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ICANN68 | Virtual Policy Forum – GNSO-Review of all Rights Protection Mechanisms in gTLDs  
Tuesday, June 23, 2020 – 10:30 to 12:00 MYT

JULIE HEDLUND:

Get things started off? Good afternoon, good evening, good morning, everyone. This is the Rights Protection Mechanisms and New GTLDs PDP Working Group on the 22<sup>nd</sup> of June for some people and the 23<sup>rd</sup> of June for others. I think on the official schedule, it is the 23<sup>rd</sup> of June.

Thank you all for joining. I will be the remote participation manager for this call, so I'm just going to give you a few administrative details, and then I'll turn things over to Phil Corwin, who will be chairing.

So again, welcome, everyone. We will be taking questions during the meeting, and we'll do that via the Q&A pod. So, you'll see in the bottom right-hand of your screen, if you click on "Q&A," a pod will come up, and you're able to type a question in there.

We'll be keeping track of those questions and we will read them out. Either the chair will read them out or staff will read them out, and we'll address them. So, do please put your questions in that Q&A pod. They will be captured there and not in the chat pod.

And just to remind everyone, you need to use the drop-down menu for "all panelists and attendees" if you want to type something in the chat. So, that's at the bottom of the chat pod when you pull it up.

We do ask you all to abide by the expected standards of behavior, and that has been put in the chat, there, as well, so please see that link. I

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think that's all we have right now for administrative items, but we'll have some reminders as we go along with respect to capturing questions.

If there are any questions that you have, then please do type them. If you have any questions about administrative items, please do put them in the chat and we'll address them there, as well. So again, thank you, everyone. At this point, I'd like to turn things over to Phil Corwin. Please begin.

PHILIP CORWIN:

Yeah. Well, good morning, afternoon, or evening, whatever day of the week it happens to be for you. I'm one of three co-chairs of this working group. Kathy Kleiman is on the call. Our other co-chair is Brian Beckham. I haven't seen him but it's very in the middle of the night in Geneva, where he is.

Welcome to members of the full working group on RPM review, and welcome to our guests to virtual Kuala Lumpur, where you get all the sleep deprivation of a normal ICANN meeting, without the jetlag.

So, what we're going to be doing this evening, which is where it is for me on the east coast of the U.S., we're going to be reviewing briefly the progress and where we are in this working group.

Then, we're going to hear from the chair and co-chairs of two subgroups we have created to review the public comments on the initial report recommendations, where we got 55 separate entities commenting.

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And then, we're going to begin a full working group review of individual proposals on URS, and when we get to that I'll explain our procedure for that review.

But I believe we have some slides we're going to go through where I'm going to be starting, and then the subgroup co-chairs will be taking over with their brief reports on what has been going on in the subgroups. So, unless staff is going to tell me that I've missed doing something, I think we're ready to go to the slides.

This is our current timeline. This working group was chartered a little over four years ago. Sometimes it seems like about 40 years, but we're near the finish line now. This is Phase 1 of the Review of All Rights Protection Mechanisms. Phase 1 is the review of all the RPMs created as implementation measures for the new TLD program.

They consist of the Trademark Post-Delegation Dispute Resolution Procedure, which is an interesting RPM because it has never been used but it is available to ... It's the only RPM that is directed at a registry operator based upon an allegation that the registry operator is either infringing trademark or is encouraging registrants to infringe trademarks.

The second RPM is Trademark Clearinghouse. That's the database in which trademark owners pay a fee and register their trademarks in order to gain access to the other RPMs, which is the ability to register their marks as domain names in the Sunrise registration period when a new TLD opens.

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And also, any attempt to register a trademark which is a domain name which is an exact match of that trademark generates a trademark claims notice from the registry operator, which does not block the registration but warns the registrant that they may, depending on their subsequent use of the domain, be entering into infringement territory.

And the other major RPM we have been reviewing is Uniform Rapid Suspension, which is a supplement to the long-time UDRP. It results not in domain transfer or extinguishment but the suspension of a domain when the complainant proves a basically black-and-white case of “know it when you see it” trademark infringement by the domain name.

And when we complete our work later this year, Phase 2 of the working group review will begin, which is the first-ever review of the UDRP and ICANN consensus policy that has been in effect since the earliest days of ICANN, since 1999, and that will kick off, and GNSO Council is probably going to be revising the charter for that Phase 2 review based upon PDP 3.0 principles.

So, we are aiming to complete our Phase 1 review and deliver our final report containing our consensus recommendations to GNSO Council somewhere between mid-September and mid-October of this year.

The subgroup review of the public comments has been proceeding on time. In fact, it’s proceeding a bit ahead of schedule, so we appear to be in good shape for delivering before virtual ICANN69, which will take place in virtual Hamburg, and you can enjoy the virtual beer there. Next slide.

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So, this is a quick review of what we've been doing recently. We published the initial report for public comment on the 18<sup>th</sup> of March. The comment period closed early May. We got comments from 55 contributors from five ICANN stakeholder groups or constituencies, 12 individuals, and 38 organizations representing lots of individuals and other entities.

Since May, we've been reviewing the public comments with the possibility of additional weekly meetings. We established two subgroups. Subgroup A, which is chaired by David McAuley has been reviewing the public comments on the Clearinghouse, Sunrise, Trademark Claims, and the TMPD/TPDDRP, as well as related questions that we asked the community.

Subgroup B, which is co-chaired by Zak Muscovitch and Paul McGrady, is reviewing the public comments for our URS-related recommendations and questions for community input.

I should add, for those of you not involved, that those two subgroups have only been focusing on new comments, new facts that we didn't take into account, and new recommendations for shaping the final recommendations that were not brought up in the working group when we created those recommendations for public comment.

