time we start, we do this all over again: viewing these donuts as if they mean something. And they don't.

KATHY KLEIMAN:     Thank you. Great. I'm not going to argue about that. I don't think we should argue about the donuts right now. But procedurally—Susan, you'll forgive me—I'm going to disagree that we have a number of individual proposals that are actually coming back to the full working group with revisions. Many of them, I believe, are being worked on as we speak. And many of them are coming back. Many of them are not, but many of them are coming back. That's one of the reasons we have to go into two one-and-a-half hour meeting a week: to review and work with them.

Let me go back. I know somewhere in the chat Phil has put in some new language. He says, "My suggested modification in a personal capacity: all current/future providers should be brought under a formal fixed-term agreement with ICANN, with ICANN required to review performance during that term prior to making a decision on extension renewal of the contract."

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I'm going to recommend we move this forward and save the procedural discussion because we're about to talk about some revisions that had been put forward for TMCH Individual Proposals #4 and 5. So I think this is a process that we have somewhat engaged in—in fact, actively engaged in.

Lori, it's a good question: moving forward just means we're bringing it up for recommendation and review among things that rise to the level of our viewing of them again for the consensus call.

If there are hands up, I am not seeing them. Brian, go ahead, please. As Co-Chairs, I would like to go forward because we have a lot of other material. Is it possible to just take's Phil's discussion and then … Again, we're not making a final decision on it. We're just rising it up to the level of review when we go forward to the recommendations. That percolated up to the top. Go ahead, Brian.

BRIAN BECKHAM:    Sure. Thanks, Kathy. Speaking personally, I, again, just want to make clear—I've put it in the several times, just to note for the record—that it's not at clear to me—in fact, I've just looked at them and I don't see one—which public comment of non-support this revision proposal reacts to. So I want that to be clear.

I perfectly understand Phil's intention to broker a compromise, but I think the time for that was long past. Seeing no public comments that drive us towards that fork in the road, I don't agree with that. If it's the will to go forward with it, so be it. We will make our views known during the consensus call. Thanks.

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KATHY KLEIMAN:        Brian, why don't you stay on the phone? In the interest of time, can we do that and bring it forward to the consensus call? We can vote it down then, but let's—

BRIAN BECKHAM:        Sorry to jump in.

KATHY KLEIMAN:        No, I'm inviting you.

BRIAN BECKHAM:        There seems to be a little bit of confusion around whether that's the original version or the proposed version. I think I've made my views clear on that. If it's the revised version, I perfectly understand. I don't want to be a roadblock. So, whichever one it is, I think we've spent a good amount of time on this, we move it along, and we go to the next question.

KATHY KLEIMAN:        I agree. So it is, [in my understanding], the revised proposed version. Brian, thank you for working with me on it.

Phil, final word.

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PHIL CORWIN:    Let me say I find myself in the opposition of seeming to be an advocate for something when my only purpose is to try to discern any common element in the public comments on the initial report. But maybe we should drop this now, but I think, whether we decide now or decide later on—because my understanding is this is going to come back up again---basically my proposal rejects everything except the concept of the agreements between ICANN and URS providers being fixed-term and renewable rather than open-ended. So I think that's what we need to decide that we can reach consensus on in this working group. So that's it. So forget about the wording/any suggested wording. Is there any consensus in response to the community comments to go from an open-ended agreement of whatever form between ICANN and providers to one having a fixed term? Or is there not? I think it's that simple at this point because we're not talking about the presumptive renewal concept. We're not talking about bringing in any enhancements to the agreement. It's just fixed-term versus open-ended and whether we can reach consensus or not. I leave it to the working group to decide that. Thank you.

KATHY KLEIMAN:    But, Phil, we're not putting that forward to a consensus call right now, right? We're just trying to decide if we revisit it to come back for a consensus call. Is that correct?

PHIL CORWIN:    Yeah. I'm not sure where are on that. Have we finished this discussion; in which case nothing is going to be done? Or are we preserving the

issue for further discussion? I'm not sure where we are, but we should make a decision.

KATHY KLEIMAN: Okay. There's a lot of support for Phil's revised language in the chat. There's certainly some concern about the language in the comments and in the chat as well.

Julie, go ahead, please.

JULIE HEDLUND: Thank you. I'm just looking at the chat and seeing some of the questions that are coming up. The working group does have the option to decide now that it either agrees that there is part of this proposal or the whole, such as the wording that Phil has suggested, that staff would capture and then would submit to the working group on a consensus call. Or the working group can decide at this point that there is nothing they wish to carry forward for this proposal for a recommendation for a consensus call.

