

ICANN

Uniform Domain Name Dispute Resolution drafting team TRANSCRIPT

Wednesday 13 April 2011 at 1600 UTC

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<http://audio.icann.org/gnso/gnso-udrp-dt-20110413-en.mp3>

On page

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Participants on the Call:

Kristina Rosette - IPC

David Taylor - IPC

John Berard - CBUC

Carlos Aguirre - NCA

Wendy Seltzer - NCSG

Staff:

Margie Milam

Liz Gasster

Marika Konings

Apologies:

Jeff Neuman - RySG

Mary Wong - GNSO Council vice chair - observer as GNSO Council vice chair

Coordinator: Thank you. The recordings are started please go ahead.

Marika Konings: Thank you very much. Good morning, good afternoon, good evening everyone. On today's UDRP Drafting Team call on Wednesday the 13th of April on today's call we have Carlos Aguirre, John Berard, David Taylor and from staff we have Margie Milam and myself, Marika Konings. We have apologies from Jeff Neuman and Mary Wong. Over to you Margie.

Margie Milam: Thank you Marika. Well it looks like we don't have very many people on the call today. I guess the best thing to do at this point is to just go over the agenda and see if anyone has any changes and then - oh good, Kristina's joined the call.

And then we might - if we don't have very many people on the call talk about giving people time to comment on the questionnaire before we send it out since I just sent that out.

So with that I've set up in the Adobe Connect room the questionnaire on the status of the UDRP. And I apologize for sending it out so late. We - David Taylor and John and I worked on it yesterday and what we (unintelligible) to do really was gather information that could be available from the UDRP providers. And so - and we did draft an introduction to the UDRP questionnaire that kind of sets the framework for the questions.

And with that I guess I'll just open up the queue and see if anyone has any comments on the questionnaire? It looks like Kristina is on the call as well. Carlos.

Carlos Aguirre: Yes, thank you. I accept your apologies with respect to the late send of the questionnaire. But in my case it's not enough because I am not English speaker. And I need more time to review and analyze this questionnaire. But I have said - I accept your apologies. Thank you.

Margie Milam: Sure, thank you Carlos. How much time do you think would be fair to give people an opportunity to make comments on the questionnaire?

Carlos Aguirre: I don't know but I received the questionnaire 20 minutes ago.

Margie Milam: That's right, yeah, that's correct. Would - today's Wednesday would it suffice if I gave everyone until Friday to comment on it?

Carlos Aguirre: Yes maybe, probably.

Margie Milam: Okay.

David Taylor: That works fine for me; I'll probably give it some more thought because we did put it together quite rushed so it's nice to actually sit and read it through again and figure out some more things. I've got some queries on the questions already.

John Berard: It's not War and Peace though, right? Okay Friday's great for me.

Kristina Rosette: This is Kristina. I'm sorry - Adobe - I'm having my usual issue with the Cisco security preventing me from getting into Adobe. I have...

John Berard: Kristina, you know, it's not Cisco security it's your firewall.

Kristina Rosette: No because I have to turn off the security and the default - it's a long story. Trust me it's part of that. In any event I had two questions - actually more than that.

First it would seem to me that the answer to one - I don't know that we need answers to both 1(c) and 1(i) because to the extent that we are saying that a default judgment is one in which the respondent does not respond and I think we need to identify what we mean there.

If that's that we're saying then we could get the answer by subtracting, you know, 1(c) from 1(a). So I'm just trying to get a sense as to what we're trying to get at one 1(i) that we wouldn't otherwise get.

John Berard: This is John. Is the process not one in which the lack of response is confirmed? So if there is no...

Kristina Rosette: There's no default judgment. It's not a there's no response you win there's always a decision.

John Berard: Okay.

Kristina Rosette: So if you all were...

((Crosstalk))

Kristina Rosette: ...trying to get at the number of proceedings in which there was no response by the respondent it would seem that that's already covered.

David Taylor: Yeah, Kristina, I'd agree with you on that one because I think that the (i) was in there on Margie's draft and I went and added in the (c).

That's two of us drafting; but I agree I think it's defunct because there's - as you rightly said there's no default judgments (unintelligible) case so we get that from (a) and (c) so I would have probably said the (i) can just drop. I don't know what anyone else thinks but we get that from just (a) - (a) and (c).

Kristina Rosette: And I guess the other question I have is that do we have reason to believe that these are questions that the providers can answer? And I'm asking in particular with regard to 1(h). Because I don't know to what extent the providers track that.

David Taylor: I put...

John Berard: I guess what...

((Crosstalk))

David Taylor: ...on a year by year basis because I do know that we are obviously seeing a lot or increased year on year. I believe (unintelligible) track it but I don't know whether that's, you know, completely something which they could go ahead with and have those statistics. I think they could probably dig it out as anyone could dig it out in all the published decisions. So that's one which I'm actually going to take a little bit more time to work that to hand but I...

((Crosstalk))

Kristina Rosette: Well I think it's probably worth checking with (NAF) and (CAC) to see whether they track this as well because I'm not sure it makes any

sense to ask a question that only, you know, one of the four providers can answer.