Because every member of the full working group had a chance to speak to those recommendations, we didn't want to relitigate issues based on the same back and forth we had had. We only wanted to focus on things we hadn't seen before. It's going to be slightly a different procedure

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tonight for the individual proposals because they never reached that stage of development.

And starting tonight, the full working group, concurrently, for a brief period of time—the next few weeks with the subgroups—is going to be reviewing the public comments for the individual working group proposals on URS and the Trademark Clearinghouse, as well as several overarching general issues in our charter.

And when the full working group completes that review of individual proposals, we’re going to come together and look at what the subgroups have sent to us, as well as the result of that individual proposal review, and conduct our final consensus call on the final recommendations.

And as those of you involved with PDP work know, ICANN does not operate to change policy. A majority sentiment is not enough. Super majority is not enough. You need consensus in the working group reflecting the overall community, which means unanimity or near-unanimity for something to be sent onto GNSO Council and the board, and that’s a very high bar. So, it’s not easy to change ICANN policy but it is done. We’re going to be doing in a number of ways with our final report, but it’s a high bar to pass.

And then, we’re going to submit our final report early fall, and be done with Phase 1, and turn it over to GNSO Council. And after that, they do their work to the ICANN Board and we’ll have completed our work.

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Whatever recommendations make it through council and the board will go to implementation, which is a whole different process. Next slide.

So, I think this is the point in the program where I step aside for about 15 minutes and let the subgroup co-chairs present. So, this is a Subgroup A update, and I'm going to step aside and we'll hear from David McAuley to report on the progress of that subgroup. David, the floor is yours.

DAVID MCAULEY:

Thank you, Phil. Hello, everybody. I am an employee at Verisign. I am a long-standing participant of the RPMPDP Working Group. And then, of course, most recently, I've become chair of the Subgroup A work group that's looking at the public comments, as Phil mentioned, with respect to non-URS-related recommendations and questions.

Let me just mention that what we're doing is we are reviewing all the public comments with those respects, and we are doing it within the context of a remit that I'll get to in just a moment or so. Phil alluded to it.

But in the meantime, I've asked Ariel to put in chat two links that will help you get a better grasp of this if you wish to dig into this deeper. This update that I'm giving now is going to be a brief, very high-level update and it's not really part of what we're going to be working on tonight.

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But the links are to the Phase 1 report from the RPMPDP Working Group, and I think, beginning of page seven, you can see recommendations and questions dealing with URS. Starting on page 12, you can see another very clear compilation of questions and recommendations dealing with the four topics that Phil mentioned Subgroup A is looking at.

Those will be very helpful. Together with this screen, you should be able to get a very decent appreciation to see what the working group is doing. As you can see on the slide that's on the screen now, we have reviewed the Trademark Clearinghouse recommendation. We have reviewed eight Sunrise recommendations and four Sunrise questions.

We recognize that a number of these are multi-part recommendations or questions. And so, this is a fair amount of work that we have accomplished so far.

We have, as Phil mentioned, made very good progress. We are a little bit ahead of schedule, and we expect to meet or beat our deadline of reporting to the full working group by the end of July.

The remit or the context in which we are working. We are working to identify if any of the public comments ... First, if they rendered any new or material perspectives which the working group hadn't considered before.

Secondly, whether the comments point to new facts that materially add to or lessen the assumptions on which the recommendations were



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based. Three, whether the comments suggest a solution that has not already been considered by the full working group.

And finally, if any working group recommendations received in the public comments widespread/substantial opposition that, obviously, we haven't had a chance to consider.

Using that process, what we've done so far is we have come up with three Sunrise recommendations and one Sunrise question where we suggest to the full working group no action is needed.

We have three recommendations where we suggest clarification. We have another recommendation where we suggest implementation guidance. All of these recommendations are for the full working group to consider. We will be making none of these decisions at the subgroup level.

We have four recommendations where we suggest consideration of a new perspective or a new solution, three questions where we do the same with respect to a new perspective or solution, and two questions where we suggest consideration of the impact of the answers on other recommendations.

So, that's fairly good progress. What we have out in front of us between now and the end of July is further work. There is one more Sunrise question. There are all of the trademark claims recommendations—there are five of them—two trademark claims questions, and a single recommendation regarding the Trademark Post-Delegation Dispute Resolution Policy.

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At the pace we're going, and at the goodwill that has been shared all around, I think that we will easily meet our deadline and report back to the full working group, at which time the working group will take on board our recommendations, give them some thought, and move onto consensus call. So, that's my update, Phil. I would like to thank all of you for being here. Thanks very much.

PHILIP CORWIN:

Yeah. Well, thank you very much, David, for that brief update. As David mentioned, the subgroups are just doing their first cut in considering the public comments. They're basically identifying issues raised by the ICANN community for consideration by the full working group when they consider these recommendations in the consensus call. And with that, I don't know who is giving ... Or whether Paul and Zak are sharing the presentation on Subgroup B on URS. I see Zak. So, Zak, the floor is yours. Go ahead.

ZAK MUSCOVITCH:

Thank you very much, Phil. I, along with Paul McGrady, have been co-chairing Subgroup B, which, as Phil has mentioned and described, has been dealing with the URS public comments.

And so the idea is, as David mentioned, as well, that what we have been trying to do is look at all of the public comments and determine, on behalf of the working group, because we've divided the work into two subgroups, whether the public comments have raised any new or material perspectives, or facts, or solutions that the working group

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hasn't considered in making its initial recommendations, and if any recommendations that the working group had made received any widespread or substantial opposition.

