ICANN
Transcription
Review of all Review of all Rights Protection Mechanisms (RPMs)
PDP Working Group
Monday, 17 September 2018 at 17:00 UTC

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Coordinator: Recording has started.

Michelle DeSmyter: Thank you. Good morning, good afternoon and good evening. And welcome to the Review of all Rights Protection Mechanisms RPMs in all gTLD PDP Working Group call held on Monday the 17th of September, 2018 at 1700 UTC. In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the audio bridge would you please let yourself be known now?

Lori Schulman: This is Lori Schulman; I'm on the audio bridge. I might jump into Adobe but I'm not on yet.

Michelle DeSmyter: Great. Thank you, Lori. Hearing no further names, I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I will turn it over to Phil Corwin. Please begin.

Phil Corwin: Thank you. This is Phil for the record. Thanks to all who are participating on this unusual Monday call of this working group. We've moved it in respect to those who celebrate and fast on Yom Kippur this coming Wednesday. And

this is the beginning of our review and discussion of proposals for operational and policy changes to URS received from individual members of the working group.

I have a couple of preliminary things to say quickly and then we'll get right into it. Number one, there are two categories of proposals that are not called up today. First, there are about half a dozen proposals where the co-chairs all agreed that more detail would be desirable and we've gone back to each of those individual proposers and asked them to provide some more detail and giving them a week to do so. So it would be premature to call those up.

And then those of you who saw on the list last week, George Kirikos raised a question regarding the distinction between Phase 1 and Phase 2 proposals and the chairs are going to put out a statement on that in the next day or two that can be discussed on the list before the next meeting. But we haven't had a chance to put that out yet but the few proposals that George identified that he thought would be more properly addressed in Phase 2 also were not called up, although I think the first one would have been Number 14, which would not have been reached today anyway. But we're going to have a statement out on that in the next few days.

You will all note that in the lower left hand corner of the Adobe chat there's something that says "5M 00S," that is the timing clock. I want to remind everyone that our procedure for these individual presentations to make sure that none takes more than 30 minutes, unless there's extraordinary interest where the co-chairs have some discretion to allow some more discussion, initial presentation by the author of the proposal, five minutes, comments on the proposal after that from other members of the working group, they can speak once for two minutes each so that would – up to 20 minutes so that would be 10 commenters if everyone takes their maximum, and then an opportunity for the presenter to respond to the comments limited to four minutes.

Today's call is 90 minutes, if we take the full 30 minutes for each proposal, which I hope we won't do, that would only allow us to get through three on this call. After today's call, if we just do one call per week and the rest of them will be two hour calls, reverting to that, we have three more calls before the week in which we'll all be heading to Barcelona, so that would only allow another 12, which would prevent us from completing this exercise before we get to Barcelona.

We'd really like to finish review of all the URS proposals before we get to Barcelona. The co-chairs are keeping the option of having at least one week in which we'd have two calls. We don't want to do that; it would only be if it's absolutely necessary and would facilitate wrapping up before Barcelona. So I'm going to stop there but I just wanted to make everyone cognizant of the time pressure we're on to complete this work before we meet in person in Spain.

So with that, let's call up the first proposal, which it appears is from – and I think we've reviewed the agenda, which is to start the discussion of individual proposals. Any statement of interest updates? So here we are, the first proposal. This is Number 8 from Kristina Dorrain. And I'm going to step back and let Kristine make her presentation and remind her and all who follow that watch the timer; five minutes for the presenter, two minutes for each response. And remember, what we're trying to find out in this exercise is whether there's adequate support to put a proposal out for comment in the initial report when we publish that end of the first quarter next year. So, Kristine, go ahead and present your proposal. Thank you.

Kristine Dorrain: Thanks, Phil. This is Kristine currently with Amazon Registry Services but I'm going to call everyone's attention back to the fact that I used to work for the Forum and that's really where this came from. When the URS was launched I was working with ICANN, we were the first – we were the first URS provider and we were working to draft the URS.

And at the time, we identified both ICANN and Forum identified that there was sort of a glitch in URS Paragraph 6 which says that, “During the default period, the registrant will be prohibited,” so it uses the passive voice, it doesn’t say by whom, “from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.”

This was just sort of a loophole in that it’s sort of a passive statement that the registrant will be prohibited. It doesn’t say who has to prohibit it. Most of the text sort of is – in this is procedural directing information that the provider has to do, and obviously the provider can't prohibit. The registry is the one who locks the domain name; they can't prohibit changing content. And really the registrar typically can't prohibit changing content either so the only one – unless the registrar is also providing hosting services for the registrant. And so really this last sentence is in legal speak, sort of a term that, you know, it’s at odds with the rest of the document.

And so at the time ICANN told me, “When the URS is reviewed because it’s going to be reviewed in 18 months, I should bring it up. And I’ve moved on from Forum, but I am now completing my obligation to bring it up per ICANN's request, that this is a problem, and that it possibly should be something the group should address.

Now there’s a couple of suggestions that I provided so we don't leave the group hanging. I’m open to other suggestions. Certainly we can just delete that sentence or you could move the sentence to, you know, the section where we talk about how legitimate use can and, you know, can't be proved or what the complainant can do to establish bad faith or illegitimate use or whatever, certainly could just move it over there where it makes more sense, that just allows the panel to make inferences about what would happen if the registrant does this.

But there's really no practical was to prohibit the registrant from changing content. And that's ultimately the problem here and the question is what does this group – if anything want to do about it and do we care enough to put this out to the general community for some feedback as to how to handle it? That's all. I'm open to any questions or comments or thoughts. Thanks.

Phil Corwin: Yes, thank you, Kristine. Thank you for doing that in less than three minutes. And now the floor is open to anyone who wants to comment. Again, you can comment on whether you like Option 1 or Option 2 or neither. But the main thing we're looking for is whether other members of the working group believe that this is something worth getting public comment on in the initial report. So and it could be a short comment just saying you support it, but so raise your hand and I'll call on my co-chair, Kathy Kleiman as the first one to comment on this. Thank you. Go ahead, Kathy.

Kathy Kleiman: Thanks, Phil. And this is Kathy Kleiman. I'm speaking as an individual, not a cochair in this capacity. And I have a question for Kristine. Kristine, I hadn't you know, we hadn't zeroed really on URS Paragraph 6 so I'm really, really glad you're bringing it to our attention. And I had a question actually about the phrase, "prohibited from changing the Whois information," which I know you didn't focus on; you focused on the content.

But let me ask you a question as one of the experts in this area, let's say, I mean, isn't that a problem as well because the Whois information may well change, somebody may move, the small business may move, the individual may move, so wouldn't we want to update the Whois information and see that updated? And don't other – isn't this a contradiction to other types of requirements that require that Whois information be very promptly updated if it actually changes? So kind of wanted to ask you about touching on this extension of what you're looking at. Thanks.

Kristine Dorrain: Thanks, Kathy. This is Kristine. Yes, to reply, so there's a couple different things you've touched on…

Phil Corwin: Kristine?

Kristine Dorrain: …I think all of them – yes.

Phil Corwin: I just want to intervene, and – I don't know, I could ask my co-chairs but I don't know since we leave a four minute rebuttal period at the end whether we should take other comments first and if you could just note the question and respond in the final four minute period? Otherwise we'll get completely off the timeline for the procedure we've adopted. Okay?

