

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) PDP Working Group call
Wednesday, 01 August 2018 at 17:00**

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Operator: Recording has started.

Julie Bisland: Thank you very much. Well good morning, good afternoon and good evening everyone. Welcome to the Review of all Rights Protection Mechanisms RPMs in all gTLDs PDP Working Group call held on Wednesday the 1st of August, 2018 at 1700 UTC.

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

Rebecca Tushnet: Rebecca Tushnet.

Julie Bisland: Thank you, Rebecca. Anyone else? Okay and hearing no more names, I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. And with this I'll turn it back over to our co-chair, Kathy Kleiman. Please begin.

Kathy Kleiman: Hello, everyone. This is Kathy Kleiman, one of the three co-chairs, of course with Phil Corwin and Brian Beckham of the working group and welcome back to a full working group meeting. It's been a while, I guess since Panama City. And today's an exciting event as the three URS Data Sub Teams report back with their thoughts, their draft recommendations, their ideas for our discussion and we begin to pull the material together.

Today is mostly about presenting, because there's a lot of material to present from the three sub teams which have been hard at work. Although, you know, feel free to make comments, it will be kind of through the rest of August that we'll be discussing and debating and coordinating what the recommendations are. So anything you hear today is a draft.

First I should pause and to Julie Hedlund, I can't see the queue. But are there any updates to statements of interest?

Julie Hedlund: And, Kathy, this is Julie Hedlund from staff. I see no hands raised.

Kathy Kleiman: Okay. Terrific. And so before we start the URS Sub Team presentations, which I'm really looking forward to hearing the recommendations on, will be Practitioners and then I know Phil and Brian were talking about the order between Providers and Document Sub Team in which order they'll be in. But before we start that there's also an update from the Trademark Clearinghouse Data Sub Team that was working on the surveys with the Analysis Group, and I'm going to turn that over to Julie to give us the update on that.

Julie Hedlund: I think I'm sorry, this is Julie Hedlund from ICANN staff, pardon me. So yes, the way – where we stand with the surveys being prepared by the Analysis Group and worked on by the Data Sub Team is that – and these are the sunrise and claims surveys, these are being finalized. Final versions have been sent to the sub team for a last look. After which point there will be a

beta testing, short beta testing phase and so what we'd like to do is ask the working group members whether or not you would like to volunteer to be a beta tester. We just need a few people.

And this is open of course to Data Sub Team members as well, but we thought it might be useful to have someone who is not – or have people that were not familiar with the surveys to test them just because it might be an easier way for people to see if there's something that's not clear or something that needs to be improved.

So we'll make – we're making that announcement here. We'll follow it up with an email and so please let us know on the list or you can contact us – staff – directly whether or not would you like to be a beta tester for the sunrise and claims surveys and that would happen in really the next week because we do need to finalize them and get them sent out according to our timeline.

And as Mary's noting, we're advised that around three to four beta testers per survey is optimal and yes, preferably not those involved in (unintelligible) questions. So that's the announcement and where we stand right now. And over to you, Kathy.

Kathy Kleiman: Terrific. Thank you, Julie. And thank you to the Trademark Clearinghouse Data Sub Team, which has been meeting – we can't even tell you how many hours, that sub team has put into the work and then meeting with the Analysis Group to frame the survey so it's great to see that it's on the cusp of being ready to go out.

Are there volunteers, Julie, are you seeing volunteer – are there hands raised or anybody in the chat room volunteering?

Julie Hedlund: Thanks, Kathy. This is Julie Hedlund from staff. There's no hands raised at this moment but we'll also send a note out to the list following this call and perhaps people might respond there as well.

Kathy Kleiman: Perfect. In that case I think the next item on the agenda that I can't see would be the starting of the URS Sub Team presentations and the first would be Jason Schaeffer who's been our hard working chair of the Practitioners URS Sub Team. Jason, go ahead please and I'm assuming that the document that you worked on with the sub team is posted for review in Adobe Connect. If that's not the case, you know, please point that out.

Jason Schaeffer: Okay, thank you, Kathy. Julie, do we have that sub team presentation that was circulated available for the screen?

Julie Hedlund: And we do. And we'll – I'm just pulling it up right now. Hold on.

Jason Schaeffer: Okay.

