Working Group (1 of 2)

ICANN69 | Community Days Sessions – GNSO - Review of all Rights Protection Mechanisms in gTLDs Working Group (1 of 2)
Tuesday, October 13, 2020 – 14:00 to 15:30 CEST

ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the ICANN68 Review of All Rights Protection Mechanisms PDP Working Group call being held on Tuesday, the 13th of October 2020.

Please note that all RPM Group members have been promoted to panelists. Panelists can activate their mics and type in the Zoom chat pod. To do so, please remember to select Panelist and Attendees in the dropdown menu so all can read your comments. Panelists cannot ask questions via the Q&A pod, so we ask you to kindly type the clearly in the chat pod.

We are welcoming observers on our call today. A warm welcome to you all. Observers on this call are silent observers, meaning you cannot activate your mics.

As a reminder to all, this call is being recorded. Recordings will be posted on the ICANN69 website shortly after the call ends. All panelists must remember to state their names before speaking. All participants on the call must abide to the ICANN standards of behavior.

With that, I will turn the chat over to Kathy Kleiman. Please begin.

KATHY KLEIMAN: Terrific. Thanks so much, Andrea. My name is Kathy Kleiman, for anyone who does not know. I'm one of the three Co-Chairs of the Review of All Rights Protection Mechanisms Working Group, along with Phil Corwin, who is on the call, and Brian Beckham. Is Brian with us as well?

Brian will be coming in and out of the GAC room, I understand.

We have two meetings today. We have a 90-minute session now and a 60-minute session to follow. Very briefly, for those who are joining us from the public, the Review of All Rights Protection Mechanism Working Group was chartered in March of 2016 to conduct a two-phased policy development process. We are nearing the completion of Phase 1, and you are joining us today as we continue to review our final report. Then we'll be going on to Phase 2. Our review included the Trademark Clearinghouse, sunrise, trademark claims, and uniform rapid suspension systems created for new gTLDs.

Today we have an ambitious agenda. This is a working meeting of the working group, so you will see we are going to jump into work already in progress. We invite you to join our discussion. Members of the working group can participate by both audio and video, if you want to come on. Members of the public would put their questions into the Q&A.

Staff, do you want to give us a review of the agenda or the overview? Let me hand it over to you for a second for an overview of the slide that we're looking at and next steps. Go ahead, Julie.

JULIE HEDLUND: Thank you very much, Kathy. Just to review the agenda for today, we will ask if any of the working group members have statements of interest, as we always do at the start of a meeting. We're going to briefly review the structure of the final report. Then the working group will dive into the heart of the working session, which is to begin to the review of the final report. Then there is Any Other Business.

May I ask if any working group members have any other business?

Kathy, may I ask working group members if they have updates to statements of interest?

KATHY KLEIMAN: I think that's a great idea.

JULIE HEDLUND: All right. Working group members, please raise your hand if you have an update to your statement of interest.

Seeing no hands, I can proceed to the structure of the final report. Kathy, would you like me to just run through this slide quickly? It's fairly self-evident.

KATHY KLEIMAN: That would be great. And then we're going to review the introduction. Is that right?

JULIE HEDLUND: Yes. And, actually, this is different from the next slide, just to explain. So this is the structure of the final report. On the next slide, we'll proceed to the order of business for the review of the final report, which is slightly different because we're focusing on some key areas where there's some unresolved text for the beginning of the review. What you see before you is the structure of the final report. Much of this structure is actually a boilerplate or template, so it is a structure that's used for all PDP policy development process final reports.

There's a cover page and then an executive summary that gives a brief summary of the final report. Then you move into the Phase 1 final PDP recommendations. There's an intro to the recommendations and then the recommendations themselves by rights protection mechanism. Then there is a section on additional marketplace rights protection mechanisms, then the next steps for this PDP, some background on the PDP, and then an explanation of the approach taken by the working group in conducting its Phase 1 review.

Then there are several annexes. There's the charter for the PDP working group, the original charter questions and the consensus designations so that, once the working group has completed its review of the final report, the next step will be to go into a consensus call. Those consensus designations, after being reviewed by the Co-Chairs of the PDP working group, also appear in the final report, and any minority statements in Annex D, if there are any. The Annex E are the

links to the working group documents. Annex F is working group membership and attendance. Finally, Annex G is the community input.

So that's the structure of the final report. Shall I go to the next slide, Kathy?

KATHY KLEIMAN: Yes, absolutely, unless anyone has any questions. This is indeed the structure of most PDP final reports. And we should note we're still filling in a lot of these blanks. We'll discuss a number of them today.

JULIE HEDLUND: Thank you, Kathy. Onto the next slide. This is the review of the final report sections. As mentioned, the order is different from the structure of the report. We are going to first start with the introduction to the final recommendations, where there is some new text. I'll note that, in this [inaudible], we are asking working group members to focus on just new text—text that would be new from what appeared in the initial report or text that wasn't text that they reviewed as part of the review of the final recommendations. We do have some unresolved recommendation text, and we'll pull that up in a Google Doc for this discussion of Sub-items A, B, and C. then we'll move on to Annex B (the charter questions), additional marketplace RPMs, the background, the executive summary, the approach taken by the working group), Annex G (community input), Annex E (working group documents), the cover page, and next steps.

Staff will note that there are actually several meetings/several sessions in this schedule for the working group to review the final report. The review is expected to take place over the two working sessions here at ICANN69, but there are also another two sessions and two working group meetings in this schedule for completing the review of the final report. So by no means are we expecting the working group to complete all of these sections here at ICANN69.

KATHY KLEIMAN: Julie, perhaps we should add, to the public, that the meat of the work has already been done: the recommendations. We have to finalize a few of them, but we've been working for many weeks on the preparation of the recommendations based on our research, based on our data gathering, and based on comments that we've received. So the meat of it is already done. We're now talking about some of the more supplemental and introductory sections.

JULIE HEDLUND: Thank you, Kathy. Yes, that's correct. And it's why also we've asked working group members in their review of the final report to focus on any new language. We'll just say, though, that, for the Sub-bullet Items A, B, and C [of] the unresolved recommendation text are some areas where language still needs to be agreed to by the working group. These are continued discussions from the previous meeting.

If I may ask then, Kathy, if we might go to the introduction to the final recommendations—to that text—and then we can ask working group

members to let us know in their review of that text if they have found any factual errors or omissions? Would you like us to proceed in that way?

KATHY KLEIMAN: Yes, please, but let's review this a little bit because there have been a lot of documents crossing. So I'll wait until we get to the next page. And I apologize. My quiet neighborhood has, of course, gotten very noisy this morning with construction. So, if you're hearing a hum, it's coming from my side.

JULIE HEDLUND: We're not hearing any noise coming from you, at least not that I can tell.

KATHY KLEIMAN: Oh, that's great. Then you're missing a lot of fun and banging.

JULIE HEDLUND: All right. Well, I'm going to stop sharing, and I'm actually going to turn the Share feature over to Ariel. So hold for one moment.