David Taylor: But, I mean, I don't - I see what you mean and I thought - it seems to me a really good question to ask.

Kristina Rosette: Oh it's a great question to ask I just don't know if they actually track it.

((Crosstalk))

David Taylor: ...someone go through and look at all of the cases published and see where there's a proxy in there and come out with a result so CAC given the number of UDRPs they've got that wouldn't take too long. Wipo would take a heck of a long and, yeah, sort of in the middle, etcetera. So it's certainly something which they could find out and I'd have thought it's something which even if they got back to us later it would be a very useful fact to have.

I mean, maybe they won't reply to it; maybe we wouldn't get an answer but maybe we would. It would be quite useful I think.

Kristina Rosette: It just seems to me that we're better off just reaching out to them informally and, you know, we can do that through members of the group or if people aren't comfortable with that have Margie do it to find out whether they actually track that.

And if they don't would it be possible for them to compile that information and how long would it take? I don't want to put them in the spot where we ask them a question that they either can't answer or

they can answer but it's going to take somebody 50 or 60 hours to go through decisions. I don't think that is helpful.

Margie Milam: Kristina, it's Margie, if I may respond.

((Crosstalk))

Margie Milam: I was thinking of this as I drafted this to solicit information if it's available. And maybe I need to, you know, maybe a clarification in the introduction is appropriate because I just don't have any sense for what information they have at their fingertips.

Kristina Rosette: Okay.

Margie Milam: And I didn't expect us to do, you know, massive research for this. This was very, very preliminary, you know, a brainstorming kind of effort as opposed to a real, you know, survey that would be done if a PDP was conducted. So that was kind of how I looked at this was trying to imagine the kind of information they might have readily available and if they don't they would just simply reply, you know, not available or something or, you know.

Kristina Rosette: Okay.

Margie Milam: They could do what they want. But to the extent that there is any data I thought it was - it'd just be, you know, useful to have some - just at least this preliminary idea as to the, you know (unintelligible).

Kristina Rosette: And this is just the partial questions because weren't we also going to ask them about identifying providers or panelists or is that going to be done separately?

Margie Milam: Yeah, I assumed that would be separate as part of the invitation to their Webinar.

Kristina Rosette: Okay.

Margie Milam: Yeah, I was thinking of this purely a fact, you know, a factual thing that if they could provide that information quickly that would be great. But, yes, that's certainly part of the discussion and part of what I had in mind.

Kristina Rosette: Okay.

Margie Milam: My question, if I can go back to you suggested that we drop one of either 1(c) or 1...

Kristina Rosette: I think 1(i) should probably be dropped simply because there is no such thing as a default judgment.

Margie Milam: Okay great that's what I'll do. Is there any objection to doing that? I think I came up with that question just want to make sure no one objects to dropping 1(i).

David Taylor: I'm absolutely fine with that.

Margie Milam: Okay. And right before the call Jeff Neuman provided some quick comments and I have posted them on Adobe Connect. Is there - if you

can see - and essentially he had a question regarding the introduction that was proposed and - thinking that the questions were loaded. And so I don't know if, David, you - I think that was your change if you'd like to reply to that or...

David Taylor: Yeah I posted that quickly to the list as well following that - yes it's lifted straight from the rough working group report. So that was just, you know, to beef up that introductory paragraph to start. It seemed fine. I didn't see that it was loaded but maybe we need to think about it but as I say it's directly the same wording.

Wendy Seltzer: This is Wendy. Sorry to jump back to the earlier question about default. Is there a way to - if default isn't the right word to use there I think we still want to know about questions (a) and (b), how many result in a decision where there is a respondent and where there is not a respondent.

One could imagine a case being dropped even without a response coming in through the UDRP process or a case being decided adversely to the complainant even though there was no response. I think it would be interesting to learn whether that happens and with what frequency.

David Taylor: Yeah, I mean if - David here. Yeah, if we can't elicit that from sort of subtracting any of the (a)s and (c)s questions then, yeah, we could put a specific one in. I agree it's interesting. And I know Wipo tracked that - the number of transfers based on the number of replies, etcetera. So they've got all those sort of statistics. We could certainly ask that - if you can catch a phrase or phrase that the way you want to then that (unintelligible).

Margie Milam: Wendy, do you have a suggestion for the wording?

Wendy Seltzer: Maybe just an A-sub or result in the decision - I'll play with it offline and send something.

Margie Milam: Okay. Okay. Any other comments on the questionnaire?

Kristina Rosette: I mean, the one thing that I'm just - I'm just wondering how to deal with it is that with the exception of the language question most of the questions don't deal with some of the process issues that have been raised with the UDRP in terms of blocking and, you know, transfers during the course or registrars not transferring or whatnot. And I wasn't sure to what extent we wanted to cover that in this.

John Berard: I thought we would - we were trying to initially get a quantitative set of database and then we could move to the qualitative?

Kristina Rosette: So you're anticipating two surveys - two questionnaires, John?

John Berard: Well, I mean, this questionnaire is going to be a part of - one of the planks that we build the Webinar on.

Kristina Rosette: Right.

John Berard: And my assumption is that that Webinar as we prepare that we will use it to address some of those more subjective aspects of the...