Julie Hedlund: And it's up. And would you like us to move the slides, staff to move the slides or would you like us to make you a presenter?

Jason Schaeffer: Sure, I mean, you can make me a presenter, make it easier.

Julie Hedlund: Okay. You are now a presenter. Thanks, Jason.

Jason Schaeffer: Okay. Okay thank you, everyone. On the screen is a short summary and I'd like to again thank our sub team, our working group, we had a sub team and we also had a sub-sub team that did a heavy lifting on this project over the past number of months as hopefully many of you will recall, we did have a presentation in Panama in the ICANN 62 meeting where we summarized and reviewed the survey results.

As you may recall, those survey results were based on the following, the bullet points are on screen, we had a survey of 14 practitioners that responded from – it was a list of about 34 practitioners in total; 13 of the 14 were representing complainants. And we think that this data has some

instructional value because of the 13 parties, those parties represented between 91 and 120 cases of the total of about 827 URS cases that we've seen at the time of the survey.

Now, before I go to the next slide and before we continue, there has been some concern raised, and it was raised in Panama and recently raised again about the validity of the survey and how we use this data.

And I think one point I would like to make is a brief one to kind of address that question and that is that by its nature, unfortunately, this survey has a structural limitation built into it because by its nature very few respondents retained counsel in these cases. That's not necessarily a bad thing but it is a fact.

And in cases – many cases it defaults and in other cases it's just pro se respondents. So in order for us to get a truly balanced survey, it's pretty difficult to get respondents feedback in an equal or representative capacity as what complainants have done. So that's a structural limitation. That's not to say that this data is no useful, in fact I will say that having been part of this throughout the entire process I think we have some very good feedback here about how the URS is working. And that in fact the URS as designed is fit for purpose.

So we can move on but that's a point that's been raised again and a number of times and I just wanted to address that up front. With that said, move on. As I said overall, the Practitioner survey and the results indicate that practitioners have a positive view of the URS and find it to be an effective rights protection mechanism, so that's a good thing.

Practitioners believe that it's being used for the clear cases of abuse as it was designed to do. Another takeaway is that of the practitioners that have used appellant mechanisms they have a generally positive experience there. And

most found that the determinations were based on the rules. So those are the good points and the good takeaways from this data.

Continuing on, the standard of proof seems to be adequate. Most of the parties responded that the existing limitations on evidence are appropriate. Most of the respondents said that the URS again, this is a repeat of before, but is an effective mechanism. And no one indicated, and this was a question that was debated, but no one indicated any experience with an examiner having an actual or potential conflict of interest. So as we go through this, you know, it's helpful for me to provide a little context.

There were many, many questions that we debated of putting into the survey, not putting into the survey including – and I think it's fair if everyone who is commenting or concerned here take a step back and reflect that while we all may have certain fears or concerns about what's happening in the context of the URS, the survey seems to indicate that those fears, and I think the Data Sub Team has some data on – Document Sub Team has some data to this point, that many of our fears or our concerns aren't just borne out in the data and it's just not happening.

So as this point of we thought perhaps there might be conflicts of interest or certain biases, people are saying no, it doesn't seem to be the case. So that's a good thing.

Next slide, the respondents found value in creating a – like the WIPO overview on UDRP, trying to create a similar overview on the URS. And while I think that would be a great action step to take, it may be very difficult to do at this time, you know, with the few amount of cases we have, the UDRP is you know, very old, has a lot of prior cases and that's a different animal all together but it's a good point to help practitioners, respondents and I think panelists.

Okay, moving onto the next point, this is a key point that we should be looking at as a possible area. One-third of the practitioners indicated problems with implementation of relief. And the review of those responses are that registrars might not be responding to the requests for renewal of suspension, some registrars don't understand the process, in some cases a losing respondent is able to re-register a domain and then in some cases a cyber squatter might review – renew the domain.

And then there were some specific problems with respect to Chinese registrars and their implementation so some of those indicate that there might be a communications issue, an educational issue, but again, nothing is jumping out as a clear structural problem.