Kristine Dorrain: No problem.

Phil Corwin: Okay.

Kristine Dorrain: Yes, no problem.

Phil Corwin: Michael Graham has his hand raised, go ahead, Michael. You have two minutes max.

Michael Graham: Well just on that point, I would prefer if there – several questions along the same line that Kristine answered or whoever answers it immediately after so we don't have to try and keep track of these. I guess my question, Kristine, is this procedure covered anyplace else? So I see what the intent is that if there's a default period during which the registrant can re-file, they don't want it to change to try and escape. If this is covered somewhere else and I think that removing this entirely from here would be fine, otherwise I do think it needs to be inserted somewhere.

The question is, is the obligation to be put onto the registrar or registry or should it simply be a statement and then as you suggest perhaps that if there is a change that this could be then evidence of bad faith or even could be

conclusive evidence of bad faith. I would suggest that second language. Thanks.

Phil Corwin: Okay. Thank you, Michael. And Kristine, please note that question as well for your response period. Do we have other comments on this? And I'll take the fact, you know, and they can chime in if I'm getting this wrong, but the fact that Kathy and Michael both raised extra questions would, to me, seem to indicate that this is probably something we should get public comment on that it needs to be sorted out. But do we have others who want to speak to this particular proposal?

Going once. Going twice. And so Kristine, we have no other comments on this. Why don't you address the questions that were raised by Kathy and Michael in your four-minute rebuttal period?

Kristine Dorrain: Thanks, Phil. This is Kristine again. To first address Kathy's questions regarding the prevention of Whois changes, yes, so there was a secondary review regarding the sort of editing some issues with the URS and how domain names were locked and when they were locked and that sort of thing, I'm sorry, with respect to (unintelligible). And one of the things that was discussed back at that time was sort of this challenge between the obligation of a domain name registrant and a registrar to maintain accurate Whois. So if the Whois is locked, it's really hard for the registry to maintain accurate Whois.

But I do understand that in generally when – at least during the URS case, and someone can correct me if I'm wrong, is my recollection that when you do a registry lock on that domain name, that does automatically lock the Whois from being changed as well. So I think functionally speaking, that is currently happening, the respondent is currently prohibited from changing Whois information once the lock is in place, but I think that that – that you've identified, Kathy, that there is actually an issue and that was discussed a long

time ago. That was discussed a long time ago during the URS changes – or the UDRP changes as well.

To be clear, Michael, and this addresses Michael's question, but the lock really only affects transfer and Whois; the lock never affects the content. So when we say, Michael, your question is, is it – could it be an obligation to the registrar or the registry? The answer really is no. You cannot require the registry or the registrar to lock content because in almost no cases do they have that power. So they can turn on or off the domain name but they have nothing – they'd have no control over the content.

So that would be something that would have to be put out for public comment if the group believes that that's still really important. Also, Michael, you had asked if it was covered elsewhere in the URS, this concept of not covered elsewhere in the URS, this is the only place that it's covered. And I know it was in direct response to some, you know, sort of shenanigans happening with UDRP and that's fine. But I just feel like it might belong in another section.

And then I think, Michael, your last question was about the default period. And as I noted in my comment, there's no definition of default period. This is an ICANN-created concept that they inserted into this text, or maybe it was the IRT or the STI, I don't know, but there's no such thing as a default period. Basically, when the respondent doesn't respond during the period of the response period, the case goes to the examiner.

And if they haven't responded, they haven't responded, but there's no default period during which something fits, the examiner decides, the case is closed, it's maybe soft closed because the panel can come back – or the respondent can come back and appeal, but in that case the domain name is already suspended; there is no chance for the website to even still be live at that point.

So this whole section, 6.2, is just a little bit of – a lot of misunderstanding of what actually happens during the URS process. And hopefully that was helpful. Thanks.

Phil Corwin: Thank you, Kristine, for that presentation and your response to those questions. It would, you know, I will consult with my co-chairs but it looks like this is a part of the URS that's problematic in terms of enforcement as presently written and raises quite a few technical and legal issues that would benefit from public comment that could inform the working group in its consensus call period to see if we can agree on a common path to make the language more workable and enforceable.

So I'm moving on. Our next proposal is from Maxim Alzoba, is Maxim with us? Just looking here. Yes, Maxim, are you ready to present? You're up.

Maxim Alzoba: Maxim Alzoba for the record. The – I present operational fix idea. It's actually just change of the name of the existing document, actually at first is to say that the document is not called Technical Requirements for Registries and Registrars, but should just call it (Other) High Level Requirements for Registries or Registrars rather to – is new document will be Legal Requirements which I'm not in favor of.

The reason to ask for this is that is the current situation where a new TLD, I mean, registry, goes (unintelligible) technical and usually (unintelligible). Do you hear me? Is it better now?

Phil Corwin: We can hear you, Maxim.

Maxim Alzoba: Can you – okay, I will talk slower. The suggested fix is a change of a name of a URS technical letter requirements for registries and registrars to (unintelligible) without technical. Is it possible to close my mobile now? I will put it in the chat.

Phil Corwin: Okay, were you done, Maxim?

Maxim Alzoba: Many persons say that they do not hear me at all.

Phil Corwin: All right…

((Crosstalk))

Phil Corwin: …but just to help out a bit here, the proposal is to take a provision out of the technical document about the registrar must accept and process payments for the renewal of the domain name where the complainant has prevailed and to move it into the URS procedures or rules as the more proper place for it to be. Maxim's asserting that it doesn't make sense to have it in the technical requirements and this full explanation is in the screen here. Do we have – this appears to be a fairly technical proposal, operational, related to a legal matter and I see Kristine's hand up. And can we end Maxim's time here and start the clock on Kristine's – okay, go ahead, Kristine.

Kristine Dorrain: Thanks. This is Kristine. It is not my intention to make this be a let me tell you the history of the URS conversation. However, I think in this case a little history, again, might be in order. This section was another one that kind of came up after the fact so as all the rules were being developed and as the registrars and registries informed of like how to implement the URS, the registries and registrars came back to ICANN with questions like, "how are we supposed to do this? What is the way in which this stuff is supposed to happen?"

And so ICANN put together this document themselves and circulated it to the registries and registrars to see if it made sense. And so that is why we ended up with sort of legal or procedural stuff in a technical document. And so I do support Maxim's proposal to put this in someplace that makes more sense. This is just something that was left out of the original URS when it was written and when we went to implement it, we realized that there was some missing

stuff and we couldn't go back and put it in, so that's sort of the history of it. And I support being able to, you know, move this into someplace where it makes more sense. I don't know where that place is, but I support this. Thanks.

Phil Corwin: Well thank you, Kristine. And it does sound like it makes sense to get public comment on the proper place to move it. It's not really – there doesn't seem, I would not imagine, much controversy about the concept since the one year suspension is permitted, it's just – doesn't seem to fit within the technical document. Do we have other comments on this proposal from Maxim?

And has Maxim now been dialed out to? Does he have a better connection in case he wants to add anything before we move on? And Kristine, your hand is still up, you might want to lower it.

Maxim Alzoba: It's Maxim Alzoba. Do you hear me now?

Phil Corwin: Yes, much better. Hear you great now.