In other words, we tried to look at all the public comments with a yardstick that recognized that the working group had made its recommendation. But the public comments are so important to take into consideration [of how the] robust analysis and discussion of them. We delegated that to Subgroup B.

Paul and I are pleased to report that we're more than halfway through the recommendations and the questions that were put out for public comment. Originally, we were dealing with two questions and recommendations a session per week, but we have increased that to four.

And so, like David, we'll probably be completing our work ahead of schedule. As you can see from the Subgroup B update slide that's in front of you, for the most part—and this isn't entirely reflected in the slides—the Subgroup B has kept the recommendations as-is. In other words, as the working group as a whole had already considered them and made its recommendations.

But based upon the public comments and numerous instances, we're seen where clarifying language may need to be considered by the working group. Or, a solution has been provided by a member based upon the public feedback that should be considered by the working group.

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So, in summary, the subgroup is not making, really, any decisions on behalf of the working group itself but is referring issues that we flagged based upon our review and analysis of the public comments to the full working group.

So, in short, things are going well. We're halfway. We'll probably be done ahead of schedule. Thank you very much to the co-chairs, Phil, Brian, and Kathy for their support throughout their process, and to all Subgroup B members. Thanks very much.

PHILIP CORWIN:

Well, thank you, Zak. A big hand of virtual applause to Zak, Paul, and David for taking on the responsibilities of chairing the subgroups. They're doing a great job in the initial vetting of the public comments on the working group recommendations that were contained in the initial report and are really setting things up for the most efficient final consideration by the full working group of those recommendations.

So, now we're going to be turning to the actual work tonight, or this afternoon, or tomorrow, depending on where you are, on considering a number of the URS individual proposals tonight.

I want to speak a little bit about what our procedures are going to be for this because it's going to be different, to some extent, from how the subgroups have been operating.

So, these individual proposals are different than the working group initial recommendations. They were reviewed by the working group but

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in a fairly cursory manner, and they did not receive the same degree of development as the recommendations backed by the full working group.

In the initial report, the bar for the working group recommendations was that they would have broad support without substantial opposition. Not as high as consensus support, but much closer.

The individual proposals are not the result of working group development. They came from individual members of the working group. We gave working group members the opportunity to recommend that they become full working group recommendations but they did not receive that. So, they have a longer way to go to make it to the consensus call.

So, our task tonight in going forward as the working group considers these recommendations is to determine whether, based upon the comments we received from the ICANN community, any of them now has the broad support and less-than-substantial opposition necessary to become a working group recommendation that gets preserved for consensus call consideration.

I want to stop there and say I want to make it very clear that any of these individual proposals which gets through this initial review by the working group and makes it to the consensus call, it doesn't mean it's going to be in the final report. It doesn't mean it has consensus report. It just means it lives to see another day and isn't going to left on the

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cutting room floor tonight, or as the working group proceeds. It means that it has a chance to get there.

Let me issue some further caveats, which is that as we go forward tonight we're not going to barring people who want to comment from citing comments that we may have heard in the full working group, because these are not full working group recommendations. They didn't receive the same amount of vetting or support. So, if the community said some things that we heard in our cursory review in the full working group, it's not barred from being brought up tonight.

And the procedure for making the cut is that I'm going to lay out and try to guide the discussion based upon the community comments, noting the relative degree of support and opposition that various proposals got from the community and some ideas for modifying these proposals where they might get full working group support.

But to make it past review and to get into final consideration on the consensus call, it would not be appropriate for me in my administrative capacity as a co-chair to move that any of these individual proposals, either in their individual form or in a modified form go onto the consensus call.

So, it's going to be up to members of the working group if they believe that, based on community comment and the suggestions made by the community ... To make a motion that an individual proposal be preserved for the consensus call and be considered as a full working group proposal, based on community comments. If we don't get that

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motion from any member of the full working group, it's going to go by the wayside as we consider it.

So, I said a lot just now. Does anyone who is on the working group—and we only want feedback from the working group on these procedures—have any questions, comments, or concerns about the procedure I just laid out?

I'm not seeing any hands up or hearing anything from anyone. So, we will proceed in the manner I described. And of course, we're all new to this procedure that we're using tonight. We'll work it out as we go along in a spirit of comity and cooperation.

So, I guess we want to go to URS proposal number one and review it, and review the community comments, and open the floor to discussion by working group members.

So, here is individual URS proposal number one. I don't remember who proposed it. That's not really important, anyway. These proposals should be considered on their merits, or lack thereof, and not on the source of the proposal.

The proposal is this: that URS paragraph six says, in 6.2, that, "In either case, the provider shall provide notice of default via e-mail to the complainant and registrant, and via e-mail [and fax] to the registrant, and during the default period the registrant will be prohibited from changing content found on the site that is on the domain name and the associated website, to argue that it is now a legitimate use, and will also be prohibited from changing the WHOIS information."

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So, that existing paragraph, basically, means to preserve the content of the website at the time the complaint was filed. And the proposal consists of two options. To delete the phrase, “During the default period, the registrant will be prohibited from changing content found on the site,” etc., and to move the text to the section in the policy that indicates how bad faith may be proven. That is, that the examiner may consider that attempt to change content is evidence of bad faith.

Or option two, just delete “during the default period.” This proponent alleges that there is no default period defined here or anyone else. So, that would make it a bit confusing about what happens during a default period if, in fact, there is no description of or definition of default period.

So, let’s look at the donut. For those of you new to the working group, we have been displaying visually the comments received from the community. On this question of all 55 commenters, let’s start with about 36% of the 55 commenters had no opinion or response.