So, from a staff point of view, there's not a time that the working group would then discuss this proposal or possible recommendation again. It should be deciding now whether or not there is a recommendation to be put forward as consideration for the working group on a consensus call that staff would capture as part of the final recommendations that would go in the final report that would go to a consensus call. So I hope that has helped clarify.

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KATHY KLEIMAN:

So there appears to be a split. There seems to be a lot of people who would like to move this very, very narrowly-tailored revised proposal forward. There are a number of people who don't want to move it forward.

My only thought is that we discussed it enough, but if people want to discuss it more … In light of the objections, I would assume we are not moving it forward. If anyone objects, please speak now.

Zak, go ahead, please

ZAK MUSCOVITCH:

Thank you. Looking at the support of this, which is significant from various stakeholders, and also looking at the lack of support of this from significant stakeholders as well, it doesn't look like this would reach the level of potential consensus.

What I take from that is that, for there to be a genuine consensus, more or less everyone has to be on board to one degree or another or at least can live with it. So, if I'm hearing that, certain stakeholders are strongly against this. As Lori Schulman said to me, there's a pretty good indication that there isn't more or less everybody on board. So, if that's the yardstick that is appropriate, which I believe it is, then this proposal should not go forward because it doesn't have a chance of reaching consensus.

But I would remind the working group that it works both ways. If there are considerable stakeholders in opposition to your [particular] favorite

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proposal as we go down the road through consensus calls, the same yardstick should be employed. Thank you.

KATHY KLEIMAN:     Sorry. Coming off mute. Thank you, Zak, and thank you to everyone who has commented on this. So, at this point, this does not appear to be going forward. Thank you for the discussion.

Let us go on to—right. As Phil said, "Based on this discussion, appears there is not consensus among working group members that the URS agreement should be …" and then it scrolled off. I assume it said "fixed term."

Now, going back to TMCH Individual Proposals #4 and … Julie, could you put up—Julie or Ariel; whoever is controlling our screen—also #5 and then go back to #4? But #5 as well. So these were both similar proposals, not identical and obviously with different proposers. You'll remember that we discussed them last week with Phil chairing. These both have to do with the nature of what types of registrations go into the TMCH database and also how they are used. We discussed these at length.

Can we go back to TMCH Individual Proposal #4? I'll read it just to refresh everyone's recollection: "Geographical indicators (GIs) may not be registered in the TMCH database used for sunrise or trademark claims under a theory that they are marks-protected by statute or treaty. If they are also not eligible for the TMCH database as trademarks, any GIs presently in the TMCH database should be removed."

We asked the proponents of TMCH Individual Proposals #4 and 5, as well as those who were interested in these proposals, based on our discussion last week, whether there was an overlap or some language that they would like to share with us regarding merging these individual proposals and going forward.

I do see Susan's objection, but this was something we asked these proponents to do—

SUSAN PAYNE: Can I just explain my objection? I did put it in the chat but it was such a long time ago that I don't think you've seen it.

KATHY KLEIMAN: Okay. Probably not. It's hard to follow the chat and everything else.

KATHY KLEIMAN: It's just I really would hate for us to spend time talking about this and then me raise my objection and say I can't possibly on this because I haven't even read the proposed amendment, which only got circulated something like two hours go now, bearing in mind we've been on this call for 45 minutes. I haven't read it and I'm quite sure that there are plenty of other people who also have day jobs that they were doing when the e-mail was circulated. So we'll then be saying we need time to look at this and then we can circle back to it.

So could we just actually do what was on the agenda and look at the individual proposals that we were expecting to look at? Then we'll all

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have time to look at 4 and 5 and the proposed new language and we can circle back to that on our next call when we've actually considered it. It would  be a much better use of time because, otherwise, after we talk about this, I'm still going to be asking for that.

KATHY KLEIMAN:    Susan, I think it was on the agenda. That's just it. So let's—

SUSAN PAYNE:    But the language got circulated less than two hours ago. We haven't even seen it.

KATHY KLEIMAN:    That's true. I hear the frustration and I respect the day jobs.

Let's call on Rebecca. Maybe it would be appropriate to have a quick overview of this. If we want to table it in the American sense of table, which I believe is different than the Australian sense of table, in order to return to it, we will certainly have an opportunity in our two-times-a-week sessions. Rebecca, go ahead, please.

REBECCA TUSHNET:    Am I unmuted on your end?