Maxim Alzoba: Okay, the short version to avoid added to the existing approved document, my suggestion is just to remove confusing word from the name of the document without change of the substance. That's it. The reasons are it's better not to hide legal requirements under the header of technical something. That's it, because we experienced issues with it. We had to change our, yes, create additional documents, obligatory documents for our registrars and it could be avoided by just more clearer naming of the document. Thanks. If you have any questions, I'm listening.

Phil Corwin: Well thank you for that, Maxim. And of course if it's put out for public comment, which it probably will, we can take views as to what's the best way to handle this but it's clear that right now it shouldn't be in a document headed up Technical Requirements when it's something that's nontechnical. So I think we can move on to proposal Number 3 from Zak Muscovitch.

Kathy Kleiman: Actually, Phil, this is Kathy. I had a quick question.

Phil Corwin: Yes, Kathy. Go ahead.

Kathy Kleiman: Okay. I don't have it in front of me now but because it just got taken down, but Maxim had suggested that the name be changed to two other documents and I just wanted to see if those other documents exist or that – or whether he's suggesting that they exist, I don't have the names in front of me anymore because they just went down.

Phil Corwin: Yes…

Maxim Alzoba: Maxim Alzoba, if I may?

Phil Corwin: Yes, go ahead, Maxim. Quick response please. Thank you.

Maxim Alzoba: Quick response, it's the name of the document at the URS stage, the link you click is the name and the second reference is to the header of the document inside of the PDF. So we need to remove confusion from both the name and the URL of URS page and from the text of PDF. It's two minor edits in my opinion. Thanks.

Phil Corwin: Okay. Thank you, Maxim. And again, this is the initial report we can take comment from the whole community on the best way to handle this discrepancy. So now we have proposal Number 4, the author is Zak Muscovitch, I believe is ready to present so, Zak, your five minutes are beginning now. Please present your proposal, which I note is another operational fix.

Zak Muscovitch: Thank you, Phil. Zak Muscovitch. So, yes, this is a technical slash timing issue that I noticed. And so let's try to briefly talk through how the chronology works. So let's say a complainant brings a URS complaint and loses the URS

complaint and then wants to appeal it. A respondent loses a URS complaint and wants to appeal it. Both parties would have 14 days under the current rules to file for that appeal.

But what happens the URS decision either in favor of the complainant or in favor of the registrant, comes out let's say December 31 and the domain name that's the subject of the proceeding is set to expire the very next day, maybe even less than 24 hours from when a decision is released, on January 1? So many attorneys will be able to file it within time and because they are rushing and will get it done and that's part of their practice. On the other hand, the rules really do contemplate 14 days and there shouldn't be such a rush to get it done, maybe even a decision comes out in the morning of December 31 and the expiry will happen at midnight.

So when I took a look at this chronology I thought that, you know, maybe a fix is in order so that the full 14 days to file an appeal can be afforded to each of the parties in that circumstance. And in terms of a solution to it, less sure on what the solution should be but it occurred to me that one solution, and it's the one that I had proposed in the proposal, is to allow an unsuccessful complainant or an unsuccessful registrant to extend the registration term of the domain name by a year which would enable the 14 days to obviously be subsumed within that one year period no matter what.

If it there was an opportunity to extend the registration for six months or three months, that would probably do the trick too but, you know, generally speaking domain name terms are one year so that was the option I had proposed. Thank you.

Phil Corwin: Well thank you, Zak, for that presentation and for doing it in about half your allotted time. We're now taking comments on this operational proposal for an operational fix. And Kristine, please go ahead.

Kristine Dorrain: Hi, thanks. This is Kristine. I have a quick question, Zak, so I know that the way ICANN dealt with this for UDRP is to promulgate Section 3.7.5.7 of the expired domains deletion policy. Do you, I mean, yes, you could actually add it at 10.3, I guess, if that was important, but would you also be amenable to just simply saying "or the expired domain solution policy applies here as well" and make the same policy apply to both?

Phil Corwin: I'm again going to intervene just to remind Zak that we're going to hold his answers to questions until all comments are over. So if he could just note that question? Did you have more to ask, Kristine, or to say on this one?

Kristine Dorrain: I did not but I did put a link to the EDDP in the chat just in case.

Phil Corwin: Okay. Well that of course could be a subject of public comment as a better way or an alternative way to handle it. George Kirikos, please go ahead, you have two minutes.

George Kirikos: George Kirikos for the transcript. Yes, this policy proposal seems to make a lot of sense because the complaint could obviously come within a few days of the expiration date and so we want to give the registrant the ability to appeal in the case of an adverse judgment, you know, up to six months. So you obviously need to have an additional year available to them in order to meet those timelines. Thank you.

Phil Corwin: Okay and thank you, George, for that short statement in support of putting the proposal out for comment. Do we have other comments on Zak's proposal? All right, seeing no hands, Zak, can you respond to Kristine's question where she's suggesting alternative way of addressing this? Of course that could be raised in public comment. Go ahead, Zak.

Zak Muscovitch: Thank you. Zak Muscovitch. Thank you, Kristine. You know, that seems like it is a potential solution. I'd like to – for myself and for the public to be able to

send that a potential solution to work alongside this, and so thank you for that. That's all I have to comment on it.

Phil Corwin: Okay. Thank you, Zak. And at least what this co-chair heard was general support for the notion that this is something – you know, an unanticipated issue that probably should be addressed and that public comment could inform the working group on the best way to address it, so we thank Zak for that proposal. We're moving on now to the next proposal which is from George Kirikos. We've got it up on the screen and let's get the clock ready for George. And, George, your five minutes are commencing. Please present your proposal.

George Kirikos: George Kirikos for the transcript. Yes, this is a proposal that well simply stated is to have the URS suspension pages be delivered in both http, which is a non-secure format, and https, which is a secure format. And the motivation for that was the observation that Google had added their entire TLD.app into what's called the HSTS preload list and that means that the browser will be instructed to only look for the https which is the secure version of a website page, and not look for the non-secure version at all.

And since the policy was adopted well before this ever was implemented by Google, it was simply something that was not contemplated by the drafters of the URS. And so this proposal aims to correct that problem that somebody could have their new gTLD for dotApp be suspended but then not be able to actually see the suspension page.

And so the evidence for this was established on the mailing list, namely that the first URS complaint was a victory for the complainant and the relevant suspension page was not visible if you used a modern browser. If you used one of the older browsers that doesn't actually check for the HSTS preload list, then you could have actually seen the non-secure version of the URS suspension page, but for all modern browsers, you wouldn't see it.

And this is actually not a problem only for the dotApp, it's also going to be a problem for the dotPage TLD, which Google is launching, which I believe is also going to be on the HSTS preload list and other TLDs like might be affected as well, I think dotBank might require HSTS and some of the dotBrand TLDs might also be affected although there's probably a very low likelihood of a URS for a dotBrand.

So just to go back to some of the discussion on the mailing list, there was a concern raised by Renee Fossen of NAF that this might have an operational problem in that it would require manual renewal of the SSL certificates like the noted that they could have a free SSL provider Let's Encrypt, which is run by EFF or sorry not run by EFF but for which EFF has some tools, their Certbot and other sponsors of it exist.

And so if manual renewal was required that could create a huge implementation cost. However, as I noted in my response, which I posted to the chat room, there are actually various tools to automatically renew the SSL certificate so that concern that was raised in the mailing list was not really correct. So I'm happy to take any questions. Thank you.

