
ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs)
Wednesday, 05 February 2020 at 18:00 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

Attendance and recordings of the call are posted on the agenda wiki page:

<https://community.icann.org/x/4RGJBw>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page:

<https://gnso.icann.org/en/group-activities/calendar>

JULIE BISLAND: All right. Well, Good morning, good afternoon, and good evening. Welcome to the Review of All Rights Protection Mechanisms (RPMs) and all gTLDs PDP Working Group call on Wednesday the 5th of February 2020. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge, could you please let yourself be known now?

All right. Hearing no names, I would like to remind everyone to please state your name before speaking for the recording and please keep your phones and microphones on mute when not speaking to avoid background noise. With this, I will turn it over to Phil Corwin. You can begin, Phil.

PHIL CORWIN: Yeah. Good morning, afternoon, evening, everyone. This is Phil. I'll be chairing today. Brian is on vacation this week. I don't see Kathy on yet. I believe she's planning to join but I'm just checking. Yeah. I don't see her on yet.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

Before we get into the substance of today's call, I want to give all the working group members a head's up. I believe you know that we're going to be submitting—we, the co-chairs—a change request to the council to somewhat extend the deadline, the timelines, for this working group. Two of the co-chairs, myself and Brian, had a call with council leadership last Thursday. Kathy couldn't be on that call but I believe she's listened to the recording. Then she and I were on a call with staff yesterday.

I just want to let you know that we are working with staff to finalize a realistic timeline. We're looking at in that timeline filing the initial report either right after the Cancun meeting or, at the latest, early April and looking at delivering the final report mid-August to possibly that could get pushed back a few weeks into the first part of September.

But council leadership was very clear that this is the last extension. So, the good news is that the end of phase one is coming up in the next few months. The other news is we're going to have to work very hard to make those timelines. There will be no further extensions granted. So we have to really, each of us, work to make these calls as efficient as possible. This doesn't mean not saying things you think are important but not endlessly repeating the same points and re-litigating matters.

When we get to ... After the initial report, after we see the public comments and we're going to be discussing during that six weeks of down time—well, about seven weeks, 40-day comment period. We'll have at least one or two calls to discuss our process for determining consensus. So, when we get to considering the comments on the initial report, we're not going to be re-litigating

and re-arguing the recommendations whether you're for or against a recommendation. The topic at hand will be is there consensus in the community or deep division? Is there a possibility of consensus in the working group or not? And we're going to have to have a very efficient triage process to make those determinations, to make our timeline.

So, I don't know if anybody has any questions about that. We're really not making any decisions right now. The co-chairs need further dialogue with staff to finalize our change request to make sure that we can make the timelines. And I think we've already told you that when we come back post-public comment we're planning on two meetings per week as the way to meet the deadline or delivery of the final report and consensus recommendations to council.

So, just wanted to give you all a head's up on that. I don't know if anyone has any questions but we will certainly share the change request when it's final and is sent off to council. That's got to be done in the next few days. They're going to consider it at their next meeting. I expect them to approve it, but again, with the caveat that this is the final extension with no further time being granted for phase one of this working group. Questions or comments on that?

All right, then. Let us get into ... And let me just ask staff. A review of the rights protection mechanisms, we've got I think ten recommendations and eight questions to review. Does our timeline having us do that all today or is that spread over the next two meetings on our current timeline? Ariel?

ARIEL LIANG: Thanks, Phil. Julie also mentioned in the chat is to wrap up for two meetings, including today's and next week's meeting, so we have to budget enough time for the working group to complete the URS part of it.

PHIL CORWIN: Okay. Well, thank you. That's what I thought. I just wanted to make sure. So, we've got 18 items to get through, ten recommendations, eight questions to the community. During today's session, the wording of the recommendations is locked down. The wording is not open to further discussion. What is open to discussion is if you see a clear error in one of the recommendations that we somehow missed. Bring it to our attention. That will be corrected.

If you believe the recommendation is ambiguous or unclear in some way, then that fits into the real topic of conversation which is a review of the contextual language to explain the recommendation or the questions to the community in the initial report.

So, with that, I'm seeing recommendation three on the screen. Where's recommendation one? I don't believe we've covered any of these yet, have we?

ARIEL LIANG: So, recommendations one and two, we actually covered that last week and we're starting number three.

PHIL CORWIN:

Okay. Thanks for reminding me. I was on last week's call but a little under the weather. I wasn't clear on that. So, that means we have 16 items left for the next two meetings. Maybe we can finish early and get ahead of our timeline.

I'm not going to read every word of these. You have the same things in front of you on the screen. You've had opportunity to look at them before the meeting.

So, recommendation three is that providers must comply with procedures in paragraph 4.2 and 4.3 and transmit the notice of complaint to the respondent with translation of dominant language of the respondent via email, fax, and postal mail. This is really reiterating what's already in the procedure.

And rules and the context, it has to do with the following URS procedure 4.2. That's just repeating what's in the procedure. So, I'm not sure if there's anything to debate there. Same with 4.3. So, really, it's the last two paragraphs down here that we're reviewing that we discovered non-compliance issues with ADNDRC which did not translate the notice of complaint into the predominant language used in the registrant country or territory, per paragraph 4.2, and transmit the notice of complaint via fax and postal mail via 4.3.

We're also stating that we noted that providers are unable to use courier services to deliver mail to PO Box addresses and FORUM and MFSD reported their mail, fax, and email to the respondent were sometimes not delivered.

So, anybody want to suggest any modifications of the contextual language in those final two paragraphs? Ariel, your hand is still up. Did you have something to say or is that an old hand?

ARIEL LIANG: It's a new hand. Thanks. I just want to note there's a comment on staff on this side. We're wondering with this recommendation is redundant because there is a recommendation at the lower part of the document regarding compliance aspect, and we're just wondering whether it's necessary to repeat compliance issue here, too. Then we also note that David McAuley has a comment here. So, if David wants to explain that, that would be very helpful.

PHIL CORWIN: David, I see your hand up. Go ahead.

