

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) PDP Working Group call
Wednesday, 07 February 2018 at 18:00 UTC**

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The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar>

Coordinator: Recordings have started.

Woman: Great. Thank you.

Well, good morning, good afternoon, good evening, everyone. Welcome to the Review of All Rights Protection Mechanisms RPMs in All gTLD PDP Working Group call held on Wednesday, the 6th of February 2018.

In the interest of time, there will be no roll call. Attendance will be taken by the Adobe Connect room. If you're only on the audio bridge, would you please let yourself be known now?

J. Scott Evans: This is J. Scott. I'm only on the audio bridge.

Woman: J. Scott, okay. And who else?

(Claudio): This is (Claudio).

Woman: Oh, hey, (Claudio). Thank you.

All right. And hearing no more names, I would just like to remind all to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid any background noise.

And with this, I will turn it back over to our co-chair, Phil Corwin.

Thank you. Please begin.

Philip Corwin: Thank you. Phil Corwin here, chairing today. You see my co-chair, Kathy Kleiman, in the Adobe and J. Scott Evans is on the audio today. Appreciate everyone's participation.

We had a call last Wednesday, very late last Wednesday night, East Coast time, the APAC call where we had decent attendance for that hour. Got some things done. And the first thing we're going to go through today is review the summary of actions and notes from that call with this broader group, so people can weigh in. And then we're going to move to a staff presentation on the potential URS case review framework that we've been reviewing and hopefully soon that review will be done and we can actually launch into the substance of that URS case review.

So with that, I'm going to call on staff to put up the documents, showing what transpired on the February 1st meeting.

Okay. All right. We had two action items. One was at the staff. We'll move the four-bullet point questions that were originally suggested by the co-chairs in their memo last October and November regarding a more objective criteria for handling some of the charter questions on URS and moving them to Column 3 of Section M and Part 2 of the document. So we're dealing with everything in one consolidated document and working group members can consider additional edits to the co-chairs' suggested bullet points and we can get into that when we're looking at the document today.

And then we had some pretty extensive discussion on alternate formulations for Question 3 as formulated by the co-chairs which was about reviewing trying to determine whether the examiners are generally applying the higher evidentiary burden of clear and convincing evidence standard as opposed to the preponderance of the evidence standard that applies in UDRP decisions and we got a lot of suggestions for alternate ways of going at that, including what instructions had the providers given to the panelists, what do the URS providers advise the panelists, does the URS providers have minimal standards for panelists for decision-making, have those minimal standards been met, what are the providers' procedures, have they done their work, have they ensured that the clear and convincing evidence standard has been applied, how did the providers police the existing rules for the panelists and what does clear and convincing evidence mean.

Personal comment on the last one, you know, that's somewhat subjective. It's more than just a slight balance in favor of 51% balance which would satisfy preponderance. It's less than beyond the reasonable doubt which is the standard for criminal convictions, at least in the United States.

There was general agreement to revise Question 3. There was no agreement on what the reformulation should be. The working group may consider recommending the panelists should issue URS decisions with a rational opinion. I forget the exact language that applies to the standards now but we had an interesting post on the e-mail list a little while ago about two decisions within the same year on the same Web site, both default URS decisions, and one of which was extremely minimal, didn't even mention the trademark at issue or what, if any, content was at the Web site. The other was much more expansive, much more like a UDRP decision than URS. I think we're hoping for a sweet spot.

In between, we adopted suggestions on the call from Brian Beckham and Susan Payne. I know that Susan Payne is so interested in this subject.

She's on in our Adobe chat room twice today, both herself and her avatar. And we adopted suggestions in Paragraph 3 and the working group considered additional edits to the co-chairs' suggested questions.

So that's where we are. So basically, we agreed we're going to take the four proposed questions from the co-chairs. Later, we're going to jettison the letter, move three of the questions as is into the overall grid that we have, the - for framing up the questions for URS review and we have generally agreed that the question regarding reasonable review of application of the clear and convincing evidence standard needs to be reformulated in a way that has that reasonable support within the working group.

So I will stop there and see if anyone wants to discuss anything that's just been reviewed in terms of the discussion on the last call. And then after that, we're going to move to the staff presentation on the URS case review framework.

And I don't see any hands up. I note that Susan has commented that she's on twice because she's got some Internet anxiety issues at her workplace today. Petter Rindforth notes that he's seeing a number of URS decisions running between 500 to 700 words, somewhat less than UDRP decisions. And so thanks for that input.

And since everyone seems satisfied with the review of our last call, let's turn it over to staff. I believe Mary wants to tee things up and then we'll be turning the presentation over to Berry Cobb.

So, Mary, could you go ahead?

Mary Wong: Yes, thank you, Phil.

Hi, everybody. This is Mary from staff. And the presentation that you'll be seeing is going to be led by Berry. But I want to note that this is a staff effort

that we've worked on for some weeks along with the three co-chairs. And as we'll probably discuss later in this call, we've been fortunate that Rebecca Tushnet, who is a law professor, has been working with her research assistant on a very similar project. So staff has also been working with Rebecca's RA to try and come up with the template that the working group will be asked to look at to decide how you wish to proceed for purposes of this PDP separate from and irrespective of Rebecca's research plan.

The reason why we wanted to have a few introductory remarks before moving to the actual presentation is that in light of the discussions that took place, particularly more recently on the mailing list up to today, is that in reviewing URS cases from the staff perspective, there are some pretty fundamental questions that, within the context of a PDP, is something to be decided by the working group. So following quite a lot of work with the co-chairs, this presentation will hopefully help you reach that kind of consideration and agreement.

The fundamental question, or really the first fundamental question, is whether or not the working group would like to review all URS cases and at the moment were about 800-something up to the 31st of December 2017 but that's probably going to grow somewhat incrementally this quarter and, of course, this year. Or if you don't wish to review all URS cases, then would you be wanting to review just some of the URS cases?

In this regard, if the preference is to review just some cases rather than all, then what we'll be asking the working group to do is to identify the categories or the types of cases, the data elements that you want to extract from the cases as to what we would put into a spreadsheet which staff would then report on.

So for example, there's been a lot of discussion about appeals cases and I believe there's something like 14 appeal cases. You may say "Okay, we want to look at all the appeal cases plus this type of other case and that type

of other case.” I think Berry’s template is buckets. So let’s say we end up with four or five buckets. Then what we could do as staff is prepopulate a spreadsheet and come back to you with what those cases are. And at the end of compiling all that data, you’d certainly be able to see the number of the cases in each bucket.

This is not necessarily the same as what working group members have been discussing relating to substantive-slash-qualitative-slash-subjective review. At the moment, from the staff perspective, we’re not talking about going into that. We’re just asking, like I said, two fundamental questions. Number one, do you wish to review all URS cases or just some? And number two, following from number one, if you want to review only some cases, then what are the types of cases that you think should be reviewed for purposes of this PDP and our charter? In other words, what are the buckets that you want us to pull out the cases for? And based on that, what are the cases you actually want to do a further more detail review of such as looking into the case itself? That, in our view, is for later even though quite a lot of discussion has taken place on the list on this point.