Phil Corwin: Thank you, George. And I do note some discussion in the chat about certificates and things. And I just want to note that's exactly the type of technical aspect that would benefit from public comment on a proposal like this. I see Renee's hand up. Renee, go ahead, you have two minutes for comments.

Renee Fossen: Thank you. Renee Fossen for the record. I just wanted to point out that in that exchange on the list I did mention that ICANN does have a draft document prepared that does require providers to obtain certificates for both http and https protocols. So currently we are – we're doing that but it does add an additional burden to the providers to keep track of those.

And I know that there is an auto renewal, but then we are accepting some liability as a provider as to when those domains will actually expire. And as we've discussed in the working group and other categories regarding the registry correspondence, we don't always get information from the registry on deletion and expiration dates, so it would require us to kind of keep track of that which is something that we hadn't done in the past. And that's all. Thank you.

Phil Corwin: Yes thank you, Renee. Do – oh, okay, I see Kristine and then Maxim. So Kristine, you're up next.

Kristine Dorrain: Hi, this is Kristine. This is just a short overarching comment because I think that my comment is going to apply to several proposals that are coming up. I just wanted to remind everybody that both for URS and UDRP but specifically the URS, the URS fees are very low and I know that for UDRP none of the providers have raised fees in many years even though wages and everything else increase.

To the extent that everyone on this list that's going to be presenting today expects providers do additional activities and add on additional features and do additional development, those fees are going to have to come from somewhere and to the extent that people on this list may not want providers to raise fees, you need to be thinking about that as part of the consideration here in our requests and our wishes for what we'd like to have versus what we need to have.

Again, I don't have any skin in this game as Amazon, we have registry, registrar, we're brand owners, we pay those fees, but I'm just pointing it out that the money has got to come from somewhere. Thanks.

Phil Corwin: Yes, thank you, Kristine, for that comment and it's true, you know, even minor additional duties can add up in terms of costs. And that's exactly the type of thing we want to see in public comments on any of these proposals before we

get to the stage of our work where we're deciding not just whether something should be out for comment but whether it should actually be recommended whether a consensus exists. Maxim, go ahead with your comment.

Maxim Alzoba: Maxim Alzoba for the record. Just a short notice, yes, it's important that we have identified an issue with https but https there are kind of some technical things which should be checked out with the technical community preferably to avoid situation where we miss something important from technical point of view but we don't obviously know that yet. There are multiple things with certificates because actually the owner should be someone who has right to use it or has some degree of control. But in the case of the domain with lost – which was lost in URS procedure, the last owner who is fixed in Whois or RDDS, whatever you call it, has no rights anymore.

And the registry which controls it according to set of URS rules, is prohibited from changing anything. So there is no way to show that someone is in control of that. Thanks. So I think we have to ask the technical community about this, in particular browser form and, yes, other guys from technical community. Thanks. That's it.

Phil Corwin: Thank you, Maxim. Do we have other comments from any members of the working group participating today? All right, I think what I heard from that discussion was that this proposal seems to make some sense. We want to make sure these suspension notices are visible to anyone entering the URL but that there were some aspects on technical aspects and cost aspects where public comment would be worthwhile. Maxim, your hand is still up, just noting that, I'm assuming you're done and that we can move on. Oh, and George, you get your response period now on the comments we heard and then I think we're already probably going to be including this for public comment but go ahead and say whatever you want to as a follow up.

George Kirikos: Yes, George Kirikos here for the transcript. Yes, one has to – as Phil noted earlier, recognize that this is important because this is one of the

mechanisms to ensure that the registrant is aware of the outcome because there's obviously big concerns about actual notice of the complaint, a lot of these are default cases, the registrant may have no idea that this thing even happened because most registrants don't check their website every day, even myself, but, you know, 500 domain names I might check a website every couple of months. And so to notice that something is wrong this is one thing that helps contribute to that notice.

And to answer Maxim's question, he didn't seem to perhaps realize that operationally the name servers during the suspension period change to that of the URS provider, so implementation is very simple to have the SSL certificate be handled by the URS provider. As for cost, the operational costs of this would be on the order of like $5 a month for all domains, it's not a per domain cost; it's something that would be handled, you know, from a web hosting perspective on a one-time basis.

You know, you set up the SSL configuration when you first set up the server to, you know, auto redirect from secure – non-secure to secure site and so it's a one-time cost in terms of figuring out how to do it and there are various automated ways to do it so providers have choice in the implementation. But it's relatively low cost. I notice Mitch has his hand up, he's from EFF so maybe he'll talk a little bit about the Certbot capability of EFF and I defer my two minutes to him. Thank you.

Phil Corwin: Yes, thank you, George, for that response. I do see that while you were talking Mitch Stoltz put his hand up. Mitch, is that a short comment on this current proposal before us?

Mitch Stoltz: Yes it is. And thank you. Mitch Stoltz from EFF…

((Crosstalk))

Phil Corwin: Yes, I'll allow it this time. We want people to comment during the comment but go ahead and then if George wants to give a quick response we'll allow that as well. We're doing well on time so go ahead, Mitch.

Mitch Stoltz: I appreciate that and I'll keep it brief. Just in response to that last point, the organization called Let's Encrypt provides SSL certificates for free configuration of a web server. Obtaining a certificate and configuring a web server takes about five minutes so it's not a high cost transaction.

Phil Corwin: Okay. And, Mitch, I assume you would support putting this proposal out for comment where points like that…

Mitch Stoltz: Yes I would…

Phil Corwin: …on others can be made.

Mitch Stoltz: Yes I would.

Phil Corwin: Okay thank you. Any quick response to that, George, or can we move on?

George Kirikos: George here. We can move on.

Phil Corwin: Okay. The next proposal up is from Claudio DiGangi. And I don't see Claudio in the…

Claudio DiGangi: I'm on audio only.

((Crosstalk))

Phil Corwin: Okay. Okay, I didn't see you listed in the chat, but are you ready to proceed, Claudio, on your proposal Number 14? And this is our first policy proposal. We've just covered all the operational proposals received from working group members. And if you're ready, your five minutes will begin.

Claudio DiGangi: Thank you, Phil. And so this is actually another proposal that seeks to harmonize the URS with the UDRP procedure. Under the UDRP multiple complainants can essentially consolidate and file a claim jointly against a single registrant who has registered multiple domain names. That is not actually permitted under the URS under the current rules. It's – that type of consolidation is actually limited to companies who are related is how it's described in the procedure.

And so it would apply to companies that have a subsidiary relationship or another form of relationship with another company. They're allowed to actually join claims but if there's no relationship between the companies and they're unrelated, according to that rule in the URS, they're not allowed to join their claims. And so this would actually create a scenario where a registrant might see multiple separate complaints and have to respond to each complaint separately, and the complainants would have to bring separate complaints; they would not be able to join their claims together to sort of consolidate.

So that's really what this recommendation is concerning. It's to bring the URS in line with how the UDRP has been performing in this area and allow companies that are facing a situation where their brands remain infringed to consolidate to bring a claim together for relief. And that's the nuts and bolts of it.

Phil Corwin: Well, thank you, Claudio. I see two hands up already to comment and of course you'll get rebuttal time after. And before calling on anyone just want to remind everyone that the – our exercise today is about whether each propos should be put out for comment in which one can express support or opposition as well as nuanced details about how a policy proposal might be changed to – for any number of reasons. So with that reminder I'm going to call on George Kirikos followed by Zak Muscovitch and then anyone else who raises their hand. George, go ahead.