KATHY KLEIMAN: Great. Would you like me to introduce this? Or, Ariel, would you like to introduce it?

ARIEL LIANG: Hi, Kathy. I'm happy to provide a quick overview. In the meantime, let me put this link in the chat so everyone can access their screen as well. So I'll start.

The introduction of the final recommendations is basically to lay out some overview or general information about all of the Phase 1 recommendations from the working group. So the first paragraph is basically just saying how many recommendations have been finalized. We will in this number when this part of the work is done.

Then the section following that provides the definition of how the working group has classified its recommendations. You may recall that, in a previous meeting, when we discussed the structure of the final report, we talked about the idea of classifying the recommendations into three groups. The first group recommendations for new policies and procedures, and the second group is recommendations to maintain status quo. The third group is recommendation to modify existing operational practices. So here we provided some further explanatory notes on what they mean here.

Then the paragraph following that is to mention there's one additional overarching data collection final recommendation and some really brief background of this recommendation—where it has come from—because it doesn't exactly fall into these three categories that you saw earlier.

Then the next paragraph talks about some of the recommendations contained, implementation guidance, and what this means. It means

the working group recommends how recommendations can be implemented but gives the flexibility to the IRT to decide on the exact implementation. So we borrowed some of this language from other PDP reports, such as SubPro and EPDP, so it's standard text to explain what implementation guidance means.

Then on the next page we have TBD content that's a quick overview of how the consensus call for the recommendations looks like. Once that exercise is done, we will fill in the content here.

Then the content following that talks about the working group's review process of public comments and how it divided the work into subgroups and then how the plenary working group reviewed the public comment related to individual proposals, etc.

JULIE HEDLUND: [inaudible]. I turned off video for a second.

ARIEL LIANG: Then the section following that talks about that the working group also discussed and referenced CCT-RT and EPDP's recommendation when it finalized its own final recommendations.

Finally, the last paragraph talks about that the working group didn't provide any additional marketplace-RPM-related recommendations, but further detail can be seen in that particular section.

So that's the overview of this introduction section. Happy to hear comments and input from the working group.

KATHY KLEIMAN: While we're waiting for comments, could you down to this paragraph on this first page, starting with, "Some recommendations contain implementation guidance"? I thought this was a really nice phrasing there. In the middle there, it says that the implementation guidance is for consideration by the IRT (the Implementation Review Team) with a strong presumption that it would be implemented but recommends that there may exist valid reasons in particular circumstances to not take the recommended action exactly as described. That makes sense, and that's what we talked about. So people who are reviewing with us who haven't been with us or haven't been with us for a while will see both the recommendation advice and implementation guidance advice. And that's just a nice definition of it.

Do we have any hands? Would anyone like to speak to the introduction or ask questions about it or raise any concerns?

Terrific. I believe we go on to the part of our agenda. Is this a good time to go back to our agenda, and do you have it? Thank you.

ARIEL LIANG: Apologies. I think it may be a little difficult to switch to [inaudible] slide, but I can just let you know what's supposed to be reviewed next: the remaining unresolved items. So it's related to URS Proposal 34,

Recommendation 9, the ALP-related text, and the contextual language related to the GI recommendation. So, if you're ready, we can go to that document.

KATHY KLEIMAN: Terrific. So here we go. To finalize the last of these remaining outlying recommendations and implementation guidance advice, we start with an interesting discussion that we've been having, which we will conclude today, on two somewhat parallel recommendations. One is revised URS Recommendation #9, which we've agreed to, and the other is converted Individual Proposal #34. What I would propose that we do is read the text of both recommendations and then discuss what's really very overlapping context and comment review for both of them. Again, unless you're getting too much noise in the background, I'll go ahead and we can read these recommendations because we're really looking at them side-by-side. Actually, Ariel, I'm going to ask you to read it in light of all the noise in the background. So could you read both #34 and #9?

ARIEL LIANG: Sure. I just want to preface by saying that the first one—Individual Proposal 34 converted recommendation—doesn't have change compared the version the working group saw in the last meeting, but then Recommendation 9 has some slight changes because of the working group's discussion last week. So I'll just preface there, and hopefully reading won't take too much time.

The first one (Individual Proposal 34 converted recommendation): "The working group recommends that the URS rules be amended to incorporate, in full, Rule #11 of the UDRP rules regarding language of proceedings." There's a URL link to that rule. "A) unless otherwise agreed by the parties or specified otherwise in the registration agreement, the language of the administrative proceedings shall be the language of the registration agreement subject to the authority of the panel to determine otherwise having regard to the circumstances of the administrative proceeding. B) The panel may order that any document submitted in languages other than the language of the administrative proceeding be [accompanied] by a translation in whole or in part into the language of the administrative proceeding."

There are a number of implementation guidance under the recommendation. "As implementation guidance, the working group recommends that the IRT consider the following. Point 1: Preliminary submission by either side to the panel regarding the language of the proceeding should be limited to 250 words and not be counted against the existing URS word limits. Point 2: The notice of complaint should, where applicable, contain a section explaining that the respondent may make a submission regarding the language of the proceedings. Point 3: If a translation is ordered, as long as the original submission meets the word limits in the original language, the translation of the original submission may nominally exceed the prescribed word limit. For the avoidance of doubt, the translation may not introduce new facts or arguments which may be contained in the language of proceedings submission." That's the fourth point. "The IRT should

consider developing a potential guidance to assist URS examiners in deciding whether to deviate from the default language in the context of a particular proceeding. Such potential guidance may take into account language of the relevant registration agreement, irrespective of whether the domain is registered through a privacy or proxy service or reseller. Such potential guidance could also consider the relevance of other factors including but not limited to"—there are several sub-bullets; the first one: "the language requested by one of the URS parties"—second—"the predominant language of the country or territory of the registrant"—third—"principles articulated in the relevant section (presently 4.5 of the WIPO overview)"—four—"the language used by the registry and/or the predominant language of the country or territory of the registry if different from that of the registration agreement"—fifth—"the language used by the registrar and/or predominant language of the country or territory of the registrar, if different from the language of the registration agreement"—and the last point—"the language or script used in the domain name if it is an internationalized domain."

So that's the language of this recommendation.

KATHY KLEIMAN: Great. Thank you, Ariel. Let's jump over to the happily shorter URS Recommendation #9 because really what we're doing, as we've been doing in the last few meetings, is talking about a choice between these two wordings and which one we're going forward with today. So back to you, Ariel. Thanks.