I hope that’s clear in terms of framing what the staff presentation today is going to be about. It’s going to be about these two, for us, elementary fundamental questions that the working group should answer.

I did notice a hand go up from Paul McGrady but it seems to have gone down again. Paul, I don’t know if you had a question.

And while waiting for Paul, there are comments in the Adobe chat. And for purposes of the transcript, there’s been a note by George that 900 cases at one minute per case is doable because it’s 15 hours. George, the staff’s response on that is that it may take a minute to look at a case but in terms of entering information into a spreadsheet and possible review, it certainly would be longer than one minute.

And then there's been a couple of comments on the number of cases. And Greg Shatan has offered, I suppose, a third option. All cases or some cases, which is what I commented on, or no cases at all. And, Greg, that is certainly within the purview and the remit of this working group if that indeed is the agreement.

So without further ado - oh, sorry, Paul, your hand has gone back up again. Please go ahead.

Paul McGrady, Jr.: Thanks. Paul McGrady here. Sorry for the hesitancy to raise my hand but since Greg raised the issue that I was going to raise, then I think it's already raised.

I guess there's - I apologize if - and I have not been in the last call. Why would we do this? What's the point of this exercise? Is it to come to the conclusion that overwhelming majority of URS cases are, you know, won by the complainant? Is it to explore further the kinds of trademarks that are being abused by respondents? I guess I just don't understand what we hope to gain by digging in here.

If what is hoped to gain is that we parse out, you know, a handful of URS cases where the complainant didn't win and attempt to shine light on them, my concern is that that will be a skewed outcome but because, of course, complainants overwhelmingly win these cases because the activities of the response is overwhelmingly bad activity.

So I guess I just don't know what it is we're trying to parse out from these cases and again, apologies if this has already been discussed at some great length. Thank you.

Mary Wong: Thank you, Paul. This is Mary from staff. And, Phil, Kathy and J. Scott, please chime in.

From the staff perspective, the directive for our GNSO PDP is to do data-driven policy development. So as a result, particularly for our PDP, you've seen that we are undertaking a data collection effort on the sunrise and claims aspects and on the URS, Berry has done a lot of work in some of the charts that he's presented to you including what you see on the screen today which is based off of his last presentation.

So the question for the working group really is whether or not you feel that as part of this directive to do data-driven policy development, it is necessary or desirable or appropriate to review URS cases. And as I said, your options, you know, depending - if you - even if you said yes that that is necessary, you still have a decision to make as to whether you wanted to review all the cases or some of the cases or, of course, the group could discuss this and say that given the data that has been presented to date by Berry, given other information that you might have that it is not necessary. That is a decision for the group to make. And so, you know, the staff is nearly putting forward some potential inputs and alternatives for consideration.

That's the staff perspective. But, Phil, you had your hand up as, I believe, a co-chair, so please go ahead.

Philip Corwin: Yes. Thanks, Mary, and thanks for the comment, Paul. And these are personal comments. I'm not going to try to speak for the other two co-chairs. They're very capable of speaking for themselves.

Number one, in regard to the back to the co-chairs' memo, it feels like what we're discussing now is one of the four questions that was proposed. I haven't heard any serious opposition to the others which are not about the decisions but about the administration of the URS by the three accredit examiners and whether it's being just a summary view to make sure it's being done in accord with the rules, procedures and the MOU they've entered into with ICANN and this is just - a lot of this is being proposed because we do have an overarching question of which the URS is a central object of the

question as to whether any of the RPM should become consensus policy and be required at legacy gTLDs which hold the majority of registered domains as opposed to why URS is now only available at new gTLDs. So just kind of, you know, making sure it's being done properly before grappling with the consensus policy question and applicability of the legacy.

On the case review, personally, my own - I haven't seen a lot of evidence that shades of great cases are being decided in the URS. I might say that in some of the cases the decision is so lacking in any recitation of relevant facts including the trademark at issue that is hard to make a complete judgment. But just to make sure the examiners understand that the higher evidentiary burden and are applying it properly, it's up to the group to decide how and if they want to proceed on that. The co-chairs never propose a review of all URS cases. We propose for that one a review of statistically significant sample from which we could extrapolate any findings.

And I don't know - I know that Professor Tushnet is undertaking a review of that type. I don't know if she wants to weigh in and inform us of what she's undertaking and the scope of it and I think she's open to having feedback from the working group on that so that - of course, we welcome contributions from any members in terms of additional data they can provide us with and we can look at that and that may - what she's undertaking they will be useful and satisfactory for overall working group purposes, so we can discuss that.

So I'll stop there and I see Jeff Neuman has his hand up and then Rebecca. So, Jeff, go ahead.

Jeff Neuman: Yes, thanks. So I just - this is Jeff Neuman. I just don't want it lost but there was no agreement on the last couple of calls that we should do a qualitative review of even a subset of cases. I think there were a lot of people on that call, myself being one of them, that argued that we should not be putting ourselves in the position of the panelists. We should not be trying to second guess why our panelists decided the way that they decided.

The proposal that I had submitted, which some people had supported and others did not but, was that we take a look at the instructions that were given to the panelists to make sure that they are being given the right standards approved, they're given the right guidance on how to make their decisions and that if we needed to work on that and revise that, that that was perfectly acceptable and reasonable. But to review qualitatively the cases and essentially put ourselves in the place of the panelists is not really fair for us to do. We don't have copies of the complaints. We don't have copies of the responses. We don't know what information the panelists necessarily used to or the context by which they've made the decision.

I'm not saying that all decisions are right. I'm, in fact, far from it but I'm just saying that to put ourselves in the place of a panelist to review it and make a judgment that it was wrong or didn't follow the right standard not only opens up those cases for appeal later on but, again, it's just out of context. Thanks.

Philip Corwin: Yes. Jeff, thanks for that. And just before calling on Rebecca, I just want to note from the chat both Kathy and Mary are urging that we - we're so not going to cut off the discussion but that we not make a move toward a final decision on this until we hear more from Berry on the type of review that staff is undertaking to extract data from the decisions. David McAuley likes the idea of an objective inquiry using a sample. So far as setting ourselves up as a court of appeals, we're - I don't think that was ever the co-chairs' intention. We're not going to be overturning decisions or anything like that. We just want to - I think our purpose was to get a general feeling that the standard is generally being adhered to.

And somewhere - early in the discussion, someone proposed something similar. After, we're going to do something similar for UDRP. I wouldn't think so. UDRP is not a new RPM. We're not going to be grappling with the question of making a consensus policy. There already is consensus policy and we have very long experience with UDRP decisions.

So I'll stop there. Rebecca, go ahead. And then I see Paul and Brian are behind you.

Rebecca Tushnet: Rebecca Tushnet. Thank you very much.

So I think we are tasked to determine and report on what's going on with URS. It's a new proceeding. Is it working? You know, what do we mean when we say "Is it working"? How else do we think we might know what's happening other than looking at the cases? I don't think that relying on our own opinions going in is, in any way, acceptably data based and, you know, we have a dataset that is perfectly manageable as a universe in contrast to the UDRP where I think we agreed that this - at this point, you couldn't review all of them.