DAVID MCAULEY: Thanks, Phil. And thanks, Ariel. Given what you said at the introduction, Phil, about the language of the recommendations, etc., I'm going to ask that a large part of my comment not be considered right now. It simply was noting that URS recommendation #3 didn't exactly follow the language in rules 4.2 and 4.3. But it's not necessary because the context shows it.

However, with respect to Ariel's question, is there a redundancy between three and eight, I personally think that they touch on the same subject but they're not redundant. One establishes the rule and the other simply says ICANN should have an enforcement

mechanism about the rule. That's my personal opinion and that's it. Thank you.

PHIL CORWIN:

Okay. Well, three is just saying that we've got these procedures and they have to be complied with, that we found instances where they're not being complied with. It's not a failure of the mechanism. It's a failure to even try to comply with and use all the mechanisms.

Let me suggest we jump to number either while this three is fresh in our mind and look at that and then decide whether three is redundant or it stays.

Here's eight. We're recommending that ICANN Org establish a compliance mechanism to ensure that URS providers, registries, and registrars operate in accordance with the rules and requirements and fulfill their roles and obligations. We recommend that such a compliance mechanism should include an avenue for any part in the URS process to file complaints and seek resolution of non-compliance issues. And we, the working group, for implementation guidance, recommend that the IRT consider investigating different options for potential compliance mechanisms and develop metrics for measuring performance of URS providers, registries, and registrars in the URS process.

So, it looks to me, my personal opinion, not binding on the working group, that this is informed by number three but quite different, that it's not duplicative of three and that three stands on its own.

Let's look at the context language and finish up on this one. Okay. It says we discovered non-compliance issues and that was stated in number three in the context language. Then the second paragraph says we found cases where the URS provider didn't translate number one, transmit as required by required methods, number two; and list and maintain the backgrounds of examiners as required by URS rule 6(a). So, that's a different issue. The 6(a) issue does not even touch to number three.

It goes on. Some registries delayed in fulfilling ... I think we mean fulfilling. That's a typo. So, in fulfilling or did not fulfill their obligations relating to locking, unlocking and suspension of disputed domains. And the provider had to report their non-compliance to ICANN.

So, let me ask staff. Did we find that the provider did in fact report their non-compliance? That's what that second ...

ARIEL LIANG: So, yes, we did hear from some URS providers that they report non-compliance by registries to ICANN, so we just want to note that the working group has heard about this feedback.

PHIL CORWIN: Okay. Was that across the board or was that just some URS providers that voluntarily did it?

ARIEL LIANG: I think it's probably some is more precise.

PHIL CORWIN:

Let me suggest a change there in the context language on the fly here, that we strike the word “the” and say some URS providers reported their non-compliance to ICANN, which is what we actually found. I suspect that A and D or C probably didn’t do so, though I’m not sure of that.

Last paragraph. Providers and practitioners reported difficulty in getting the registrar on the same page with the registry to implement a settlement which typically involves a transfer of the domain, registration at the registrar level.

Somebody has got their phone open. We’re hearing a side conversation. Can we mute that please?

Problems with the Chinese registrar to implement the ... Can we go on there? [inaudible] been reported. Let’s jump back up to where that sentence started. Reported difficulty in getting the registrar on the same page with the registry to implement a settlement. I’ll leave it to the working group whether that language is sufficiently clear. But I’m not going to suggest any change right here.

So, moving on to the final language here. The working group agree that ICANN Org should reactively monitor the practice of providers, registries, and registrars in the URS process, establish a compliance mechanism for any stakeholder to raise complaints. The working group is unsure which specific mechanism would be appropriate, so it recommends the [inaudible] to investigate different options.

Finally, the working group also seeks public comment on additional compliance issues as well as suggestions for enhancing compliance in the URS process. Then it references question five below.

All right. That language is open for comment now if anyone thinks it needs to be clarified or that we need to add anything. I'm looking for hands. I see none. All right. And of course, if you're on the phone, just shout out if you have a suggestion.

All right. The working group seems to be satisfied with that language, so let's lock down number three and number eight. We reviewed both against each other. Unless there's an objective, they appear to be sufficiently different that both should remain in the initial report as recommendations.

And let's go back to recommendation four and look at that. Oh, Ariel, I see your hand up.

ARIEL LIANG:

Thanks, Phil. I just wanted to note Suzanne's comment in the chat that perhaps it's helpful to put number three and eight next to each other so it [inaudible] a little more logically, and because we did notice the similarities between these two so it probably is better just to put them together side by side for the initial report.

PHIL CORWIN:

Yeah. I'll leave that to staff. We can either put them side by side or we can add a sentence to the context for number three directing the community to consider number three and number eight

together. I think either one accomplishes the purpose of linking them for community comment.

Okay, recommendation four. We're recommending that ICANN Org, registries, and registrars and URS providers keep each other's contact details up to date in order to effectively fill the notice requirements set forth in procedure paragraph four. We note that it's related to URS question two. We'll look at question two later.

Now, this seems like a very straightforward and non-controversial technical recommendation to keep contact data current. Let's look at the context language.

Okay, providers feedback indicates there may be some clerical issues concerning the registry operators including communicating from email addresses different from the context present in ICANN's repository. Not responsive to requests for information from providers. Delay in sending notifications to the providers regarding the completion of URS actions. Not completing URS actions despite notifications and reminders from the provider, resulting in the need for the providers to report non-compliance to ICANN. That's a pretty serious issue there.

And then, due to GDPR, registries are inconsistent with respect to how they would like to either receive verification requests or how the provider should receive the verification from them. The inconstancy adds a significant amount of time to case handling. A small number of registries do not respond within the required 24 hours for verification requests.

Then we conclude. To understand the full picture, the clerical issues reported by the providers, the working group seeks public comment from registry operators regarding their experience of receiving notices from URS providers.

So, that's all pretty straightforward. Anyone want to suggest modifications or additions to that context language?

All right. Going once, going twice. We're done with number four. And I assume the lack of comment reflects the fine job done by staff, rather than any lack of interest by working group members.

Number five. We recommend that a uniform set of education materials be developed to provide guidance for URS parties, practitioners, and examiners on what is needed to meet the clear and convincing burden of proof in a URS proceeding. As an implementation guidance, we recommend that the educational materials be developed in the form of an administrative checklist, basic template, or FAQ. I would suggest we say and/or FAQ because it might be useful to have more than one of those approaches.