KATHY KLEIMAN:    You are unmuted. Thank you.

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| REBECCA TUSHNET: | I actually completely respect Susan's frustration, and I actually have a predicate question to ask, given what happened with the previous proposal. As I read the comments—people can tell me if they disagree—there is a division in the opposition. There are commenters who think, "Gee, I should be in the TMCH. They should get sunrise," etc. That's good. That's a small but definable subset of opposition. Then I perceive a larger group of people who are picking between 4 and 5 and say, "I don't support 4 because I support 5," and vice-versa. |
| | So, if we think that the people who want GIs in the TMCH prevent consensus, then we should stop. Despite my personal policy preferences, it's not going to get there. If we think that there could still be consensus on this, then we should go forward. If we can make it work, I would be fine with saying, "Come back to it next week." But rather than having that fight, do we even need to? If this is futile, let's give it up. I would prefer not to do that, but it does seem to me to be an important question, especially given what just happened. Thank you. |
| KATHY KLEIMAN: | Thank you, Rebecca. As I understand it, what you're proposing is a branching taking place, which is—and you said it more eloquently—are there a number of commenters who support TMCH #4 or #5? So it could be merged potentially. Or are the opponents of both, because they're both looking at GIs in the TMCH database, are enough to block any kind of consensus on the issue? |

Does anyone want to speak to that? This is indeed a make-or-break question on these two proposals. Or would everyone just like to think about it and hold it for our next meeting?

Okay. Paul says, "Next call, please." So does Paul Tattersfield, who was one who circulated the newly revised language, which had been worked out with both Rebecca and Claudio, the proponents of Proposals #4 and 5, respectively.

So, to staff, please bring back TMCH Individual Proposals #4 and 5 for next week. To Paul Tattersfield, I would recommend you please recirculate your e-mail so that proposed revised/simplified language is in front of everyone before us. Indeed, for staff, I think Rebecca's question is right: can we start next time with, is consensus possible on the GI issue overall, Based on the comments that we received from the public? Because we really wanted to hear from the public on these issues. In that case, that helps us to know what direction to do.

Julie says, "Noted," so we have some of our agenda items for next Tuesday morning, or Tuesday morning eastern time.

Moving on to one of our last individual proposals (I think this is the second to last): TMCH Individual Proposal #6. "The TMCH clearinghouse database provider/providers should be contractually bound to maintain, at minimum, industry-standard levels of redundancy in uptime to further ensure the effective delivery of the sunrise and trademark claims services. The following implementation guidance should be provided to the IRT (the Implementation Review Team), that will be formed to advise ICANN Org on the implementation of those policy

recommendations that are ultimately approved by the GNSO Council and the ICANN Board, namely 1) consider the advisability of requiring that more than one provider be appointed and, 2) review the work of the Implementation Advisory Group that was formed for the 2012 New gTLD Program to assist ICANN Org with developing the specifications for and the designs of the Trademark Clearinghouse." This is one that we put out for public comment.

Could you move down to Support? Can you show—yes, number … We see that there really is a wide level of support here. We have the contracted parties, the registrars and registrars, and the IPC, who support with comments, and then a number—can we see Row 28, please?—of organizations that support without further comment: commercial, non-commercial, academic, otherwise, and individual.

Can we go back up to the donut, which I know is not popular? But it does give us a bird's-eye view of 58.2% support. No one, to the best of my acknowledge, is asking for any kind of minor or significant changes.

Now let's go down and look at the 1.8% that did not support. This was a not-support from the Union des Fabricants without further comment. Then, of course, we had an [open-ended] no response.

Here we have a very short recommendation with further implementation guidance. Does anybody want to speak to this? Can we go back up to the donut now, please? There does seem to be considerable support on this.

If there are any hands raised, I cannot see them. Phil, go ahead, please.

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| PHIL CORWIN: | Thank you, Kathy. Looking at the Donut, it looks like there's overwhelming support, but this is a donut, based on the number of responses, that would be a tiny donut that would fill the hole in an ordinary donut. There were only four parties who provided support. Now, one of them is the Contracted Parties House, which, of course, is important. One was the IPC—that's notable—and then two individuals that were generally against more of the RPMs but like this one. So— |
| KATHY KLEIMAN: | Phil, can I interrupt you there? Hold on just a second. Can I interrupt you there? |
| PHIL CORWIN: | Yeah. |
| KATHY KLEIMAN: | Can you look at Row 28? Because people had the opportunity to support, absent further comment. That's where, maybe because of the clarity in this proposal, there is … Maybe I'm misreading this, but it looks like 28 is— |
| PHIL CORWIN: | Oh, actually, Kathy, I though those were parties who didn't comment, who didn't support. Well, then I'm wrong. I take my prior remarks back. |