I also want to just say that the casual decision of qualitative examination with second guessing seems to me to be mistaken. Those are two very different things. And if you look at the kinds of qualitative questions that people have wanted answered like, you know, does the examiner identify the trademark at issue, does it identify or does the panelist identify, you know, what the abuse of use was, those don't actually require second guessing even the step in the reasoning, much less the outcome.

And I think it will provide guidance whether we think that they're doing the right things, you know. So far, it seems like there's actually a lot more analysis in many of these proceedings than some of us might have feared which is really good news. But we don't know until we ask. Thank you.

Philip Corwin: Okay. Thank you for that. Paul, go ahead.

Paul McGrady, Jr.: Thanks. Paul McGrady for the record.

So I guess I'm a bit confused. And I should have been listening more carefully at the beginning. Are we talking about this is going to be a staff analysis and staff is asking us for input on what, if anything, they should be looking at? And I heard somebody say that Rebecca's research assistant is going to be doing the work. Are we talking about two different things? Is that one of the reasons why I'm (unintelligible)? Because obviously, Rebecca's research, whatever she'd like to research and she's free to put into this process whatever she like to put into the process. You know, likewise, those of us that also write in the space are free to put in whatever we'd like to put into the process or do surveys of our own, whatever, and those can all be weighed and that's fine. And those can have whatever biases are contained in them and going to be part of the analysis. So that's one thing.

And then the other thing is whether that we're going to ask staff to do this because if we're asking staff to do this, then it seems like a lot of wheel spinning to me. So maybe somebody can explain a little bit better about what we're talking about. I apologize for not catching it first. Thanks.

Philip Corwin: Yes. So, Paul, let me try to respond. Number one, let me state very clearly so everyone understands that the co-chairs note that there is concern about undertaking within the working group a qualitative review of the URS decisions or a sample thereof regarding whether the evidentiary standard has been respected and no decision has been made or will be made on this call today as to whether this working group will be undertaking that.

I think the thought was that if we did undertake that, it would be undertaken by volunteers from the working group doing - agreeing to review a set number of cases each we now know that Professor Tushnet and her assistant are undertaking an exercise along these lines. I think she's open to having input from the working group on that study to make it - and we welcome her contribution down the road and as well from any other member in any other organization that's relevant to our work and that's about as far as we've gone so far.

So we haven't decided to do it and we haven't decided how we would do it if we do it. And if she's doing it, that may be satisfactory particularly if she's want to take some input from the working group on what type of inquiry might be most beneficial in terms of reporting results back to us.

So that's my understanding of the situation. And with that, I'm going to call on Brian then Kathy then Greg and then unless you have a burning desire, I hope we can cut the queue off there because I think Berry's updated presentation today on the staff review of URS data and what that will yield in terms of information will be very relevant to this overall question.

So with that, Brian, please.

Brian Beckham: Thanks, Phil. Brian Beckham for the record.

For whatever its worth, I thought it may be useful to provide a little bit of context from the UDRP. When we first produced the WIPO overview in 2005, looking backwards at 7000 UDRP cases at the time and if I remember from the chat, somebody said they're somewhere in the neighborhood of 800 URS cases, so noting that there's sharp disagreement amongst members of the working group as to this notion of a substantive review of the cases, maybe one alternative would be to - as I can't remember who made the suggestion, I think it might have been Jeff Neuman, was to look at are the decisions containing minimal elements that would give an outside reader, you know, enough information to make an assessment gone.

So for example, are they listing the trademark that rights are being claimed on, are they listing how the domain name is being used, et cetera? So just want to offer that as maybe a compromised solution to, you know, if there are people who feel it's important to look at the cases, that may give them, you know, something. But then for people who feel it's not appropriate for us to

be looking at these cases, maybe they could accept looking at what are the minimal elements the decisions could - should contain. Thanks.

Philip Corwin: Yes, thank you for that, Brian. And yes, I would hope, regardless of what, if anything, we do on evidentiary standard, I think I would hope that there'd be some agreement that in the working group that a URS decision can still be brief while containing some very basic data elements like what's the trademark, was there any content at the Web site, things like that because basic elements like that are missing from some of the decisions I've reviewed which makes review of the quality extremely difficult.

I'm going to call on Kathy now and then Greg and then we're going to move on to Berry's presentation.

Kathy Kleiman: Great. Thanks. Kathy Kleiman. And I am speaking as a co-chair because I wanted to talk procedurally. We're mixing up apples and oranges here and they just wanted to share that. And it's logical that we would be doing that.

So, you know, to reiterate what Phil said, there is this discussion we've been having over the qualitative review of the cases and that's not what today's presentation is about. Actually, there's kind of a line in the sand. We're talking about something else. So please give us a chance.

The qualitative do make sense because we're finishing up the co-chairs' memo and the questions that went into Section M of the URS topic on evaluation of the URS providers and their processes. So it makes sense that you think that we're going on to the same thing but there really is a line in the sand as we go into a different question. Really the question we should have started with perhaps is, you know, a qualitative overview of all the cases. We've spent months and months and months trying to - and subteam - the data subteam has been spending months and months and months as well. We work on questions and data gathering for the sunrise period, for the

trademark claims, for the trademark clearinghouse. We're back to that basic question or basic data gathering for the URS.

And that's what today is about. It's not the qualitative evaluation of the case decisions. It's about kind of the big picture. We have this material, how do we dive into the data and that's where Berry is going to guide us through his thoughts and he spent enormous amount of time on this, so I want to thank him ahead of time for what he's about to present. Thank you.

Philip Corwin: Thanks, Kathy. And, Greg, you get the last word on this. For today.

Greg Shatan: Thanks. It's...

Philip Corwin: For today.

Greg Shatan: It's Greg Shatan for the record.

I think there seems to be an assumption by some that missing - that there's a list - there are certain elements that should be included in a decision and that it would be significant to this group to do a review of the decisions to see where those elements are missing. And I don't think we've had any discussion of the elements that should go into a decision or whether it's a mistake or bad to have - to not have those elements in the policy or these overall instructions are very spare. It's just as to put in the reasons for the decision, I believe, which is not the rationale or the argument or whatever it may be.

So I think if - before we decide that we're going to make you a list of inadequate - inadequacies, we have to decide that those are, in fact, inadequacies and I think that one could not include those in the decision and still have the decision be correctly decided, which I think is substantively different from the - trying to ascertain by some fashion whether the clear and convincing standard was properly applied. And I think that goes to whether

the decision was right or wrong and I can't distinguish that in my mind from second guessing.

I suggested earlier in the chat only having just that we should nearly contact the panelists and ask them whether they feel that they properly apply the clear and convincing standard and maybe we could ask them what they felt that they were given the information necessary to understand what the clear and convincing standard is, especially for those who are not involved in US jurisprudence. But the idea of trying to say that they're wrongly decided decisions is where I think we cross the line into disturbing territory. Thanks.

