ICANN67 | Virtual Community Forum – GNSO Review of all Rights Protection Mechanisms in gTLDs (1 of 4)
Monday, March 08, 2020 - 13:45 to 15:15 CUN

JULIE BISLAND: Welcome, everyone. This is Julie from staff. We are right at the start time, but we are going to wait another minute. We're waiting on [co-host]—

KATHY KLEIMAN: Julie, this is Kathy Kleiman. I think we should wait a few minutes. No break time was allowed between … We didn't allocate any breaks. Next time we do a virtual meeting, I think they're just as important in virtual land as they are in physical land. So let's give people a few minutes to come from the Subsequent Procedures Working Group and other meetings.

JULIE BISLAND: Okay. Will do. Thank you, Kathy.

KATHY KLEIMAN: Great. Thanks.

JULIE BISLAND: Thanks, everyone, for standing by. Kathy, did you want to begin?

---

KATHY KLEIMAN:     Hi. There's a private chat going on about whether Brian or I will be chairing today. Brian, if you'd like to chair, feel free. Otherwise, I'm happy to.

BRIAN BECKHAM:     No problem. I'm happy to. I had penciled it in my diary. I know you were on SubPro and the .org thing I was of course monitoring. But I was a little in the background. So I'm happy to do this today if it's easier.

KATHY KLEIMAN:     That sounds great. It has been an exciting day. Thank, Brian. Over to you.

BRIAN BECKHAM:     Okay. Thanks, Kathy. Thanks, Julie. Thanks, everyone, for joining us. I think, just scrolling down then chat, there looks like there may be a few observers or new members. So  this is the Rights Protection Mechanisms in all gTLDs Working Group. We are in our virtual meeting for what would normally be the ICANN meeting in Cancun.

You see there on this screen the proposed agenda for today. For those of you who are new to this or maybe haven't been participating in recent calls, what we're doing today is we've been for the past three or four years going through a lot of discussions on rights protection mechanisms around trademarks and domain names. We are in the final stretch of pulling together a draft report that we will put out for

public comment. So we are, if you will, crossing the t's and dotting the i's before that report goes out to public comment, hopefully at the end of this week.

Let me start by asking if there are any suggestions regarding the agenda, any updates to statements of interest, or any questions or suggestions for AOB.

Okay. Apologies. If you bear with me, I'm toggling, as I think probably a lot of us are between different screens and documents. Just looking over to my agenda, it looks like where we left off for our first item was we had some action items from the last call regarding the trademark post-delegation dispute resolution procedure and the additional marketplace RPMs.

Ariel, maybe it makes sense, since you're controlling the screen, if you want to highlight for us the action items. I believe the first had to do with some finetuning with regard to the proposal from Claudio DiGangi concerning consolidation of multiple complaints or complainants for the trademark post-delegation dispute resolution procedure.

Ariel, I don't know if you're speaking. I don't hear anything.

ARIEL LIANG:              I was double-muted. Apologies.

BRIAN BECKHAM:        There we go.

ICANN 67
VIRTUAL COMMUNITY FORUM
7–12 March 2020

ARIEL LIANG:    Thanks, Brian. For the TMPDDRP document, we have two actions. First is to clarify the language for Sub-Bullet #1 in the recommendations portion. You can see the redline added here. I will just read it for the people who are on audio only. The revised language for Bullet #1 is, "For the avoidance of doubt, the working group notes that the filing of a joint complaint or a consolidation is to be permitted only where, one, the complaints related to the same conduct by the registry operators at the top or the second level of the same gTLD for all complaints and, two, all the trademark owners have set aside the threshold review criteria specified in Article 9 of the TMPDRP." So that's the completion of the first action item: to clarify the language for Bullet #1.

The second action item is to include the footnotes for the supplemental rules for the three TMPDDRP providers. You can see the redline at the bottom of Page 1, where it's [linked] to all the supplemental rules to the ADNDRC [forum] and WIPO.

The third action item is to add another footnote to provide the link to Article 9 of the TMPDDRP rules. So you can see we have included a link there and also the page number to point people to Article 9.

So that's the extent of changes here.

BRIAN BECKHAM:    That's right. Thank you, Ariel. Of course, for those who were with us on the last call, both of these were discussed on the last call: the

finetuning of the proposed definition there of what consolidation would look like and then the reference to the threshold review criteria in Article 9. The threshold review was a preliminary gatekeeping function where a panel would look at whether there was the minimum elements required to [get in] to bring it to the next level.

Kathy, I see your hand up.

KATHY KLEIMAN:          Sorry. Coming off mute. Thanks, Brian. This is definitely better. So thank you. This is now clearer.

I do think—I wanted to see if anybody objected … We can't see the second page here in front of us, but maybe, staff, could you page down? I don't see any references … Could you go up a little higher? In the opening of the context, we talk about the PDDRP Rule 3, but the reference that we just added the footnote to was, I think, 9. So maybe, just so that we don't have … It was a reference to Article 9. It seems that we should probably put that in then context as well so that, in order to understand the recommendation, you don't have to go farther than the context below. That's how we've done it in the other places throughout our initial report: putting it all on one place.

So I like the revised recommendation. I like the footnote, and now I think we should put the relevant text of Article 9 into the context. And I think we'll be good. Thanks.

BRIAN BECKHAM:     Thanks, Kathy. Certainly there's a link in the footnote, but, as you mentioned, this, for a lot of people, this will be new. For those of us in the working group, we may be a little more familiar. So, to the extent we can make it easier to reference applicable rules for people including those in the relevant context, then certainly that's no bad thing.

So barring any objection—I don't see any hands; I don't see any calls for comments or any comments in the chat—we'll take that as an action item and move along.

I think I have, just on my notes from the last call we had—the last action item on the TMPDDRP—was the working group to review revised text and provide comments by Friday, March 6th. I don't believe there were any comments submitted on the working group e-mail list. Those, of course, would have gone to what we said on the screen.