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But what I was going to get to is, what can we take away from the support? I think we can take away that there's broad support for the clearinghouse provider to maintain industry-level standards of redundancy and uptime. I'm not sure that we can assume that other things, like considering a second provider and reviewing all the work from 2012, with the paucity of comments … I'm not sure we can go that far, particularly when the few comments we have just focus on the industry-level standards of redundancy and uptime on not on the rest of this individual proposal. Thank you.

KATHY KLEIMAN: Okay. Someone is writing in the chat. It looks like the chat is referring to the prior proposals that we were talking about.

Back to TMCH Individual Proposal #6, is there anything substantive … It does appear to have an array of cross-community support, both from commercial, non-commercial, and contracted parties. It is a very, very short recommendation and guidance, which is not necessarily binding. It's not binding on the implementation review team. It's just some ideas that will … Let me read the wording: "To further ensure the effective delivery of the sunrise and trademark claims services, the following implementation guidance should be provided to the implementation review team." That doesn't mean, although people can argue it applies, that the implementation review team has to do it this way. Really, there seems to be a call for the implementation review team to figure out some better uptime and redundancy concepts for the TMCH. There is a lot of support from this.

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Does anybody have a next step forward for us?

Rebecca, go ahead, please.

REBECCA TUSHNET: I guess I move we should go forward and put this in the hopper for the consensus call. There are apparently anecdotal but real reports of problems. This seems like something pursuing. Thank you.

KATHY KLEIMAN: Perfect. Thank you, Rebecca. Anyone else want to speak to this? Any objections?

Sounds like someone has come on from a phone. So anyone on audio who wants to speak?

Okay. So noted. Staff, thank you for taking note. So this one moves forward.

We go on to TMCH Individual Proposal #7 with a bit more color in our donut. Let me read this. This is short. "In order to foster robust accountability and in order to ease operational and commercial challenges flowing from a dearth of information about what is in the TMCH, the TMCH should transition from a closed database to an open and searchable database."

You'll see that support and non-support are pretty stark here. We're not seeing support with minor or major changes. We're not seeing variations of non-support. It's pretty stark: support or non-support. So

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support is at about 36.4%. Non-support is at 23.6%. So we've got a clear division right there on this, although I think we may see this again on some of our charter questions.

Let's go down to the support and then we'll go to non-support to just see some of the range of groups that supported. We're seeing academics, Internet Commerce Association, Yale, Yale Law School Initiative on Intermediaries and Information—can we go down a little farther?—NCSG and other groups. NCSG (I'll read the green): "The TMCH was written to be an open database with its contents reviewable by the public and by potential registrants seeking to explore open and available domain names."   Then, going down to the bottom of that comment: "The ICANN community should be able to review as an open and public database TMCH database as a way of overseeing this important function."

Let's keep moving down, please. So we're seeing others who supported it without comment in Row 34.

Then, under the red Do Not Support Recommendation bar, we see an array of Do Not Supports from the BC, from INTA, and other commercial entities.

Let's take a look at the BC comments on this, if we might. Here I'm reading the red: "The TMCH database contains confidential and trade secret information, namely the trademarks most valued by businesses and brand owners, the trademarks most enforced within the DNS,  and the protection strategies of each entity who entered in data."

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Let's keep going down. LEGO Systems is also opposing. AIM (European Brands), Hermes, and UNIFAB … Let's see. I'll read Row 41. Again, red: "To render the TMCH searchable would disclose sensitive commercial, including domain name strategy. There's minimal evidence of abuse or egregious registrations, so this aims to deal with a problem which does not exist in fact."

Let's see what Deloitte said on this. Row 46. Deloitte, which, of course, operates the TMCH (here I'm in the second paragraph): "Deloitte is taking this opportunity to share its point of view on Individual Proposal #7, that the TMCH should transition from a closed database to an open and searchable database in order to foster robust accountability and to ease operational and commercial challenge flowing from an absence of information around the content of the TMCH." Next paragraph, "As the TMCH provider, Deloitte wants to emphasize that ICANN is the owner of this TMCH database and that not Deloitte but IBM operates the TMDB. In this regard, it is up to ICANN and the community to take the ultimate decision to move from a closed to an open database. Notwithstanding the foregoing, Deloitte, as always, will implement any revision of the guidebook"—here I'm summarizing—to be implemented basically by ICANN. So that's really interesting: a clarification from Deloitte that this is really IBM operating this side of the database, which is useful.