Specifically, the working group communications that the education materials be developed with the help from URS providers, practitioners, panelists, as well as researchers, academics who study URS decisions closely. And we note that it's related to URS question three.

Let's look at the context language which is the real focus of discussion here. About half of the practitioners who responded to the working group survey agree that there should be more

guidance provided to educate or instruct practitioners on what is needed to meet the clear and convincing burden of proof in a URS proceeding in light of the different laws around the world.

The working group noted that two of the three URS providers did not strongly support the issuance of an examiner's guide, at least to the extent that the guidance to provide direction or examples as to the distinction between clear cut and more difficult cases.

Therefore, the working group recommends that the uniform set of guidance or education material should not extend to providing examiners with specific directions as to what is and is not a clear-cut case. So, we're saying here that this material is intended for third parties, not for the examiners who determine the decisions.

Going on, it may be preferable to develop the education material that is more in the nature of an administrative checklist, basic template or FAQ rather than a substantive document, such as WIPO's UDRP overview.

In addition, we recommend the educational materials be developed via the collaboration of experienced parties in handling URS proceedings. And then we name them. And then the working group seeks public comment on additional implementation guidance for the development of such education materials. And we reference question three below.

So, pretty clear cut. We're recommending that some group be formed following on the work of this working group to prepare one or more forms of education materials for the general public, for practitioners, but not for examiners, too give some guidance as to

recommendation in any way. Okay. Any objectives to that edit? All right, no objectives heard. All right. Now we can move on to number six. Thank you, Cyntia.

All right. In number six, we're recommending that all providers require their examiners to document their rationale in sufficient detail to explain how the decision was reached in all issued determinations.

As an implementation guidance, we also recommend that providers provide their examiners a uniform set of basic guidance for documenting their rationale for determination. The purpose of the guidance is to ensure consistency and precision in terminology and format as well as ensure that all steps in a proceeding are recorded. Such guidance may take the form of administrative checklist or template of minimum elements that need to be included for a determination. So, that's the recommendation. That's locked down, except for typos and grammar.

The context. URS providers vary in terms of the amount of guidance they provide their examiners with respect to issuing determinations. They also vary in the use of a template determination form. Case review indicates that there are some inconsistencies across examiners as to whether or not rationale or justifications are provided and in what detail for their findings in the issued determination. There have been determinations specifically issued by FORUM where no clear rationale or reasons were elaborated. A working group member found that roughly 7% of over 900 issued determinations that did not include a rationale. So, that would be about 60 out of the 900.

Nonetheless, some working group members caution against micromanaging, imposing a number of guidance on panelists—I think we need to reconsider that language. That’s not clear—who have limited time and compensation in handling URS cases. I think we mean imposing numerous. Say numerous elements of guidance on panelists. I think that’s what it was trying to get at but in a muddled way. So, if anyone doesn’t like my language, suggest something different. But I think we’d all agree that a number of guidance is not a good term.

Let me ask one thing of staff. Don’t the rules of procedure require some explanation in decisions? I think that was part of the reason for this recommendation.

ARIEL LIANG:

Yes, I believe so. And I think this kind of also ties to the compliance but we specifically have this recommendation just to make sure that a panelist has a guidance from your examiners to understand how to draft the determination.

PHIL CORWIN:

Yeah. My recollection is that there is some language—I don’t recall the exact language at this moment—in the URS rules of procedures which require some minimum explanation. So, really, this was a compliance issue. I don’t have language to suggest but I think we need ... Staff needs to look at that and maybe add one sentence just noting that this would bring all decisions into compliance with the existing rules and procedures. That would be my suggestion there if I’m correct on that.

Does anyone have any other comments on the contextual language? Lori, please go ahead. Are you off mute? We're not hearing you. Lori, I'm still not getting any audio. Did you want to type a comment in chat if you're having a technical issue? Okay. Lori is saying she is still unmuted. Could staff take her off mute from our end? Although her phone is showing as not muted.

JULIE: Correct. It is unmuted from this end, so it has to be ...

PHIL CORWIN: Yeah. Lori, staff is saying you're not muted from this end.

JULIE: I'll private message her, Phil.

PHIL CORWIN: Okay. All right, she's going to type. She says she can't figure out the mute issue. Okay. We'll wait, Lori. If you could type in the substance of your comment, we'd like to consider it.

Numerous elements of guidance. Well, that was my suggested language. I'm not wed to it. It was just something I suggested on the fly. How about we just say imposing detailed guidance on panelists? I think that is the gist that working group members don't want us dictating detailed guidance set, that we want to make sure that what they're doing is compliant with the rules and procedures but we don't want to get into the weeds. That's between them and the URS provider.

Does detailed guidance ... Is that language okay or does anyone want to object to it or suggest something different? Ariel suggested prescriptive. Lori said onerous. Susan Payne, extensive. And Rebecca, go ahead.

REBECCA TUSHNET: Thank you. I'm now on audio only. Yeah. I could go with any of those. I think it would be more reflective of where our discussions were, that we don't want to give burdensome guidance but I could be happy with any other adjective. But detailed actually [inaudible]. The point is apparently the guidance wasn't detailed enough.

I'm also checking [a thing]. I'm not sure that 7% is correct but I'm going to send an email around if I find otherwise in my records. So, I just wanted to flag that. Thank you.

PHIL CORWIN: Okay. Yeah, if you find that's a mistake, get it to us, Rebecca, and we'll put in the correct percentage. So, what's the ... Oh, and I see Jason wants to comment. Go ahead, Jason.

JASON SCHAEFFER: Hi, Phil. Thank you. I think burdensome might be the way to go. I mean, I think the intent here was that we didn't want to be over burdensome on these panelists who are making very little money in a very short period of time. So, I think that was the intention. Obviously, they're not getting enough guidance, so that is the problem. But we don't want to burden these people with more than

they need. So, that was the intention, at least I recall. But I think it's important that they get this guidance because they clearly don't have it in a sufficient manner.