I think, with that, we can draw a line under this and move on to the next action item from our last call, which was regarding additional marketplace rights protection mechanisms. If I'm not mistaken, there was a proposed addition to the end of the second paragraph and then a similar suggestion to the previous reference to Article 9 to move a link from text and put it in the footnote.

Ariel, would you be able to point us to those on the screen?


ARIEL LIANG:     Yes. Thanks, Brian. You're not seeing redline because this has been completed during the calls last week. So the part I'm highlighting on

the screen is the additional contextual language to say why the working group reviewed the additional marketplace RPMs. So that was appearing as redline last week, but we have accepted it. That's why it's not redline anymore.

The footnote we also added in the document on during the call last week. I'm highlighting that part, too, so that's why you're not seeing that as redline. But this document should be final.

BRIAN BECKHAM: Perfect. Thank you, Ariel, for the explanation. Seeing no comments and nothing in the chat, I think we can move along. Again, just to remind people, these are items that we've covered on a number of occasions. So nothing new. We're really just finetuning before we put this out for public comment.

I believe the next item of business for today was to review the initial boilerplate sections. We'll see how far we can get through that.

I note there was a little bit of e-mail traffic where staff provided a link for that. I don't know if people had a chance to look at that. As Kathy mentioned in the chat, a lot of us were busy traveling to the meeting. In all seriousness, though, I think people were doing some work to get prepared for this meeting, making sure they have documents in front of them and that they were all set up.

I don't recall seeing any particular feedback on the e-mail list. Ariel has just put the first section—the link—into the chat.

Ariel, I don't know if that's a new hand or an old hand.

Again, Julie is just confirming there was no feedback on the list. So I think, for my part, I hope to rely a little bit on staff here as we're doing this a little bit on the sly.

The first item was the background. Of course, we introduced this on last week's call. Again, we've had an opportunity to look at this over the course of the last week. This is not text that is new.

Maybe let me ask whether there are any comments. I don't think it's a productive use of our time because we've all seen this and this is text, as Mary is reminding us, that was taken from the issue report. So this is really just helping to set the scene for a leader who's a little less familiar with this than the working group members to explain what was the genesis of the work that we've been undertaking for the past four-odd years now.

Ariel, do you mind just scrolling down to see how much of the background there is there? Again, it's just background on the TMCH and sunrise services—again, this is all very worn ground for working group members—and background on the URS and background on the TMPDDRP, additional marketplace RPMs, and things like a Do Not Block list. Then, of course, we start to walk through the process. People probably remember we had a number of questions that were put to us. I think there were maybe 40 or 50 walking through the initial work there. Of course, we started with the TMPDDRP and the TMCH. We issued a survey. We looked at the results of those. We farmed the work out into sub-teams, looking at the sunrise and trademark claims

processes. We had a number of proposals come out of those. We looked at the additional marketplace RPMs.

Again, with the URS, as with the TMCH, we farmed work out into sub-teams. We looked at providers and practitioners. The sub-teams came back with recommendations that, of course, we've gone through over the past through months. It looks like the background there relates to the deeper, deeper background. A lot of people remember the IRT that was formed during the beginning phases of the New gTLD Program. Then there was the STI Review Team. There was a UDRP issues report and an RPMs staff paper. Let's see. That's right. The GAC called for review of the TMCH. We had the CCT-RT, of course … [will] come later. There was a few recommendations, but from the CCT and the EPDP which were flagged for our working group to review or to consider. We'll see what's the best way to address those [inaudible]. Of course, in some respects, it may involve items that are outside of the scope of our particular working group.

I see Recommendation 27 there. That's coming, Ariel, I'm guessing from the EPDP team. Where we planning on getting into that during this call or was that scheduled for the next call?

ARIEL LIANG:                    Brian, Mary has her hand up. Mary, please go ahead.

BRIAN BECKHAM:               Oh, I'm sorry.

ICANN 67
VIRTUAL COMMUNITY FORUM
7–12 March 2020

MARY WONG: That's fine, Ariel. Hi, everyone. Hi, Brian. I suspect Ariel and I were going to say the same thing. Just to step a take back and remind the working group that the agendas for the sessions this week were updated earlier today because we will be discussing the recommendations from the EPDP tomorrow, on Tuesday, at that meeting, and some proposed recommendations that this working group might want to consider in relation to that. I believe the same goes for the CCT recommendations, which are slated for Wednesday.

BRIAN BECKHAM: Perfect. Thanks, Mary and Ariel. Susan, you put a question in the chat. I see Kathy has her hand up. Susan's question is, "Could we look at the new text from today over the last few pages?" Is that the text that's on the screen currently, Susan?

While you're coming off of mute, maybe, Susan, I can call on Kathy.

KATHY KLEIMAN: Thanks, Brian. Question for Mary, which is, can she point us, because I'm trying to follow … As members of the working group know, staff holds the pen and Chairs see this material for the initial report alongside everyone else. So, Mary, I was wondering if you could tell us exactly which URS recommendations we're looking at tomorrow? Because there's a link to the URS recommendation, but maybe I'm missing something. It doesn't appear to be highlighted. So which one,

having looked at the URS recommendation already, should be zeroing in on for our discussion tomorrow? Thanks.

MARY WONG: Hi, Kathy and everyone. Thanks for the question. I should have pointed this out because I do realize that several working group members were either on the SubPro call just a while ago or in other sessions or indeed were at day jobs.

The URS recommendation in question that pertains to the EPDP work is URS Recommendation #1. What we've basically done here is basically say, "Refer to URS Recommendation #1." We sent out an update to that particular document—the URS deliberations document—showing in redline the staff-proposed update to URS Recommendation 1 a short while ago to the working group mailing list. It links back to exactly the same Google Doc for the URS deliberations you've looked at. But we've kept in redline so you can see what the proposed changes are. We hope that you will have a chance to discuss it tomorrow.

KATHY KLEIMAN: Brian, may I follow up?

BRIAN BECKHAM: Please.

KATHY KLEIMAN: If there is a redline, Mary, for whatever reason it may not be coming through in the Google Doc. Sometimes we've had this in the past, where redlines are only visible to some. I'm not seeing a redline when I click the link. Thanks.