Kristina Rosette: I don't think it's subjective, I mean, I'm talking about issues where, you know, there are issues with transfer, issues with locking of the names.

Those aren't really subjective; it either happens or it doesn't. You know, I'm not putting a value judgment on it I'm just saying, you know, to what extent the providers have encountered issues that wouldn't really go to the substance of the UDRP in terms of what the criteria are, what the defenses are, you know, that type of thing.

((Crosstalk))

John Berard: No long as - as long as we could expect that the - that they can put a number to the - that they can answer the question with a number or...

((Crosstalk))

Kristina Rosette: Right, no absolutely, absolutely and that's certainly what I had in mind.

John Berard: Yeah, that's fine.

Kristina Rosette: Because, you know, those are certainly considered by some to be kind of inefficiencies in the process.

John Berard: Yeah, I mean, I know that we do get into this, you know, please provide your opinion on whether the definition of cyber squatting ought to be reviewed or updated; please highlight any inefficiencies and inequalities you see with the process. And those are far more open-ended than...

Kristina Rosette: Right.

John Berard: ...maybe they should be. And I don't know, let me think about that. Maybe I might ultimately recommend that we not include Number 5 in this survey.

Margie Milam: John, if I may comment? This is Margie.

John Berard: Hey Margie.

Margie Milam: I included those because I was really tracking the language of the GNSO Council resolution and that's essentially what it's asking, you know, the issue's report to address. Now obviously, you know, I can write whatever I, you know, come up with or staff can write, you know, in the issue report.

But I just thought it'd be interesting to get their perspective on that which is why I included those questions.

John Berard: No, no and that's why I didn't, you know, that's why I thought they were okay in the review prior to the session. But, you know, now I have two more days to fiddle.

Margie Milam: Yeah, I mean, that's - does anyone else have concerns about the open-endedness of those questions?

David Taylor: I quite like them being open-ended because we might get some interesting material back which we think oh we should have asked that question perhaps so...

John Berard: Or more likely we'll get my god it's going to take us a long time to answer that question; can we have an extension?

David Taylor: Yeah.

Kristina Rosette: And I guess the one question I have in terms of having them complete it is what I think we should try and stay away from or encourage the person's - the provider's that are submitting responses is I don't think it's particularly helpful if they answer a question by saying, you know, please see the following letters, you know, or the following reports simply because that can get very time consuming.

So I guess the question is is that for purposes of the actual instructions on providing the answers to what extent do we want to discourage, I mean, I guess Margie, this question is really for you because I would imagine you're the one who's going to have to tabulate their responses.

But, I mean, to what extent do you want to discourage the response from just cross referencing other documents?

Margie Milam: Yeah, I think probably the only place I would think it's okay is the answer to Number 6 where I specifically asked them for information or documents. But, yeah, it is a difficult, you know, thumb through a large document to understand what they're, you know, what point they're trying to make. So that would be very helpful and I can certainly clarify that in the instructions.

Kristina, to get back to your point about the transfers or the - I think transfers or expiration issues...

Kristina Rosette: I mean, I was just using it as an example. Like, I mean, there's basically no process questions on here.

Margie Milam: Yeah, that's right. And in the presentation that I gave to the Council early on there were a number of process issues. I just wasn't sure how far to go with this questionnaire. Would you like me to make some suggestions and, you know, post them to the list or do you have, you know, any particular...

Kristina Rosette: I don't have any particular ones in mind. I mean, I think that would be really helpful. And maybe for those the questions should be kind of a check the box as opposed to, you know, how many instances of. In other words in your experience as a provider have, you know, have any of the items below or however you want to phrase it occurred?

And then if they want to provide additional comments then they can. But I think at a certain point it might not be particularly reasonable for us to expect everybody to have very kind of hard data at their fingertips on some of this stuff. I could be totally wrong but.

Margie Milam: Okay. Okay I'll try to come up with something and circulate it to the list. Any other comments on the questionnaire? Okay hearing none I guess we'll move onto the next item on the agenda which is the proposed Webinar date and format. It did take us a bit longer to get this questionnaire out and so I guess the question - first for you all is how much time do you think is reasonable to ask, you know, to allow the providers to provide this information?

I think, David, you probably have a good idea having worked with some of the providers.

David Taylor: Yeah, well I've suggested on our little drafting group (unintelligible) I said I thought we should do at least three weeks and I thought, you know, four weeks would probably be more reasonable. But I'm open to anything. I'd have thought three weeks needs to be in case people go away for a two week holiday and holiday is in May, etcetera. I'm open to any discussion on that.

John Berard: Well what are the dates that we should work backwards from?

Margie Milam: Assuming that we want to have this - a lot of this information available for the Webinar today is the 13th; I was thinking of hosting the Webinar the week of May 3-5 or the week after that. I wouldn't want it to be any later than the week after that.

Kristina Rosette: Are you saying the week of May 9 or the...

((Crosstalk))

Margie Milam: Yeah. The week - yeah, I wouldn't want it to be any later than early in the week of May 9 and preferably the first week in May to give me enough time to, you know, take the information then finalize the draft issue reports.