ARIEL LIANG: Thanks, Kathy. URS Final Recommendation #9. On this one, you see there are some redline edits that are incorporating the working group's input from last meeting. But I will read the full text here. "The working group recommends that, as implementation guidance, the IRT consider developing guidance to assist the URS examiners in deciding what language to use during a URS proceeding and when issuing a determination. Such guidance should take into account the fact that domains subject to a URS complaint may have been registered via a privacy or proxy service, and the location of the service will determine the language of the service, which may be relevant. Furthermore, the guidance may include but is not limited to 1) whether it is possible to [insert] in the language of the registration agreement from the registrar, 2) principles articulated in the relevant section (presently 4.5 of the WIP overview, 3) procedures followed under the UDRP, 4) the language requested by one of the URS parties, 5) the predominant language of the country or territory of the registrant, 6) the language used by the registry and/or predominant language of the country or territory of the registry, 7) the language used by the registrar and/or predominant language of the country or territory of the registrar, 8) the language script used in the domain name if it is an internationalized domain name."

KATHY KLEIMAN: Terrific, Ariel. Thank you. First, I don't know if the link is in the chat for all of this so everyone can follow and flip back and forth as they'd like.

If not, if you could put it there. I wanted to just highlight some of the overlapping text of both recommendations. Maybe you can help by finding it. One of the paragraphs in both draft languages starts: "The working group also notes that the ADNDRC." I'll let you find that. And the language may vary slightly between the two. I just want to highlight some of the facts that we've accumulated as we've gone on.

Terrific. So, "The working group also notes that the ADNDRC communicates with respondents only in English"—this was one of our findings—"and is consequently non-compliant with the URS Procedure Paragraph 4.2 in URS Rules 9E. Although most of its examiners speak additional languages other than English, language skills do not seem to be a factor in its assignment and rotation of the examiners. ADNDRC reported that it has not encountered a situation where the respondent did not understand English." So that's one of the findings driving this recommendation.

The other—let's go two paragraphs up—has to the with the Forum suggestion. This is the beginning paragraph. "Forum suggested that the guidance …" Do we have that? And there's a lot of text here, and you'll see a lot of new text.

We'll just read this. We'll find it. "Forum suggested that the guidance can include"—the guidance in deciding the language to communicate with a respondent—"a list of ICANN-sanctioned websites to review for the most accurate language data, a table of researched [and] improved languages for countries/territories with multiple languages and/or guidance on what an acceptable percentage of population in a

country or territory speaking certain languages to determine a language dominant."

So we found no problem with the larger URS provider, but [there's] some work [to do] with finding additional guidance on how to follow the URS rule which requires that translations under certain circumstances be in the predominant language of the country or territory of the language.

Ariel, let me go back to you. Are there other text provisions? There seems to be a lot of new text here, particularly in Individual Proposal #34. Would you like to go through some of it? Then I would propose that we open the discussion first with Renee Fossen and Brian Beckham from the Forum and from WIPO respectively to begin to talk about the two different choices that we have.

ARIEL LIANG: For the contextual language you see in green for this Individual Proposal 34 converted recommendation, they're mostly the same as what the working group saw earlier in the previous meeting. That's just staff's work to move some relevant contextual language from Recommendation 9 over here and to reflect when the working group discussed this particular issue—some of the feedback from Forum, in particular. Then there's some additional language we added here to reflect the latest e-mail from Renee regarding Forum's practice in terms of researching what is the predominant language of the registrant and then some of the difficulties they run into, such as a

country maybe being multilingual and how to determine which one is the predominant language. So they had that particular feedback there, and also their practice when a domain is registered via a proxy or privacy service and how they send the notice. Some of that information is incorporated here. As you noted, the specific suggestion from Forum regarding the type of guidance they would like to get from this recommendation that you already noted is included in the new contextual language here.

So the update is basically to incorporate what Forum provided to the working group in the last meeting.

KATHY KLEIMAN: Terrific. Thank you, Ariel. So there's two different approaches for the language issue. One is changing the rules—the first one; Individual Proposal 34—of the URS policy, which we have every right to do, and saying that the URS provider will go with the language of the registration agreement, presumably if they can find it. And another is just providing additional guidance for the URS providers in choosing the appropriate language. But, in both of them, it's insisting that we at least try to find the language of the registrant as required by the rules.

Let me open this up or much more eloquent discussion initially by Renee and Brian because their perspectives as providers –URS providers/UDRP provider—I think are important to us, and then we'll open it up generally. But we've talked about this extensively, so let's

see if we can, as quickly as possible, come to a conclusion on which path we want to follow: the first or the second. Renee, over to you.

RENEE FOSSEN: Thank you, Kathy. Can you hear me? I'm on my laptop today, so it might be a little dicey.

KATHY KLEIMAN: I hear you loud and clear.

RENEE FOSSEN: Excellent. Well, as a provider, I think I have two concerns with the recommendations and which way we should go. First of all, we have to make sure that we're translating the notice of the complaint in a language that we think the registrant is going to understand. So, whichever way we go, upfront, before we get a response from the registrant, we need to know what language we should translate that notice of complaint into. So that's an important thing because, if we don't have an examiner that speaks that language, we're not going to be able to take the case/the matter.

The other issue is with respect to not knowing which language will be used until the respondent responds, if they do. They may respond and we wouldn't have an examiner. That could potentially decide that matter. So we have to reject it. We're just deep into the process at that point for the complainant. If we don't have an examiner able to take the case, it's an uncomfortable situation for all of us.

So those are the two main concerns.

The other concern is adding time to the process. Currently—I think we discussed this multiple times before—as a provider, we're seeking the information from the registry as to the identity of the registrant. They don't necessarily have the information on the language of the registration agreement. That would have to come from the registrar. I'm sure there could be a process developed where that may be a faster, more efficient way of getting that information, but, currently, if we had to do that as a provider, it would add time to the process.

Finally, when it comes to ordering a translation, again that's going to add time to the process. I do agree with Michael Graham's comment—I believe it was him—saying that we need to add some sort of language in there as to who is going to be ordering that. It would have to be the examiner. So, at that point, an examiner is going to be appointed and would have to make that order. It will be a determination of how long they have to translate that and how to submit that.

So that does really change how we as a provider would handle it. I think I've made it pretty clear before that our system is highly automated, so this would be a real change for us as far as programming and how we administer cases. It's not to say we wouldn't do it, but it's certainly nothing that's going to be simple for us.

KATHY KLEIMAN: Renee, before you get off—thank you so much; staff, if we could go down to URS #9 just so we have both of us in front of us, equal [time]—do you have a thought as between one or the other? We've been looking at some of your critiques of 34. If we look at 9, does that change anything?

RENEE FOSSEN: I would say, essentially, 9 is what we're doing now, other than relying on the WIP overview guide. What we're doing is visiting websites and trying to figure out what is the predominant language of the country to send the notice of the complaint so that we're hopefully reaching the registrant in the language that they speak.

As for 34, I think it just adds some complexities. It certainly would make it easier to know that the default is going to be the language of the registration agreement, but, since we don't know what that is and what that process would look like, it's difficult for me to say that it would be completely on board with that one.