Good. I see hands. Let's talk about, now that we've summarized it, how to move forward. Marie and then Susan. Marie, go ahead, please.

MARIE PATTULLO:         Thanks so much, Kathy. Can you hear me okay.

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KATHY KLEIMAN:            I'd already muted. Absolutely. Loud and clear.

MARIE PATTULLO:           Great. I bought a new microphone, so I'm very happy that it works. You characterized the donuts in the discussion of the last proposal as not popular. It's not so much for me that it's not popular. It's that it's completely misrepresentative.

Now, Ariel, if you'd be kind enough to scroll down, you'll see that, at a quick count—I may be wrong; it was [why it] was on the screen—nine of the separate accounted individual circle support boxes are individuals. But, if you could please scroll down further to the red—the not-support; thanks so much, Ariel—these are massive organizations which bring together large amounts of companies. [Marks], INTA, and all of these you know. If you could go down a wee bit further, please, Ariel. I'm sorry to … LEGO. I hope we all know LEGO. AIM I can certainly speak to because that's my employer. We're 2,500 companies/brands. The next one is one that I realize worked on joint comments, so I know they've been lumped together. [Echmes], Chanel, and Montclair are huge companies. UNIFAB is the French anticounterfeiting group. [Comintalbear] is a luxury group. They are huge. I'm really, really, really having a problem in us giving equal weight to one individual and to INTA or to [Marks] or to [inaudible] or to [Echmes]. I think it's really misrepresentative to suggest that this proposal has an equal level of support and non-support based on the donuts. I'm being very careful

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not to go into the substantive here, Kathy, you'll note, but that's the point I wanted to make. Thank you.

KATHY KLEIMAN:          Marie, can you stay on the line, please?

MARIE PATTULLO:          Sure.

KATHY KLEIMAN:          I hope I didn't say that there was equal. If I did, I misspoke and I apologize. But you're raising procedural objections, which is great. Would you like to speak to the substance briefly?

MARIE PATTULLO:          I'm completely and utterly against this proposal. I bored you all at length for some quite some time before, Kathy, and I really don't want to use your time. But I think to me the main point is a fundamental misunderstanding or misrepresentation of what the trademark database is. If you want to know who earns a trademark, you go to a trademark register. Yes, absolutely, they are open. The vast majority globally are open. The vast majority here in the European Union … No, I take that back. All of them now in the European Union are free. So, if you want to know what trademarks any of the companies own, you're more than welcome to do that. This is a specific subset for a specific reason which is not in any way something that can be equated to a trademark database.

I'll stop, Kathy, because I—

KATHY KLEIMAN: Can I ask you one more question? Would you say that the opposition to this Individual Proposal #7 is substantive and basically means this should not go forward for recommendation?

MARIE PATTULLO: I would certainly believe that. I see there's some support for it in the chat as well, but from my point of view, yes, I would, Kathy.

KATHY KLEIMAN: Terrific. Thank you. And thank you for coming on and walking through the spreadsheet with us in such a useful way. Great.

Susan, then Zak. Susan, go ahead, please.

SUSAN PAYNE: Lovely. Thanks, Kathy. I won't reiterate the point that Marie is making because she has made it so persuasively, but I completely agree with it. I just wanted to also say that, unlike some of these individual proposals, which were really quite out of the blue and not things that really got any kind of airtime in the working group, this particular topic, as you well know, had a huge amount of airtime in the working group. I remember multiple calls where we discussed it. I remember being in meeting rooms at ICANN meetings that I now can't remember which country we were in. But we talked this to death and we couldn't come to

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consensus, which is why there's an individual proposal here. So just even looking at the donut, even giving it the weighting that I totally disagree with, it's quite clear here we're not going to get consensus on this one. We never got it in all of the discussions we've had to date. So I just don't think we need to spend more time on this. It clearly won't get consensus.

KATHY KLEIMAN:    Great. Thank you, Susan. That's a great summary. Like you, I'm forgetting what countries we were in for which discussions but wishing we might be a country again all together for some discussions. But I know that's going to be a long time away. So thank you so much for your comment.

We've got Zak and Jason. When you speak to this issue, also, whatever you're going to address, please address: do we go forward with this or not at this time? Zak, go ahead, please.