MARY WONG: Thanks, Kathy. Of course, we'll go back and check. I think Ariel has got the document up there. And you're right. Sometimes, depending on how we share it, it doesn't show up. I suspect what happens is because we share the document in View mode so that there's no changes to the document between the time we distribute it and the time that we discuss it. So we will just do a check on that. But, if it is in redline [format], you should be able to see the changes. Thank you.

BRIAN BECKHAM: Thanks, Mary and Ariel. Just going back to Susan's comment in the chat, I think we're still seeing on the screen the text that you were referring to. If I'm not mistaken, this is merely adding text relating to the CCT and the EPDP, which we were planning on discussing tomorrow. I think that this isn't really anything new. I think this was flagged for us possibly even a year or further back. At the time, frankly, we were in the middle of a lot of other work, so we parked this.

Susan, maybe you had a comment, and then Kathy again.

SUSAN PAYNE:
Yeah. Thanks, Brian. Apologies. As it was scrolling through quite fast, I could just see that there looked to be some text in red that was new. As we pause now, I can see that it's what is intended to be tomorrow. So that's fine. I'm good. It just was going through too fast for me to catch up with it.

BRIAN BECKHAM:
Not a problem. Thanks, Susan. Just as a reminder, for example, for the CCT, there were questions such as referring to this working group— "What is the interaction between the URS and the UDRP?"—and, if I recall, we had agreed at the time that we would look at that during Phase 2. But, of course, we'll get to that tomorrow.

Kathy?

KATHY KLEIMAN:
I just wanted to flag for people that we're also going back to the EPDP discussions tomorrow. We were asking questions about revealing registrant data. As Brian mentioned, some of these questions came through initially. Some of them were months ago. And we had our head in other places. We were looking at other things. But, before tomorrow, I would urge you to look at this text—this revealing of the registrant data—and talk to your EPDP members. When I talked to mine this time, they had done a lot more work in the EPDP on the criteria for revealing redacted data—data redacted for registrants under the GDPR—and they voiced a number of concerns to what we're recommending. So please take a look at the recommendations. Take a

look at the publication recommendations that we're putting out there. Talk to your EPDP members, and we'll talk about it tomorrow. Thanks.

Back to you, Brian.

BRIAN BECKHAM:    Thank you, Kathy. Maybe just to round that out, although I believe it's technically overtaken by now, it may be useful to refer back to the temp spec which also spoke to the issue of what happens when a URS or UDPR case is filed. The case is filed sometimes in the blind and that underlying information is relayed to the filing party once the provider has that. So we'll look at the CCT and EPDP recommendations tomorrow.

I think, Ariel, we are on Item 5 or 6—the overview of preliminary recommendation for community input – but I could be jumping around on the agenda a little bit. [inaudible]

ARIEL LIANG:    Yeah. The next one is the next steps, and then after that is approach. We already have all the documents. You can just look at the next one we're going to show on the screen.

BRIAN BECKHAM:    Okay. Thank you. Of course, for those of you who have been with us from the beginning, this should look very familiar. Because of the nature of the charter questions that were given to us, we had a few attempts to Zoom out, if you will, and look at if there were themes that

underpinned all of the questions. So those are the five overarching questions that you see on your screen there. Again, none of this should be new to anyone.

Susan?

SUSAN PAYNE:     Thanks, Brian. Yes, it is somewhat new. In relation to those five listed overarching charter questions, #2, #3, and #4 (both 4A and 4B) are in the charter at the beginning of the appended list of questions. They're in the charter as overarching questions and there are three of them there. #1 and #5 are not. So I'm interested in understanding the thinking behind including these in that list because, to my mind, they come from a different part of the charter. They're two questions listed amongst, I think, 18 bullets, but, for some reason, these two have been selected and not any of the others. So I'm interested in why #1 and #5 are in there. Thanks.

BRIAN BECKHAM:     Thanks, Susan. That's a very good question. Ariel, I think maybe you can help us unpack that a little bit?

ARIEL LIANG:     Yeah. Thanks, Brian. When staff was compiling all these documents, we did see another related document. If you remember, when the working group was reviewing the topics for the URS, there is a URS topics table. I'm going to show you that table. In the table, there's a

section related to basically the overarching questions. Then the overarching questions have listed all five of them that we have included in the next step. Just give me a moment to open that able to show you the origin of all these five questions. I have to open it in a Word document, so it's taking a little bit of time. But, basically, that's the origin of these five. Let me just share with you the URS table document. Give me one second.

Okay. This is the URS topics table. You can see there's a whole section about these additional question drawn from the general section of the PDP charter. That's where we got these five questions.

But I'm happy to hear corrections from the working group if we got these questions wrong or if there's a disconnect there.

MARY WONG:          Brian, this is Mary.

BRIAN BECKHAM:          Sorry. Mary, go ahead, please.

MARY WONG:          I apologize because I think what we planned to do … Ariel is absolutely right about where these questions taken from. As Susan points out, these questions are in the charter, and some of them are in the back of the charter under Additional Questions and Issues. In the deliberations of this working group last few years, some of these questions came up off and on. I think there was some that came up

during the initial TMCH discussions, but, as Ariel noted, these specific ones that she's showing came up during the URS discussions.

I think what may be missing—Susan, I think this is what you're referring to; let us know if that is not or if it's not true—are the sets of general questions that are in the charter basically about the collective effectiveness of the RPMs and of offsetting any changes to one against the other, if I'm remembering that correctly. Those should probably be in the next-steps document, and we haven't put them in yet. If that's what you mean, Susan.

SUSAN PAYNE: Shall I reply? No, I just wanted to know where those five questions came from because, if you go the actual charter, there's a whole series of pages and then there's the attachment which is a list of potential issues for consideration in this PDP. The first heading is General, and there are three of them, which are three that are included in your list. But, for the other two, you have to get right to the end document where there's a kind of freefall of additional questions—18 of them—of which it feels like two of them have been plucked out and 16 haven't. So I was trying to understand why that was the case.