Philip Corwin: Well, thanks, Greg. I'm going to make one personal comment and then go on to Berry which is just in the hour before this call started, Jon Nevett posted to the e-mail list links to two NAF decisions involving the same complainant and the same registrant on the same domain which I believe was (boucheron.hub). There was no explanation of how the same domain was subject to a URS twice within the 12-month period but the first decision was the type that personally concerns me where it simply said the case was broad and this is a standard and I find it was mapped and neither the trademark or whether the domain was being used or the nature of the bad faith use was even mentioned in passing. So I - personally, I would like to see such basic elements in URS decisions. I don't think it would add more than a minute or two to examiners' time and would make - I think make a lot of people more comfortable that the decisions were being made properly.

The second decision by (David Steele) almost goes too far in the amount of detail but it's really high quality and goes way beyond basic information. So I'd invite working group members to take a look at those two decisions when they have a chance just to see the difference in the type of data that'll be resided in decisions done by panelists for the exact same URS dispute provider.

And with that, I'm going to be quiet and I see Mary's hand up and go ahead, Mary, and then let's get Berry online and let him explain where he's going with their data analysis. Thank you.

Mary Wong: Sorry, old hand. Thanks, Phil, though for noticing.

I think let's just go to Berry and hopefully what he presents will at least give folks some information as to what it is that we're talking about in order for the working group to make a decision. Thanks, Phil, and...

Philip Corwin: Yes. So...

Mary Wong: Go ahead, Phil.

Philip Corwin: ...we're going to turn to Berry Cobb, our master of statistical analysis, and Berry will be explaining further the type of data he believes he can extract for the use and information of this working group from the URS case files and this type of analysis he's doing is quite different. It's the apples, not the oranges that we've just been discussing about case decision review. This is about - more about what we're seeing in the URS system.

Go ahead, Berry.

Berry Cobb: Thank you, Phil.

I guess I'll start by pushing back on the improper use of "master" although I am a data guy and that one has been beat pretty well as - during this discussion.

So I want to start by saying that, you know, staff has kind of been working on this or starting to think about this back before the working group even really started the URS case analysis, you know, as a pivot from the survey work that's going on. And the primary motivation was we didn't understand what

the URS review was actually going to be. All we had were a bunch of charter questions.

And without understanding the sizing and scope of what would be contained in the review, it's hard to try to put a target date on something that can be advertised out to the community on when they can expect the work to be done. That's kind of the first motivation.

The second that has been said a couple of times and I can't emphasize it enough is that, you know, even per ICANN bylaws where possible, we need to be doing data-driven policy development. And someone had put in the chat earlier about - to look at instructions provided to panelists and to ensure that the standards are being applied and - I mean, I can subscribe to that but how do you know that standards would be - were being applied without actually looking at some of the details of the cases? And I won't make any opinion about, you know, reviewing an actual decision as to whether it was correct or not. It seems fairly - have fair agreement that that part shouldn't be done.

But at any rate, the entire approach here from this data-driven exercise really does start by the data that we presented first in Abu Dhabi and then kind of a second version of that earlier in January. And the whole idea of taking this data that has been scraped off the provider sites is to look for things that are out of band or buckets, as Mary had mentioned earlier, and the chart on Page 1 in Adobe Connect room is the first instance of that. I mean, we can quickly take away from this that there are about 14 cases that had an appeal, some 225 or so, maybe as high as 250, had some sort of response and, you know, that 44 were withdrawn for whatever reason. Those, you know, the withdrawn ones are probably not a reason that the working group would want to dive deeper into that maybe so.

But from all of the bigger bucket of all of those cases that just had a default and suspension to them, you know, that's a pretty large bucket and perhaps

there's even some nuances within that very large bucket that might be where we can find additional data elements that might provoke deliberations amongst the group to understand whether the rules and procedures were properly being applied or not.

But we're at a stopping point for the most parts. The data that is presented on the provider sites is limited in terms of the different attributes of cases. And so automation has taken us about as far as we can. So the next step is really human intervention. And so to look for key elements or kind of a coding framework by reviewing these cases will help, hopefully, provide some other out-of-band kinds of activities or identify a trend or not that may be worthy of further deliberation.

So what was being discussed in prior deliberations is the responses to the cases and whether e-mails were being accepted by the registrants and some of those things. I don't think we'll be able to get to all of that but at least within the cases where a - there was a response, you know, would it be interesting to see what percentage of the cases that the registrant respond within 14 days or after - within six months or did any of them even apply for the six-month extension. That kind of goes into the mechanics of how the URS works and there might be particular areas again that can be possible for deliberation.

So in terms of - I kind of mentioned the background and Mary and others have mentioned a while back, I think it was probably seven, eight weeks ago, Rebecca, there was dialog on the list about some of the URS cases. Rebecca had responded back on the list about her upcoming research project where she intends to review through all of them. That peaked my interest because I had a certain set of data that you've seen charts for and we were interested in what other parts or what elements were they going to be reviewing. And in terms of timeline and the work plan, you know, can there be synergies between the two efforts? And I'll state right up front that, you know, what Rebecca and her research assistant are doing are

completely independent to what this working group is doing but again perhaps there are synergies that can be applied here.

And so I think probably four or five weeks ago, we engaged with her research assistant or - which her name is (Alex), and what I'm about to present is kind of the combination of what we have up to this point.

I did mention so this framework, the whole goal again is to detect out-of-band trends that can maybe expedite a meaningful review of these URS cases instead of having to review all of them. We're right now still focused on more a quantitative component again to try to identify these out-of-band aspects and this coding template that again has been constructed jointly -- most of the credit goes to (Alex) -- may help us identify some of those aspects.

The data sources, as I've mentioned, again, are going to be scraped from the URS provider sites and then, in turn, there's also going to be a collection of the WHOIS data and, in some cases, the historical data to understand what happened with the domain name itself and it was discussed here in the chat is, you know, is this a preview for what we're going to be doing in Phase 2 for UDRP or not.

I'm hopeful that this is kind of a preview for what we eventually will try to replicate in the UDRP, again, because it goes back to this fact-based policy decision-making aspect. And without reviewing some set of cases, I don't know how we get to data that would tell the working group otherwise.

So as I mentioned at the very beginning that this first chart here is a first attempt of identifying some of these buckets that may be worthy of further review of the cases. And now the coding framework itself I'll share the screen.

This may be difficult for you to see in the screen. I'm going to zoom in then I'm going to give you control of it. But there are four basic sections of this

and this is only a printed example of what you'll find. But essentially, there's basic case information which mostly consists of the data that has produced the data and charts that we've built thus far. There's a section for result and final disposition, a third section about a trademark analysis and a fourth about case analysis.

And I'll add that practically all of the trademark analysis and case analysis section is more involved from Rebecca's research but it's set up in a way that allows for basically kind of yes/no possibilities or responses in reviewing the details of the case and that provides a mechanism by which we can roll up this data and perhaps detect percentage trends across all of the 827 cases and if, for example, you know, whatever element was only 60% then we would have instinctively maybe have said it should have been 90%, maybe that's something to look at. And until we do this, we really don't know.