George Kirikos: George Kirikos for the transcript. Yes, it looks like a very interesting proposal and I think it's a very appealing and so I think it should be put out for public comment to see how the public feels about it. One of the concerns I have about this though is that potentially there could be, you know, hundreds of complainants in one dispute and so operationally I don't know whether the registrant would be, you know, really maxing out their word limit to try to respond to all those separate trademark issues within the existing word limits.

So my question for Claudio when he – this goes to him later – is whether he would support in conjunction with this proposal an operational adjustment in terms of the word limits so that if, you know, there is a multiple complainant scenario that the registrant has sufficient ability to actually respond to all of the marks in question. Thank you.

Phil Corwin: Okay. Thank you for that helpful comment, George. Zak, your turn to comment.

Zak Muscovitch: Thank you. Zak Muscovitch. Well first, Claudio, thank you for submitting the proposal. I'm trying to understand it a little better. Before the call I looked into how this is treated in the UDRP a little bit. And to my understanding, (unintelligible) in a UDRP typically are in a licensor or licensee relationship so that both complainants are related to each other in the sense that they're related through this license agreement. And I don't recall cases – and I could be wrong in this – where it's a situation where let's say Nike, Adidas, Smirnoff and other trademark owners target a particular registrant about different domain names, different issues, and the only commonality is that it's the registrant.

So I'm trying to understand, are we talking about a change in the proposed language of the URS in order to lessen the apparently restricted term "related" to enable a licensor or licensee relationship? Or we talking about a changing the policy to enable diverse complainants with diverse marks to all

try to bring their complaint within the 500 words and have the respondent respond to the diverse complaints in their 2000 word response? Thank you.

Phil Corwin: Okay, thank you, Zak, for that inquiry. And I'll remind Claudio just note Zak's questions and respond in your rebuttal period after we've heard all comments. Moving on I believe the next person after Zak is Kristine Dorrain wishes to comment, go ahead.

Kristine Dorrain: Hi, this is Kristine. I was typing so I guess I could have put my hand down. I essentially was going to say the same thing Zak said so I'm not going to repeat it. I think I'm trying to figure out the value given the extreme sort of rapidity and the lightweight nature of URS and if a respondent has to then address multiple different (brands), in multiple possible different uses of those domain names, in different types of websites, if there's no common thread other than all of the brand owners believe that this single registrant has, you know, taken advantage of their mark.

So I'm trying to figure out how the advantage – what the advantage is and if it's justified against the extremely extreme pressure of by the – against the registrant and even the provider in that case too of having to wrangle multiple parties and which is the lead counsel and those sorts of questions. So I'd love to hear some more about how we keep it quick and streamlined. Thanks.

Phil Corwin: Okay. Thank you, Kristine. And now Martin, as soon as I reset the clock, you can now begin with your comment and, Zak, by the way, your hand is still up, so you might want to lower it. Go ahead, Martin.

Martin Silva Valent: Oh, thank you very much. Can you hear me?

Phil Corwin: Hear you great. Thank you.

Martin Silva Valent: Oh great. Yes, I think the question I didn't understand the extent of what is being proposed here. Does this mean that with a – we are just

(unintelligible) of the trademark I can also join and be a complainant? Again, how do we keep track of this (unintelligible)? Just are we proposing to copy how the UDRP works in this place? I also don't fully understand the benefits of this proposal so – or the limit. Thank you.

Phil Corwin: Okay, Martin, let me just ask you, you don't understand it or see the need but would that mean you would not support putting it out for comment or is that exactly the kind of input we want on a proposal like this?

Martin Silva Valent: I'm not – I'm not saying I'm opposed to keep relating it and I would (unintelligible) to implement this unless I'm convinced that otherwise it's being something useful (unintelligible).

Phil Corwin: Okay. Well thank you. And I don't see any more hands up. Before letting Claudio respond I'm just going to – just observe, you know, this is a good example of where public comment can be useful. Claudio is proposing to put something in URS that he contends is already available in UDRP. That might make sense or because of the expedited low cost nature of URS it may not make sense and that's exactly where public comment can be worthwhile and also public comments can allow the proponents, after viewing the public comments, after they all come back, to revise their proposal that may be more acceptable to the working group and the community at large and more likely to get consensus support.

And I see my co-chair's hand up so let's reset the clock for Kathy, give her two minutes and then if she's the last comment we'll turn to Claudio to respond. Kathy, go ahead.

Kathy Kleiman: Hi, two minutes it is. Thanks, Phil. I'm going to argue that this one may not be right for public comment. There's a diversity of questions, there's a diversity of ambiguity and I'm not seeing a diversity of support. There's, you know, questions being raised about whether this is what the UDRP does and that the UDRP actually has related companies, licensing franchise agreements,

but not different companies – unrelated companies. It looks like a lot of people want to respond. But I'm – I think this may be a classic example of something not quite right for public comment. Thanks, Phil. Sorry to disagree but thanks.

Phil Corwin: No, thanks, Kathy. Disagreement is always welcome. Be boring without them. I just want to ask staff, after Kathy just spoke, we have three more people in the queue. How close are we to the 10 total? I think we're up to eight or nine after Mitch Stoltz speaks. Can staff just check on that? Yes, Ariel, I'm not asking – we've limited comments to 10 persons per proposal; I think we've already heard at least five with Kathy, I'm just trying to figure out where we are to get to our limit. Well…

Ariel Liang: Sorry, so this is Ariel speaking. We're just tracking the total amount of time for this particular proposal, so it's only – we only spent 10 minutes total discussing this.

((Crosstalk))

Phil Corwin: Okay fine. All right, with that just want to check, Greg Shatan go ahead please.

Greg Shatan: Thank you, Phil. Greg Shatan for the record. I was concerned that Kathy didn't hear a diversity of support so I figured I would add my support to the proposal. And I think it acknowledges a fact of what often happens which is that a single party will infringe or launch a variety of domain names against a variety of brands, essentially simultaneously but as part of a kind of common practice or common set of operative facts, and that this would provide a solution to that problem that would be much more efficient and a better use of resources.

I think it does need to fine-tuned. I don't think the idea is that everyone can kind of just jump in the pool against a particular defendant or respondent

rather, but the idea is that where you basically have a set of related acts should be able to bring those into a single case and dispose of it that way it seems eminently practical. And certainly while it's in formation I would not describe it as one that contains multiple ambiguities. Thank you.

Phil Corwin: Okay thank you, Greg. Moving onto Michael Graham. And I'm just – by the way, I'll just – staff, if we get to the full 20 minutes, let me know, otherwise we'll just let people keep commenting. Go ahead, Michael.

Michael Graham: Thanks. Michael Graham for the record. I would support putting this out for public comment. I think one, the fact that the UDRP has the inclusion does not mean that it's a situation that should be limited to UDRP but actually shows the desirability of allowing multiple complainants to join together. And then more importantly, since the URS procedure, yes it's for inexpensive rapid determinations, but it's also based on there being egregious situations which the evidence of which may be in part that the same registrant is conducting this activity against multiple trademark owners and not only one.

So I think it may be worth at least looking at to see if this is something that should be included in URS, and for that very reason should be put out for public comment. Thanks.