Next slide. About half of the respondents indicated that there should be more guidance to educate and instruct the practitioners on the burdens of proof and the evidence. Another point was to take away is there was a split regarding the adequacy of relief. And some parties, not surprisingly, expressed a desire for a transfer; other expressed the right of first refusal and others sought possibility for negotiated transfer from a losing party to a prevailing party or cancellation of the domain. So again, there's a number of points there.

Final point there is some thought that the word limit of 500 words was too low, someone called it arbitrary and insufficient. But again I caution any kind of, you know, conclusion here is that, you know, we always have to look to what's the purpose of the URS, how it's different than the UDRP, and why it's a fast, quick, inexpensive and by design supposed to be an easy mechanism to implement. So if we, in this case, were to look at increasing the word limit or increasing the evidentiary issues it would naturally change the nature of the RPM.

So that brings us to the conclusion. In summary, and as I said before, I think that the – our – at least our survey indicates that the URS is working for its

intended purpose, it's addressing cases of clear abuse, which is what we all hoped it would do. And any of the problems that are indicated seem minor and can be fixed. So that is the overall summary of what our Practitioner Sub Team was able to obtain. Any questions, comments? George.

Kathy Kleiman: George.

George Kirikos: George Kirikos here for the transcript. Yes, I just wanted to point out that I continue to disagree with your assessment. This is still a small sample that could have been fixed by improving the data collection, not limiting it only to practitioners who'd done five or more cases, as I mentioned on the mailing list. It's like sampling a restaurant who's only had – only with customers that have visited it five or more times. And so you're going to get only those who obviously like the food because they've gone there five times and you're not going to get the sample of those who only visited once and didn't like the experience.

And the second issue is the unrepresentative nature, as you obviously already alluded to. Here we're only really hearing one side of the debate which is dominated by complainants. And of course they're happy because they win a large percentage of the case and there's obvious due process concerns for respondents. And that's not being captured by this survey.
Thank you.

Jason Schaeffer: Thank you, George. And of course those points are noted and I believe staff is noting them on the record so, you know, we appreciate your comments, George, and I understand your position. Any other comments regarding the survey results or any questions on the – yes, go ahead, Greg. Greg, I don't think we can hear you...

Greg Shatan: Greg Shatan for the record. Can you hear me now?

Jason Schaeffer: Yes.

Greg Shatan: Okay. I think first off it wasn't just Jason's assessment that Jason stated but rather the assessment of the sub team so it's not – I don't think it's just Jason's personal opinion or viewpoint although Jason is the one in the cat bird seat at the moment so that's what happens when you're sitting there. I would say that also when we started out to do this, we were looking at getting a survey experienced practitioners, those who had had multiple cases; it was not necessarily intended to be a perfectly representative sample. And in the end though we did include those with few cases as well as those with many.

And we had a 41% response rate, which was actually a very good response rate, if I did the math correctly, it was 14 out of 41. And so, you know, that's actually quite a decent response rate. In terms of sample size, we'd have to compare the sample size to the population size. I don't think there are that many folks that have compared – that have been involved in the URS so 34 out of 200 or 300, it's probably not even 200, is also not a bad sample size.

But again, this was not I think intended to perfectly replicate the sample to the population so that may affect it some bit – to some extent the ability to generalize from the survey to the population of all practitioners, but it doesn't invalidate in any way the facts of the survey itself.

So – and lastly I don't think we can assume necessarily that respondent counsel wouldn't tell a different story, that this is one side of this story or that the people who go to the URS repeatedly necessarily like it; they may think it's the best available solution but they may not like it at all.

I often go to the sandwich place closest to my office; it's not the place I like the most. But if I have 10 minutes to get a sandwich and get back to my desk it's where I go. There are a lot of reasons for going places other than you like it. So I think we have to avoid making inferences that aren't supported by the data and that may in fact be supported more by one's own bias in looking at the data. Thank you.

Jason Schaeffer: Thank you, Greg. I see Brian – Brian, you have your hand. Go ahead, Brian.

Brian Beckham: Yes, thank you Jason. Brian Beckham for the record. And I'm sorry if I missed this, I wasn't participating in this sub team, but do you happen to know, Jason, to this question about the survey, I know there are a few attorneys on the full working group that do sometimes represent respondents. Do you happen to know if there was any anecdotal evidence shared from practitioners who might be active in this space to kind of fill out any of the perceived gaps in the survey?