But 9? I think if we had some guidance on which language to pick … I think I mentioned, on the last call, that, when it comes to a territory that has two that are very close—dominant languages—and we may have an examiner that speaks the one that's a little bit less dominant, then the one that may be a 51/49 split (the population) … If we have an examiner that speaks the language that's 49%, it would be great to just be able to assign that examiner to the case, should we get a

response. If we don't get a response, we always proceed in English. I think that's it. [inaudible] to the rules currently as well.

We don't get a lot of responses on URS cases anyway, so it hasn't been a huge problem for us. So, in that respect, I would agree with the ADNC provider that it's just not a huge problem, but there are those times when we're not quite sure which language to select. It's tempting to select the one where we have an examiner rather than reject the case.

KATHY KLEIMAN: Makes sense. Thank you so much, Renee. I appreciate the comparison and the critique.

Brian, are you with us, and would you like to speak?

If you are speaking—

BRIAN BECKHAM: Yeah. Can you hear me?

KATHY KLEIMAN: I can. Over to you.

BRIAN BECKHAM: Great. Thanks so much. Hi, everyone. I'm going to try to speak in a provider capacity. Mind you, we're not a URS provider, only a UDRP provider. That may or may not change in the future. But I think what I would only add is—I don't want to put words in your mouth … My

understanding, to recap what Renee said, and following some of the comments in the chat. Ultimately, this is left to, on the one hand, a string of guesswork versus, on the other hand, clarity. The former is where we find ourselves when we're looking at the language of a proxy service—registrar, etc.—and the latter is where we find ourselves when we can ascertain the language of the registration agreement. Here the nuance is that, of course, it's the registrar who would know that they're the entity which has the contract with the registrant. So it would require a slight shift in how providers manage these cases. I appreciate … And certainly we've looked into, back in 2009/'10/'11/'12 potentially being a URS provider, and it was very clear that there has to be heaps and heaps of automation—I'm sure Renee can attest to that—to do these because the price point is incredibly low. You're asking a provider to a fair amount for not much money, which, by the way, has to also go to pay the examiner to make an assessment of the case. So, necessarily, there's going to be a lot of automation in here.

I would just add that, when we intake a UDRP case, once we enter that into our system and it's assigned a case number, there's an e-mail which automatically goes out from the database to the registrar, which asks a number of questions: can you lock the domain name, can you provide the language of the registration agreement, etc. But, if it's a question of basically integrating that UDRP automation side of things with querying the registrar for the language of the registration agreement into the URS, then my view is that that's certainly worth considering. The reason is that that effectively removes all doubt over this. The reason I suggest that's better is that it really, like I say,

removes all doubt. It removes questions about it. I've used the example on a number of occasions of myself. I live here in Switzerland. There's three official languages, none of which I speak, except for pretty surface-level. So, if I were to buy a domain name, I would certainly purchase that using an English registration agreement. And, if I received notification of a complaint in Italian or German, I could use Google Translate. But the question is, what do we want to ask of registrants to be able to understand what's being put in front of them. For me, avoiding that confusion, if possible, on the front end is certainly better. *baby gurgling*

I saw a question scrolling through the chat while I was talking. I'm trying to—

KATHY KLEIMAN: Let me read it to you, Brian. It's from Rebecca.

BRIAN BECKHAM: Thank you.

KATHY KLEIMAN: And it sounds like you have some expert help there in the background.

BRIAN BECKHAM: I have a helper with me today.

KATHY KLEIMAN: Fantastic. Okay, from Rebecca: "Brian, do you experience difficulties getting the answer to the language of the registration agreement question?" Then let's add, would a URS provider experience difficulties that you might not?

BRIAN BECKHAM: Thanks, Rebecca. We do sometimes have difficulties, but I would say that's not focused on the registrar providing us the language of the registration agreement. I'm sure Renee can attest to this. Fortunately, it's reasonably rare. It's, I would say, let's say, a dozen or so cases a year. Maybe less. But it's simply that the registrar is non-responsive all together. So we never hear from then. We have a process. We check. We get a monthly update from ICANN with what's meant to be authoritative e-mail addresses/contact points for registrars. Sometimes those aren't up to date. So, when we have difficulty—fortunately, it's pretty rare—most of the registrars, I think, have pretty standard processes for this, but it has nothing to do with the language of the registration agreement. It's more a matter of that their contact information is out of date.

KATHY KLEIMAN: Okay. Let me open it. Thank you, Brian and Renee, for the extensive discussion from the provider perspective. One question I'll throw out as we go into general discussion is, do we need to make, if we go with Individual Proposal #34, additional changes to the contracts of the registrars to require them to respond to the URS providers when

asked? Because the URS relationship is with the registry, as we know from the URS procedures and policies. So let me open this up to questions. Let's head into a final decision of this well-discussed, well-reviewed choice between the two: implementation guidance on how to help the URS provider find the language translation or this much more definitive choice of the language of the registration agreement, with noting that that changes the rules as they currently exist, which is not something we've done much of in this process. We've tweaked, we've refined, we've helped clarify, but we haven't changed rules—not that we can't, but we haven't. So I'm looking for hands.

BRIAN BECKHAM: Kathy, I'm sorry to jump in. I'm doing a little multi-tasking across devices here. I just wanted to respond to Lori's question in the chat on that, when in doubt, the language of a registration agreement should hold. That's certainly our suggestion: to use the language of the registration agreement. The rub here, of course, is that, as it currently stands, we don't necessarily know that. So the question is, do we want to modify the process to say that a provider should get confirmation of the language of the registration agreement? Then that's the starting point from which we launch. So I hope that's help, Lori. Thanks.

LORI: Yeah. I'm sorry to jump in, Kathy, but I don't see hands. I only see Q&A. I've been trying to raise my hand, and I apologize if there's something I'm not getting.

KATHY KLEIMAN: Well, these are new systems for all of us, so [inaudible], but thank you for speaking up. I also don't see any question in the Q&A. I see chat but not Q&A. So, Lori, the floor is yours. Go ahead.

LORI: Thank you. I apologize for the confusion on the process. So this is my question because this keeps confusing me. I think fundamentally I wouldn't say anybody might object to guidelines if they're just that—guidelines—and there's always a reasonably discussion left to the examiners so that the case can be adjudicated. So, if these are guidelines as opposed to fast rules, I'm not sure why there would be a need for a contract change. And I'm not even sure why this would be super controversial if, again, they're guidelines versus must-doss.

KATHY KLEIMAN: Let me see if I can clarify, Lori. Recommendation #9 is guidelines. Individual Proposal #34 is not. That is that the working group recommends the URS rules be amended to incorporate the way WIPO does things, basically, which, as I understand, changes the way the URS providers interact. Their main interaction for locking is with the registry, and yet we're asking them to get the registration agreement language, which is which the registrar. And the Forum has told us—it's in the materials—that sometimes the registrars say, "Why do we have to deal with you? We don't have an obligation to deal with you as a

URS provider," which is probably true. So #34 does change the rules and the processes. Does that make sense?

Lori, if you're speaking, we can't hear you.