Phil Corwin: Okay, thank you, Michael. Mitch Stoltz, please go ahead.

Mitch Stoltz: I don't think this proposal should be put out for public comment and that's primarily because of the ambiguities in it. One, I'd like to highlight is about the – what the term "related registrants" means. And I think I heard the word "licensee" mentioned here, so normally speaking, you know, a licensee of a trademark may or may not be sort of competent to enforce that trademark, it usually would be the owner of a trademark rather than the licensee. But so there's that situation.

But more broadly, the – I think the group, you know, a, you know, the comments that we're – the comments that the public will see I think there may be a lot of assumptions about how broad or narrow the term "related registrants" means without clarification of that I don't think there's really going to be a good basis for discussion. And I'll leave it at that.

Phil Corwin: Okay, Mitch. So your comment is basically that you think it needs to be fleshed out with more detail to have meaningful public comment. I note at the beginning of the call that the co-chairs had identified about half a dozen proposals where we went back to the proponents and asked if they could add more detail for meaningful comments and discussion and I'll ask Claudio to address that issue when his turn for rebuttal comes. And let's move onto Zak. Go ahead, Zak.

Zak Muscovitch: Thank you. Zak Muscovitch. So as a preliminary matter, I'm not entirely sure what the threshold is for moving proposals to public comment, because I see on one hand that any person in this erudite group's proposal is worthy of public comment on one hand, regardless of. And on the other hand, maybe it deserves some degree of consensus before it's moved to that subject – to that state. But in any event, what I'm thinking is that this proposal leaves a bunch of unanswered questions that are crucial for people who want to see this proposed make sense.

For example, if we're talking about a situation where there's going to be 15 diverse trademark owners, everyone from Smirnoff, to Pepsi-Cola, to Levis, then they're going to want to do it in more than 500 words. So initially the first change that would be required is to increase the word limit and they probably want at least 500 words per (unintelligible).

The second thing is the URS providers, they're going to want to have more fees; they're not going to want to do it for the $300 or whatever per case for 15 or 20 complaints. So the fees are going to have to be multiplied probably

$300 or whatever it is times X number of complainants or something along those lines.

Then the respondent is going to want more words in order to respond to the dozen or however many complaints there are and so they're going to want more word limits. And so then at the end of the day I'm thinking, you know what, what is the efficiency of the proposal when at the end of the day it might be just as easy just to file separate complaints each one where you don't have to worry about changing the word limits, they're not going to worry about multiples of fees. And they'll all – they could be moved to be consolidated before a particular examiner, maybe that's the route to go, consolidate the separate complaints into one thing, maybe that's worth considering.

So my point is is that there needs to be some more work done to answer some of these questions and make sure that it's worthy of being proposed as it has been proposed…

((Crosstalk))

Phil Corwin: Okay.

Zak Muscovitch: Thank you.

Phil Corwin: All right, Zak, you hit your time limit but we certainly hear that you have many questions about this. And I don't see other hands up. Let me just respond, you had asked, Zak, what the rule was for putting out for public comment and I don't remember the exact words in the co-chair statement but basically the bias was toward inclusion unless the support had no display of adequate support for putting it out to get input from the community even if there was substantial opposition to doing so or to the merits of the proposal, the bias is toward getting public comment which doesn't mean that anything that gets public comment is going to get consensus. It may just show that the community's deeply divided and that something is not going to move on.

But I don't see any more comments. We're six minutes past the top of the hour, we can get to at least one or two more proposals today. But I want to give Claudio his four minutes of rebuttal time to respond to anything he's heard and particularly I'd be interested in knowing, Claudio, given the concerns about the need for fleshing this out, on – particularly on the meaning of you know, the relationship of the co-complainants, if you'd be contemplating any modifications to this proposal for the working group to look at before it – a final decision on inclusion for comment. So, Claudio, go ahead please and we're waiting to hear from you. Thank you.

Claudio DiGangi: Thanks all. And, yes, I'm happy to do that, you know, some more meat to the bones based on the feedback received. I think the comments were very helpful and were certainly issues that will need to be looked at in consideration for this proposal like the word limit. To respond to Zak's question about the UDRP, and what I'm happy to do is circulate some cases to the list that describe the standard that's used under the UDRP when this type of situation arises just to provide some more contrast and I think it'll help to, you know, to see some real life examples about how this situation arises and associated benefits with allowing consolidation.

The standard under the UDRP is when the domains are registered under a common occurrence or scheme and so the registration abuse has a pattern to it that is targeting companies that do not have a legal relationship with each other but are subject to the same form of abuse by the registrant. And so the example actually that comes to mind is there is a case when the arbitration providers themselves – their brands, their trademarks were targeted by a registrant and so you had five different arbitration providers who were targeted by the same registrant.

And they've consolidated their claim and they filed one joint complaint in that situation. And there was no formal legal relationship between the parties but they were effectively all in the same industry and they were targeted by this –

by this one registrant. And so that's the type of situation in which it arises under. But, you know, I'm happy to flesh out the proposal to put some more context to it, so if it does go out for public comment, we certainly want informed comments, and I'm happy to do that and send some more information around to the list. Thank you.

Phil Corwin: Well thank you, Claudio. And, yes, I think procedurally I would encourage you to flesh out some of the ambiguities and details that some commenters thought was missing and submit that to staff and staff will circulate on the working group list and we appreciate your willingness to do that. We did hear some support for putting this topic generally out for comment and the co-chairs will discuss the entire situation when we next meet, and we tend to meet every Friday.

And with that I will note that we have 20 minutes left so we have time for at least one more proposal, perhaps two. And the next person up is my colleague from VeriSign, David McAuley, and, David, your five minutes are about to begin to present this policy proposal so please go ahead.

David McAuley: Hello, everyone. It's David McAuley speaking for the record. And I'm going to leap into the policy proposal in just a moment but I want to make two disclosures first. One is those of you who have read through the policies will notice that I've made two policy proposals. This one that I'm addressing now I want to make clear is not on behalf of VeriSign, it's on behalf of me as an individual participant and in fact more specifically as a participant in the Document Sub Team that Brian led where I came across a rules base issue as I saw it and that's what prompts me to make this.

The second disclosure is I am not a URS practitioner, never have been, nor am I ever – nor have I ever been affiliated with a provider so I'm not bringing experience to this issue, I am rather, as I said, reacting to what appeared to me to be an anomalous part of the rules. So to the proposal I'm dealing with

the default procedures relating to URS which appear in Paragraph 6 of the procedures. And I'm specifically honing in on Paragraph 6.3 through 6.5.

And conceptually my proposal is in two parts. It deals with how many reviews, examinations a defaulting respondent gets, that's one part; and the second conceptual part is how much time they get. Here's what in a nutshell appeared to me from the rules, that someone who defaults will get three examinations, three examinations potentially along the way towards a disposition of the case.

The defaulting respondent in that case, the examiner nevertheless has to look at the complainant's case in full, it's not a simple, you know, default judgment on default without an examination that takes place. But under the rules a defaulting respondent can file for relief from the default and get a de novo review with a response filed. This will be their first chance to make a response. And they can get up to a year to do that, six months in one instance and they can ask for a six month extension.