Of the remaining commenters, 18.2% supported exactly as written. I’m not sure what that means because there were two options here, so it’s not clear with “support as written” which option they were supporting.

Another 23.6% supported it conceptually but wanted some changes to gain their full support. So, that adds up to about 41-42% of all commenters. The 55 supporting it either as written or with some changes. Another 2% wanted significant changes, so that brings it up to about 44%. And then, 20% of those commenting did not support it at all. They want no change to the current text.



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So, basically, among those who commented, about 44% some degree of support, 20% opposition. So, about a two-to-one ratio of support to opposition. So, if we were operating by majority rules, it would be in good shape. But of course, we're not, and a two-to-one ratio is a ratio with a significant opposition.

Let's look a little bit more at the comment highlights. Among those supporting it, one group supported option one. About an equal group supported option two. Then, one group wanted some very significant changes.

Among those who didn't support it, a major concern seemed to [not be] that there could be cases of fraud, theft, or domain hacking where [responded] should be allowed to change the content because, in those cases, they would not be responsible for the complaint about content. And changing it, I guess, might be an indication of good faith, not bad faith.

Can we scroll down and see a little bit more, here? All right. I'm going to my own separate browser, just to see things here, and what the comments were. We've got an equal split between support for option one and option two, and then we've got the non-support.

So, I'm going to stop there. I've said enough. I see Susan Payne's hand up. Susan, you are the first to comment on this, so please share your insights with us on what the community comment might mean for whether this individual proposal lives another day or is disposed of this evening. Thank you. Go ahead, Susan. I see Susan is muted.

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SUSAN PAYNE: I think I'm off mute now. Is that right?

PHILIP CORWIN: Yes.

SUSAN PAYNE: Okay, great. So, I don't feel totally committed to this one, but I think it's interesting to drill down to the "do not support" comments. I mean, there are a few people who haven't supported and only, actually, three of them have given comments. So, there is limited information, here.

And obviously, I can't see who is in this meeting, so it may be that some of the people who have opposed this are actually in the meeting and would be much better able to speak up as to what their thinking was.

But if you look at just the first two, Jason Schaeffer and Steven Kennedy, both of them are making comments about that there may be circumstances where it's appropriate to be able to make a change.

All I really wanted to flag was that, of course, if the recommendation or the individual proposal doesn't pass on from this and become a recommendation, the outcome of that, i.e. not supporting this proposal, doesn't achieve what either of those individuals are suggesting.

At the moment, there is currently a prohibition on making any change. And so, the individual proposal that was put forward was actually trying

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to improve the position, and opposing it doesn't achieve the outcome that those two individuals, and possibly others who opposed it, were seeking to achieve.

And obviously, I know we don't count numbers and so on, but if you look at who is supporting either wholeheartedly or perhaps with a little bit of tweaking, they are groups representing large numbers of people. They are constituencies or stakeholder groups within ICANN or other large organizations. So, you do have to make some kind of assessment of the scale of the opposition as well, I think.

PHILIP CORWIN:

Okay. Thank you, Susan. I see some people chiming in the chat that they agree with you. The next person who wants to speak is Professor Rebecca Tushnet. Please go ahead, professor.

REBECCA TUSHNET:

Am I unmuted yet?

PHILIP CORWIN:

You are unmuted.

REBECCA TUSHNET:

Thank you. Sorry about that.

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PHILIP CORWIN: Yes, you are.

REBECCA TUSHNET: Thank you. So, I am in qualified agreement with Susan, which is to say I think everyone agrees the current statement is just misplaced. It's just in the wrong place for anyone to do anything about it.

In fact, I actually read these comments as, basically, saying a consensus like, "It has at least got to be deleted because the person it's directed to can't do anything about it."

Then the question is, where does it go, if anywhere? Because of course, there might be reasons that you might change a site. For example, the proposal is not super clear about what should happen if we're talking about dynamically-generated ads. Am I not allowed to actually have new ads? That seems weird.

So, the one possibility, given that I think there is consensus actually emerging, that it should be at least be deleted from where it is, we are proposing to do materials for what counts as bad faith.

This would be a really good suggestion for putting in the materials, that the examiner can consider it. But of course, it might not be relevant, depending on what exactly is going on. Thank you.

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PHILIP CORWIN:

Yeah. Thank you, Rebecca, and also thank you, Susan. Susan is correct. If this proposal does not go forward after this discussion, the current paragraph of the URS stays the same.

I'm not sure whether or not the proponent is correct that there is no definition of default period, but the gist of the current language, without any further change, is that the registrant will be prohibited from changing the content once the complaint is filed.

And that would not seem to satisfy the concerns of those who didn't support the proposal who wanted some ability for the registrant to change it, at least if the website had been hacked in some way and they were not responsible for the current content.

So, based on what I said before, procedurally, I'd like to see if there is further discussion on this. Because if it goes by the wayside tonight, the people supporting either option one or two will be unhappy, and I'm not sure that the people who didn't support it will be happy because the URS will continue to bar any change post-complaint of website content.

So, I'd ask if there is further discussion or if any member of the working group wants to move that the proposal be preserved either in its original form, or I think we're at the place for a modified form for full working group consideration in the consensus period.

If there is no motion made to that effect, this proposal is going to go to the cutting room floor and not be up for any further consideration by the working group. So, working group members, if you think there is

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some merit in this proposal and want to preserve it in some way going forward, speak up, or that will not happen.

I must say, I'm not seeing any hands up and I'm not hearing anyone intervene. Again, I'd say I want to remind everyone, working group members and observers tonight, that, all these individual proposals, working group members had the opportunity before we published the initial report to advocate they become working group recommendations. That didn't happen.