David Taylor: So in other words if we can get this out - if we can get it sent out on Friday of this week or Monday of next we'd basically be giving them three weeks?

Margie Milam: And I think it's doable. I certainly think we can get the questionnaire turned around and sent out either Friday or Monday. What do you guys think?

David Taylor: Yeah, I think so.

Kristina Rosette: Yeah, it seems doable to me.

Margie Milam: Okay. So I'm going to try to shoot for setting up the Webinar Thursday of the week of May 3 - let me look at the calendar.

John Berard: Twelfth of May.

Margie Milam: No the week before that.

John Berard: Oh okay.

David Taylor: Oh I thought you said you were going for the week of the 9th of May?

Margie Milam: Well I could it's just - if I'm going to do it that week then I want it earlier in the week so that I have sufficient time to turn things around. Marika, do you remember when is the publication date for Singapore? I forgot off the top of my head.

Marika Konings: Yeah, this is Marika. I think it's the 30th of May.

Margie Milam: Oh oh, okay, then that can go as far - if it's the 30th of May I can go as far as that week - the week of May 9. Does that seem like the preferable date to you all on the call?

David Taylor: Well I think so we're going to give them three weeks if it goes out on Friday then that gives them to the Friday the 6th of May which would mean you'd have all the information in to be able to have that information the following week. So that seems to me to be workable.

If we're doing it the work before we're in effect giving them, you know, two and a bit weeks which is just - if you're asking meaningful questions and we actually want a little bit of input from them, you know, for instance reverse domain name hijacking I'm not aware that Wipo actually has a list and a full list of all the cases which would involve reverse domain name hijacking.

So someone's going to go in and search their database I would have thought and looked for it. So they do have to put a bit of work in and obviously the more work they put in the better data we get.

Margie Milam: That's right. Okay so let's shoot for May 12 then.

Kristina Rosette: I actually think that date is going to be a problem because you have the INTA annual meeting starting the 14th and the International Anti-Counterfeiting Coalition annual meeting starting the 11th. So...

Wendy Seltzer: Yeah.

Kristina Rosette: ...you basically have the whole trademark community out of pocket from May 11 through the 20th. So if you want to do it the week of May 9th it would have to be the 10th at the latest I think.

Margie Milam: Okay. Okay is that - do you think 10th is doable?

John Berard: Well now that's - that's really a question for, you know, the review of the data and logistics of the thing. But I think it sounds like it's doable; it sounds like it's - we need to do it then.

Kristina Rosette: Because otherwise you can't do it until probably the 23rd and I don't know that that gives you enough time, Margie.

Margie Milam: No I don't want to push it that long honestly. With all the other things we have to publish for the meeting I may have other, you know, things on my plate that also need to get done that week. So, yeah, I think May 10th is fine. And I'll send to the list kind of a next step and let everyone know that that's the date I'm looking for.

David Taylor: Sounds good.

Margie Milam: Okay with regard to the format of the Webinar I just wanted to touch base on - and confirm what we talked about last week because I know that there was some chatter on the email list regarding the format of the Webinar. And so as you guys recall we were talking about 90 minutes giving each provider five minutes to address how to make the UDRP more efficient and to discuss and rank their top issues for improvements.

And then we were going to ask them to recommend two panelists each so that we could select some - a few speakers for about 20 minutes to discuss their issues.

And then we also indicated that we would ask the provider to recommend two attorneys; one that regularly represents complainants and the other one that regularly represents respondents so that we

could pick some speakers that would speak for about 20 minutes on their topics. And then the rest of the Webinar would be for audience input.

And so I know that the speaker list seemed to get some concerns on the email list. And I think Wendy you may have had some comment on that. Is there any, you know, update to that or any suggestions on how to change the format?

Wendy Seltzer: Yeah my thought was it would be great to get a bit more diversity of participants on represented respondents and non-repeat players might have very different views of the process as well and getting sort of a - what does it look like the first time you're faced with one of these might be interesting as well as the - what does it look like once you've done 50 of them?

And then I thought there are academics who have done studies of the UDRP and have done some statistical analyses and other review who also might contribute.

Kristina Rosette: I actually think Wendy raises a good question that we might want to add to the survey is in, you know, in what number of proceedings has the respondent not been represented by counsel? Again that might be information they don't have or information that, I mean, they do have but that it would be time consuming to get. But I think it's probably an important data point.

Margie Milam: Okay I will add that to the list.

John Berard: Do we, I mean, you begin to see how this can be parsed. I mean, what if the respondent is a lawyer?

((Crosstalk))

Kristina Rosette: Really, John? Are you serious?

John Berard: You know, I'm just - I mean, at some point you have to sort of draw a line and say, you know, do a...

Kristina Rosette: Right but if one of the concerns that we've heard historically from the Non Commercial Stakeholder Group is that, you know, there's a concern about how a respondent who's not representing - who's not kind of regularly represented by counsel, in other words an individual, you know, how they deal with these when they get them and why notice periods have to be a certain length because they've go to go out and hire counsel and the like.