And then finally it's clear that this second examination is not an appeal; it is a normal course examination meaning, presumably, that that defaulting respondent gets a third bite at the apple under the appeals rules in Section 12 – or Procedure 12. It almost invites default as to get a strategic advantage.

The other thing I'd mention is 12 months struck me as inordinately long for a rapid procedure. And so my suggestion would be that a defaultant get 90 days, not up to 12 months, and that that 90 days not be renewable. I recognize that there's a due process issue here surrounding the adequacy of notice, and so that's what prompts me to say 90 days as opposed to 30 or 60. There could be language issues, there could be other issues that make it difficult for someone to respond and so I would suggest we get public comment on that as an appropriate period for someone who defaulted to be able to get themselves back into the process. That in a nutshell is my proposal. Thank you very much.

Phil Corwin: Okay, thank you, David. This seems like a fairly serious proposal for a significant policy change. And let's take comments. George Kirikos is up first.

George Kirikos: George Kirikos for the transcript. Yes, I'd be opposed to this proposal. The rapid part of the URS is in relation to the rapidity of the suspension, not to the process surrounding that suspension. Somebody's audio is on. And so there needs to be recognition of that, that most registrants are not actively monitoring for disputes and so there's a big question whether they even become aware of the dispute in terms of the actual notice. And so the times that were put into the URS policy reflect that uncertainty of actual notice taking place.

Secondly, the policy seems to assume that the registrant has been served the notice but strategically defaults and I don't think there's any evidence that people are strategically defaulting in order to get a second and third bite at the apple. The first decision where they default, the – only the complainant's side of the story is before the examiner and so it's not really a fair game at that point and so having all the facts before the examiner is really the first decision and then there's the appeal after that. So there really isn't three bites at the apple, there's really only just two.

And so that distinguish – sorry, people must distinguish between that strategic default versus an innocent default. And lastly, this seems to kind of support the idea of a statute of limitations for trademark holders because if you really want the process to go forward quickly, then there needs to be counterbalance by the trademark holders side that they shouldn't be able to have, you know, 20 years to bring a complaint, that they too must act quickly. Thank you.

Phil Corwin: Yes, thank you George. I will note we've got quite a few hands up. So we may go a little bit past the 90 minutes, we're going to complete this issue and then that will probably be it for our 90 minute call today. And again, we heard

George speak on the merits but again, I'd like to hear comment on whether this proposal should or shouldn't go out for comment. If the community is deeply divided on it, like we won't get consensus down the road but that's different from taking comment. And with that I'll let Martin speak. Go ahead, Martin.

Martin Silva Valent: Thank you very much, Phil, I know when I say I oppose the proposal, yes, of course we can keep debating it and making comment on it. But I really think in this case I have (unintelligible) George comments. We have a URS (unintelligible) and a streamlined procedure that benefits greatly the complainant because we have a compensation on the process itself on the appealing part so I think that changing this really change the (unintelligible) that as a committee we accepted to have for URS. It's not about making the process more efficient, these are changing a big part of (unintelligible). So I really have to oppose to even have this as a public comment, but again, if everyone agrees that public comment is not a place of oppositions, there's not much I can do.

But I strongly suggest not opening this debate at least not in this broad terms, there's no evidence of this process or appeal regarding this at all. We even have a need to make respondents more comfortable to use the process itself and not to take away opportunities. And again, when I use the word "opportunities" it (unintelligible) of appealing and this is not the case even the proposal said, this is not an appeal, it's part of the process, yes, so I didn't – I don't see a reason to change it and I think that the (unintelligible) is great toward balance of the URS itself. Thanks.

Phil Corwin: Okay. Thank you, Martin. Let's move on to Mitch Stoltz and David, I hope you're keeping notes on what people are saying so you can respond in the wrap up. Go ahead, Mitch.

Mitch Stoltz: Thank you. Mitch Stoltz for the record. I oppose putting this out for public comment because I think putting it for out comment gives the impression that

there is a problem to be fixed. And my understanding is that there's – has been no proof of harm or abuse in this sense. It's a bit speculative that this is indeed a problem for anyone. You know, because after a default, you know, my understanding is the domain has been suspended, the rapidness of the Uniform Rapid Suspension, you know, has already been fulfilled.

On the – but the – that needs to be counterbalanced, right, the ease of getting the initial default and the brevity of the initial procedure has to be counterbalanced by additional safeguards on the backend, otherwise this essentially becomes a gotcha, without that, you know, that's a basis that needs to be sort of made again before this goes to public comment, because I think the public will presume that there is, you know, an issue here that needs to be solved when really there is not.

Phil Corwin: Okay, thank you, Mitch, and thanks for commenting on whether it should or shouldn't be put out for comment. I'd remind everyone after you've spoken please lower your hand. Our next speaker is Michael Karanicolas. Go ahead, Michael K.

Michael Karanicolas: Hi, thanks. Thanks very much. Yes, the – one of the main problems that I have with putting this out there, as I sort of already indicated in the chat, is I think it does mischaracterize the nature of the process to talk about getting three bites at the apple, which is I don't think that's a true characterization of how the process works at the moment, it's more like there's an extended process for responding in that first bite. So this isn't two reconsiderations, it's fundamentally you still only get one appeal but there's an extended notice to file your response.

And I also concur with Mitch that the problem that I have with putting this out is there is an implication that we've, as a working group, have found a problem here and I haven't seen any indication as to why this is necessary. To me it's still a solution trying to find a problem. So I would oppose sending it out for those reasons. And more broadly, just I think that this unfairly shifts

the balance that is established in the URS whereby those low standards of notice early on that streamlined procedure is acceptable solely because there's this robust appeals mechanism to allow for people who might not capture that they're being subject to this. So I also think that it's a problematic proposal for that reason. Thank you.

Phil Corwin: Yes, thank you, Michael. So I'll note that at this point we've heard some opposition on the merits, we've heard some opposition to putting it out for comment as a solution in search of a problem, but I've also seen members of the working group comment in chat that they do support for putting it for comment. And I'll now turn to Michael Graham for his thoughts.

Michael Graham: Thanks. Michael Graham for the record. And I apologize, I would have put much of this in the chat but my chat is not working right now. I'm of an opinion that we should look at this, now whether or not it's appropriate for public comment I think might require some more fleshing out, and I wish that there was some evidence that this were actually a problem that had occurred. At the same time, I think David's point that this was something that really no one had seen and it was identified in reviewing the documents as a potential problem, I certainly am one who believes that if we can avoid a problem, it's much better than trying to fix it afterwards.

I do agree that there should be a reasonable time for applicant registrants to challenge defaults where they may or may not know it. At the same time I think they need to underline the term "reasonable" and a full year does not seem to be reasonable and may be allow someone to game the system within that time. I'm just not sure that that's reasonable and I think that is the question whether there's a more reasonable time that may be put out there.

Just quickly to address the question of statutory – of statutes of limitation and this period, there's a grave difference, statute of limitations are established by legislative grant of rights in trademarks, copyrights or whatever, whereas this is really a contractual limits that are put on when certain actions can be taken.

But I weigh towards wanting to put this out for public comment but at the same time I understand that the real interest is that we make and ensure that the process is efficient. Again, I don't think having a one year period of time supports that efficiency. Thanks.

Phil Corwin: Thank you, Michael. Moving onto Zak Muscovitch. Go ahead, Zak.