Tonight, there is an opportunity to preserve them if a working group member feels strongly enough to make a motion. I'm going to give this another 30 seconds. I see one comment in the chat from Griffin Barnett. All right. I have to review the chat, here.

JULIE HEDLUND:

Phil, there was actually support, if you look back, from Rebecca Tushnet, from Susan Payne, from Justine Chew, and Griffin as well. And Renee Fossen says so, as well, and also Phil Morano and George.

PHILIP CORWIN:

Okay. All right. Well, that's a lot of working group members who are sometimes at odds, but they all seem to think that this should live to see another day and have a chance to be considered in modified form, I'm presuming, during the consensus call. I think that would be the gist of what we're seeing in the chat. All right.

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So, we're halfway through this meeting. I don't think we want to take the time on the first of five proposals we're reviewing tonight to try to wordsmith it. So, I think what we will do with this one is note that quite a number of working group members want to preserve it for further discussion in the consensus call period to see if it can gain consensus support in modified form.

I think there is a recognition that the current language in the URS paragraph six has problems and needs to be, at least from a technical viewpoint, cleaned up and rationalized. So, we will preserve this one for future working group consideration.

Any objection to that conclusion on my part? All right. So, let us move on, now, to individual proposal number two. Let me focus in on this one. Okay. So, this is a pretty ... I think we can dispose of this one fairly quickly based on community comment.

This is, basically, a technical cleanup. The proponent states that there's a legal requirement in the URS high-level technical requirements for registries and registrars and is proposing that it be moved to another document, either the URS Procedure or the URS Reviews.

It quotes the language that's currently in the technical requirements, which is about the registry operator specifying in their Registry-Registrar Agreements that the registrar must accept and process payments for the renewal of a domain name by a URS complainant.

In cases where the URS complainant prevailed, there is, under current URS policy, a one-year extension available. And the registry operator

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must specify in that agreement that the registrar must not renew a domain name to a complainant who prevailed for longer than one year.

So, it's addressing ... It's really not a technical requirement, it's a legal requirement relating to a legal document, the Registry-Registrar Agreement that's between the registry and the registrars who provide the middle-man function for their domain names.

And there's also a suggestion, as an alternative, to leave the legal requirements but change the title of the document. My personal opinion is that if it's a legal, not technical, it's in the wrong document, but that's just my personal opinion.

Let's look at the donut. We will note on the donut three interesting things. One, a majority of those who commented have no comment. Two, nobody opposed it. Three, almost half of all commenters supported it as written or, in a very small percentage, conceptually by wanting some changes.

So this, among those who had anything to say about it, had very broad support and absolutely no opposition, and there was a division between those who wanted to move the text to a different document or wanted to change the name of the existing document and what should [inaudible]. So, that would be a decision for the full working group. That's really about it.

So, the sentiment of those who commented seems to be that they want to make some change. They're divided on whether to move a language or to rename the document it's currently found in. There was absolutely



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no opposition to taking some action on this. I see Griffin Barnett’s hand is up. I’m going to open this up to comment.

GRIFFIN BARNETT:

Yeah. Thanks, Phil. I’m hopeful that everyone can hear me now. So, I’ll continue. The only reason I think that there is, perhaps, a little bit of ambiguity here in terms of how we capture the “support as written” versus the “support concept with a minor change” comments is that, the way that the proposal is written, it presents a proposal, and then in the last sentence it says, “As an alternative,” and then it presents a variation of that.

And so, I think, when we were reviewing this, at least, because it kind of presented the general proposal and then the alternative, I think that’s why some of the comments, maybe, were categorized as “support with a minor change,” because they supporter, maybe, one versus the other of those two alternatives.

I think, ultimately, it seems like there is more support in general for the alternative option, in terms of just renaming the document, which would certainly be, I think, a much simpler solution. And so, maybe that’s the one that we go with. But I did just want to note, I guess, a reason why I think there’s a little bit of confusion among a few of the comments about the “support as written” versus the “support with minor change” categorization. Thanks.

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PHILIP CORWIN: Yeah. Thank you, Griffin. Okay, Maxim. Go ahead, please. I see Maxim Alzoba’s hand up. We’re waiting to hear from him. You need to unmute, Maxim.

MAXIM ALZOBA: Do you hear me now?

PHILIP CORWIN: I can hear you now, yes.

MAXIM ALZOBA: Yeah. I’d like to thank everyone who supported this clarification. If possible, I think it would be nice to move this as a recommendation of the whole work group. Thanks. But only if possible.

PHILIP CORWIN: Yeah. Thank you, Maxim. If anyone else wants to speak to it, let’s go ahead. But it seems to me, chairing this meeting, that we have identified an issue. We have got a legal requirement in a technical document. We either need to move the language or rename the document.

And based on Maxim’s motion, I think the sentiment is likely to be that we preserve this and that the full working group decide how they want to fix this issue here, which doesn't seem very controversial. It’s just a matter of whether we’re going to leave this in this document and

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rename the document or move it to a different document that governs the URS.

So, I think Maxim has moved that we preserve it, and that would seem consistent with the public comment. So, unless I hear objections, we're going to preserve this. I think the full working group can probably resolve this one in the consensus call in a very short time.

So, hearing no objection, we're going to move onto URS proposal three. Okay. This one is not going to be as easy. Okay. This is a proposal to revise URS policy paragraph ten to reflect the following new provisions.

So, they changed 10.3 so that there will be an option for successful or unsuccessful complainants to extend the registration period for one additional year at commercial rates. I have to say, I'm not ... Well, we'll get into discussion. I'm not sure why an unsuccessful complainant would have any option at all to extend the registration period, but maybe I'm just missing something, here.