PHIL CORWIN:

Well, this co-chair is fine with burdensome, if that's acceptable to the folks on the call today. I think it gets to what the concern was, that we get too prescriptive and [inaudible] to having a burden and a procedure where really ... Again, our recommendation here ... The fact remains the original concept of URS—and I was part of the decisions that created it way back in pre-history—was that it should be a slam dunk. It should be a know it when you see it. You look at the domain name, you look at the webpage and it's clear that it either meets the standard or it doesn't. If there's ambiguity, if you're not sure, it probably should be a UDRP.

So, we're not [inaudible] adding any details here but we just want the examiner to say, "All right. Well, it was an exact match for the trademark and they were selling counterfeit goods at the webpage." Something like that. Just explain how you got the decision. And Jason, that's an old hand, right?

JASON SCHAEFFER:

Oh yes, that was ... Yeah. I got to take that down. Sorry.

PHIL CORWIN:

Okay. So, we're going with burdensome unless I hear objective right now. And I don't, so we're done with six. Let's move on to seven. And let me say we're 40 minutes in and we've already

done seven of these because we've already dealt with number eight, so we're making good time here. I appreciate the cooperation of the working group and only making comments when necessary.

Okay. This is a little more detailed recommendation, particularly the contextual language. Recommendation seven, we're recommending that the IRT consider reviewing the implementation issues with respect to registry requirement ten and the high-level technical requirements for registries and registrars and amend the registry requirement ten if needed. The provider sub-team discovered issues with respect to implementing the outcomes of the URS proceeding, such as relief awarded following a URS decision to where the parties settled a case prior to determination or where a complainant requests to extend a suspension. And then it notes that the recommendation is related to URS question number four. We'll look at that later.

So, the recommendation is pretty clear. It's actually a little bit of contextual language already in the recommendation. But now let's look at the language up for review.

Okay, context. The recommendation specifically concerns with the following URS technical requirement which is registry requirement ten. Staff, is this exact language from the registry requirement? Is this the exact language of the technical requirement? If it is, we don't have to review it because we can't change it if it's an exact quote.

ARIEL LIANG: Yes, it is.

PHIL CORWIN: Okay, so that's locked. The remaining language is open for comment. And here we go. One-third of URS practitioners who responded to the survey indicated problems with implementing the relief awarded following a URS decision. Providers also reported that some registries and registrars had difficulty implementing the extension request of the URS suspension because they might not understand their roles in the process. Therefore, the working group recommends the future IRT to review the implementation issues regarding registry requirement ten and consider whether enhanced education is needed to help registries and registrars understand how to implement relief and gain better awareness of URS procedures.

Continuing on. In addition, some FORUM examiners supported the possibility of altering registration information during the additional year of suspension that is available to a successful complainant. One working group member also raised the question whether the prevailing complainant could elect to transfer the suspended domain name to a different registrar which is accredited by the same registry for just one additional year.

Thus, the working group seeks public comment on whether registry requirement ten should be amended. And then there's a reference to URS question number four.

So, those two paragraphs that I just read are subject to comment. Do they do the job or do they need additions or clarifications?

Cyntia has a grammatical comment in the chat, which Ariel I think is going to address. Yes, Rebecca?

REBECCA TUSHNET: I'm very sorry but I was finally able to look up the data. I think it's actually 17% and I just want to belatedly request that correction be made because that's the number I have. Thank you.

PHIL CORWIN: Okay, 17%. Well, that's about one-sixth, so that's a more serious omission and better explains the reason for the recommendation—recommendation six.

Back to seven. Any comments? Greg, go ahead. I see your hand up.

GREG SHATAN: Thanks. I think that you put some discussion in the chat before Rebecca came back with her number that this should be put up for discussion. Maybe you missed that.

In any case, I think the point was that after an initial figure came out of Rebecca and her students, it was reviewed by George [inaudible] and he went back and looked at the decisions that were in that 17% and concluded the proper number was 7%. So, I think we stick with the 7% unless we want to go back through [inaudible] of these again.

REBECCA TUSHNET: Whoa!

PHIL CORWIN: All right. Wait. Rebecca, before you jump in, this is a dispute over facts. I don't think we can decide it during the call. I'm going to ask staff to take input from both Greg and Georgios if he wants to get involved. I don't know if he's on the call today but he can certainly be contacted by staff. Yeah, Georgios is on the call. So, why don't the three of you provide input to staff and we'll come back to this issue on the next call and determine what the proper number is. We're going to be looking at studies and analysis of studies. Go ahead, Greg.

GREG SHATAN: I don't have any information to add to this. It's just that I'm aware of the circumstances and the rapid retreat was, especially given that several people had already mentioned something in the chat, that it should not just be taken as something that literally can simply be changed. I just put my hand up to stop the runaway train. Thanks. So, it's really [inaudible].

PHIL CORWIN: All right. Well, I'm going to ask Rebecca and Georgios because Greg referenced Georgios's separate analysis to look at this and to come back to us at the next meeting with a report on what they found. If we can determine with certainty that the number is either 7 or 17 or some other number, we'll put that in. If there remains a dispute, I would suggest that we put something that's non-

numerical but simply something like a significant percentage to not include the rationale.

The point is the same. Whether it's 7 or 17, we found that in a significant number of cases, all the examiner was doing is saying, "I found that the burden was met and I'm ordering suspension," and there wasn't a single sentence explaining how they reached that conclusion. So, I think that's the important point. But let's take it off to the side now and come back on that number next week and decide what the language is going to be. Let's not try to solve that on this call. And Greg you can take your hand down unless you have something further to say on number seven here.

GREG SHATAN:

Just that I think we ... Let's get to the facts but I don't know that I'd use the word "significant". I was thinking not insignificant but let's hope that we can actually come to a determination we all agree on.

PHIL CORWIN:

All right. Let's have that discussion next week once we see what Rebecca's group put in and what Georgios's response was.

Back on the contextual language in number seven, the two paragraphs displayed on the bottom half of the page here. Do we have comments on that or is everybody satisfied with it?

I don't see hands up. I'm not hearing any shout-outs. We're done with seven. We've already done eight, so onto nine, which is our next to last recommendation on the URS.