ZAK MUSCOVITCH:    Thank you, Kathy. I agree with Susan. Just looking at the positions of the various stakeholders, there's plenty of support. There's plenty of opposition. By definition, that means that there's not going to be consensus for this individual proposal. So I don't think it goes ahead.

But I do want to respond respectfully to some of the comments in chat and otherwise about how to characterize some of the public comments. It concerns me. It is absolutely true, to INTA's credit, that they have many thousands of members. The Louis Vuitton and [inaudible] and

Chanel are all exceptionally well-known brands that I've come to familiar with at great expense over the years. Their opinion matters, too. But, ultimately, these individuals and the Internet Congress Association and non-commercial users represent registrants. As many thousands of brands there are, there are 140 million registrants in .com alone. There's no one here speaking for them, other than commenters such as NC (the Non-Commercial Users Group), which represents non-commercial registrants' interests, and commercial registrants, which the ICA represents. So registrants' viewpoints cannot be discounted. I really do not appreciate hearing that these are just random people. These are the people that pay the fees. These are the people that register domain names. They have as much interest as any fancy necklace brand or any group of trademark lawyers. Everybody's viewpoint here counts. So I just want to make that clear because it's very frustrating to hear when certain stakeholders are emphasizing having thousands of members, when, in my view, other stakeholders have millions. Thank you.

KATHY KLEIMAN:      Thank you, Zak. I would just add that all commenters came in at a really difficult time. This as COVID was breaking out, as thing were closing down. All commenters had exerted a lot of effort to comment on our particular proceeding, given its timing. So, Zak, thank you.

We've got Jason, Cyntia, Greg. Perhaps we can close the queue after that. The real question is … What I'm hearing from three people, including Zak, is that this proposal probably doesn't go forward to consensus call. So if you could let me know if you agree with that as a pending thought. Jason, go ahead, please.

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Jason, if you are speaking, we can't hear you. You're on phone audio. Let's ask staff to unmute Jason. Jason, it may be … I think we can hear you. Go ahead.

JASON SCHAEFFER:    Okay. Hi, everyone. Zak covered most of what I was concerned about. I do agree that it does not look like we have consensus on it, and that's rather unfortunate, as I do recall spending many, many calls discussing this very point over a past number of years. But, be that as it may, it doesn't look like there is consensus.

But, again, for the record and to expand upon Zak's point, I do take great objection to certain comments about the power and strengths in numbers of certain constituencies when all of us on this call know that this is not about which group has the greatest number of constituents or the greatest number of buying power in terms of sales. We cover not just domain registrants. We cover  organizations. We cover institutions. We cover universities. We cover all types of concerned participants that were voicing a different opinion on this.

So, while we all respect one another and we all expect large brands' position on this, that is by no means the end of the discussion, and nor should it be because, as we go forward, I don't want us to take an approach that says, "Well, simply because INTA or the large European brands decided, so we must decide [inaudible]." I know that's not what was stated, but it sure seems to be a very strong position on … We should dispose of that.

KATHY KLEIMAN:     Thank you, Jason. Thanks for your thoughts and also your vote on whether this goes forward or not. So all the votes right now seem to be in the same column, which is not going forward.

Cyntia, then Greg, and then I'm going to cut off the queue and urge people to read the chat now or later if you don't have access to the chat now because there are substantive comments coming in. And procedural. Cyntia, go ahead, please.

CYNTIA KING:     Hi. Can you hear me?

KATHY KLEIMAN:     Yes. Loud and clear.

CYNTIA KING:     Good. First I just wanted to answer the question at hand, Kathy, which is I also don't see this moving forward. There's just not consensus. So there's that.

Then, very briefly, I want to reach out to some of the folks on the call who believe that, since we talk about organizations having many members, that we're discounting individuals, I can tell you that, from my perspective, that's not the case. I represent many individuals and small-town business people.

So I do take their concerns to heart, but it's a little disingenuous to read the comments and to equate some of the comments from individuals

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with the broad-reaching comments from some of the larger organizations. George Kirikios, who was an esteemed member of our group beforehand, had some very unusual concepts about what should and shouldn't go forward. He was an individual and his comments were unique. His perspectives were very unique.

So I think that we can say that there are some individuals who comments from a unique perspective. Certainly, we can't say that a large organization automatically takes precedence over all registrants, but let's just be honest that what we're talking about here is that we're looking at comments and we're trying to infer broad-reaching goals from the comments made by some individuals and some companies and, frankly, representing really a fraction of all the registrants that are out there. But we have to do our best job. I think we all are. I think we're all on the same page. I'd really like to just move forward with the substance if we could do that. Thank you.