And 10.5, that notwithstanding any locking of the domain name pursuant to paragraph 4.1 of the policy, and notwithstanding 10.2, "A registrant shall be entitled to renew a subject domain name registration, and the registry shall permit the same in accordance with its usual commercial rates for a period of one year."

I think this was aimed at where the registration period expires during the course of the URS. But again, I may be mistaken on that. Others can enlighten me when we get to the comment.

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Let's look at the support. About one-third of all commenters, 34.6%, had no opinion and no response. So, about one-third of the 55 who commented had nothing to say about this proposal.

Of those who did comment, 23.6% supported as written. 27.3% supported it conceptually but wanted changes. 14.5% did not support changing paragraph ten at all to make these changes.

So, we had about 50 to 14, a roughly 3.5 to one ratio of “support absolutely or with changes” versus “non-support.” So, I don't know if that would have made the bar for a working group recommendation before the initial report. A lot of support, but not insubstantial opposition, but not overwhelming opposition.

Looking at the comments, there was “support without changes” for some groups representing numerous parties. Others wanted it with changes: “Extension or renewal limited for purposes of the appeal.”

A lot of the comments to that just to preserve the domain during an appeal. INTA wanted to ensure the wording in the proposal is more comprehensible in terms of the apparent problem and solution.

Some concern about permitted extension if there was going to be an appeal to the courts. The Contracted Parties House were concerned about the commercial rates term and concerns about breach of the so-called “picket fence.”

One group thought this would violate registrant rights. Yeah. There were concerns about the “unsuccessful complainant” language. So,

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some of the non-support seem to be based on a lack of clarity in the proposal as written, or certain portions of proposal where there might be no opposition if some words were stricken.

So, that's the quick review of the comments. Griffin has a ... I'm going to open up the floor, now, to comments on that. This is a proposal which ... Let's see if I can get ideas on how this might be preserved in some modified form, as well as if there is opinion that it should go by the wayside. Griffin, go ahead.

GRIFFIN BARNETT:

Yeah. Thanks, Phil. I was just waiting a moment to be unmuted. Yeah. So, I think it seems like a lot of the comments, both couched as support and couched as opposition, are just really not sure what the proposal really means in practical terms and what it is aimed at solving.

And I, frankly, think we had a similar discussion back when this proposal was first introduced and reviewed by the working group. I seem to recall that there was some confusion then about its purpose and ensuring that the actual wording of the proposal conveyed exactly what the intended effect would be. And I don't feel that it has been captured in a way that it is sufficiently clear.

And I think, if we are to take anything of this proposal forward, we really need its proponents. I believe this may have come from Zak, perhaps. I don't recall specifically, but I think this is one where, if there is going to be any support for doing anything further with it, we really need

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something that's crystal-clear in terms of what it is proposing and the rationale.

And I think if we can get that, then maybe it would warrant further discussion. But in lieu of that, and in lieu of being able to articulate an issue that this is aimed at resolving, or clearly how to do that, then I don't know that it would have sufficient support, even though, just by looking at the donut snapshot here, I think it would give a different sense as to that. So, thanks.

PHILIP CORWIN:

Yeah. Thank you, Griffin. Again, we discuss so many proposals. I don't remember the exact context for one. I don't know if staff or another member of the working group recalls what the ostensible purpose of this proposal was. I believe it was to preserve a domain name during an appeal process, but I'm not sure on that.

But it seems clear that the community thought it has some merit but that it needed a lot of clarification to move any further. So, do we have further discussion on this?

JULIE HEDLUND:

Phil?

PHILIP CORWIN:

Yeah. Yes, Julie?

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JULIE HEDLUND: We do have a question from Michael Graham. Would you like me to read it out?

PHILIP CORWIN: Yeah, read it out. Sorry for not attending to that.

JULIE HEDLUND: No, that's all right. It's from Michael R. Graham: "Would not the registration remain with the registrant if the complainant is unsuccessful?"

PHILIP CORWIN: Yeah. Well, my personal opinion—give it whatever weight you think it deserves—is that, obviously, if a complaint is brought in the URS, and the complaint fails, and the domain is not suspended, then the registrant stands in the same position as before the complaint was brought. So yeah, they can renew it for as long as they want, would be my personal view. It's not a working group view.

I think what I'm going to suggest we do with this one ... It did get a lot of support from those who commented. There was opposition. Let me look again at the basis of the opposition. The opposition seemed to be the contracted party was concerned about commercial rates, and what that meant, and whether that might breach the picket fence.

Some people thought there was no problem. Some people thought it would violate registrants' rights. One commenter was concerned about

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the “unsuccessful complainant” language, which I also raised in my initial introduction.

I'm going to suggest what we do with this one is kind of leave it in limbo. I think it's up to ... I'm not hearing from anybody in the working group moving to preserve it as-is or with modifications. I don't recall who the proponent was. I think the proponent is now aware of the community's concerns and has an opportunity to recast the proposal in response to those community concerns.

So, I think let's leave it there. It's not dead. It's not definitively going forward. I think it's ... Yeah. Zak, your hand is up. Sorry about that.

ZAK MUSCOVITCH:

Thanks, Phil. I do vaguely recall that I may have been the proponent on this some two years ago. And so, the people who have noted in the chat from reviewing the comments that this was targeted to the situation where a domain name expired and there wasn't an opportunity for either the complainant or the respondent to appeal.

And so, it was the extension of the registration period that this was focused on. As you can see, the IPC's comment and the [Mark Association] both noted that, and [cum laude] also noted that.