Zak Muscovitch: Thank you. So my question is really – is for David to provide some help and clarifying, rather, this term “de novo appeal” which appears in the procedure itself. It’s a term that I admit that I’m not familiar with and outside this paradigm. And so when I look at the provision, the procedure, about what a de novo appeal is, it makes it even more confab. It says, “Either party shall have a right to seek a de novo appeal of the determination based on existing record within the URS proceeding.” So it seems to me that there’s an assumption that an appeal is understood by the procedure involves a review of the existing record.

And to further confirm that, if there’s going to be new evidence provided, permission has to be requested for that. So in terms of the proposal itself, it uses the same terminology, “de novo appeal” but to me what this really means is that – an appeal that relies upon an existing record assumes there’s an existing record so if this – if there were to be a new procedure that would replace this de novo appeal procedure, what does it really mean? And so I’m hoping for some clarification on that. Thank you.

Phil Corwin: Okay. Thank you, Zak. And we’ve got two more people with hands up. Greg, go ahead.

Greg Shatan: Thanks. Greg Shatan. I’ll be brief. I think that it certainly does deserve to be put out for comment. I think there are some things here that need to be cleaned up a bit in how this is described. I think that, you know, for those who are not lawyers, or maybe those who don't have all of the lawyerly terminology under review we might, you know, look at ways to make it a little

bit more plain. But the basic problem is a problem, people may not want to change the way the problem is dealt with. And that's fine.

But I think that we, you know, should not be quite so stereotypical each of us in our comments about what we're supporting or not supporting and the – I find the coordination or similarity in the comments quite amusing as well. But I guess if I wanted a theater I'd go to a play, not here. But in any case, I do support bringing this out so I think it does require public airing and commentary. Thank you.

Julie Hedlund: Hello, everyone. This is Julie Hedlund from staff. Phil is dialing back in. We have Zak Muscovitch in the queue. Zak, please.

Zak Muscovitch: That's an old hand, I'll lower it now.

Julie Hedlund: Sorry. And Phil's got it. Go ahead, Rebecca, please.

Rebecca Tushnet: …for a while, I've been struggling to get in online but I'm not newly arrived. So I also don't see an identified problem, a theoretical possibility is actually not a documented problem and I object to the idea that saying that – a number of people saying that there haven't been data identified problems and that there is also an interaction between the relatively lax toleration for default and the relatively lax notice rules, those are linked, those are – the one way you get to justify the relatively lax notice rules is that it's relatively easy to get back into the system if you didn't actually get notice.

And I don't think we should bring to the public a proposal that does suggest that there is a problem and does decouple those two things. Thank you.

Phil Corwin: Okay. Thank you, Rebecca. This is Phil. I'm back online now. And I don't see any more hands so David is going to have his four minutes to respond which will take us a little bit past the scheduled end of the call. I just want to observe that – one, I'd like to hear from David as to whether he's willing to consider

some revisions in light of the feedback we've gotten and, second, just note that not on this specific proposal but just as a general matter, reasonable people can disagree as to whether or not a problem exists. So with that I'm going to let David respond to what he's heard the last 20 minutes. Go ahead, David.

David McAuley: Thanks, Phil. Hello, again, everyone. It's David McAuley speaking for the record. And to answers Phil's last question, sure, I would be open to doing some revisions based on the feedback. As mentioned at the top I don't really have a particular dog in this fight, I'm not a practitioner but I mentioned something that I noticed that I thought was of concern. To George's comments about the rapidity having to do with suspension and not the process, I think it's a fair comment, but I actually do think that a quick – relatively quick process while maintaining some fairness would also be – would also be in order.

And it also gets to comments that others have made and most lately Rebecca with, you know, making the point that because of the lax notice requirements it's counterbalanced by the relative ease on getting back into the process. I think it's a fair point but I actually think that 12 months is stretching things. Maybe 90 days wouldn't be the right number but I think it would be worth getting public comment on it.

With respect to the argument, Michael Karanicolas made but others did as well, about this isn't three bites at the apple, it's two bites at the apple, I don't agree. I do understand that the initial bite at the apple is based on sort of one side's complaint. Oddly enough, in the Documents' team and I think it was elsewhere we discovered that there have been some decisions where a complainant made a complaint that was not responded to and lost. The examiner will still look at the complaint to make sure that the complaint makes the case.

It's possible under these rules that there would be three separate examiners taking a look. And so I don't think it's fair – I don't think it's fair to say that this is not three bites at the apple, it's really two bites at the apple. It's at least 2.5 and perhaps three.

Martin mentioned that the – changing this would change the balance of the whole URS. And, you know, I think it's a fair comment and that's exactly what, you know, I mean, it struck me as an anomaly whether we want to go to public comment with it, I think it merits it but I understand his comment, you know, we don't want to upset the apple cart and if this would do that, maybe I think it would be good to hear from the public that case.

Mitch mentioned – I'm looking at the clock – Mitch mentioned that he opposed it because there's not a problem. It's – and it's – I think Mitch and Rebecca were largely making the same points and that there's no issue to be solved. I tend to agree more with Michael who says if it's something that is a problem that there's a missing – that the elements don't link in paper that that could be a concern and so that's why I put that out there.

And I'm having a hard time – Zak, you asked if I would be willing to do clarification, I would. On de novo appeal I think I saw something in the chat from Mary but basically a de novo appeal is an examination by someone on the record as it exists, not adding to the record. And they would not be bringing to it any bias from an examiner that had worked on it before; they wouldn't have to take any presumptions or anything like that.

Those are the best I can make from my notes and so those are my comments. I want to thank the chairs for organizing this and the staff for making it efficient. And thanks, everybody, for your comments.

Phil Corwin: Okay thank you, David. So we're at the end today. I want to note that we got through six of the eight scheduled comments. The fact that we got through six proposals in 90 minutes doesn't mean that they're averaging 15 minutes

each; we saw quite a bit of extended discussion on the policy proposals so I think the co-chairs will take – we'll note that in planning, you know, for the time needed for future calls to meet our timeline.

I don't have anything else to say at this point. Do either of my co-chairs have anything to say or is there any other business? Our next call will be Wednesday, the 24th of September for two hours so any comments from Kathy and Brian or from staff before we wrap up for the day? Brian says nothing to add.

Kathy Kleiman: Phil, this is Kathy.

Phil Corwin: Kathy.

Kathy Kleiman: Wednesday the 26th, will that be an Asia friendly call?

Phil Corwin: I mean, the 26th, yes I believe we are going to be doing Asia friendly on that one.

Kathy Kleiman: Okay. And I believe that's our new Asia friendly time which would be eight o'clock in the morning Eastern Time.

Phil Corwin: Eight am Eastern, that's correct.

Kathy Kleiman: Great. Thanks for today's call, Phil and everybody.

Phil Corwin: Yes, thanks for pointing that out, Kathy. I forgot that. And I did want to commend everyone who spoke today, we had a very polite, very substantive discussion which is exactly what we like to see going on in this working group. And I want to thank everyone who participated, those who listened and those who took the time to propose changes to URS operations and policy. You'll be hearing further from the co-chairs before our call on Wednesday, the 26th. Thank you. And enjoy the rest of your day. Goodbye.

Claudio DiGangi: Thank you.

Michelle DeSmyter: Thank you. This concludes today's conference. Please remember to disconnect all lines and have a wonderful rest of your day.

END