Okay. Number nine, the working group recommends as implementation guidance the IRT consider developing guidance to assist the providers in deciding what language to use during a URS procedure and when issuing a determination. Such guidance should take into account the fact that domains subject to a URS [inaudible] may have been registered via privacy or proxy service and the location of the service would determine the language of that service which may be relevant.

And on this one, we've got a lot of contextual language, so let's slog through it. [Forum on MSSSD], communicate with the respondent in the language of the respondent. Such practice includes assigning examiner—I think it should be an examiner to be grammatically correct—who speaks the same language as the respondent and also ... I think I say also providing so it's clear that it's the provider and not the examiner doing this. Also providing translations of notices, emails, templates, and determinations.

Next paragraph. Post-GDPR implementation FORUM researches what the predominant language is in a respondent's physical location based on the registration information provided by the registry. FORUM also confirms the language based on the language used in the respondent's response. And then a parenthetical: if no response, the default option is to use English in the URS proceeding.

Next paragraph. However, when the domain subject to a URS complaint has been registered via privacy or proxy service, FORUM has difficulty in determining the language to be used, unless that information is relayed to them. Is relayed the right word or is it relayed?

Okay. The language and the location of the privacy or proxy service may be different from the language of the respondent. Furthermore, if the respondent resides in a region that has multiple predominant languages, research is needed to determine which language should be used.

Personal comment. In a jurisdiction like India, there's more than a dozen major languages used throughout the country.

All right, back to the language here. Hence, the working group recommends the future IRT to develop ... I think strike the word "to". That's not grammatical. The future IRT develop guidance to assist URS providers in deciding the language to communicate with the respondent.

Final paragraph. The working group notes that ADNDRC communicates with respondents only in English and is non-compliant with URS procedure paragraph 4.2 and URS rules 9(e). Then it references recommendation eight which was on compliance. Although most of the examiners speak additional languages, to English ... I don't think it's "to". It should be "besides" or "other than", something like that. Language skills do not seem to be a factor in its assignment and rotation of examiners. ADNDRC reported that it did not encounter the situation where the respondent did not understand English.

Okay. I'm not sure how they would ... Personal comment. I'm not sure how they would know that if the respondent never files a response, which happens in many URS cases. But that's the listen. I don't have any suggestions for additions or modifications. I think it explains the rationale for the recommendation. Anyone

want to suggest edits here or additions? All right, Renee, please go ahead, particularly since FORUM is discussed a lot in this context language.

RENEE FOSSEN: If we scroll up a little bit, it says that post-GDPR implementation—that’s the second paragraph under the context. I think that be deleted because it doesn’t matter. I think that when we were talking about it, we talked about it in that context. So, no matter when, always we have had a certain—

PHIL CORWIN: Renee, to clarify, you’re suggesting deletion of the first three words “post-GDPR implementation” or deletion of the entire sentence?

RENEE FOSSEN: Deletion of those first three words: post-GDPR.

PHIL CORWIN: Okay. So, you’re saying your practice hasn’t changed with the GDPR enforcement.

RENEE FOSSEN: Right. Yes. We’re going to get the information either from WHOIS or from the registry. GDPR really has nothing to do with it at this point and probably ... We were just discussing it in that context which is why it probably stuck.

PHIL CORWIN:

Okay. Yeah. I think that makes a more factual ... The original language suggestion ... You just started doing that research post-GDPR and you're telling us that's not the case. Thank you. Any other comments on these four paragraphs? Going once, twice.

On to number ten. And this is our last recommendation on the URS and we haven't even gone an hour yet so we're doing great here.

Number ten. We recommendation that clear, concise, and easy-to-understand information and materials should be developed, translated into multiple languages, and published on the URS providers websites to assist complainants and respondents in URS proceedings. Such information and materials should include, but not ... I think we need "not be limited to". That's a grammatical change, not substantive.

One, a uniform set of basic FAQs. Two, links to complaint, response, and appeals forms. And three, reference materials that explain URS provider services and practices. Then it notes that the recommendation is related to question number nine.

And here's the context. Providers vary in terms of the amount of guidance and instructions they provide to complainants and respondents in the various stages of URS proceedings. FORUM provides PowerPoint demo ... I think we need "a PowerPoint demo". Just a point of grammar. MFSD references specific URS rules, URS procedure and supplemental rules, in detail. ADNDRC seems to only provide the complaint response and appeals forms.

The notice of complaint from FORUM and MFSD includes instructions to the respondents about the steps and what to expect in the URS proceedings. FORUM's case coordinator also assists respondents on an individual basis via phone or email.

Continuing on. FORUM is aware that some respondents did not file response as they did not know how to proceed regardless of the materials provided by FORUM. There are general complaints regarding FORUM's online filing portal. I'm just going to ... I'll continue but I'm going to ask staff whether there were general complaints or some complaints. General suggests a large number. Some would suggest some but it's just the level of feedback we received. It's also not clear to me in this sentence who the complaints came from, whether it respondents or other parties. So, I'll let staff respond when I'm done reading the final paragraph.

Final paragraph. Therefore, this recommendation seeks to assist future URS parties and URS proceedings. However, the working group is unclear whether the uniform set of basic FAQs should be developed by the ICANN Org. The three URS providers jointly or some other entity [inaudible] seek public comment on this resource related implementation question. And it again references question nine before.

So, staff if you could respond on the questions I raised on the last sentence of the third paragraph and then I see Renee's hand up. We'll open it up to general comment.

Okay. Staff feedback on complaints about FORUM, whether they were some or general. I'm not sure what general means and the source of those complaints.

ARIEL LIANG: Sorry, I forgot to raise my hand. We actually got the wording from FORUM's response to the providers sub-team's questionnaire but Renee has her hand up, so perhaps Renee can provide further clarification.

PHIL CORWIN: Did you say it was FORUM's response?

ARIEL LIANG: Yes.

PHIL CORWIN: Okay. Well, Renee, maybe you can explain that and comment on anything else in this context that you wish to.