KATHY KLEIMAN:                  Thank you, Cyntia. Cyntia is one the same side of the ledgers as everyone who has spoken about whether to go forward with #7 or not.

Greg, briefly, why don't you take us out of this issue? Last comment. Also, last call for anyone who wants to speak in favor of moving TMCH Individual Proposal #7 forward to the working group. So far as I've been taking notes, everyone, regardless of the views of their organization—I apologize; that's my phone come coming in—is not calling for this to move forward. So, anyone who wants to, last chance. Greg, last comment.

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GREG SHATAN:	Thanks. First off, I do not believe this should move forward, both due to a lack of support overall and that I do not support it.

With regard to weighting of comments, I'd like to put aside for the moment the idea that a big company and an individual have different weights but do want to go to the point that an organization has 10,000 actual members and probably represents the interests of tens of thousands or hundreds of thousands of similarly-situated non-members does in fact have a greater weight than an individual or perhaps even an organization with a small number of members and vice-versa. So I don't think that my individual comment, if I'm not making it on behalf of a number of clients—it's just mine—doesn't have as much weight as the comment of the ICA. So this is not about which side has [bigger] mentors but rather—

KATHY KLEIMAN:	Thank you, Greg.

GREG SHATAN:	My one last point is that there are registrants on all sides of this. I might even hazard to say that there are more registrants among those not in support of this. So I think the idea that registrants are monolithic is a rabbit's hole we shouldn't go down. But, if we do, let's do it another time.

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| KATHY KLEIMAN: | Zak, then Jason, for brief comments. We still have more on our agenda. So, with our last 10-15 minutes, I'd like to go forward to some of that. Zak, please? |
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| ZAK MUSCOVITCH: | Thank you. It would impolite if I didn't give a small rejoinder to some of the previous comment. |
| | I think that Cyntia was on the right track when she suggested that this isn't a matter of weighting. If this was a matter of weighting interests and sizes and membership levels, then we might as well just take a portion weighting based upon the size of everyone's organization and the number of members they have, etc. I think that's not how I understand the consensus process to operate. I don't believe that's what the procedure we'd be engaged in. I think it's unproductive to emphasize the perceived or purported sizes of organizations and the weight that's apportioned to them. I do accept that an individual speaks only for him- or herself and, in a mathematical sense, their voice is only one as opposed to an organization that speaks for many thousands of members, but the constructive work that we're supposed to be engaged in here is taking into account all stakeholders and all interests, not merely standing by and protecting our parochial interests but trying to reach consensus and compromise and productive work product on behalf of the entire community. That's what I think the emphasis should always be on. Thank you. |

KATHY KLEIMAN:     Thank you, Zak. This is clearly an important conversation, and, it sounds, long and coming on this weighting issue.

Jason, take us out. Last comment.

JASON SCHAEFFER:     Okay. Thank you, Kathy. First, Cyntia, I do agree with you, so thank you for your point of clarification. Also, Marie, I saw your comment in the chat. I do understand your point. It's well-taken and I do agree.

I think this issue and these comments exemplify a larger issue. The larger issue is that, as a working group, we have a very difficult task but a very important one. Partly what Zak mentioned is we represent a broad panoply of people across all nations, across economic status, across the board.

What we raised in this topic is that an issue of transparency seemingly needs to be addressed. In response, we received a lot of pushback from—I'm going to just call it the brand group, for lack of a better term for the moment, but not real basis … There were a couple of points put forward, way back a year ago or maybe two years ago, on some defenses as to why we don't want to reveal this, but the core issue remains: do we want accountability from the TMCH or not? I understand why the brands may be concerned, but we really never fleshed that out. So, instead, what we're left with is two sides arguing over what their constituency wants but not really getting to the core of the issue: should accountability with the TMCH be further by clarity and transparency, which is the touchstone of everything we do?

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So I'm very saddened that we can't get through this and we can't even put this forward to the working group, but I do understand why we're here. So I respect Cyntia. I respect Marie. Everyone here I respect. Hopefully, as we move forward, we'll find a way to do something productive because we're not doing much. Thank you.

KATHY KLEIMAN:     Thank you, Jason. Jason, I didn't hear a recommendation—let me ask—to move Individual TMCH Proposal #7 forward. Is that correct?

JASON SCHAEFFER:     I agree. [I said before I might stand] on my position that we don't have consensus. That's what's troubling: we can't even get something out of the gate here, which is on a very important issue. But I agree: we move on.