I think we need to know, you know, how big is this issue that we're actually talking about? And quite honestly, you know, I would be shocked if there are any proceedings, you know, I mean, I'm just trying - the only person I can think of would be (Art Goldberg) or like way back in the day but I don't think that was even a UDRP; I think that was actual federal court litigation over the ESQwire - E-S-Q-W-I-R-E.

I don't know, I mean, you know, we can ask but I do think that we need to, you know, we hear repeatedly about, you know, these - individual respondents who don't have counsel and I think it's important to know, you know...

John Berard: How often that...

Kristina Rosette: ...how often that actually happens.

John Berard: Okay that's fair.

David Taylor: Yeah, I agree completely; I think that's a great question to ask because it is good to know.

Kristina Rosette: And frankly I think the even better question is how often do they win? Because, you know, I would have to think if there's - that to me would be really interesting to find out. But, you know, that's more of kind of an esoteric interesting as opposed to being helpful in the future.

((Crosstalk))

John Berard: Now we're in the of...

((Crosstalk))

Kristina Rosette: No, no, you're right, you're right, you're right.

Margie Milam: So let me ask a question to Wendy; how would we identify the folks that you think might be useful (unintelligible) to bring that other perspective?

Wendy Seltzer: Well the academics I think we can find with a review of the literature. I'm not sure whether we ask the providers or simply look at the database or simply put out a call through our networks or from ICANN for people who have thoughts from other perspectives on this process.

Now I recognize that some of that will come in public comment afterwards and elsewhere but it would be great to include that perspective in this discussion.

David Taylor: I think that could - when we were going through this we had sort of divided it into three sections that basically the providers, the panelists and then the complainants and respondents' attorneys. Perhaps we should just have a fourth section there which is complainants and respondents which would probably be the most interesting part of the Webinar because then the real life stories.

Margie Milam: Yeah but how do you figure out who?

David Taylor: Yeah, difficult.

Margie Milam: I mean, we'll be discussing it for years...

David Taylor: Maybe there's a way of getting to...

((Crosstalk))

David Taylor: You know, if it's a 20 minute session on that and you've got at least two from each, maybe three from each and we have to start reaching out by the Webinar meeting. Put a call out on the ICANN.

Wendy Seltzer: Right, I mean, I recognize that it's difficult but I worry about the perspective otherwise that we get only the institutional participants and even the repeat responder attorneys are - have an institutional perspective of they've seen this lots of times before that is different

from the attorney who gets the first call from somebody bringing one of these to him or the person who gets a complaint and doesn't even know whom to contact.

Kristina Rosette: Wendy just so I'm clear what's the information that you think we can illicit from for example, you know, an individual one-time respondent that would help us - that we would...

Wendy Seltzer: What was confusing them? What was unexpected? Did it work - were you satisfied that it was fair whether you won or lost in the end?

Kristina Rosette: Well, I don't know, personally I think it's probably not any less confusing than the domain name registration agreement that they had to agree to but that's just me. Yeah, I mean, if we can find...

((Crosstalk))

Kristina Rosette: ...people we all agree on I think that'll be great. I just think it's going to be hard to find somebody that, you know, and frankly, you know, if we find - the ideal candidate it sounds like might be somebody who got one for the first time, wasn't represented by counsel, tried to handle it themselves and lost.

I'm just wondering whether somebody like that is going to be - want to go on a Webinar and talk about it. Maybe I'm wrong, you know, there might be somebody out there. I just - I think...

Wendy Seltzer: Or if not then that may point to the limitations of the Webinar for fact gathering and...

Kristina Rosette: Absolutely. And I think I - you know, I don't think any of us think that the - I mean, well speaking for myself I certainly don't think that the Webinar is going to be an exhaustive fact-gathering mechanism but given the resources and the time it seems to be a good one.

Margie Milam: I have...

((Crosstalk))

David Taylor: David here. Hopefully we'll get a lot of these comments in on the public, you know, comment period; that's where that'll reach out and people will be putting in their personal comments as we always see.

I mean - and I agree with Kristina I think we've - that sort of person may not at all want to participate in a Webinar. I can certainly identify quite a few people who've received cases who afterwards we've ended up chatting and, you know, they really are not cyber squatters.

So again it really depends what sort of person you can get because you can find somebody who's not a cyber squatter but they did it really in error and I generally believed they did it in error and what they thought of the process because they thought they were going off to court and that they were going to be sued, etcetera. They really didn't understand what was going on.

They were still infringing but that sort of person would have a very different story to, you know, another person who is cyber squatting and maybe just did it once. And some of their stories would, I mean, they're the users of the whole system so it would be good to have them in if we can identify them. And if we can't at least we've reached out to try.

Kristina Rosette: So, David, to follow up on your suggestion would we - is this something we could ask the providers to identify a respondent that didn't appear to be represented by counsel and lost to contact? I don't know I'm just, you know, trying to figure out other than just...

((Crosstalk))

David Taylor: ...I wouldn't want it to be sort of accused that would, you know, the providers are slanting it in their favor. I know that providers do have a lot of contact with registrants; the ones who threaten to come to Geneva and blow them up for instance. So, you know, you can find all those people and hopefully we can get somebody who they think is, you know, going to provide some useful information.