BRIAN BECKHAM: Thanks, Susan. That's a good question. Mary?

MARY WONG: Thanks, everyone. Maybe, just to avoid taking up more time on this switching between documents, staff can as an action item to make sure that we do another sweep through the various review documents, including this table, as well as the charter, to make sure that any overarching issues that have not yet been addressed by the group of folded into any of your other sections are reflected in the next-steps document.

BRIAN BECKHAM: Thanks, Mary. Ariel, would you mind going back to the original document that we had where we see these five questions pulled together? I was just curious of the heading that that fell under—so the overarching charter questions.

I see Susan agreeing with Mary. If we go back and run through all of the questions just to see how these fit together, that could make sense as an action item.

Kathy is asking if Ariel could post the link to the doc previously on the screen.

ARIEL LIANG: I'm not clear what Kathy means. The next-steps document link is already in the chat. Is she referring to the URS topics table?

KATHY KLEIMAN: Yes. Please.

BRIAN BECKHAM: Thank you, Kathy and Ariel. Just to pick up on Susan's comment in the chat, it does seem that Questions 2, 3, and 4 fit a slightly different theme than Questions 1 and 5. Maybe staff can help us go back over where those came from and how they're meant to sit together in relation to overarching questions versus the large number of charter questions that we started with.

Does that make sense as a way forward?

Kathy, is that a new hand?

KATHY KLEIMAN: It is a new hand. Brian, I think that does make sense as a way forward. I think somehow, if we go back into the URS materials, we will find these five questions [would] percolate up through the process. So I think, if we go back through, we'll find the breadcrumbs that took us here. Thank you.

BRIAN BECKHAM: Thanks, Kathy. I think that's a good way to put it. Of course, this is all stuff we've seen before, but we're just retracing out steps to see how these things all fit together.

I know we're all very busy with a lot of overlapping sessions probably after this and then before our next session tomorrow, but we have a little bit of homework before our next session. Thanks, Susan and

Kathy. And, of course, thanks, Ariel and Mary, for the assistance with that.

If I might, it could be useful, of course, during the chat, but maybe it's possible to just circulate the relevant links in an e-mail just to make our homework a little bit easier. That might help us finish this off during the course of this ICANN67 week.

Thanks. I'm seeing Mary taking an action item in the chat.

Kathy, just double-checking if that's an old hand or new.

Old hand. Okay, thanks. Back to Ariel helping us scroll through this, again, we are on the next-steps phase of the initial report. I don't know if we see at the bottom of the screen, Ariel, is the end of this next-steps phase and that moves us to the approach taken by the working group portion.

Mary, go ahead.

MARY WONG:                    Thanks, Brian. Apologies. I didn't mean to interrupt. I just wanted to highlight for the working group that paragraph you see on the screen now, which is an additional question. It is not an overarching question from the charter but it is a question left over, if you like, from the work on the additional marketplace RPMs, where the group agreed that this is something that you could come back to once you've actually looked at all the Phase 1 RPMs. So staff just wanted to preserve that question

here as a placeholder should the group want to come back to this after you've reviewed the public comments, let's say.

BRIAN BECKHAM:    Thank you, Mary. That's a good reminder. Of course, this takes us into slightly different territory because, of course, we're looking at rights protections developed for the New gTLD Program and existing consensus policies in the UDPR. Of course, we can look at the interplay between those and private marketplace RPMs. But, of course, that's, strictly speaking, not within the remit of this working group. But we can look at how those fit together with the overarching goals of the rights protection mechanisms.

I think that could take us—yeah—to the approach taken by the working group portion of the draft initial report. Again, I think, no, we don't need to belabor this. We've had the links provided both in the working group e-mail list and, I see, in the chat, for those of you who'd like to look at on your computer and scroll through it at your own pace. Of course, this walks us through the beginning, the working methodology, and starting to work into sub-teams, which, of course, where producing recommendations that went through a further review by this whole working group—so data gathering and review. Of course, you'll remember we did the survey on the Trademark Clearinghouse. We had some helpful research by Rebecca Tushnet. We had a survey from NTIA. Again, just to refresh everybody's memory, these items that we've discussed, so this shouldn't be new. This is just walking us through the history over the past couple of years.

The charter questions. Of course, we started off in a couple of places trying to better understand those and refine those. At some point, we collectively moved on and just started answering some of the questions as best we could.

The charter questions and issues report of course have been relayed to the GNSO Council under the PDP 3.0 rubric. So there's an, let's say, action item from our working group to the council to better arm PDP working groups with charter questions, hopefully to have a little bit more of an efficient work product rather than somewhat loopy way we did things on a few different occasions.

Ariel, does that take us to the end of the approach taken by the working group session?

ARIEL LIANG: Yes, that's it.

BRIAN BECKHAM: Okay. Any comments? Of course, this is really just looking in the rearview mirror, if you will. Any comments? Any questions? I don't see any hands or comments in the chat?

Okay. So, again, moving on to the next section—the approach taken by the working group—in some respects, you can see on the screen there that this mirrors the previous section, which is a little bit of a look in the rearview mirror as to how we began undertaking our work.

Now you see there, at the bottom of the screen, reference to the overarching charter questions. There we have those five questions we've just seen.

On the screen there, you see that's where we had a phase of our work where we tried to put the charter questions into different themes—for the URS there, for the Trademark Clearinghouse. Again, just a little bit of a look backwards here. This is really to assist people in the public comment on the initial report—people who haven't been following our work as closely as the working group members themselves over the past couple of years.

As Ariel continues to scroll us through this, [inaudible] we have a lot of gratitude. You can see a lot of work [inaudible] to capture all this for us and for the people who are commenting.

I think that probably takes us to the end of this section.

ARIEL LIANG: Yes, that's it. I just want to note there's only one charter question for TMPDDRP. So we don't have a table format like the other RPMs. You see the question in the charter. It's bolded on the document. For additional marketplace RPMs, there is no specific charter question because it's beyond the scope of the PDP. But we have included some of the similar content, like how it was deliberated and why and also the link a final set of questions for additional marketplace RPMs. They're in the footnotes. But, because they're not really charter

questions, we didn't present them in that table format, either. So this is the end of the document.