But that being said, I'm not going to move that this be maintained. I'm not particularly wed to it. I note the serious objections from other parties. I do note that the objection to commercial rates by the CPH would apply not just to the language of this particular individual



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proposal but to the existing language of 10.3, which also refers to commercial rates. And so, I think your approach is fine, Phil. I would support it. I'm refraining from moving it formally. Thank you.

PHILIP CORWIN:

All right. Well, Zak, just to clarify, where I was going was to give the proponent—and now, it appears you were original proponent—an opportunity to recast it for full working group consideration. You've just said, unless I misunderstood you, that you do not wish to preserve it and you do not plan to present it to the full working group in a revised form for its possible consideration down the road. Is that correct?

ZAK MUSCOVITCH:

Kind of, Phil. I see that there is some significant interest in the proposal but I'm personally not wed to it. If there were more people who wanted to see this work done by myself and others to present it to the working group, I'd be fine with that. But I'm also fine with moving on from it. So, if there is anyone else who thinks that this should be worked on, fine. Otherwise, I say move on.

PHILIP CORWIN:

All right. Well, thank you, Zak, for agreeing with my interpretation of your remarks. So, does any other member of the working group want to move to preserve this in some manner for possible future consideration by the working group? Unless someone does, it's going to go by the wayside.

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I'm just reading Griffin's comment. Okay. Griffin, I've read your comment. Paul McGrady likes what you said, but it's ... Do you want to make a motion in some way to preserve the kernel of the idea of the issue that this proposal was attempting to address as something that the full working group should think about for the final report, or at least preserve it for possible consideration? I see your hand up.

GRIFFIN BARNETT:

Yeah. Thanks, Phil. I figured I would just speak to it briefly. So, yeah. I mean, I think the idea ... And I have to apologize because I hadn't recalled the additional context and I know it was provided. So, that's on me, or that's on us, I guess, for not having that fresh in mind when taking a look at this now.

But having refreshed my recollection and seeing that, indeed, the proposal does appear to have been aimed at solving the issue of a registration expiring in the midst of the URS appeal period.

I have put forward a suggested simplification, perhaps, that I think could address that issue without some of the confusion, and ambiguity, and other problems that the current formulation of the proposal seems to have been running into.

And I note that a couple of folks in chat have supported it. And so, without wanting to redraft or revise on the fly, I would be in favor of taking this proposal forward and presenting my revised formulation to the working group to see if there might be agreements to move forward with it in that form, or a substantially similar form.

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I mean, I guess this is a full working group meeting, so people are welcome to comment on it now. But again, not wanting to put people on the spot for something that has just been presented now. Sure. Yeah. Thanks.

PHILIP CORWIN:

Okay. Yeah. Thank you, Griffin. And of course, this is the full working group. The full working group is vetting the public comments on the initial report. I didn't mean to say that this wasn't a full working group review. I was saying that our task right now is to determine whether any aspect of these individual proposals is going to be preserved for the full working group consensus call or just tonight's discussion will be the end of it.

So, I think Griffin has proposed that we preserve the possibility of a proposal being brought forward in the consensus call; to make sure, based upon further research between now and that call, if there is a real problem with reserving a domain name during a judicial appeal or any appeal of the initial URS decision.

It will be a neutral proposal for according that ability to extend the registration to either the registrant or the complainant as appropriate. So, I think we did have a lot of support for the initial idea. We had some concerns. There were issues with the wording of the present proposal.

So, I think the present proposal is not going forward but we're leaving open the possibility of Griffin, or Griffin in combination with others, to bring something forward for the full working group's consideration on

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the narrow point of preserving a domain during the appeals process. So, that's my interpretation of the discussion and the community comments. Any further comment or concerns about what I just said? All right.

So, we're gone with number three. This proposal has a lot of issues, but we're going to leave open the door for someone to bring a proposal targeting the issue we'd seem to be attempting to address, which is the need to preserve a domain during an appeal from a URS decision. And if we get such a proposal, the full working group can take a look at it. If not, that will be the end of it.

All right. Now, we're up to number six. I think, just looking at the donut, this one is different from the other ones we have been looking at. So, let me get into number six.

This is a proposal to, "Permit multiple unrelated complainants to bring a single combined complaint against a single domain name registrant or related registrants," I'm assuming that's "related" in a business sense, not in a familial sense, "who has registered multiple domain names by deleting the following procedural element, section 1.1.3 of the URS procedure," and that current provision states that, "One complaint is [except over] multiple related companies against one registrant, but only if the companies complaining are related."

So again, I guess if you're a corporation it would be a bunch of subsidiary and affiliates, and there's a single registrant who you believe has infringed, with multiple domains, trademarks owned by different

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members of your corporate family. You can address that in a single URS complaint.

That's the current language. This would change that to allow unrelated companies to bring a combined complaint against a single registrant. The community ... Not too keen on this one.

We had a lot of comments. About 30% of all commenters had nothing to say about this, but of the 70% who had something to say, a total of close to 24% or 25% supported it as written, conceptually, or with significant changes, and a majority, 45%, did not support it at all.

So, the opposition to support ratio was about two to one. So, this proposal didn't get a lot of love from the community. The IPC liked it. Another attorney's group liked it. WIPO didn't support as written.

And rationales for non-support, there were so many non-support comments. Staff didn't attempt to include the individual highlighted comments here because of duplications.

But the complaints where the opposition was based on a number of points made that were inconsistent with the goals of the URS: no evidence of a problem in search of a remedy; additional burdens on examiners/providers; damages due process for the registrant; and somebody didn't like the URS at all. But of those who accept the URS but oppose the proposal, they raised quite a number of substantive concerns. So, I'm going to end my discussion there.