Jason Schaeffer: So, Brian, you're referring to during our – during the many months we discussed this – the survey, you're talking about were there any anecdotal comments or inferences from parties, is that what you're asking?

Brian Beckham: Yes, well I guess it's maybe – the question is, you know, did you guys maybe reach out to practitioners who you knew might be active in this space just to see if they had any anecdotes to share that wouldn't have necessarily been captured in the survey?

Jason Schaeffer: Sure.

((Crosstalk))

Brian Beckham: ...to mention that of course there are some folks in the working group and I would certainly hope that, you know, now would be the time that if people who've participated in URS proceedings that had concerns with that, this would be a great time to raise those.

Jason Schaeffer: Yes, so, Brian, very good point and thank you for raising that. You know, throughout this process the many, many months that we've all worked on this indeed before, even prior to the working group, the sub team being created, I know – I can speak personally with a few others in the working group that we

actually did a lot of work trying to analyze the effectiveness of the URS itself. I can say that there were a couple of times where respondents' counsel, those that are generally respondents' counsel in UDRP proceedings had a number of conversations regarding this.

And you know, there is some information that, you know, we gleaned; we looked at some data, we on our own looked at hundreds of cases to try to assess is there a problem in the decision making process with the URS. And we personally didn't find that. We did take an effort to try to see are there any attorneys out there that are regularly representing respondents in URS cases? And again, not surprisingly, we found that that's just not the case.

So what we're ending up with again, as I said earlier, structurally, is the situation where even typical respondents' counsel are just not participating in the URS because most likely, and this is my own personal opinion, this is just not something that a party would hire competent counsel to defend them in. And if it is a clear case of abuse, they wouldn't be hiring counsel. Maybe they would but it's just not bearing out.

Obviously in a case if there was a good faith dispute or good faith issue on the fair use of that domain then I think you would find that they would be hiring counsel. So that's an anecdotal point that we can present. I know that in my sub team and the sub-sub team we had many conversations among trademark counsel and brand protection counsel that we debated these points. And we really tried hard to figure out from the original set of how many practitioners are out there and how many respondents are out there, how we can, you know, get the best result. And this is what happened, this is how it came back.

So I appreciate everybody's concerns. They make sense. I understand George's points, I see that George wrote again in the text portion, you know, George, we spent a lot of time going over this and this was debated, nobody on this group wants to have a biased survey by design. Certainly I don't. So I

understand your points. It's safe to say that it's a valuable survey; it should not be conclusive, but none of this should be conclusive. It's recommendations and we can certainly take the data that we have and it is instructive. As with anything else, what you do with it is what you choose.

Phil, I see you have your hand up.

Rebecca Tushnet: This is Rebecca Tushnet, can I get on the queue?

Jason Schaeffer: Sure, Rebecca. I have Phil, Kathy and then you. Go ahead, Phil.

Phil Corwin: Yes, thanks Jason. I'll be brief because we've got two other reports. But, you know, if there's another side of the story this working group wants to hear it. I will say that, you know, I follow the domain industry press, I often see stories regarding a UDRP case that people think was wrongly decided or a case in which the complainant lost and there's an opinion that there should have been a finding of reverse domain name hijacking. I just haven't seen stories alleging abuse or misuse of misapplication of the URS.

We've got three members of the ICA senior leadership of the ICA on this call. I think if professional investors were seeing problems with URS, they would know about it. We've got Gerald Levine, who reviews UDRP and URS decisions and is regarded as an expert.

So by all means, if we can – if there's another side that shows that the policy is flawed or is being misapplied we want to hear it, but I haven't seen any evidence. And we certainly have lots of folks involved with this working group who should know if that's a substantial problem. So I'll stop there. Thank you.

Jason Schaeffer: Thank you, Phil. Kathy.

Kathy Kleiman: Sorry, Jason, was that me? This is Kathy.

Jason Schaeffer: Yes, go ahead, Kathy.

Kathy Kleiman: Okay great. Kathy Kleiman. I just – I was a member of the sub team as well with – not as co-chair obviously because Jason was the chair of the sub team. And there was a lot of work both in trying to decide, you know, from the list of practitioners what group should be requested and that was everyone who had five or more cases, and then working, you know, to come up with clear questions that people would respond to.