So I'm just going to run through quickly each one of these sections just to give a quick description. This example will be attached to the notes and I've also included two examples of the very first two URS cases which is not complete but at least it's kind of a first run example of what this coding structure might look like.

So the basic case information is relatively straightforward, you know, who the provider is, the case number, this green and red section. The green is really just a pivot table perspective. Red will likely be deleted. Case name, disputed name, the TLD, were there multiple domains involved in the case or not, yes or no, you know, what was the result, what's the determination type, those are kind of aspects or examples of what we've already collected off to the provider sites.

And if you see blank spaces below the two IBM examples, those are areas that would need to manually be filled in. So, you know, who those actual complainants was, what country were they from, the respondent country, the examiner. Commencement date and decision date, we've already had that,

so that's been prepopulated. But as I mentioned earlier, so there's a coding aspect about if there was a response to any of these and when did it occur, you know, what kinds of attributes can we find out of that.

Moving on to the second section, the results and final disposition, the very first column is the final domain disposition. There's been lots of dialog on the list and on the calls speculating whether the abuse of registrant reacquired the name after the domain expire or did the brand pick it up or there's been consternation that because the way the URS is set up now that the name is only suspended, you know, is it more costly to acquire the name afterwards and some of those types of positions.

Here, you know, by looking at the WHOIS information, we're able to look at the history and make a quick determination, you know, was the name properly suspended after the compliant had prevailed, what happened to the domain after it expired and those kinds of things and I'll run through the two IBM ones here in just a little bit.

But then there's some other attributes here, you know, if the complaint was unsuccessful, where did the complaint fall and I'll note that, you know, these kinds of three elements that are listed here, you know, the - all three elements must be satisfied to prevail in the URS and for the third element, the domain must have been registered and used in bad faith. Those are the kinds of - a little bit more subjective type components. But staff has placed some notes here just to try to help understand some of the nuances of some of these fields and then, of course, whether the case was appealed or not. The first two examples, those weren't appealed. But as we were to traverse down the list, the 14 would eventually show up in this column.

The trademark analysis honestly goes beyond my pay grade. So I wouldn't be able to properly fill in much of this. But essentially, you know, is the domain name string identical to the trademark, yes or no, you know, does the domain name contain a generic or related term which I believe this working

group has agreed to be called or referred to as dictionary terms, there are some more subjective elements about whether the trademark is fanciful and those kinds of aspects that require a deeper analysis more than just the extraction effects from the document or record.

The trademark owner is mentioned in the decision which is not necessarily indicative of whether this URS case was filed based on the possible claims notice going but if it - whether it was just mentioned in the case or not.

And then lastly, we get into the Case Analysis section, so that - which gets into the evidentiary basis. The examiner finds likely confusion increased by addition of the TLD and likely confusion decreased by the addition of the TLD, et cetera. And again, this starts to get more beyond my pay grade. But again, the concept still applies is trying to form these questions in a yes/no way and that they're answered consistently across all of these cases and we promote that or aggregate that data to a macro level. Are there percentage trends that we could find or work on from there?

So the last thing I'll say is I'm just going to run through the - it's really just one IBM example but it was two domains for the same case that was at forum. The case number, obviously, was IBM. It was within dot-guru and dot-ventures. There were multiple domains involved. The case resulted was - the result was the domain was suspended and it was a final determination. We've got the contact and country information, when it was commenced. There was indeed a response within 14 days for this particular case. The final domain disposition having gone to look into the WHOIS history I did validate that, yes, the name servers were changed to the forum name servers and the name was suspended. It expired one year later. Then it was eventually picked up under Donuts DPML and is no longer available for registration.

And it wasn't appealed. And then we get into some of the trademark analysis. This was kind of - this is repopulated by (Alex), so I didn't really go

into the details but, you know, was the domain name identical to the trademark? Yes, it was. Did it contain generic related terms? No, it didn't. Is there, you know, a typo or homophobe? No. Whether it's fanciful or not and some of this other descriptive type elements that make up this coding structure.

And so, again, the whole idea is to do this for practically the way the data is set up just like how we've done originally is that this is all by domain names so that each domain can be analyzed. But then when we roll up or aggregate this data, we'll take a look back at it on a case level and again, hopefully, walk away with some takeaway charts that may point to areas that the working group can deliberate on, on ensuring whether, you know, the URS as the dispute resolution aspect that it is today, whether there are components that maybe need for the review or whether it's working appropriately or not. But then at the end, if all of this says that, yes, maybe it is, then, you know, we can move on and we have data to support it or if there are few areas, for example, in the response areas that maybe need a further look and perhaps there could be some suggested recommendations on how to improve that element.

And the last part that I would say is that I think it would be important for this working group, if you agreed with its approach and I think it was either discussed on the last call or perhaps on the list, but the appeals, the cases were in appeal was also included in that particular case or that transaction, if you will. Perhaps, those 14 would be the best place to start first because it would help validate this coding framework so that we do identify the proper elements that maybe need to be coded.

But then secondarily, the - I think that there probably the most valuable is because they provide the best view of kind of the end - the beginning to end mechanics of the URS procedure. And while probably it doesn't cover all the rules and all of the provisions of the procedures, it's probably the best start. And then from there, that helps us confirm that this coding structure is

appropriate then Rebecca and (Alex) specifically will have higher confidence that we won't need to change any of the structure moving forward.

So with that, I would like to, first, maybe if Rebecca wants, to turn it over to her because this - again, this half is really her and (Alex's) research, if she just has any other comments that she'd like to make or if I had missed anything from her side of the fence, again, noting that her effort in what they're doing is completely separate than what this working group is doing. But again, the hope is that we can leverage that.

So, Rebecca, if you're interested in responding, please raise your hand and I'll turn it over to you. Else, I'll turn it back to Phil.

Okay. Please go ahead, Rebecca. And then over to you, Phil, after her. Thank you.

Rebecca, you're on mute if we can't hear you.

Rebecca Tushnet: Oh, I'm so sorry. Berry, thank you so much for this presentation. It was very helpful.

Philip Corwin: It's Phil. Let me just - Rebecca, before you speak, I'm just trying to get a better understanding in terms of what Berry just presented of what is a continuation of the staff work that he's already briefed us on in previous calls versus what you'll be doing. It's just not quite clear to me who's doing what from the presentation we just had. So go ahead, please.

Rebecca Tushnet: So maybe I can speak to that. So I - so my research is actually going to focus, I hope, on things like classifying the trademark, so what, you know, our owners of arbitrary and inherent - or otherwise inherently distinctive marks bring, you know, a greater percentage, are they succeeding more often. So, you know, does the type of trademark affect the outcome at all?

And then the related research question is, does the TLD or its interaction with the trademark affect the outcome at all? So for example, suppose you have a security firm called Tower Security. So we might expect them to succeed in proceeding against tower-dot-security but expect them to fail in a proceeding against tower-dot-london. So we're collecting the data to figure out if that is happening. So that's kind of the stuff that I'm interested in.

In terms of other interesting questions, if people come up with stuff that makes sense, I'm certainly happy to code for those. But I think that classification of trademarks and the gTLD interaction is where we hope to be focusing our analysis. And my understanding is that staff does not propose to do the trademark classification stuff or the gTLD interaction stuff. Thank you.