BRIAN BECKHAM: Thanks, Ariel. That makes perfect sense. That was the executive summary.

I think that next takes us to the review of preliminary recommendations and questions for community input. Of course— sorry. Am I jumping around a little bit?

ARIEL LIANG: I apologize. I wasn't completely following the agenda list of documents. Just, when displaying these documents, my personal understanding is that, if we look at all the other documents, it'd probably make more sense to look at the executive summary at the end because it serves as a summary to tie to all the other sections of the initial report. If it's okay, maybe we can proceed to the one currently displayed on the screen. But, if folks want to look at the executive summary, we can look at that, too.

BRIAN BECKHAM: Thanks, Ariel. That seems to make perfect sense because those working group documents—the annexes—would of course feed into the preliminary recommendation and the questions for input. So this is the foundation, if you will, that would help us look at the next portion of the report.

ICANN 67
VIRTUAL COMMUNITY FORUM
7–12 March 2020

We have the working group documents for the URS. We have the proposals and the sub-team work. Of course, there was a lot of data that we looked at, both in the working group … We were also assisted by Rebecca Tushnet and her team of law students. We had the TMCH survey and the sunrise and Trademark Clearinghouse services documents.

Is this, Ariel, the end of this document? The end of this annex?

ARIEL LIANG: Yes, that's it.

BRIAN BECKHAM: Okay. Apologies. I'm toggling back and forth and looking. So we did Annex B—the charter questions. Where does that take us to? I think we have the overview of preliminary recommendations. We have the cover page and the executive summary. I think we did this earlier. Or am I getting confused now?

Susan?

SUSAN PAYNE: Thanks, Brian. I don't think we have done this one. It's possible we did it on a previous call, but I'm not sure that we have. I'm not sure that it will take us too long.

I did have a question, when we scroll down to how long our public comment period, which I can either raise now or I can wait until we get there.

BRIAN BECKHAM: Sure, Susan. Go ahead. Ariel is just confirming that this is new.

SUSAN PAYNE: It's just a question. It says in the document that there'll be a 40-day public comment period. I thought 42 days was the usual. And I think it's in this document, but I might be wrong … Oh, yeah. There it is. Thank you. I just wondered why it was 40 rather than 42 because I thought 42 was the norm.

BRIAN BECKHAM: Thanks, Susan. I would have to defer to staff. I know that it was extended to either 40 or 42. Mary, maybe you can help us with that.

MARY WONG: I hope so. Hi, everyone. Susan, in the past, it was 42 or some breakup as between an initial public comment period and then a reply period. I can't remember exactly when that was consolidated. Essentially, the standard minimum public comment period for policy recommendations these days is 40. The group can always extend it if you feel it's necessary, but we normally go with 40 and then see if you need to extend it.

BRIAN BECKHAM:    Thanks, Mary. I think, in any event, 40 or 42 is certainly longer than it has been in the past. As Mary said, we can judge that if need be.

Susan, is that satisfactory? I think 40 is probably what we have unless there's a need [inaudible].

SUSAN PAYNE:    Yeah, I guess it's fine. Apologies then. I just always assumed there were 42. Maybe I haven't noticed that they're shorter.

The only thing I would say is I think we're due to be publishing this on the Wednesday after this meeting finishes. 42 days would take us to six full weeks, where 40 is less than that. Given that it's coming literally after an ICANN meeting, [inaudible] it seems to me like people might benefit from the extra couple of days, which I guess would also give them a weekend. But I'm sure, if anyone wants an extension, they can ask for it.

BRIAN BECKHAM:    Thanks, Susan. Of course, you'll remember that we had to submit a recent change request to the council. So we've got a fixed deadline for the end of our work. So maybe, before answering that, we can see if we have the wiggle room of those two days with the timelines we've projected or not.

Mary, is that a new hand?

MARY WONG: Sorry. Old.

BRIAN BECKHAM: Okay. Susan, is that okay if we look at—Julie is just reminding me that the project change request assumes 40 days … We did build in a teeny bit of wiggle room, but maybe we can do a sanity check on the change request and see if we could eke two additional days into the public comment or if that would potentially have some unintended consequences for our work going forward.

Right. Julie is just reminding us that the change request has been approved by council. For what it's worth, we've been told this is a final change request. We did have a best-case and a worst-case scenario. Sorry, Julie, if that wasn't clear. That's what I was referring to in terms of if there were additional two days of wiggle room.

Why don't we assume that we stick to 40 days, unless, in reviewing that, we see that it would[n't] have any unintended consequences and take it from there?

Back to the executive summary. Again, none of this should radically new to anyone here.

Let me just ask, Ariel, if there's any particular reason that some of those are highlighted. Is that just maybe to double-check and look at the exact numbers?

ARIEL LIANG: Yes, that's the exact intention: to double-check the numbers and make sure we didn't count it wrong.

BRIAN BECKHAM: Perfect. Seeing no comments on the executive summary, which was a very short one—of course, we've got a lot of supporting background documents, so there's no need to belabor that—does that take us now to the overview? Yeah. Of course, the last couple of months we devoted to looking at the agreed recommendations and the individual proposals, both from the URS and the Trademark Clearinghouse. So this is really just summarizing the work that got us to that point. Everyone on the call would be familiar with that.

Ariel?

ARIEL LIANG: Thanks, Brian. Staff just have a comment about this introduction section. Much of the content is repeated also in the executive summary. So we're wondering whether it's necessary or whether you think is duplication is not needed. But we do note that the benefit of repeating some of those content here is to provide additional context [to] the deliberation summary of these recommendations and questions. If somebody is not reading the executive summary, they may not get the context. So they can find it here. But we just want to note that this part under introduction is basically duplicated in the executive summary.