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I do note that Paul McGrady, who was a co-chair of the URS subgroup reviewing the comments on the working group proposal, said, “This one should die on the vine,” and, “the complaints are too factual for multiple marks to be considered by a panelist in a single proceeding when the complainants are unrelated,” and that, “this is not consistent with a streamlined procedure.”

Does anyone want to speak for preserving this and swim against the tide based upon Paul’s comment and support from Paul Tattersfield? My own view is that this proposal is in deep trouble and probably is not going forward unless someone right here and now wants to make the case for preserving this.

And despite the broad opposition to it, I think it has seen its moment in the sun and it’s going to shuffle off-stage and not be seen again. Lori Schulman says, “Put it out of its misery.” Lori from INTA, for those who know Lori.

So, I think proposal six has had its opportunity and did not garner sufficient support, but garnered lots and lots of opposition. We’re done with it unless someone objects right now.

So, farewell, proposal six, and onto proposal 11, which is our final proposal to be considered in this session. Let me turn and get into proposal 11. This one, starting with the donut.

The community was about even on this. Close to 28% of all the commenters had nothing to say about it. Of the remaining 72% who have commented, it was about an even split. 20% support as written,

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7.3% support conceptually, 5.5% with significant changes. So, that adds up to about 27%. About 33% of ...

But then, 40% of all commenters did not support it at all. So, a slight majority, 40% to 33%, about a five to four ratio, did not support it at all, so it did not get even majority support in the community.

Let's look at the reasons for support. First, I should—excuse me—say what the proposal is, before getting into the reasons for support or non-support. I'm going to stop on second and take a sip of water.

All right. This proposal relates to the response fee. That's a fee levied on the registrant in a case when the complaint currently involves 15 or more domain names registered by the same registrant.

The proposal is to lower that threshold for that response fee from the current 15 domain names to three domain names, an 80% reduction. The proponent says that three domain names as a complaint is sufficient to demonstrate a clear pattern by the registrant based on relevant URS precedent.

And in cases where the [name] responded was ultimately determined not to be the actual registrant, the fee would only apply if the registrant is confirmed for three or more of the listed domain names. Otherwise, the fee wouldn't apply.

And the questions accompanying this proposal was, should the current threshold of 15 domain names be lowered at all, and if so, what should be the new threshold?

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So, the proposal was for an 80% reduction, but there were additional questions to the community. The IPC supported lowering the threshold from 15 to five domain names. The Business Constituency supported lowering it but to ten domain names.

The Institute of Trademark Attorneys said three might be too low, but 15 is too high. So, they want a Goldilocks solution that's just right. WIPO suggested that a compromise could be reached by lowering the threshold somewhat, and they suggested the same thing as the Business Constituency, going from 15 to ten.

Among those who didn't support it, again, there were a lot of duplicated reasons. But staff aggregated them into, basically: people did not support it because they said there was no basis for finding a pattern based upon the number of domain names in a particular dispute, although we do have the current rule, which is 15, and that's going to remain without any change; that three was inappropriate and too low; no evidence of a problem with the current threshold of 15; that lowering the threshold would raise the costs of responding for some registrants; and, once again, some parties don't like the URS at all.

I'm going to stop there. So, we've got a proposal to cut the threshold for the registrant in a URS complaint from having to file a fee. Currently, the threshold is 15 domains in the same complaint. The proposal is to lower it to three.

We had some support for some lowering of the threshold below 15. They seem to congregate around ten, a reduction of the threshold by



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one-third, rather than 80%. And then, a majority saying there is no need to lower the threshold at all, that 15 is appropriate and should be left alone.

So, we're now open for comments. I would say that, based on the community comments, unless someone makes a convincing case this is probably not going forward, and we'll keep the 15 because it's difficult to see how this might be converted into something as-is. Going from 15 to three, it has broad support and minimal opposition.

But I've said enough. Members of the working group, here is your opportunity to comment. Staff is showing a breakdown among those who wanted to change it and not go as low as three. They're all over the place. Let me see. Okay. Yeah.

There doesn't seem to be much opportunity for getting consensus on this one and moving it forward as a working group recommendation. So, unless someone speaks up now, we're going to set this proposal aside, and maintain the current threshold of 15 domain names, and not bring this up to the full working group.

Let me say we've got four minutes left. Now, I'm seeing some comments in the chat saying, "Maybe if we go from 15, but only down a little bit?" Does anyone want to make a motion that this should be preserved in a modified form for future working group consideration?

Unless someone makes such a motion, this is going to die on the vine right now. I see no hands up. I'm not hearing anyone. So, I think this one just doesn't have good prospects for getting broad support and

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minimal opposition in the full working group, much less making it through the consensus call.

So, whatever we think of its merits, I'm going to bring the gavel down and pronounce this one as deceased and not moving forward any further in this working group.

That completes our work for this evening. I hope most of you are still awake and don't, like me, have to get up in the middle of the night for another meeting in a few hours.

But I want to thank all of our working group members for attending tonight. We're down to 68 now but I noted that we were either at 100 or close to 100 participants at one point. We're staying on timeline. We got through all the individual proposals listed for consideration tonight. So, thank you all for attending. Thanks, those of you not on the working group, for observing.

I remind working group members that we have another meeting of the full working group at regular time on this coming Thursday, after ICANN68 ends. So, you are all free now to go on with your day or go to sleep, whichever is appropriate to your time zone. So, thank you, and goodnight from the east coast of the U.S. Bye, now.

JULIE HEDLUND:

Thank you, Phil, so much for chairing, and thank you all for joining. This meeting is adjourned.

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**[END OF TRANSCRIPTION]**