RENEE FOSSEN: Thanks, Phil. Yeah. We probably were self-reporting in the written responses to some of the questions that there have been complaints from some respondents on the portal but generally I can't say that it's a problem for us. So, I guess I don't really have any preference whether we leave that sentence in or take it out, but obviously not everybody is going to know how to use the portal. Anybody's portal, probably. So, I can't say that there's no problems but there have been a few people that have complained, I think, was the context of that. So, I'll let the group decide how they want to handle that sentence.

PHIL CORWIN: Yeah. Let me take co-chair's prerogative and suggest, subject to feedback from the working group, that we revise that sentence to read—and I think this will be more accurate—FORUM reported that it had received complaints from some respondents regarding its online filing portal. I think that's what you just told us, Renee, and that is an accurate reflection of what you reported, regarding its online filing portal. Is that acceptable, Renee, that revision?

RENEE FOSSEN: Yeah, looks good to me.

PHIL CORWIN: Anybody else? Cyntia, go ahead.

CYNTIA KING: Hi. It looks good to me, but is it possible for us to just say FORUM reported it has received some respondent complaints and leave it at that?

PHIL CORWIN: Well, I think "some respondent" replace "regarding its portal". We want to know what they complained about. That's fine with me. I think it's just a more accurate reporting of what FORUM provided to the working group. And we thank them for telling us that they've received complaints.

All right. We are at the top of the hour and we have completed all the recommendations. I want to thank the working group for being so effective. I also want to just observe personally, it seems to me that at last for these URS recommendations, that my personal view would be that most of them would have a substantial possibility with some minor adjustment based on community feedback to become a consensus recommendation to our final report. I didn't see anything that seemed particularly divisive, some of them. So, that's good where the working group came together on recommendations. They stand a good chance of getting over that final bar and become consensus recommendations to improve that particular rights protection mechanism and its administration and provide a better experience for both complainants and respondents and contracted parties. So, it's good work.

So, let's move on to these questions. We've got 30 minutes left. I'm not going to hold us past 30 minutes, the bottom of the half hour. If we're done, but again we've got two weeks scheduled for this exercise and we can probably get at least three quarters of it done in one session which means we can get a little bit ahead of our timeline next week, which is what we want to do as much as possible because we're going to probably bog down on some other things and lose time.

Question one. Again, the questions are locked down. We discussed them previously. We've agreed on them. The subject for modification is the context language.

Question one. What mechanism do you suggest that allows a URS provider to efficiently check with other providers in order to

ensure that a disputed domain name is not already subject to an open and active URS UDRP proceeding?

I'm going to ask a question here. I'm not trying to affect substance, but to fulfill ... Wouldn't they have to check with ... Oh, I'm sorry. Never mind. I was looking at URS and UDRPs are providers of reference. So, that's what I was going to say. Never mind.

Let's go on to the context. Question stems from URS rules 3(g)—that should be rule, not rules, the singular—which states a URS complaint may not be filed against a domain name that is part of an open and active URS or UDRP case.

It goes on. FORUM already checks whether there is any duplicative filing of URS proceedings. Most of FORUM's complainants are also well informed and abide by the rules. Among the URS cases handled by FORUM, no disputed domain name was already subject to an open and active URS/UDRP proceedings or court case. ADNDRC at least checks whether the same complaint has already been filed with another one of their offices. So, they just check within the organization, not with others. So, that was my additional language.

Final sentence. Nonetheless, providers rely heavily on information provided by the URS parties and are unable to search or track active court cases related to the URS proceedings in certain jurisdictions.

If the rule prohibits filing a URS which is part of an open and active existing URS or UDRP proceeding, why are we talking about court cases if the rule doesn't reference them? And yet we

had these substantive discussions a long time ago but I would raise with the working group if the rule doesn't require, doesn't say anything about concurrent court cases, should we be referencing them? And that's all I'm going to say.

So, that's open for discussion or anything else about this contextual language. Cyntia and then Susan.

CYNTIA KING:

Hi, Phil. Thank you. I had a question related to what you were just saying about whether or not the court cases should be deleted. What if the court case has grown out of a UDRP or URS proceeding? Thanks.

PHIL CORWIN:

Yeah. I don't know the answer to that. Do you have suggested language to deal with that question? Think about that while I hear from Susan and then from Steve.

SUSAN PAYNE:

Thanks, Phil. Well, I was just going to agree with the comment that Brian had put, which is what you were touching on as well. I don't know where these sort of context languages come from. I'm sure it was part of a much bigger conversation in the sub-team at some point.

But the rule is about whether there is an active URS or UDRP case. So, it just seems to be a bit of a side avenue to start

referencing court cases because that's not the relevant test or the relevant standard that the providers have to check on.

So, I would agree with Brian Beckham who has suggested that that sentence should come out.

PHIL CORWIN: Okay. When did Brian do that? Because he's not on our call today.

SUSAN PAYNE: It's in his comment in the document.

PHIL CORWIN: Oh, okay. Thanks. I wasn't looking at that. I was looking at chat and hands. All right. And Steve's hand is up. I see your comment in chat, Steve, that UDRP and URS cases can move forward despite the current pendency of court cases. Do you have anything further to add on that, Steve?

STEVE LEVY: Yeah. Thanks. I just wanted to answer the question of what happens if a pending court case in fact relates to a prior URS decision, or I guess UDRP in some cases. The simple answer is that I believe it's incumbent upon the parties, probably the respondent, to bring that to the panel's attention. So, if you're involved in a case, you bring forward relevant facts and I think that's the answer to that question.

PHIL CORWIN: Okay. I've got Renee and then Greg. Renee?

RENEE FOSSEN: Actually, Steve just said what I was going to say. In looking at that paragraph where it says that FORUM checks for proceedings or court cases, we can't do that, so that was a mistake. But what we do do is rely on the parties to tell us that and that's part of why they're [signing] the complaints, to let us know that they're saying that there isn't one and that they've checked. So, they would have more information as to a court case [inaudible].

PHIL CORWIN: All right. Ariel, don't strike this yet. The language says that FORUM checks for duplicative URS proceedings and you also reported that no disputed domain name was already subject to an open and active URS or UDRP proceedings or a court case. So, it didn't say you checked for that. It said that, so far as you knew, none of your URS's involved a domain which was involved in a concurrent legal proceeding of any type.