BRIAN BECKHAM: Thanks, Ariel. I wondered about that. Some of this already looked familiar. I think normally we would try to streamline this so that it's not repetitive and it's as streamlined as possible for people. But, given that we are in the final stretch and that, frankly, staff has already taken the time to produce the text, and also picking up some comments in the chat from Griffin and Kathy, it seems like the consensus is to just go ahead and leave it, even if it is a little repetitive.

This, again, should look very familiar. This is about as fresh as it's going to get in our collective memories: the URS recommendations for public comment.

I'm now moving into the same for TMCH-related RPMs. It looks like it takes us to the end here, but it also looks like we have a—yeah. Okay. I see Ariel is making an action item to actually add the text of the preliminary recommendation. Of course, it's all text that we've all seen and agreed on. It's just for staff to actually past it in here.

Seeing no comments or questions on this, I think we can probably move on. Does that take us to the cover page, Ariel?

ARIEL LIANG: Yes. Thanks, Brian. We're moving much faster than staff expected. We're already well into the sections that were scheduled to be reviewed on the 11th of March. So we can just probably tackle them because they're relatively shorter content.

BRIAN BECKHAM:     Okay. No bad thing making more progress than we anticipated. I think that's probably because this is content that we've seen before. It also looks like text that we've seen before. This is reminding us of the number of recommendations, proposals, and questions for community input in reference to the charter questions. This is really just setting the scene for people.

Any questions, comments, or thoughts on the text in front of us on the cover page? They should be about as uncontroversial as it gets.

Does that take us to the deliberations of the working group? Or those we've already covered?

ARIEL LIANG:       If I may, I'll provide some context.

BRIAN BECKHAM:     Please.

ARIEL LIANG:       What we're doing now is basically the introduction section of the deliberations of the working group. Following the introduction is going to be the deliberation of each of the RPMs, which the working group has already reviewed. So what they're reviewing now is merely the introduction language. If you recall, previously we did ask the question of whether this introductory language should be repeated under each of the deliberations of the Phase 1 RPMs. The suggestion is to consolidate this duplicated language and just put it under

introduction so people just see it once. That's the context for this document.

BRIAN BECKHAM: That makes perfect sense. So [it] would be the same for both the deliberations of the working group and then the individual proposals which didn't rise to the level of recommendations but which we are seeking public comment on.

Does that then, Ariel—I'm just going back to my other screen—take us to Annex E, or have we knocked out everything on the boilerplate sections?

ARIEL LIANG: I had my hand up, but also Susan has her hand up. So maybe Susan can go ahead first. Maybe it would make more sense if show you the actual Word document for the entire initial report and you can see where the placement is for this introductory language. And there's another one. It's for the TMCH and URS proposals. There's also introduction language, too. But it would make much more sense, if you look at the Word document, to have the have the context. That's the thing I wanted to add now, but perhaps Susan can provide her comment first.

BRIAN BECKHAM: Yeah. Thank you. Go ahead, Susan.

SUSAN PAYNE:          Thanks, Ariel. Actually, it might really help to see what you're proposing because I'm not sure I'm following. I'm feeling concerned and I may not need to be.

ARIEL LIANG:          Just one moment. I'm pulling the document up.

BRIAN BECKHAM:        Thanks, Ariel. I don't know, Susan, if you're alluding to a similar idea. I personally find it sometimes a little difficult to track this all on the fly when someone else is controlling the screen. Sometimes it's easier to take control of the mouse and scroll through it yourself.

ARIEL LIANG:          Brian, I have my hand up again, just to walk people through the language that you just saw in the Google Doc here. You see that's the introduction of the deliberation section. So, just to provide some kind of high-level summary of how the working group deliberated, all these are each of the Phase 1 RPMs. Some of the deliberations have resulted in the recommendations or questions seeking community input, and then some of the community deliberations resulted in individual proposals that did not rise to the level of preliminary recommendations. So it's a very high-level summary of the deliberations.

Following that introduction section, you just see each of the recommendations and then their contextual language, starting from URS. After that is the TMCH Sunrise Trademark Claims TMPDDRP.

So that's the structure of this section. Hopefully that alleviated some of the concerns from Susan.

BRIAN BECKHAM:     Thanks, Ariel. It looks to me like we've been looking at the component pieces of the document that is now on the screen.

Susan, does that answer your question?

Yes. I'm trying to catch my eyes on this really quickly. It's a 93-page document. It's a lot of work that's gone into that. So we've been seeing bits of pieces of it. Here it's brought all together in one place.

[inaudible], new hand? [inaudible]

ARIEL LIANG:      Hi, Brian. I still have my hand up. Perhaps I can just give you the introduction of the last piece of the boilerplate language under the individual proposals section. That's similar to the introduction language to the deliberations section, providing a very high-level overview of how these individual proposals were developed and then what's the working group's process of deliberating on them and then, under each individual proposal, what the contextual language actually includes. Just a note that [there are] not working group recommendations and some of the rationale were not supported by

the working group. So we just want to include all this disclaimer language in the individual proposal section at the beginning. Following that are the individual proposals from URS. The end is individual proposals for TMCH. So those are the components that the working group already reviewed. So that's the last bit.

BRIAN BECKHAM: Thanks, Ariel. I think that's an important section because, of course, the rationale for the individual proposals is something that we largely left aside.

Do we want to run through this—the individual proposals? I think we've probably done that sufficiently over the last few working group calls, but we can, of course, look at it on screen quickly, just to see how it all fits together. All 36 of the URS proposals for recommendations?

Ariel, does that take us to Annex E: the community input? Or am I …

Ah, okay. So this is not asking [for] input but the looking back at the community input that we've received. Okay. Of course, we did try to, especially with some of the Trademark Clearinghouse issues that impacted contracted parties, get direct feedback in terms of if there were operational concerns or hiccups in working with these different rights protection mechanisms.

Is that the extent of Annex E, Ariel?

ARIEL LIANG: Yes. That's basically the entire initial report. However, staff will finalize the other Google Docs and then transfer the content into the Word document. Then the working group should have an opportunity to work in this Word document in its entirety to check whether there's any corrections or mistakes that staff missed. We will compile all the other sections and put them into one doc for the working group to review before publishing.