You know, but I agree I think, you know, if Wendy reaches out, we reach out and we just see whether we can get some appropriate people. And we may - they just may not be appropriate but, I mean, we can certainly ask providers as well if they're aware of anybody.

It's a difficult question to ask. But - and in the same way of complainants, you know, I suppose it's users of your system who - again how do you ask it? Have you got users of the UDRP system which are happy or unhappy because I'm sure you've got a lot of complainants who think it's rubbish and just don't use it and will always want to go to court.

So do you get on of those in as well as a complainant who loves it and wins lots and lots of cases? I don't know, I mean, that's the difficult part; that's probably why we didn't go into it on the last call the - the first three areas we can do.

But, I mean, that could be a lively end discussion - maybe it needs to be case studies. Maybe we need to say we need - we'd like to have four case studies, two complainants, two respondents in your case studies and we'd love to hear from you and see who comes forward.

Margie Milam: Sure - and this is Margie. One way of getting information could be looking through those, you know, those domain - wire and domain blog sites where whenever there is a decision that seems to, you know, seems to go astray you'll often see someone blogging about how unfair it was or, you know, writing an article about it.

I can certainly do some research and make some suggestions in that regard. Does that seem useful?

((Crosstalk))

Kristina Rosette: I think so. I just think we need to make sure that the call for participants gets out wide enough and I'm not quite sure how to do that. But, hey, I know, ICANN is working on the new gTLD communications program; maybe they've got some ideas. Sorry.

Margie Milam: And the other thing, Kristina, is, you know, we can have, you know, the end of the Webinar dedicated to, you know, question from the audience so certainly...

Kristina Rosette: Oh absolutely. Yeah, I mean, I think we absolutely should make sure that we've got questions, I mean, time for questions.

Margie Milam: So long as there's been, you know, hopefully a decent dissemination of the announcement...

Kristina Rosette: Right.

Margie Milam: ...you get people that would, you know, share their views. With regard to the academics what do you suggest, Wendy, for identifying, you know, a few academics to speak?

Wendy Seltzer: I think Lexis or West Law search of law reviews and - on the subject would pull up sections.

Margie Milam: Okay. Okay I can certainly do that and make suggestions to the list.

Wendy Seltzer: Thanks.

David Taylor: Well - Margie, on that, I mean, which section would we try and bring academics in? is that creating a fifth section then where we've got an academic discussion on it as well because that seems to be - I don't know, not quite following that really.

You've got the providers - because the idea is to get the fact and figures out there so are we having a debate amongst academic - lots of different academic - I'm not quite following.

And I think maybe you should have an academic view if you want one academic view but again it's sort of the same - you bring that in with the providers and have some - one person there or do you - I don't really see how that fits; it's more users of the system I'd have thought.

Unless they filed cases on their, you know, also acting for - or have had cases brought against them.

Margie Milam: Yeah the question is do we want another category or do we want to lump them in with the section that deals with the complainants, respondents and academics I guess could be, you know, part of that. It's up to you guys as to whether you think that's appropriate or not.

Wendy Seltzer: This is Wendy. And I was thinking that getting lots of numbers dumped out it would be useful also to have some analysis of those and what are the oddities or quirks in those statistics. So I guess I would see academic analysis as a separate category.

Margie Milam: But the academics, Wendy, won't have access to the data until well after, I mean, you know, if you look at our timeline it would be something that, you know, they wouldn't even access to really analyze it before the Webinar. So I'm not sure that that could work.

You know, they certainly could have invited - if we look ahead to the Singapore meeting for example and if we schedule some sort of workshop in Singapore on the UDRP, you know, I could see, you know, a possible role there. But in terms of responding to the data that comes from the providers I'm not sure that that, you know, they would have any time to do real analysis.

Wendy Seltzer: Right so some of them have analyzed - thinking more of those who analyzed the material already on earlier sets of data from position databases or the providers. And I think it would also be interesting and separately to ask for or even commission some analysis of the data that we get back, you know, in this call.

Margie Milam: So you're suggesting an analysis - commissioning analysis before a PDP starts? Because, I mean, I can see that, you know, that's obviously useful if we actually launched the PDP. But this is in essence kind of, you know, before that process where we're at identifying issues and, you know, and preparing the reports so that the Council can vote.

Wendy Seltzer: Yeah, I wasn't necessarily thinking about timing simply thinking I - I think it would be useful to have multiple perspectives in the Webinar; the institutional participants and some from elsewhere in the system looking in at it and that's the perspective I think that academics and infrequent participants can help provide.

Margie Milam: Any other comments on Wendy's proposal whether it should be a separate category or part of, you know, one of the existing categories?

David Taylor: I thought maybe we could have that - and so it was nice if we got three sessions and we were saying 20 minutes each; that was an hour and then we were thinking half an hour for discussion.

If we've got another session of 20 minutes which are the complainants and respondents themselves, the actual, I suppose, users maybe we could have that section, I mean, have somebody in there? I don't know that's - one or two people in that section so otherwise it's going to go on way too long. If we have a two-hour Webinar we can't go further than two hours.