Philip Corwin: Well, thanks for that. I'll let my main questions - I don't want to say confirms my questions as I know Berry's briefed us in the past on statistical data, he was drawing out from the database of URS decisions be useful for working group consideration of our various charter questions. This is on top of it. So, yes, I'm - as we go forward, I just want to understand better what Berry and staff are doing for the working group, what you're doing in your own research project with some communication back and forth with staff and how this all relates to assisting the working group in addressing charter questions. I'll stop there and open it for discussion.

And I'll call on Michael Graham.

Michael Graham: Thanks, Phil.

I guess I have a couple of questions. The basic question in looking at this chart, Berry, and on the - and this is also for Rebecca. In terms of the classification of the types of trademarks, the determination of whether it's arbitrary, descriptive or not, I would presume that that would only be inserted

and that would be based on the determination stated by the panelists. That would be one question.

The second question is whether or not - I do not recall seeing this, whether or not these decisions, too, will be categorized or there will be a category for indicating which service provider the decision arises from in case there's some difference that might be apprised from that. With those two questions, I'll go off.

Rebecca Tushnet: Is it okay if I take that?

This is Rebecca. My understanding is that there is a field for the case provider although I don't think I have control over the thing to move it. But as for the classification, no, for my research, my expectation is that I will have the RA coding and actually we're getting a second RA and we're going to look for coder agreement on this. And if there is, you know, we'll do some review. If the examiner says it, then we'll put it in. But a lot of times, it turns out the examiner doesn't say anything. So we will make those calls and, you know, try and get coder agreement on them. Thank you.

Philip Corwin: Thanks, Rebecca. Paul McGrady and if Michael Graham is finished, his hand is still up. But if not, then Paul can go ahead...

Michael Graham: Yes. While we're on that, could we just get clarification? It's Michael. So I guess, Rebecca, if that is going to be the case, if it's not indicated and it's determined by a coder, I think that has to be made clear in these results as well because as you well know, you know, I say potayto and they say potahto. So I think that needs to be indicated because I think that also is important in showing the distinction between the two and certainly if a decision is based on a panelist's determination, whether that's right or wrong, I think that's what we're analyzing is the basis for the decision. Thanks.

Rebecca Tushnet: This is Rebecca. So certainly my expectation that the resulting research will fully disclose who did what and the coding process. That being said, it was kind of my expectation that the working group would probably not adopt the trademark classification part of it. It's part of my research, so it's going to, you know, it'll be there. But I did not expect that that will be the official output of the working group. Thank you.

Philip Corwin: Just before calling on Paul, Rebecca, what's your projected - when do you anticipate having at least some preliminary data just in terms of timing?

Rebecca Tushnet: So this is a great question. And so after discussions with my RA, I'm actually in the process of hiring a second person, as I said, to do some double checking. And so right now, my one RA is projecting end of March. But once I hire someone and we get - we might be able to speed that up. Thank you.

Philip Corwin: Okay. Thank you very much for that clarification.

Mr. McGrady, please go ahead.

Paul McGrady, Jr.: Thanks. Paul McGrady here.

So, I mean, I look forward to reading the outcomes of Rebecca's study. I like to read (unintelligible) in the domain name space. It's (unintelligible) writing as well. And of course, many of us practice in the space. So that's all well and good.

I guess I just don't understand what the purpose of today's call is. Rebecca is obviously free to research what she likes and if she wants to submit those findings to the working group, you know, she's obviously free to do that. Hopefully, they're submitted in time to, you know, be useful to the working group, you know, if we're still deliberating whatever it is that is a subject to the research. Research shouldn't be used to reopen things that have since been

closed but timely research is welcome from anybody on this call or anybody in the broader ICANN community, of course.

But I guess I just don't understand what it is that we're being asked to talk about today. If Rebecca wants inputs on various numbers of the working group, she can certainly get that offline. I don't think that involving working group in private research projects is the path forward for the working group. I've never had that getting asked before. I'm not sure that is what is being asked but it's what it feels like it's being asked. Involving ICANN staff in private research projects, again, maybe that's not what's being asked but it feels like it's being asked. We have a lot of work to do. And so I don't want us to get sidetracked into individual research projects of our membership. So what's the purpose of today's call? What are we being asked to do? Thanks.

Philip Corwin: Yes, Paul, Phil here. I'll just speak for myself. I welcome input from my co-chairs and from staff on this because I don't think I have the completely definitive answer. Number one, I'm glad you're open to members of this working group contributing additional data and analysis that might be relevant and helpful to our work.

I think my guess is that the main reason for presenting this today is that, one, to let the group know that this type of extensive analysis is being undertaken by a member of the group which is relevant to some extent to the consideration of that qualitative evaluation of URS evidentiary standard application that we've been kicking around.

And I would hope that the other is to give the working group an opportunity to provide some input to the professor so that if we feel that something that is better to say now "Hey, if you could just take a look at this or design it," that way that the end results might be more useful than to wait until the result turn and say "Geez, we wish you had asked this question" or done it that way because that would have been more useful.

But I'll stop there. That's just speculation on my part. Paul, your hand is still up. I think you're done unless you want to respond and then we have Kathy...

Paul McGrady, Jr.: Yes. I like to respond to it. So I guess I see an inherent problem in that because if we then leave the subjects, right, we become - essentially, I think what we do there if we are going to be providing the inputs into Rebecca's research, then whatever her outputs are will be reflecting our own inputs. I think it's perfectly valid for Rebecca to go do independent research and come back and present what she finds and for us to say, you know, "Yes, that all looks great and there's nothing else that we wish have been covered" or, you know, this particular thing was overcovered or that particular thing was undercovered or where's this or that. That's the nature of research.

But to use working group time to sort of make the outcomes of Rebecca's research less prone to having appropriate review, thoughtfulness and criticism, I don't know that that's good research nor is it necessarily like the working group is about. And so, again, I apologize. I just feel like we're in a place I've never been in 15 years of ICANN participation where we're really talking about private research project of working group member. Thanks.

Philip Corwin: Okay. Thanks, Paul.

Kathy, go ahead, please.

Kathy Kleiman: Sure. Kathy Kleiman with my personal add-on. So first, I wanted to cite David McAuley out of the chat room that this kind of data shown so far seems subjective. So I wanted to thank Berry and Rebecca for coming to us today because I think what they're doing is interesting. We're in a bind, guys. We've gone to the council for \$50,000 already on outside data gathering for sunrise period, trademark claims, trademark clearinghouse. We're not going to be able to go - you know, the sense is we're not going to be able to go back and we're not going to be able to have months of delay. So while we're

waiting for that research to come back, we're pushing forward the URS and we have some incredible support.

We have Berry and Rebecca sitting down with the co-chairs for weeks, working on a template that, of course, we would show you for your thoughts as we go through - and we have the ability not to cherry pick. As it's already been pointed out in the chat room, cherry picking is not good and we can spend forever trying to figure out what buckets and cherries but the ability to go through every single case with a broad overview.