RENEE FOSSEN: Correct. That's correct.

PHIL CORWIN: Okay. So, I think the language is factually correct as it stands on that point. Greg, go ahead, please.

GREG SHATAN:

Thanks. With regard to that [inaudible] court case, while it seems to be factually correct, the question is whether it's relevant to this particular question in context. We quote rule 3(g) which does not refer to court cases. So, the fact that it wasn't subject to a court case, it probably also wasn't subject to court marshal and to quarantine. So, where does the reference to court case even ... Why is it germane here? It may be germane to UDRP, which is also where I think that last sentence is highlighted by Brian Beckham's comment. It was probably a mistake. Maybe came from URS/UDRP confusion because some of the discussions kind of move freely between the two. So, again, it seems to me like this is just here in error. Maybe it would make sense to discuss in the UDRP case if it's true but that's for another time. So, I would just strike all the court case stuff unless there's a reason why it should be there. Thanks.

PHIL CORWIN:

All right. I'm going to divide this into two things. One, I'm going to suggest the gist of the comments we've just heard, plus Brian's comment is that we should strike the last paragraph which consists of a single sentence because it's just confusing. The rule doesn't reference court cases, so we shouldn't be talking about providers unable to search or track active court cases. Is there any objection to striking that entire sentence?

All right, hearing none, we're going to strike that.

I'm going to suggest, subject to the will of the working group, that in the preceding paragraph that we put the words "or court case" in parentheses. I think it's an important data point that FORUM has reported that's worth noting in the report but placing it in parentheses separates it from what's considered by the rule, what the rule covers, which is URS and UDR proceedings. Would that be acceptable to the group, and to you Greg, or is there still objection to any reference to court case in this context language? Greg?

GREG SHATAN:

I still just don't think it's relevant to this discussion. It may be an interesting point—or it may not be. I don't know what the context says ... What the URS question above it says because I don't have my own copy open so I'm not sure what's in the box for URS question one. Maybe is there context that's coming from that that I'm somehow missing just because I'm only looking at the screen? Because if there's no mention of court cases in the question, and there's no mention of it in the rule, then there's no reason to bring it in. So, I would take it out entirely.

And maybe go back to Renee because I think that what she said was that it was reported to the best of its knowledge. No disputed domain names were involved because they did not go and check everything. But I think that may have only been with regard to the court cases, so it may be that they can be factually confident with regard to URS and UDRP.

PHIL CORWIN:

All right. Is anybody going to object if we just strike those three words “or court case” whether or not they’re in parenthetical, on the grounds that any reference to court cases could confuse community members since the rule only talks about URS and UDRP proceedings. Is that acceptable? If you think you want to leave those words in with or without parentheticals, speak up now. If not, we’re going to strike them.

Okay, they’re gone. All right, 17 minutes remaining. Onto question two.

The working group recommends that public comment be sought from registry operators on the following question. Have registry operators experienced any issues with respect to receiving notices from URS providers? Were these notices sent through appropriate channels? Did the notices contain the correct information? And it’s related to URS recommendation four. And the context language which is what’s up for discussion, is [inaudible] context of URS recommendation four which is the same for this question.

Well, I think we’ve already done the contextual language for URS recommendation four, so we have nothing to discuss here. Anybody disagree?

Seeing no hands, hearing no voices, onto question three.

URS question three. What content and format should these education materials have? How should these education materials be developed? And who should bear the cost for developing these education materials? Should translations be provided?

And then there's a note which makes this much more explainable. This question, related to recommendation number five, the education materials refer to a uniform set of education materials developed to provide guidance for URS parties, practitioners, and examiners on what is needed to meet the clear and convincing burden of proof in the URS proceeding.

I got a question here to staff. I thought back in recommendation five we were talking about education materials for parties and practitioners but not for examiners. So, are the words "and examiners", is that correct? My recollection was that the education materials were not going to be guidance for examiners, that we're going to leave that for the providers, that it was between them and their examiners. Yeah, there's no reference to examiners in recommendation five. Oh, there is?

ARIEL LIANG:
word examiner.

Sorry, I was not on mute. Yes, I'm just highlighting the

PHIL CORWIN:

All right. Can we go on to the context language and look at that again? All right. But then in this paragraph here starts with: therefore, we recommend that the uniform set of guidance or education materials should not extend to providing examiners with specific directions as to what is and is not a clear-cut case.

So, let me raise with the working group. There seems to be some contradiction here between the recommendation which includes the word "examiners" and the context which says we shouldn't be

giving guidance, that these education materials are for other people but not to give direction to examiners.

Maybe we want examiners to be aware of them but not to be guided by them, but I think we need some clarification here or else we need to take out the reference in the recommendation and the question to examiners. What do working group members think? Anyone recall more the discussion on this point? Kathy?

KATHY KLEIMAN:

Hi, Phil. Hi, everyone. Sorry to be coming in late. I seem to recall ... So, let's go back. I recall examiners were there. Let's go back to that paragraph. No, let's stay on the paragraph that we were on below. Therefore, the working group recommends that the uniform set of guidance or education materials should not extend to providing examiners with specific direction. It may be preferable—I'm now jumping to the next sentence—to develop the education material ... Probably the educational material ... That is more of the nature of an administrative checklist, basic template, and/or FAQ.

So, I think we did include examiners here in part because they don't seem to have the checklist, and if they do, they're not using it. So, I think examiners were a part of this, if I remember correctly. But for broader guidance and advice—and particularly that checklist, so that they don't forget to put in the details of the decision which I think we were talking about when I came in just a few minutes ago. Thanks, Phil.

PHIL CORWIN: All right. So, you're saying, Kathy—and I can read it that way—that what we're saying here is that, yeah, examiners should see these materials. They should know about them. But these materials should not go over the line of trying to provide them with specific direction as to how they should decide cases.

KATHY KLEIMAN: Right. Specific cases, exactly. But general guidance.

PHIL CORWIN: All right. Well, if that's the intent, then keeping the word examiners in the question and in the recommendation would make sense. Is that okay with the working group or does anyone want to take a contrary position based on their recollection of our discussions around this point?