BRIAN BECKHAM: Thanks, Ariel. I think probably everybody has a preferred way of working. Some may be more familiar with Google Docs or Word docs. So that would be very helpful if you all can put that over and people can find this all on one place and give it a onceover.

I think that takes us through the items that we had on our agenda for today. I know we're actually, believe it or—this is unusual for this group—ahead of schedule. We had planned to look at a number of things tomorrow. I don't know if there's any point—we may not even be ready—to start to look at those. Or we could, for example, look at the public comment tool.

For those of you who have been doing this for a while, historically there were iterations, let's say, of the Applicant Guidebook. Then people would draft letters and those would usually be a fair number of pages. So staff would have to compile those, and there were sometimes discussions around whether those were captured accurately and how things were to be weighted, etc.

Recently, ICANN has been moving to more of a survey or a fill-in-the-blank public comment tool. That really helps staff digest these. I have not been in a working group that has looked at those, but I can already imagine how that would be easier to have things already compartmentalized versus having to unpack some narratives that someone has put into a letter format.

Some of you may have seen this before—for example, with the EPDP report that's [inaudible] public comment—but here you see that basically the person who is filling out this form is asked to provide a little bit of information. One of the things that's helpful to know is that you can save your progress and not have to [to it all at once], of course, because, if people are looking at a 93-page document, that could take a little time to wade through. So it's broken down section by section.

I don't know, Ariel, if it's possible to do a dry run through that or if you have to be – yeah.

ARIEL LIANG: Brian, I'm happy to walk the working group through the public comment tool as I've filling this out as a commenter if that would help.

BRIAN BECKHAM: I think that could be helpful. I wonder. Is it normally provided in an offline format so that people could, let's say, print out the initial report, print out the survey, make notes, and prepare their work if they didn't want to do it on the computer and save it?

ARIEL LIANG:         Yes. In the public comment webpage, we will include a PDF document that provides a preview to all of the questions in this Google form so folks can do their offline work if they wish and can look at all of the questions in one place. So there will be that provided.

BRIAN BECKHAM:       That's very helpful. Especially if we're shifting into a new way of providing comments, that may help people who are more familiar with the old way of doing things. I believe there are sections where you would tick yes or no, but then there's also some spots for some preformed text. I think we'll see that as we go through this.

ARIEL LIANG:         I think Kathy has her hand up. Then there's also some questions in the chat.

BRIAN BECKHAM:       Oh, I'm sorry. Kathy?

KATHY KLEIMAN:       Thanks. I have question for Ariel. Can people skip sections? Is there any requirement that you fill everything out, or can you go 1 to 10 if that's the particular areas that someone wants to comment on?

ARIEL LIANG: Thanks, Kathy, for the question. For the entire form, the only questions that are mandatory is in Section 2, basically asking people their name and their affiliation and whether they're providing their input on behalf of their group who are not. These are the only mandatory questions. After that, none of the questions are mandatory. So people can just skip and click Next and then text the question they want to answer. So there's no obligation for commenters to answer any of the questions except for these information questions at the beginning.

KATHY KLEIMAN: Great. Thank you.

BRIAN BECKHAM: Good question, Kathy. Back to you, Ariel.

ARIEL LIANG: Thanks, Brian. I also note that Griffin has a question in the chat on whether we can convert this PDF document into a Word version. We do know, sometimes, conversion of formatting will completely mess up [things]. I do note that EPDP used to provide a Word document to preview all the questions. But, for this round of the Phase 2 initial report, they only used the PDF version instead of the Word version. So staff can discuss this with the EPDP colleagues and understand why they choose PDF instead of Word.

BRIAN BECKHAM:          Thanks for looking into that for us.

ARIEL LIANG:            Perhaps I can just show everyone quickly how the form is structed. I'm just going to put out some mandatory answers in order to move to the next section. You can se that basically each section is organizing one theme. So Section 3 is all of the URS preliminary recommendations and questions seeking community input. But I want to note the URS individual proposals are in a separate section because we have 17 of them. So it's going to be terrible all to put them all in one section.

Under each of the recommendations, we have a wiki page link to provide the complete text of what the recommendation is and also the contextual language underneath to just make it easier for people to reference. Then commenters can select their response in terms of each of the recommendations: whether they support, don't support, or have added changes. They also have an open field to provide additional comments, including their rationale. Also, if they have a proposed change to the recommendation, they can provide in there an elaborate response here.

For some of the recommendations, there are related questions, too, if you remember. We also provide space for them to answer them specifically. So basically we put related questions and recommendations together for people to answer in a more convenient manner.

So that's the general structure for this form. It's repeated in other sections, too. I'm not sure people want to look at them one by one, but perhaps staff can provide a link for people to go through this form on their own. If you see any issues, please let us know.

BRIAN BECKHAM:    Thanks, Ariel. Well, we'll see this as PDF. We'll see if we can't see it as a Word document. I think we see the gist of it there on the screen. So, for all of the various recommendations and individual proposals, they'll be asked whether [there were changes or they] support it at all. Of course, there's some freeform places for people to provide specific feedback. That would be really helpful to the extent that we're looking to actually get some of these proposals across to recommendation territory [for] people to finetune.

Sorry, Ariel. Is that a new hand?

ARIEL LIANG:    Yes. Sorry. I forgot to mention one thing. For some of the questions related to sunrise, for example, if the answer is a yes or no kind of answer, staff already provided these multiple choice bubbles for people to click. Hopefully that will be easier for commenters to just select one of the options instead of writing down yes or no because they're really basic responses. So we can streamline this response process. When we compile the comments, it will be much easier to show. So that's one thing.

Another thing is that, at the end of this Google form, there is also a general section for people to provide comments on anything, really, in the initial report—provide additional recommendations or proposals the working group hasn't considered. So we do have a section at the end of the form for people to have even more open-ended responses.