So, of course, we would show you the template that we're thinking of. And the outside help of two research assistants kind of dedicated to the task of working with Rebecca and with Berry to kind of gather this material that's either completely factual base or yes/no. And then we can look for the outliers, as Berry said. It gives us tremendous overview.

I wanted to ask a question actually about a category -- and sorry if I missed it but this is for either Berry or Rebecca -- about language, about the language of the TLD, about the language of the notice, whether any of the stuff - we've been talking about language and communication. Is there anything about language, whether it's in Hindi or if it's in Arabic, is there any notation going into whether the second level is also in the foreign language or whether it's in English? Something about language. Is there anything in this table about that and should there be? Thank you.

Rebecca Tushnet: So this is Rebecca. Just, no, there isn't but yes, there should be. Good point. Thank you.

Philip Corwin: Okay. Thanks for that. And I'm going to call on Susan Payne and then Mary has had her hand up. And so first Susan and then Mary. And noting that we're about 14 minutes from the end of the call.

Susan?

Susan Payne: Hi. Sorry about that. Is that one working?

Philip Corwin: Yes. We can hear you now. Go ahead.

Susan Payne: Thank you. Yes. I can be quick because it's possible Mary will answer what I'm asking anyway. But I - like Paul, I'm somewhat confused about what we're being shown here. It seems - as I'm understanding it, this is Rebecca's RA template. And I'm really unclear about what it is that staff is suggesting that we should be doing of this, leaving aside the fact that we haven't had the agreement of this working group on the scope of work. But I mean, a large number - a number of these fields go way into the subjective. And they may be able - they may have been crafted in such a way that they're yes/no answers. But, you know, whether the name is fanciful, arbitrary, descriptive, blah di blah, that requires a subjective analysis and I think - which I think we wouldn't necessarily get individual members of the working group even agreeing on if we were to go down that path.

And it's not clear to me that the staff is proposing that we should be doing that exercise. I certainly don't believe we should be doing that exercise. If Rebecca wishes to do it, she should go right ahead. But it's well outside the scope of this working group. I don't think we're in a bind at all. We spent quite a long time looking at our charter questions and identifying a way of working and we don't need to go into council and ask for more money to do extensive research because we can answer our questions, I think, quite easily but we don't need to do an extensive case review in order to answer the questions that we've been tasked with answering in terms of, you know, are the (unintelligible) working.

We have a number of questions around the providers - you know, about the providers but they're about - essentially about what instructions the providers give to the panelists and what, if any, any training panelists get and what, if any, any overview there is with panelist. Much of that overview ought to be

coming from ICANN and from ICANN Compliance. This is well outside our scope.

Philip Corwin: Okay. Thank you for that input, Susan.

Mary, I know you've had your hand up for a while. Please go ahead.

Mary Wong: Thank you, Phil. This is Mary from staff. And I'll see if my response answers Susan's questions because I did have my hand up previously to try to clarify the scope and nature of this presentation.

So for the benefit of those who joined later in the call or who have not been following the Adobe chat, the staff framing of this discussion is that the working group is being asked to decide, because this is a working group within a GNSO PDP, what are the URS cases that you would like to review, if at all? So is it all URS cases, some or none?

If some cases - and one of the possible categories of cases that seems to have emerged recently is the cases where there were appeals. If you can identify the types of cases that you think may merit further consideration, for example appeals, three-letter domains, responses, et cetera -- and I gave an example of ending up with five such types of cases or five buckets -- then what we would do is put the cases into a spreadsheet somewhat like this so that for, say, all the 14 appeal cases, you would be able to see what the case is, what the domain or domains is or are, what the result was and so forth.

Then based on that data report, you could then decide for all these buckets that you previously agreed on, is there a need to go further with any of them and do a more substantive review, whatever that may mean. But from the staff perspective, that really comes a little bit later because the first task - I think J. Scott mentioned this in the chat as well. The first task is do you want to review any URS cases, none or all or some? If so, which? And we can

show you a kind of template or spreadsheet where we can report to you the data from those identified buckets.

Then in respect of the template or the spreadsheet, what you're seeing here is a spreadsheet that's very set - or table that's very set that was mostly worked on by (Alex), Rebecca's research assistant. And this is, therefore, not a staff template. But we, as staff, do not feel it'd be appropriate to tinker with that template because it was developed as part of independent academic research by Rebecca and her RA.

So what we did, as you'll see, is we called out specific columns. For example, the nature of a trademark, those columns being the ones that either, from the staff perspective, are not surely data-focused or that may not be necessary for this PDP's purposes.

So, again, the basic question that we're asking you to answer is do you want to review URS cases? And if you only want to review some, what are those buckets or types? Then we would look - put all that information into a spreadsheet which could look like this or it could look like a subset of this. And based on that, you would then have the data to decide how else you want to proceed. Rebecca's research is independent of this working group. But as we said earlier, there are some commonalities mostly -- actually entirely -- on the data side, you know, what is the domain, what is the date of the case.

And so, you know, just by timing, we managed to discuss what they were doing with Rebecca and (Alex). But what you're seeing here is the template that was developed by (Alex) with specific staff comments that call out elements that we think may be more relevant or not to this working group.

So, Susan, Phil and everyone, I hope that it makes it much clearer. And we'll allow the working group to move forward with their decision. Thank you.

Philip Corwin: Yes. Thanks for that input, Mary.

And I'll just say, personally, I'm - whatever this group decides, the working group itself wants to do in terms of whether it wants to do any qualitative analysis of URS decisions, and if so, what types of cases to focus on. I think it's better for the working group to know that a member of the working group is undertaking this research and giving us an idea of what it will entail and the expected delivery date than keeping it a secret and then upon delivering it in two months, people saying "Gee, we had wished - we had known this was going on," "It would have informed our discussion," "We might have wanted some input." So I'm glad we're having this discussion today.

And with that, I'm going to call on Lori Schulman. I think Paul's hand is an old one but I'm happy to hear from Paul again after Lori if he still has something to further say. But Lori has been waiting awhile.

So, Lori Schulman.

Lori Schulman: Good morning. Thank you for the presentation. I definitely agree that this is interesting. And I do look forward to reading Rebecca's analysis. But where I'm getting stuck as a workgroup member, which we view generally, and I don't hear a lot being just in terms of are we looking at process or are we looking at substance. If we're looking at process, if we're looking charting how many cases, timing of cases, number of panelists, number of appeals, things that don't require any sort of judgment in terms of data gathering, I mean, I'm in favor of it.

I'm speaking personally now because I will tell you there are a lot of my members at this point who are pushing back. And "my members," I mean, IMTA, are pushing back very hard now on opening these cases up and I think for very valid reasons that if - to go any deeper to look at outcomes as, you know, type of mark, type of extension and this and that without understanding context, I can't imagine a situation where there could be any sort of objective

analysis because it's well understood that every decision, every trademark decision, whether it's in a court, whether it's in arbitration, whether it's discussed in remediation, there are always subjective values attached to this. That's how trademark law is practiced. There are certain legal principles but everything is challengeable based on a particular set of facts and a particular set of circumstances.