So in that fourth group which we've created we maybe have a - and again I'm trying to think - so you've got complainants, respondents and

observers? That opens up the observers to academics. Just thinking out loud here completely.

And then maybe if we don't have anybody as complainants and users actually wanted to talk in the Webinar then we're covered on the observers who do want to comment and that fills it up nicely because that then would be what would be on one hour twenty minutes total. And I think we should probably leave at least 20-30 minutes for discussion if not (unintelligible) to the two hours, questions from the audience.

Which is probably where we'll pick up the users because when these people who are watching this Webinar may well be the users who wouldn't step up to be in the Webinar but are quite likely to tell their stories, you know, their horror stories or whatever in the actual Webinar in the questions.

Margie Milam: I like that approach. I think at this point you do probably have to expand it to two hours. I don't think it's too bad to have a two-hour Webinar especially on a topic as important as the UDRP. So, you know, I like your approach. I think that would make sense and then it would pick up the ability to have the academics. Does anyone oppose that approach?

Wendy Seltzer: I'm sorry, dropping the academics? I would still...

Margie Milam: No, yeah...

((Crosstalk))

Margie Milam: I'm sorry, Wendy, I don't mean to interrupt. Just to clarify it would be a two-hour session. Academics would be part of the complainants, respondents and observers category.

Wendy Seltzer: That sounds plausible. Okay.

Margie Milam: Okay, okay I'll put that in the email that's sent to the list. Before we close off on the questionnaire Carlos had a suggestion in the chat. I don't know if you all had a chance to look at it. Carlos, would you like to explain? You had a suggestion for a question to be included.

Carlos Aguirre: Yes. I agree with Wendy's idea to add the academics in the Webinar because if we want to have all perspectives we need to add all points of view on this discussion.

I think particularly that if all the UDRP process questioning now but is a particular position. I would like to ask the participants of the Webinar (unintelligible) if there are other options to UDRP. No - I think - I feel that it is possible to imagine another solution to the (unintelligible).

Kristina Rosette: Carlos, if you got a solution that's faster and cheaper I'm all for it; what is it?

David Taylor: URS.

Kristina Rosette: No I'm serious, I mean, you know, if there are other solutions I think you'd hear from, you know, resoundingly from the trademark community that, you know, if there are solutions that, you know, will keep the same balances in check and have results more quickly and at less expense to them I think they'd be all - they'd be supportive of it.

Margie Milam: So do you - does anyone suggest (in) that regard or is it a - something that's out of scope given the, you know, the UDRP is the focus of the issue report?

John Berard: I think it's interesting but it does feel a little bit out of scope. You know, if these characters had an idea - a better idea wouldn't they have offered it or suggested it or floated it? And what kind of trouble do we roil if we ask - if we begin asking about alternatives to the UDRP?

Kristina Rosette: Well I'm going to hide under my desk so.

John Berard: Well you're protected by that significant firewall that you have.

Kristina Rosette: That's true.

David Taylor: I think we have to focus on the UDRP but at the end of the day are we sitting there saying different ways of tweaking the UDRP? I mean, that's in affect what's happened where we see the EUDRP with Wipo and we also see where the supplemental rules, you know, are changing; we've got different sets of supplemental rules over the place. That's the UDRP adapting rightly or wrongly.

But, I mean, I think we probably have to focus on the UDRP because again if we talk about - imagine other things we wouldn't really want to open up a discussion on the URS here. And if we do open a discussion on the URS then I think a lot of people would say well yes let's wait and see what the URS does and get stats on that.

And then we can use that to look at the UDRP which in many ways is sensible. So I think - I don't know, I think we have to focus on the UDRP or you'll have a lot of brand owners saying that, you know, as long as there's the equivalent legislation is in the US then yes we wouldn't need to use the UDRP and there isn't that across the world so then we could end up in the discussion of court litigation across the world and which jurisdictions you can do what in and get damages for. And I just think we'd probably get inundated and lost.

I don't know, Wendy, what do you think on that - on your side?

Wendy Seltzer: I think it sounds as though we have enough on our plate with the current challenges but it could be an interesting question to include.

David Taylor: I mean, I think one of the hardest things for me on looking at this is, you know, when we see an injustice if we do see it - and there are injustices - but the whole idea of UDRP you can't actually appeal so I think we're actually wrong on the way we say that in the questions but, you know, you go to court.

But there's no obligation on any respondent or complainant who's gone to court to report that back to the provider. So at the end of the day we don't know how many cases generally go to court and then how many of those generally find in favor of one of the other parties.

And in effect that's a lovely statistic to be able to have and to be able to look at because then you really would see because again if 10 cases have all gone to court and just been blocked for a few years and then ultimately the domain name has been transferred or, you know, whatever, you know, you just don't know the percentage of the

problem. And that's one of the things which I think we'll never know. But hopefully maybe we can elicit and somehow if we get to PDP status and state.

Kristina Rosette: Are we - I don't know - I understand your point, David, I just think that given that you have had registrars whose business model to encourage registration has been a, you know, if UDRP is filed against you we will file a legal complaint in the judicial system that takes almost the longest in the world to resolve anything so you're good for another 10 years.