KATHY KLEIMAN:     Okay, great. Thank you, everyone, for clearly passionate, important comments.

Brian, sounds like you want to comment. I would love to spend ten minutes—I think we go on to overarching charter questions … Brian, last comment on Individual Proposal #7, please.

BRIAN BECKHAM:     Thanks. I just wanted to suggest I think it's time to move on from this one. Thank you.

KATHY KLEIMAN:          Agreed. I will take Brian's proposal. This one does not come back to see us again. Good. Congratulations, everyone. I know it was hard. We have now gone through all of the individual proposals for both URS and TMCH, at least the first pass. I'm going to ask that Jason and Brian put their hands down, please.

Julie, can we go on to General Overarching Question #1? To the group, I don't think we're going to finish this today, but one of our procedural questions is—I open this up to our Co-Chairs as well—how do we want to work with the overarching questions? These are overarching questions that come to us from the charter. We put them out, as you remember, as a latter part of our extensive comment request. Some of the questions I put in my notes as I was preparing for today is, obviously is there any clear direction coming from the public and coming from the commenters? But also, since these are questions that the GNSO Council asked us, we may want to go a little step further—I just put it out for suggestion—which is, what would we like to report about these overarching questions to the GNSO Council, and how would we like to summarize what we heard from the public for the ICANN community as a whole? Very, very broad thing.

Phil, go ahead, please, and then we'll read General Overarching Charter Question #1.

PHIL CORWIN:            Thank you, Kathy. I'm not sure how far we're going to get with six minutes left on this call, but I want to make a general comment,

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repeating what I said when the Co-Chairs discussed this matter on Monday when we looked at these questions. All but General Overarching Question #2, which is whether any of the RPMs should become consensus policy, which is really a question of whether the URS should be consensus policy—that one requires a yes/no decision, and that's going to be dealt with separately—(Overarching Question 1 and 3 and Additional Overarching Questions 1 through 3) I categorize as "philosophical" questions. I would suggest, subject to the working group's determination, that our main concern when we look at each of them is, have we considered this in our overall work over the past four years? For example, on #1, do the RPMs collectively fulfill their objectives to provide trademark holders, etc.,? In other words, have they, in the aggregate, been sufficient? For us to try to formulate a consensus answer to questions like this I believe would be a very long and frustrating process. I think, clearly on #1, we've dealt with many individual proposals and proposals for working group recommendations, which address various aspects of this.

So I think we can definitely check the box and say, "We have debated this in many different ways, but our answer to the question is that we've recommended in the final report revisions to the RPMs." That's our answer to the question. Other than that, we're not going to spend weeks trying to come up with an agreed-upon answer to this very broad philosophical question.

So I'm really proposing, by way of process for all the overarching questions, other than #2—URS as consensus policy—that we focus on whether our discussions over four years have dealt with it. If we have, I

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think that finishes out work because our answer is in the things we've reached consensus agreement on. Thank you.

KATHY KLEIMAN: Thank you, Phil. I'm just going to use the next few minutes, though, to look at this question. We did put it out for public comment. I do think we need to look at little bit at what the public responded with. As with other comments, was there anything we didn't consider that we haven't considered in our work? I agree with you, Phil. Is this a question that we dealt with, that we addressed, [and] is something we should tell the GNSO Council? But also is there anything we haven't seen from the public? That seems to have been one of our major issues.

"Can we start with this next time?" from Susan.

Let's just read it so that we have it. General Overarching Charter Question #1 (Phil read some of it): "Do the RPMs collectively fulfill the objectives for their creation, namely to provide trademark holders with either preventative or curative protections against cybersquatting and other abusive uses of their legally recognized trademarks? In other words, have all the RPMs in the aggregate been sufficient to meet their objectives, or do new or additional mechanisms or changes to existing RPMs need to be developed?"

So it looks like that'll be the question we open with next week, unless anyone else wants to comment now. Actually, we'll also be going back to the TMCH Individual Proposals #4 and 5.

Julie or Ariel, do we have Any Other Business? Just so I know if I reserve a moment or two.

So we don't. We still have two minutes if anyone wants to comment.

It sounds like no one does. Then let me wish everyone a good week. We will see you on Tuesday, as Julie Bisland has put in the chat: Tuesday at the earlier time. Thank you so much for such an active, involved, passionate, and emotional conversation. Thank you. Take care now.

**[END OF TRANSCRIPTION]**