So I think from an academic viewpoint, what Rebecca is doing is laudable and I think it will be helpful to the community. I don't think it's appropriate in this workgroup to talk about processes that have been put in place for the URS. And I'm very firm in that belief. Thank you.

Philip Corwin: Okay. Thank you, Lori.

We're now four minutes before the end of the call. If other people have a statement to make, that'd be fine. But I'd like to hear from staff. I know - I believe we meet at the same time next Wednesday. I'd like to hear from staff what our projected agenda is for next week. We've been talking a lot about how we're going to approach our URS analysis. How close are we to actually ending the discussion of how we're going to undertake it and actually begin undertaking it and grappling with the substance that's relevant to answering our charter questions as to whether this RPM is working in an effective and balanced way and whether it needs to be modified in any way?

So, Mary, go ahead.

Mary Wong: Thank you, Phil.

This is Mary from staff. So the easy answer first, yes, we are meeting at the same time, same day next week. And there will be a calendar invitation as usual.

In respect of next steps, I have to confess -- and the staff has been discussing this amongst ourselves -- we are not clear at this point what the working group wishes to do. Our perspective from the staff side remains that the working group does need to decide whether it was just to proceed with - and I probably will even start using the word "case review," whether it was just to proceed with data extraction from URS cases.

And in that respect, whether - you know, the first question that we asked, is that going to be data from all cases, some cases or just stop right here? And if it is some cases, what are the types of cases? For example, the cases where there were appeals, we can pull out data, not necessarily on that full spreadsheet that Rebecca prepared that you just saw, but based on a subset of that that's purely data such as the domains in question, the dates of the decision and the results.

But we're at this point not sure that we're even there yet. So that the only suggestion that we have at this point, Phil, Kathy and J. Scott, is for the working group to think about those questions. What we can do is recirculate them and perhaps take suggestions on the mailing list for the next few days and then in consultation with you three as the co-chairs, figure out what would be a best use of the group's time next week.

Philip Corwin: Okay. Well, thank you for that, Mary. And I believe the co-chairs have a call set up with staff for Friday afternoon East Coast Time.

I would ask that you put out on the e-mail list the current document with the charter questions and revisions we've made with them, staff's view as to what guidance they need from the working group, so we can begin to dig into the actual substance of that, answering our charter questions and then encourage working group feedback between now and midday Friday, so the staff have - I mean, the co-chairs have as much feedback from the working group members as possible before we get on that call with staff on Friday.

But I'm - I would say just from a personal feeling but I think, one, the working group - I haven't heard objections to data extraction and analysis. The concern seemed to be about qualitative analysis of URS decisions rather than quantitative analysis of the administration and results of the cases. And I think probably we're reaching a point where people want to stop talking about how we're going to do our job and actually do it.

So with that, I'll stop. Are there any final comments from either my co-chairs before we wrap for today?

Kathy Kleiman: Phil, this is Kathy.

Philip Corwin: Go ahead, Kathy.

Kathy Kleiman: Yes. I think that's a good idea to put out the template and have people take a look at it, this kind of very quantitative-looking at the data. And we're beginning to - and maybe staff can take - we've had constructive comments regarding the template in both the chat and I think also in the oral comments. So maybe staff can begin to put a list together of things that might be added or changed in the template. Thanks.

Philip Corwin: Okay. Thanks, Kathy.

And to all the working group members, to the 39 on this - in the Adobe chat...

J. Scott Evans: Can you hear me?

Philip Corwin: Who's that?

J. Scott Evans: J. Scott. Can you hear me?

Philip Corwin: Oh. Do you want to speak, J. Scott?

J. Scott Evans: Yes. I still think, you know, we need to decide, why spend time on the template if we don't know what the template is going to be used for? So I think we have to decide, you know, what is our - what are we going to do. Are we using - are we going to use a template to help us identify a set of cases that we might be able to review, you know, to willow down our work? I mean, what exactly is it supposed to tell us and what are we using it for? Because I just think, you know, arguing about what should go in the template and that we never use the template for anything is (unintelligible). I think we have to make some choices about what are we going to do here. It seems to me there seems to still be a fundamental disagreement of whether there should be any look at cases at all or at least I've heard it on this call today raised by several people.

And, you know, that's a threshold question. Are we going to look at case? Okay. If the answer is yes, then are we going to use a template to help us to identify data that would help us select segmentation of cases in certain, as Berry has called it, buckets and then those will get further reviewed?

Those kinds of things, I mean, what's the purpose of the template? I know what it is for Rebecca's research and I respect her right to do that. But for our purposes, what is the purpose of the template? And I don't think we need to look at it, review it and argue about it because at the end of the day, it's not going to serve any purpose for our work.

I'm on the audio only. So I'll say that's the end of my comment.

Philip Corwin: Okay. Well, thank you, J. Scott. And I'm personally in agreement. I think, you know, we don't want data for its own sake. We want data that's going to help us answer our charter questions and make decisions about whether the URS has to change in any way going forward.

So, again, I want to strongly encourage working group members to weigh in over the next 48 hours as to how you want this working group to proceed over the next few weeks as we get into the substance of URS review.

And with that...

Kathy Kleiman: Phil? Phil, this is Kathy.

There's a question in the chat about whether we're circulating the template or not, the draft template that Berry presented today. And it says staff only heard that they're circulating the earlier document, the current URS discussion document, but nobody can comment unless the rest of the working group sees the draft template that Berry and Rebecca and the co-chairs and the leadership team have spent so much time doing. So which documents did you recommend that we circulate? Thank you.

Philip Corwin: Well, what - maybe we can take that to the list. What I had in mind was Berry was circulating the document that has the charter questions and our revisions of it which is going to be our jumping-off point for getting into the substance of our URS work. I think today's presentation was to inform the working group of what Rebecca is doing, so they're not blindsided by it, so they can provide some input to it. But that's a separate side project, not a working group project. And I don't - I think if - I don't think that should be the main focus between now and next week. I think the focus should be on finalizing revision of the charter questions and getting into the substance of our work.

Kathy Kleiman: This is Kathy.

I'm not sure how the rest of the working group, the other 100 members who weren't on the call today, can participate in a discussion unless they see the document.

Philip Corwin: Let me say, why don't for the next 48 hours, which is when we want feedback from working group members on how to proceed with our next meeting, circulate the revised charter questions with the co-chairs' proposed questions on URS review, plugged in with a notation that - the one on evidentiary burden has not been agreed to or finalized and get feedback on that and why don't we discuss this other question on circulation of the document today for our co-chairs' call on Friday.

But I think between now and Friday, we want feedback from the working group on how to proceed on the heart of our work which is commencing the URS review.

Is that okay?

All right. Well, we're six minutes past, so I'm going to call it a call. I thank everyone for being on today. And we will get back late this week or early next week with proposed agenda for our next call.

Thank you very much. Goodbye.

Man: Thanks, Phil.

Mary Wong: Thank you, Phil. Thank you, everyone.

Woman: Thanks, everyone. Today's meeting is adjourned.

(Ed), can you please stop the recording?

And, everyone, enjoy the rest of your day.

END