I mean, that I think, you know, I think you'll find that that has really skewed the number of appeals. But maybe that's - that should be one of the provisions that should be considered is does...

((Crosstalk))

Kristina Rosette: ...has to notify the provider and does the provider have to make those - those statistics available?

David Taylor: Because in many instances - and we've come across that - we find the case which has been filed and, you know, on the site it says it's been - it's been awarded to the complainant but it isn't because when you go and check it's actually being appealed in some court and the provider isn't even aware of that.

Obviously there's quite a few where they are aware of it and so it's a tough one; it's tough to get the statistics and the facts.

John Berard: Well wouldn't a registrar promoting that kind of workaround get kicked out?

Kristina Rosette: You would think.

John Berard: Has not happened? Do you mean you've seen the marketing materials and ICANN has stood idly by?

Kristina Rosette: It was presented at an ICANN meeting in Lisbon in an open session as, gee, isn't this innovation by our registrar members?

John Berard: And which is the slowest moving court system on the planet?

Kristina Rosette: Well it's one of them and that's India.

John Berard: Ah - well it's a big place. So that information is somewhere in a transcript out of the Lisbon meeting?

Kristina Rosette: I can send it to you, John, I'll find it.

John Berard: That'd be great. I'd love to see it.

Kristina Rosette: But my point is is that I think we just need - the point I was trying to make indirectly is that I think we need to be careful about all of these numbers because there might be factors in them that we may not have a way of kind of taking into account I guess. You know, and that's just one of them - one example.

And, you know, and if you were to filter all of those out maybe the numbers would be valid. But on the other hand it's not necessarily fair to automatically filter all of them out so how do you?

Margie Milam: So do I hear a new question regarding that or is this the debate about the open issue that, you know, eventually would take place in the PDP if one was...

Kristina Rosette: So, I mean, think that there's an existing - there's an existing question and I think that would be, you know, useful to know.

Margie Milam: Do you have a suggestion for that existing question because we do have are they, you know...

Kristina Rosette: No it's already there. It's already there.

Margie Milam: Okay. Okay.

Kristina Rosette: But kind of getting to my question about well, you know what, Margie, I'll wait to see your list of kind of process stuff and then I'll weigh in.

Margie Milam: Okay, okay. I think we're pretty much at time. It sounds like we probably need another call next week; does that - do you all agree?

John Berard: I think once we've got everybody's feedback by Friday we probably should reconvene just to sign off on everything.

David Taylor: Right, can we do Monday? Is Monday good? Then we - because I'm thinking of making sure we get it sent out if we do have any slip that we can try to get the questionnaire out on the Monday.

Margie Milam: Right because then we start running into Easter week closers.

David Taylor: Because I just think, you know, you've got to give a three-week period to providers because we're asking some things here which we want to try and get good information back on...

Kristina Rosette: Right but I don't - I guess this is the - what I don't get is why do we have to have the data before the Webinar? I mean, presumably each provider that's going to participate will have their own data. I mean, yeah it would be great to have it because then we have it and Margie isn't kind of chasing people all over the globe trying to get their data. But is - the Webinar is not - having the Webinar is not dependant on the providers reporting the data as long as the providers are going to present in the Webinar.

John Berard: Well I think if we have the information in advance of the Webinar it allows us to organize it and direct it in a way that makes it more meaningful and maybe come in on the two-hour timeframe. Otherwise we wind up - we could wind up creating a lot of tangents that are impossible to tie together.

So I think having the data in advance gives us a chance to structure and manage the Webinar in a more productive way.

David Taylor: Maybe we can just do it at the beginning then. And I agree I think it focuses the Webinar so I think it would be best if we could do it but again we shouldn't be unrealistic and squish it and give people four days to provide it; it just makes everyone look silly.

But maybe on that - where we kick off at the beginning we'd appreciate receiving your response to these questions by XX date, 6 of May or whatever I think I've put down here in order...

John Berard: David, would that be XXX date?

David Taylor: Sorry, I've got a - I actually did that and I was writing an opinion and I said that and I had to stop myself now because up until now I've been using that and I've got to stop.

But I'd say, you know, in responses by this in order to be considered or as part of the Webinar but obviously, you know, any further input would be greatly welcomed after the Webinar; it's not - then if somebody can't provide it they can't provide it.

Margie Milam: Okay - okay I think that's a good idea. I will have Gisella send...

John Berard: So are we going to get together next Monday or Tuesday then? Same time?

Margie Milam: Yeah, I'm thinking send a Doodle for Monday and Tuesday but preferably Monday and that way we'll get it out - finalize it and approve it on the next call.

John Berard: Okay.

Margie Milam: Okay?

John Berard: Yeah.

Kristina Rosette: Sounds great.

Margie Milam: Great, thank you everybody.

((Crosstalk))

David Taylor: ...to the Doodle.

Kristina Rosette: Have a good week, everyone. Bye.

Margie Milam: Thank you.

David Taylor: Yeah.

John Berard: Bye-bye.

David Taylor: Bye.

Wendy Seltzer: Bye.

Carlos Aguirre: Bye.

Margie Milam: Okay I think we can end the recording now. Thank you.

END