LORI: I muted to be polite. Sorry. Yes, that clarifies in terms of … I think I missed that part about actually amending the rules. I guess I still don't understand, again, because, even looking at the guidance itself, it talks about guidelines versus hard and fast rules. But I see the differentiation between rules and guidelines and the language in the proposal. But I'm still a little confused because I feel like something is getting conflated here as to what would be helpful to a registrant and user, which is what we're aiming for, versus having to change a requirement that, right now, is even part of an MOU. It's not even a part of an agreement. I'm sorry. I'm just confused with the process right now.

Brian Beckham said he wouldn't mind trying to answer.

KATHY KLEIMAN: And I assume Renee is going to try to answer. I see Griffin in the queue. And Zak doesn't know it, but I'm conscripting him—sorry, Zak—to talk about it since this was his individual proposal – #34. So maybe he can also try to pull things together and compare the two. But this is a really good question—what's the difference? What helps registrants

the most? And I'll add: what's solving a problem that we've seen? And what, in some ways, is coming up with a new solution for something?

Brian, are you in the queue? Wait, Brian, you've been asked a question, so let me pause for that. Then Griffin and Zak.

BRIAN BECKHAM: Thanks. Please, anyone, including Renee, feel free to chime in. I'll try to navigate through this. What I think is happening is there's a couple things that are being mixed together. One is there's some references to WIPO processes. First of all, just to be clear, WIPO is not a URS provider. It's a UDRP provider. When we talk about WIPO processes, I think that's a reference to our jurisprudential overview, where there's about ten factors, I think, that are listed that help panelists determine the language of proceedings in a case.

That leads me to this second thing, which is, I think, the concept of the rules versus the guidance. So I think, when we talk about the rules/procedure, we're talking about the actual URS procedure. So that's the starting point of the provider either not knowing as it is today or, as I think is being proposed, knowing the language of the registration agreement. So the process flows from there: the language is X, they provide notice in that language, and off the case goes.

When we talk about guidance, then we shift away from the provider. So, let's say, that's more of an operational side of things. Then, when we talk about guidance, we're talking more about the substance. So say that the registrar says the language of the registration agreement

is Korean. The case has been filed in English. That gets turned over to an examiner who can read and write in both languages. They have arguments from the parties. Oftentimes that amounts to the web pages/a blog in English, or there's correspondence between the parties or English or something to that effect. So the panelists look at those factors from the base point of: the language of the registration agreement is X, and one of the parties has requested that the language of the proceedings be different from that language. So the guidance is to help the examiners basically assess, should they deviate from that language of the registration agreement.

I hope that helps, but obviously I'll hang on the line to see if there's further questions from that.

KATHY KLEIMAN: Terrific. Thank you, Brian. Griffin, then Zak, then Susan. Griffin, go ahead, please.

GRIFFIN BARNETT: Thanks, Kathy. There seems to me to be a fundamental consideration here. I put some of this into chat earlier, but what we have here in terms of this individual proposal that we're potentially suggesting become a recommendation is to provide a baseline default rule to govern in the first instance what determinative language of a proceeding should be, which obviously we're proposing be the language of the registration agreement. Now, obviously, an examiner can choose to deviate from that, given a host of factors in any given

case, as we've enumerated here. And we heard from Renee that determining the predominant language involves a certain level of research. It involves a certain level, potentially, in guesswork, particularly in countries or territories that have multiple languages that are common.

So I think what we want to try and do here is take that level of subjectivity out of the hands of providers and say, "Here's the default." Frankly, I do think it's much easier and much clearer to determine what the language of a particular registration agreement is, even if that involves some outreach to the registrar to confirm that, than to be putting the burden on providers to research the language of a country or territory and come up with a determination as to which language is the appropriate one to move forward in, which we just heard from Renee can often come down to the provider making a decision sometimes based on other factors, like, do they have a panelist that is equipped to work in one language versus another?

So I think all those reasons seem, to my mind, to favor having this type of brightline rule, again, even if it introduces the need for a slightly new process here that involves outreach to a registrar. I think that's fine. Again, I think registrars do already need to be involved in this process in certain situations, for example, where a registry doesn't, for whatever reason, revert to the provider with certain information. I believe—I haven't looked at in a minute—that the existing URS technical requirements document does contain certain obligations for

a registrar to respond to a provider request for certain information in situation where the registry can't or doesn't.

So, again, I don't think this would introducing such a burdensome level of new process that it overtakes the need to prefer this type of brightline rule, again, recognizing that, built into this "brightline" rule, is obviously the flexibility to deviate where circumstances dictate. So I think we're getting the best of both worlds here by going this route. Thank you.

KATHY KLEIMAN: Terrific. Thank you, Griffin. Although to the extent that is requires a deviation of process, we do [yield through an A] on that, I think, as the URS providers with us, on how much effort that might require, I would think. But thank you for your comments throughout this process. And it does look like we're coalescing. As we go into the top of the hour, I'm going to try to push that coalescence. Zak then Susan.

ZAK MUSCOVITCH: Thank you, Kathy. Yes, I agree; it does seem like we're coalescing around this Individual Proposal 34 as revised. I've got a whole bunch of reasons and explanations why the original Recommendation 9 is untenable and why this Recommendation 34 makes more sense policy-wise, etc.

But, if we're already coalescing around it, what I would suggest, Kathy, is, if anyone in the working group has any inclinations or concerns or is

favoring of the original Recommendation 9, I would like to hear from them, and then I would volunteer to answer their concerns and try to endeavor to explain why Recommendation 34 makes more sense than that.

KATHY KLEIMAN: That makes sense, Zak. Let's call on Susan, but in the meantime, Zak, if I understand what you've said, it is that you'd like to hear anybody who would still like to speak in light of their discussion today and over the last session or two—anyone who would still like to speak for URS #9—and then you'll help with the counterpoints.

ZAK MUSCOVITCH: Yeah.

KATHY KLEIMAN: So that is shout-out to the working group and an invitation from Zak, which I think is a good one and will help us hone into the closure of this discussion. So thank you very much, Zak.

Susan, over to you.

SUSAN PAYNE: Thanks, Kathy. Hi. Just really quickly, I want to completely support what Griffin was saying on essentially all of it, so I won't repeat that now.

But it seemed to me that we are perhaps talking about a slight change of process, as we've said, in terms of reaching out to the registrar, possibly, in order to get this information. I guess this is, again, the question for the providers to clarify if there's a problem with this, but it seems to be that the providers are now, because of GDPR, having to reach out to someone already to get information about the registrant. So it may be that the practice at the moment is to reach out to the registry because that's the way it has been done, but it seems to me that it's perfectly feasible and, indeed, if the registry doesn't respond, then it has to happen anyway: the provider could instead be reaching out to the registrar and asking for the information about the registrant and asking for this information about the language of the registration agreement. So I totally recognize that it might be a change of process for the providers, but I'm really keen to understand if we're all being impractical in thinking that this is a reasonable solution.

KATHY KLEIMAN: That's a great question: are we being impractical in asking if this is a reasonable solution? Thanks, Susan.