I'm not seeing any hands or hearing anyone. All right. So, let's go back to the question. Yeah. So, we'll keep examiners in the context language. I wasn't meaning to divert us, but I did recollect that language in the context for recommendation five that we limited examiners use of this material and how far the material should go, so I want to make sure that was all as clear as possible. And I think it is.

So, with that, let's move on to question four. Ten minutes left. And we've got a lot of context language on this one. So, this could be our last question for today,

Question four. Should the registry requirement ten be amended to include the possibility for another registrar different from the

sponsoring registrar but accredited by the same registry be ... I think it should be “to be elected” by the URS complainant to renew the URS suspended domain name and to collect the registrar renewal fee? And it's related to recommendation seven.

Here's the context. The question [inaudible] concerns ... Strike the word “with”—the following URS technical requirement. And then we quote registry requirement ten, which I'm not going to read all the language. The language is not up for modification because it's an exact quote of the requirement which is that the registry operator must offer the option for the complainant to extend a suspended domain names registration for an additional year, if allowed by the maximum registration policies of the TLD, provided however that the domain name must remain registered to the registrant who was the registrant at the time of the URS suspension.

Personal comment. So, we get this weird situation where the prevailing complainant is extending a domain that's still in the name of the losing original registrant.

Continuing with the requirement. The registry operator may collect a registrar renewal fee if the URS complainant elects to renew the suspended domain name with the sponsoring registrar.

All right. Here's the context language that's up for discussion. One working group raised the question whether the prevailing complainant could elect to transfer the suspended domain name to a different registrar which is accredited by the same registry for one additional year. This workaround may count as some operational challenge. For example, the original sponsoring

registrar may not accept payment in the currency of the country where the prevailing complainant resides. However, some other working group member questioned the feasibility of implementation as a suspended domain name must remain registered to the respondent. The respondent may not agree with the transfer due to geo-political reasons or government regulations, for example.

I got a question here just on the top of my head. Does the respondent have any say over this? They've lost the URS proceeding. So, I'm raising that question about this language.

Thus, the working group seeks comment on whether registry requirement ten should be amended to include such possibly transferring the suspended domain name to a registrar of the prevailing complainant's choice.

My recollection of the conversation around this question was that besides the currency issue which was [inaudible] some prevailing complainants keep all their domains at a registrar which is designed to cater to brands and other businesses and they prefer having their domains on one place rather than spread over other registrars.

Are there comments on this contextual language on these two paragraphs I just went through? Anyone think we need clarifications, additions, edits, anything? Kathy?

KATHY KLEIMAN:

Thanks, Phil. Do we want to include something ... I seem to recall that the issue was something like Iran or North Korea. If the

registrar was in a country where literally the complainant could not pay for the extension of the domain name term, the extra year. And especially since we have recommendations out that might extend how long it's suspended. So this may become a big issue. Should we mention that specifically so that people don't have to guess?

PHIL CORWIN:

You know, I don't know. If we cite some countries, people may ... Particularly those two around which there are—Iran and North Korea where there are all kinds of political issues. That may suggest to community that that political concerns are the only reason for difficulties. I don't recall enough to know if that's the case. Do other working group members have anything they want to say on that point?

Kathy, where would you put that in? Can you suggest a specific edit that we can consider?

KATHY KLEIMAN:

So, this is interesting. It says that it's in the middle of the paragraph starting "one working group member raised the question ..." So, in the middle of that paragraph, it says the original sponsoring registrar may not accept payment in the currency of the country where the prevailing complainant resides.

I actually remember it as the opposite, that the prevailing complainant may not be able to pay the registrar in the country where the registrar resides. But if after "resides" we want to

include a parenthetical about treaties or economic sanction issues, something there.

PHIL CORWIN:

Okay. We have some comments on this. Maxim has said that changing the registrant is a transfer, so registrants should stay the same. He says we should not name countries. Maxim, the registrant does stay the same under the current rules.

David McAuley said he sees my reluctance on citing specific countries. Susan Payne adds, "Maxim, I think that's only about changing the registrar and not the registrant." Maxim replied, "Changing registrar is still a transfer." And then he raised the question, "Has no legal way to pay?"

I'm going to suggest ... We're two minutes from the end. Why don't we not close out question four today? Some interesting questions have been raised about whether we should cite specific nations. I've got an issue ... If it's about currency, it's not that hard to get another currency. There's currency exchanges. If you can't pay in your national currency for some reason, can't you exchange it for the currency the registrar accepts? About whether this triggers transfer policy.

I want to invite working group members to comment on this, to think about it and suggest that we come back—that staff remind us what the issues were on this question four and that when we come back next week, we start with it and close it out and give everybody a week to think about this and whether we need to make the contextual language clearer or add to it.

So, we're done for today. I want to thank everyone. We made great progress. We closed out ten questions. No, ten recommendations and three questions, which leaves only five questions to be addressed on the next call, which means that I would think that instead of using the full 90 minutes on URS next week, we should close out the URS and get on to the next subject. So, staff should probably plan on us beginning on ... I don't recall what the next issue is for us to review but we got somewhat ahead of schedule today which is fantastic.

So, again ... And Kathy, you weren't on at the beginning of the call. I briefly advised the working group that the co-chairs ... [inaudible] discussion yesterday, the call that Brian and I were on that you heard last, listened to last week with council leadership and about how we're going to be putting in a final change request after further cochair consultation with staff on what's a really realistic timeline which is going to deliver the initial report either right after Cancun or, at the latest, early April. Deliver the final report either mid-August or early September and how we're going to have to really focus in the final stage when we're holding two meetings a week [inaudible] not the substantive recommendation but only on the substance and the context of can we get to consensus? And if not, it's on the cutting room floor because we have been told by council leadership that no further extensions will be granted.

But based on today's progress, there's a good chance for making that timeline. So, thank you, everyone. Have a good week and see you all next Wednesday.

UNIDENTIFIED FEMALE: Thanks, Phil.

UNIDENTIFIED FEMALE: Thanks, everyone. This meeting is adjourned. You can disconnect your line. Thank you.

[END OF TRANSCRIPTION]