Sorry. The third thing is we also have another section about the overarching charter questions for the public to provide input. But, of course, we'll double-check whether this is the correct list of overarching questions and update if necessary.

So just these additional comments.

BRIAN BECKHAM:          Thanks so much, Ariel, for walking us through that. I think, of course, it's always challenging to change a lot of those familiar with the old way of submitting comments to ICANN, but I think we can already see how this is going to make our work as a working group and also the staff's work a lot easier.

I think Phil had a question.

Phil, I think you may be on mute. While you're coming off mute, if it's not too much, what I might like to do is see if we can't call on Mary or staff just—

PHIL CORWIN:          Can you hear me now?

BRIAN BECKHAM:    Yeah, Phil. Maybe I can just—yeah, go ahead.


PHIL CORWIN:    This will be real quick. One, I'm delighted we're making such good progress today. Two, I think this new comment tool will be of great assistance in helping the working group and staff analyze the community response and input in a much more systematic way than possibly before. Three, I just wanted to check with Ariel. When we initially looked at the comment form, it seemed to be a bit biased in terms of soliciting additional comments beyond the checking-off of things for negative comments rather than positive. I just want to make sure we've made the language neutral so that people feel free to comment positively as well as negatively when they want to write something in.


ARIEL LIANG:    Thanks, Phil. You can see on the screen that we did update the language. So, if people want to just provide a rationale for their response, ranging from support, not support, or support with minor changes, etc., they can provide their rationale here. So it's neutral rather than limiting. So we have made that update.


PHIL CORWIN:    Okay. Thank you so much. Appreciate it.

BRIAN BECKHAM:     Thanks, Phil, for the question and, Ariel, for the clarification. I'm just seeing some comments in the chat. Of course, we're going to try to make this available both in PDF and Word. And people are not required to fill out the entire survey.

We've made a lot of good progress today. We have an important couple of topics tomorrow. As I mentioned earlier in the call, these are not entirely new topics. The CCT and the EPDP had put a couple of questions—I think there were maybe three or four—to us some time back. So we did actually give those a look. We decided at the time to park those because we had our heads down working on other things. [These] were also moving targets in terms of the subject matter themselves.

Would it be all right, Mary or Julie or Ariel, if you'd be able to just do a little bit of a better refresh of our collective memory on the questions, just so that we're able to make good progress tomorrow in terms of answering those questions?

I think, Phil, that may be an old hand. And I see Mary's hand.


MARY WONG:     Thanks, Brian, and thanks, Phil. Hi, everybody. We're happy to, and I can start off because I was probably one of the staff supporting this group at the time that the CCT review was going on and, of course, when the EPDP started developing its recommendations as well. For tomorrow, I believe the agenda starts with EPDP. We had slated CCT

for the day after, but it may be possible, if we make as good progress as we did today, to move on as well.

A couple of general introductions to perhaps prepare for the discussion tomorrow. One is that the EPDP made several recommendations related to the RPMs review that we're doing, as did the CCT. For that reason, staff felt that, for a complete initial report, it would make sense for this group to put at least your preliminary conclusions, if you have any, or any questions you may have about possible recommendations into the initial report for community input.

The second thing that we want to say is that, obviously, the review in terms of GDPR compliance and any kind of privacy-related questions that are within the purview of the EPDP team in both phases of its work is not within the scope of this PDP because this was not what our group was chartered to do.

If you have a chance to take a look at the e-mail I sent out just before this call, we do include the updated Google Doc on URS Recommendation #1, to repeat what we said earlier. The e-mail also notes a couple of things. One is we include the source documentation for which we base the staff-proposed text. As we emphasized, this staff-proposed text is entirely from the staff side that's based on recommendation we had made to the Co-Chairs of this group. But the Co-Chairs have not had a chance to review or discuss the staff-proposed text. We just want to make that very clear. But, as I said, we do include the source documentation. Those include, of course, the

**EN**

temporary specification that, Brian, you had mentioned because that is what was approved by the ICANN Board in 2018.

I will note that, after the EPDP's work was concluded and the council and the Board voted, there is now, in effect, as of the 20th of May last year, an interim consensus policy that essentially obligates the contracted parties to continue compliance with the temp spec until a final consensus policy. All the language surrounding that is in place. I think, as most people know, implementation for Phase 1 EPDP is well underway.

The last source document that I'll mention for purposes of preparing for tomorrow is what's called the Wave 1 Analysis that was done by our colleagues in the GDD department. That actually formed the basis for the staff-suggested approach to you, which is that, while some updates may be necessary for the procedural aspects of, say, the URS, as well as some of the wording of the rules and perhaps the supplemental rules of the providers, there's really only one potential substantive modification that may need to be made to the URS procedure itself.

So we hope that you can see that in the e-mail that sent out, as well as the updated Google Doc for URS Recommendation #1. If you want to see the actual text of the EPDP recommendations and the CCT recommendations that were forwarded or referred to our group, you can find that in the background document that Ariel is scrolling through now and that we saw a little while ago.

Brian, I hope that's helpful.

BRIAN BECKHAM:     Yeah, Mary. That's really, really helpful. For the document that's on screen, would it be possible maybe to just include that as a specific link with possibly a reference to a page number, just so that people can really focus in on this for tomorrow?

MARY WONG:     Certainly. We'll do that, Brian.

BRIAN BECKHAM:     Brilliant. I don't see any other questions. I know there was some chat going on about the survey document. It looks like that's all in hand. I'm not seeing any other comments or any hands raised.

I want to say a huge thanks to staff. You can all see that a tremendous amount of work has gone into this. Thanks to you all. We've made really good progress today, even a little bit ahead of schedule.

Unless there are any other questions, I will call this meeting adjourned. We'll see you all tomorrow, where my Co-Chair, Kathy, will be leading us through the EPDP and maybe even the CCT portions of our work. Thanks so much, everyone.

JULIE BISLAND:     Thank you, Brian. Thanks, everyone. This meeting is adjourned.

**[END OF TRANSCRIPTION]**

ICANN 67
VIRTUAL COMMUNITY FORUM
7–12 March 2020