Renee, your hand is up. So let's ask. Are we being impractical in thinking this is a practical solution, referring to #34. Also, is there something we could add that would make you more comfortable that registrars would respond or anything else that might make you more comfortable in this change of procedure? Over to you, Renee.

RENEE FOSSEN: Hi. Thanks, Kathy. I want to be clear. I'm not uncomfortable with reaching up to the registrar, but what we have to do is let the expectation be known that that's what's going to happen. We have to reach out to the registry anyway, and we always have., even before GDPR. We have to verify and validate the information that we have. We have to be able to get a correct address for service of the registrant. So we've always done that. We always will. And the registry has to lock that domain because that's part of the process now. So we have to reach out to the registry, and then this will just make so that we have to reach out to the registrar as well. So it's going to be a two-step process, unless there is a way that the registry, once we ask them for verification of the information in lock, if they can get it from the registrar and give it to us at that time. But that's going to be something procedure that I think the IRT will just have to work through and with.

KATHY KLEIMAN: Okay. So is there any—Renee, don't go yet—additional language? Brian puts some in the chat. I think he said, "Seeking clarity on the"—let me see if I got this right—"registrar agreement language." Is there anything you'd—Brian, tell me if I'm getting this wrong—like to see in that language, Renee, that would make this interaction easier?

RENEE FOSSEN: I was trying to catch up here. Okay, I'm seeing more comments reach out to both simultaneously. Yeah, we can do that. Like I said at the

beginning, the issue is we just need to know which language we're going to send the notice of complaint out in. So, if that's the language of the registration agreement, then we'll wait and [get] that information however we can. I assume that's what we're doing. We're just completely rewriting that rule so that we're not reaching out in the language of the registrant's country or territory. So, if it's the language of the registration agreement, I'm fine with that. I guess I'm just struggling with what else to say about the issue. It's not that complicated, but it can be complicated, I guess.

KATHY KLEIMAN: And it makes sense that we are rewriting the rule and we're getting our hands the fact that we're doing something somewhat significant. So, again, if there's any further input that you have, now is the perfect time for it. Back to you, Renee, if there's anything else you want to say, or after Zak and Brian comment. But thank you for continuing to engage in the dialogue with us.

RENEE FOSSEN: I'll wait until we get further comments and then I can jump back in.

KATHY KLEIMAN: Terrific. Thanks. Zak and then Brian.

ZAK MUSCOVITCH: Thank you, Kathy.

KATHY KLEIMAN: Final words. We're wrapping up here, I think. Go ahead, Zak.

ZAK MUSCOVITCH: Okay. Thank you, Kathy. Renee, this proposed 34 is not just going to change the language that you're required to translate the English notice into—the predominant language used in the registrant's country or territory—so not only do you not have to worry about translating it into the predominant language of the registrant's country or territory and worry about figuring that out but you would just send the notice in the language of the registration [rule]. So that would change URS Rule 4.2.

But there's more benefits for the provider as well because this proposal would also effectively change the URS procedure's Paragraph 9, which has a whole bunch of complicated rules about language of the proceeding it's in. I'm just going to put it into chat here. So you have the notice of complaint in English and translated into the registrant's language from that 4.2 rule that I mentioned. Then the complaint shall be in English. So all complaints must be in English, and the respondent is going to receive a complaint only in English. But then the response may be provided in English or in the language of the notice of the complaint. That complicates things for the provider and examiner. Then the examiner must be fluent in both English and the language of the response and then must make a

determination on which language to use for the actual decision, called a determination.

So this new proposed rule would get rid of all that complicated stuff in Section 9 and in Rule 4.2 and have effectively the language of the registration agreement prevail over all aspects of the proceeding, taking out the guesswork, taking out the examiner that must make determinations in one language or the other and be fluent, etc. So there's a lot of benefits for the provider and for the examiners with this proposal.

But there is the tradeoff in that the provider will have to reach out to the registrar in addition to the registry, but I think it may arguably be a reasonable tradeoff to make in order to save all the complications from the existing language procedures. Maybe, as part of the implementation guidance, we could add another aspect to help the provider, and that's that, if the provider reaches out to the registrar to determine the language of the registration agreement and doesn't receive a response in a reasonable period of time or a fixed period of time, the default language would be English, which tends to be—I imagine WIPO and NAF would both have found this from their experience from UDRP—tends to be English anyhow. So there wouldn't be much loss.

Now, my last point is that, from the perspective of the rights and interest of registrants to make this as fair as possible, I see Recommendation 34 as an improvement for them because currently the complaint must be in English. That's the rule now. But, under the

new rule, there's a chance that it might have to be in a different language—in the language of the registration agreement. So, from that perspective, it's an improvement for registrants and, overall, is a less complicated procedure. That's why I think we go with Proposal 34. Thanks.

KATHY KLEIMAN: Terrific, Zak. I think you may have proposed some additional language here. I'm not sure that's in play quite yet, but if you wan to put it in play, we can do that. Thank you for the language of Section 9.

So far, I don't hear anybody taking up your challenge, for lack of a better word, to defend URS Recommendation #9, so I think that's interesting to note. I'll also note that Lori said that, before she left, "I would be in favor of what works for the provider as primary consideration."

So, Brian and Susan, final comments as we close down … What I'm hearing is us leaning towards Individual Proposal #34 for reasons that Zak and Griffin and Brian and Susan have enunciated—and many others—over the weeks. Brian and then Susan?

BRIAN BECKHAM: Thanks. I wish I could say, "Challenge accepted, Zak," just to say that, but I think what I wanted to add to Renee's intervention was I think—I appreciate that we're doing this at the last minute and we're at the finish line, but I firmly believe this is worth taking the time to go

through, and we'll all be happy that we did—what Renee was getting at was to take all the stuff that talks about—I'm just going from memory, not the screen—privacy/proxy, location language, resellers—whatever; all that stuff—if we head in this direction, will be extraneous for the provider side. So the provider gets the language of the registration agreement. It's clear. All that stuff basically gets taken out of the section that deals with the provider [and] the notice. Certainly it can be relevant. In my experience, I don't recall where that has been particular relevant, but if we wanted to salvage that, we could keep it for the examiner discretion portion.

But I think the point was that, if we know the language of the registration agreement, then all of the stuff that would help us with the guesswork is no longer relevant for the provider side. Thanks.

KATHY KLEIMAN: Does that mean, Brian, that we're deleting from the implementation guidance?

BRIAN BECKHAM: Only to the extent that it would refer to the provider providing notice. If people feel it's relevant … I personally happen to not think it's particularly relevant, but, if people want to say that, for the determination of the language ultimately by the examiner, then I think that wouldn't add confusion because ultimately what we want is clarity from the beginning when we launch the case. If there's a request by one of the parties to change the language, then that can

run its own course and we could leave this, if people feel that's appropriate, for the examiner's discretion. But, at the side of the provider providing notice, they would no longer be necessary.

KATHY KLEIMAN: So the notice would be in the language of the registration agreement, but we sill have these provisions which are now part of the implementation guidance of #34, which is what's in front of us, that says that the examiners have some discretion on whether to deviate from the default language in the [context] of a particular proceeding in light of some other factors that may be presented. So we're agreeing that we're going to keep—this is a lot of the green language or blue language, depending on your screen, in front of us—this, but it only applies to changing from the language of the registration agreement under certain circumstances.

BRIAN BECKHAM: Exactly. So to the examiner, not the provider.

KATHY KLEIMAN: Okay. So, again, further zeroing, and thank you, Brian, on #34.

Susan, it looks like the final comment goes to you because I'm not hearing any … We've now spent a lot of time late in the day, as we should, on this discussion of a significant rule and procedure change. I personally, as Co-Chair and as a member of the working group, am

glad we did and appreciate the discussion, but it looks like we're closing it. Final word to you, Susan.

SUSAN PAYNE: Thanks. Hi. Not to belabor this or anything, but I agree with Zak that, assuming that we do go down this Recommendation 34 path, there are some consequential changes that we probably need to look at or at least consider in relation to some of the other provisions that deal with language. Zak flagged some of them. I think we probably can't really do that on the fly here, but hopefully it'll be a relatively simple path for us to do that outside of on-the-fly during the meeting.

But I heard Zak saying that, in terms of the registrant, this might even be more beneficial for them because they would be getting the complaint in some other language than English—i.e., in the language of the registration agreement—and I'm not sure that, when we've been discussing this and adopting this recommendation, we were intending to go quite that far. I say that only because it seems to me that, at the time of the complaint, the complainant obviously hasn't been in touch with the registrar and doesn't know the language of the registrant agreement and has relatively little if not information actually about the registrants themselves at all. So obviously the rules at the moment have the complaint in English and the notice of the complaint translated into some other language. I think that would be the bit that needs to be married up. So I just wanted to flag that, but I think this is something that hopefully we can work on really easily outside of this call.

KATHY KLEIMAN: Well, hold on. This is interesting. Let's go back. Staff, can we go back to the language we were just looking at? Thank you. Zak, can you come back on? Because I think we're making a change now that is interesting. What were you assuming the language of the complaint would be?

ZAK MUSCOVITCH: The text of the recommendation is in front of us, and it nears what the procedure is with then UDRP. Typically, the way it works with the UDRP is that the complainant makes a submission in the complaint about what the language ought to be based upon the registration agreement. If the complainant runs up against a registration agreement in Czech, for example, the complainant can still make its submission in the complaint that, despite that, it submits that the language of the proceeding should be in English, for example. Typically, the way panelists deal with that is that, by and large, because most of the cases are default, they tend to accept the complainant's submissions, particularly if the domain name itself is in English characters, there's no other objections, etc., received from the respondents [of] the proceeding, and a determination is issued in English despite the language of the registration agreement. But, if a complaint is submitted in English despite the registration agreement being in another language, and the respondent responds, the respondent may make a submission demanding that the proceeding take place in the language of the registration. That happens very, very

rarely, but it does occasionally happen in the UDRP context. So this would essentially fit into the way things have been handled in the UDRP.

If we were just to be talking about the notice of complaint itself—that the notice of complaint shall be just in the language of the registration agreement—that's a whole different story. That's not the language of the proceeding. That's just a notice of complaint.

KATHY KLEIMAN: Right, which is why I'm confused this late in the day that we're now changing from the language of the proceeding, as you said, Zak, to the language of the notice, which seems like an awful lot of time to spend picking the language of the notice. The language here is indeed the language of the proceeding. Zak, am I right about that? That's Individual Proposal #34.

ZAK MUSCOVITCH: Say that again, Kathy, please?

KATHY KLEIMAN: Proposal #34 is expressed in the language of the proceeding.

ZAK MUSCOVITCH: Right. And language of proceeding is more than just the notice. A language of proceeding has to do with the language of the complaint, the language of correspondence between the parties, the language of

the determination, etc. That's language of the proceeding. If we want to talk just about the language of the notice of complaint, that's possible, too, but that would be a very minor change that just essentially eliminates the current practice, which is to have the notice of complaint in English and translated into the predominant language of the registrant. Then the proceeding would carry on with this [Dodge] breakfast of different rules under Section 9 of the procedure.

KATHY KLEIMAN: Okay. Thank you, Zak. So, all, as we zero in on this, we've had the language of Individual Proposal #34 before us now for quite a while. We've had the language of Recommendation #9 for quite a while. If we're going to change the language now, it seems fairly late in the day to this Co-Chair, but I look forward to hearing what the other Co-Chairs say.

Susan and Rebecca. Susan?

SUSAN PAYNE: Hi. Sorry. I think I seem to have caused some confusion without intending to here. I was not suggesting that we're only talking about the notice of complaint at all. What I was responding to was just that there is a provision—unfortunately, I don't have the rules in front of me—that talks about the current rules that say that the complaint is submitted in English and that the notice of complaint goes to the registrant in English, and currently it goes in the language of the country of the registrant, etc., etc. So, if we're going to be making this

change that we are proposing, then we need to do a consequential change to that so that we don't have one set of language rules for that notice of complaint, and a different set of language rules for the rest of the proceedings. So clearly this could also apply to things like the determination.

But what I was just trying to flag is that we're not talking here about expecting that the complainant has to translate the complaint into some other language, which is not something that they've ever done and not something we've discussed when we've been discussing this rule. Zak seemed to be making that assumption, so I just was trying to make sure that we were all on the same page. He's responding to me, and I think he is on the same page as me. But that's all I was trying to do. I wasn't suddenly trying to wind this back to a different position.

KATHY KLEIMAN: Whoops. Coming off mute. Okay. Thank you, Susan. There seems to be some agreement. Maybe Zak can help us, for those of us who don't participate in UDRP as actively as others.

Rebecca, over to you.

REBECCA TUSHNET: Thank you. I'm actually a little concerned about doing this this late in the day. I'm not sure we know what's most likely to get through to registrants. I just wonder, do we really have any data that would help us sort this out; like there's a reason to give the notice in two

languages where appropriate, and it's not as burdensome as having a whole proceeding, certainly, in two languages, especially since the notice is going to be standard text? So I'm just not convinced that we have much data either way, so I'm concerned about destabilizing stuff we've already done. I could become comfortable, but it makes me nervous. Thank you.

KATHY KLEIMAN: Thank you, Rebecca. There's discussion in the chat of … Could people who are commenting now come back into the audio? We've been doing this for a while. There seem to be questions now arising and some discomfort. Can anyone come and help clarify?

Paul McGrady is saying, "I can come around to agreeing with Rebecca this late in the game. Do we need to change it all? Perfectly okay to simply leave it as it is now?"

I'm not sure what "it" is, Paul. Is it Individual Proposal #34, or is it the procedure as it exists now?

Brian then Zak. Hopefully, we can wrap this up before the end of the session in ten minutes. Brian, please?

BRIAN BECKHAM: Thanks, Kathy. I had a similar question to Paul, which was the current rules versus … Because I think, if the question is … We have a tension between Proposal 34 and Recommendation 9, so I'm assuming Paul means the current rules. If that's the case, because we don't have time

to fully go through this, then maybe one of the things we can do … We've all recognized that we need to recharter Phase 2, and there's been a recognition that that also should include the question of the interoperability between the URS and the UDRP. So, if we take that to one more level of specificity, we can specifically add this to a question that should be addressed by the charter in Phase 2—the language. But I'm not sure we need to go there.

But what I wanted to add to Zak's comment and some of the things that I'm seeing in the chat is that I think what's being suggested is that … To the point of data, Rebecca, basically what we have is that, in most of the cases, you have a default, and the case is filed in English. And, frankly, most of the registration agreements are in English, by the way. So the question is, is it more procedurally efficient and fair to the parties to proceed on the basis of an English complaint when the notice, which is an easy-to-read document that says a case has been filed against you … That's provided in both languages. It gives the registrant to gives the registrant the opportunity to come back and say, "Hang on. I want to defend this in this language." But requiring the complaints to be translated would frankly be inefficient and disproportionate on complaints when the vast majority of respondents don't bother to defend the case.

So I hope that helps. It's the language of the complaint notification that would be provided in English and the language of the registration agreement, with an opportunity, of course, for the registrant to come

back and the examiner makes an ultimate determination, as opposed to, from the outset, requiring a translation of the complaint. Thanks.

KATHY KLEIMAN: Thanks, Brian. I know that changes my understanding a bit.

Zak? Let's see. I'm trying to look in the … Hold on just a second, Zak. So Griffin is saying, "Most of us have expressed being comfortable with Proposal 34-as-it-stands-now approach, which is the language of the proceeding," and Rebecca is expressing concern about changing of the recommendations that deal with the language of the notice. Zak, can you provide a guide to the perplexed? Because there seems to now be different understandings o what #34 might be. Over to you.

ZAK MUSCOVITCH: Right. Thank you, Kathy. I'm just reading Rebecca's chat message. [I understand that,] Brian[,] I'm expressing concern with changing other recommendations that deal with the language of the notice. If we can just put Recommendation 9 back up, staff. Okay. So this recommendation … The preliminary question is, if we were to keep the status quo, are we talking about keeping the status quo of the existing rules, or are we talking about keeping the status quo of Recommendation #9?

I won't get into that now, but what I would want to hear from Rebecca about, I guess, is, is she thinking that we should keep the notice of complaint procedure as it is in the rules and procedure right now

intact; In other words, that the complaint goes out in English and has to be translated into the predominant language of the place of the registrant and still have the provider guess or figure out what that is? Because that's how things are right now. To me, that was one of the original issues that led to Recommendation #9, which provides some better way or guidance to the provider to determine what that predominant language is. So Recommendation 34 is a solution to that by getting away from the predominant language of the registrant and moving towards this broad, general rule of the language of the registration.

KATHY KLEIMAN: But, Zak, is #4 about just changing the language of the notice, or is it about changing the language of the proceeding?

ZAK MUSCOVITCH: It says language of proceeding. It doesn't say language of the notice. The language of the notice is just a small part of this. That's just the prelude to the entire procedure, right?

KATHY KLEIMAN: Terrific. Okay, so we have the language of #34 before us as it is. We have no defenses of URS Recommendation #9 as it is. It turns out it may have been a vehicle to help us understand the process.

Can we go back up to #34 staff? The request on the table is, I believe, to adopt Individual Proposal #34 as it is before us with the edits, which

provide some ability of the examiner to change the language, should requests be made. But it changes the black rules of the URS procedure. It changes the language of the proceeding and makes it the language of the registration agreement. I would say that's now a very well-discussed change. We have five minutes for any objections, basically, to this discussion that is taking place at both the level of the rules, the level of the registrant understanding, and also the processes and the technical systems that providers have.

Let me see. Let me read the chat. So really what's up now is acceptance of Individual Proposal #34. It looks like … Griffin, do you want to come back on? I'm not seeing any objections right now but let me look for further hands.

Okay. So I'm going to call out the Co-Chairs on this one with their Co-Chairs' hat on. Do you see any reason that we don't move forward with Individual URS Proposal #34?

And does anyone want to make … I see chat happening. So, Brian and Phil, here's an opportunity to speak if you'd like.

BRIAN BECKHAM: Thanks, Kathy. I think that's right. I would just say that maybe we can, with the help of staff—I know we lean on them a lot—carefully go through Recommendation 9 to make sure, and based on the chat we had today. It seems that we're all rowing on the same direction. We want notice. We want due process. So there seems to be agreement on 34, but maybe we should take a careful pass at 9 to make sure that

we're not overlooking anything that would be useful for the provider-party examiner.

KATHY KLEIMAN: Brian, let me just [inaudible], looking at 9 to see if there's further material—9 is going to go away, right?—that should be incorporated into 34?

BRIAN BECKHAM: Exactly, just to make sure we haven't overlooked anything.

KATHY KLEIMAN: Makes sense. And I think staff has already started that process as part of the extensive green. They've been moving history and background and findings from 9 to 34. But I agree with you: going back through that one more time would make sense, and then circulating with highlights to the working group would make sense as well.

That was a long discussion but an important one. Thank you, everyone, for the involvement, the information, and the insight, and especially Renee and Brian for the insights as URS and UDRP providers.

Rebecca, did you want to say anything as we close out? We're heading into a break. Rebecca, if you'd like to comment.

REBECCA TUSHNET: Look, I'm not going to die on this hill, but I think we're pretending a certainty we don't have. I don't think we should expect that everything will go smoothly. This is one of the things we needed to collect data on that we didn't have. Thank you.

KATHY KLEIMAN: Fair warning. Hopefully, the next review team will collect the data on this. Maybe staff can make a note of that: that this is data that would be very useful to have; how the translation is working, how the notices are working, whether the registrants can follow the proceedings. That would be great data to have for the next review team.

So, staff, correct me if I'm wrong. I think we go on a half-hour break. Then I believe we come back. Phil Corwin, my Co-Chair, will be chairing. Do we come back, staff … The question is, is it a half-hour break, and do we come back to the same link or is it a different link?

JULIE HEDLUND: Kathy, it's a different link. Please go into that second session (Part 2 of 2) to get the Zoom link again from there.

We do need to close this call now. Thank you very much for chairing, Kathy, but our tech will need a full 30 minutes to get the next room ready for the meeting. Thank you.

KATHY KLEIMAN: Terrific. Thank you, Julie. Thank you to our technicians who ran the meeting so well and kept us all online. Everyone, we could meet in the hallways to have coffee together. Take care, everybody. See you in half-an-hour.

[END OF TRANSCRIPTION]