And then the Forum did the distribution for us so we couldn't force people to respond of course, but the Forum sent several notices which we greatly appreciate Renee doing to the practitioners to encourage the response to the survey.

So let's take it for what it was worth and it's informing the debate but it's just one of many inputs. And thanks again to the sub team for all of its work.

Jason Schaeffer: Thanks, Kathy. And just to get back to Phil's point. Phil, you're correct, you know, from our side and from the others that participated, we did not find any problems, we're not aware of those problems; they were not raised as far as respondents' counsel is concerned so these issues have not – they just haven't shown up and we're not aware of it. Rebecca.

Rebecca Tushnet: Rebecca Tushnet. My apologies, my call dropped so if I'm repeating something, I don't mean to be. So I was just thinking about Brian's question about anecdotal evidence and it occurs to me if wanted to put in the recommendations something about this, or our report and request for comments, we did have two presentations from practitioners. One who did represent respondents and I believe there were some anecdotal things that they mentioned. It might be worth putting in for flavor. That's all. Thank you.

Jason Schaeffer: Thanks, Rebecca. Looks like Zak.

Zak Muscovitch: Thank you, Jason. Zak Muscovitch. Just further to Phil's remarks and regarding the survey results and the conclusion, I wanted to share with you how I see it. The survey results are useful and they contribute to our understanding as a group about whether the URS is working. And the conclusions that are drawn are indicative of those 13 or 14 complainant practitioners. And so I agree that those results are indicative of the views of those 13 or 14 complainant practitioners.

But in – that's an important source of data and that's what this procedure was all about, getting data from the URS providers, from practitioners and from documents. But that is not to say that there's not another and equally important way of getting a greater understanding of whether the URS is working and what improvements can perhaps be made to it and that's from participants in this group.

And so although, Phil, you mentioned that there was ICA leadership on this call and you would have heard from them if there's any problems with the URS, well, first of all, I wasn't asked whether I have recommendations. And I do have recommendations. Be happy to make those in due course.

And second of all, the URS I think that the study does bear – the recommendations as Jason pointed out, do generally bear out my anecdotal understanding is that it has been working for the clear cut cases, and there hasn't been any findings of abuse, and is generally working. And that's my own assessment which is anecdotally obtained from observing.

But certainly there's areas for improvements. Certainly there's areas that I'd like to contribute to so I don't think that it's appropriate to treat the survey results as only – as the only yardstick about whether to gauge whether the URS is working and/or could be improved. Thank you.

Jason Schaeffer: Thank you, Zak. Appreciate your comments and points. Well noted. It looks like we do need to wrap up to get to the next group. Phil, I see your hand is up.

Phil Corwin: Yes, just to briefly respond to Zak, since he mentioned my name. I appreciate Zak's comments, you know, any member of this working group, you don't need an invitation to speak on our calls or state anything on the email list and when we start the decisional process on URS later this month we welcome suggestions for change in the policy, the administration from any member of this working group based on any evidence they wish to cite.

I certainly never meant to suggest and I don't know that Jason or Kathy did, that the survey should be the only thing we consider; it's just one thing that we can consider and it's up to the working group members what weight to give it. And if there's consensus for change, we'll recommend change; if there isn't, we won't do it. Thanks.

Jason Schaeffer: Thanks, Phil. Greg, your hand is up, just quickly so we can move forward.

Greg Shatan: Thanks. It's Greg Shatan for the record. I actually agree with a lot of what Zak said and it's more of a general caution to this group, with all of the surveys and outside data collection elements, and I've noticed this not just in this working group but in other working groups I've been involved in that when you start going outside for information there seems to be a tendency to stop or to not look as much to the group.

I mean, let's recall that the initial concept of a working group was, was to actually really draw on the opinions and experiences and viewpoints of the participants. And it's great to get outside information, but that's – and it can be used in a variety of different ways, it can be seen in a variety of different things.

But the bottom line is that here and elsewhere the increasing tendency to look for information outside should not be coupled with a decreasing tendency for the working group, its participants, to engage in robust discussions nor should it be seen as somehow that any one person's opinion is worth less than some survey result necessarily.

Ultimately the issue here is looking at the issues and being persuasive and, you know, understanding the concerns and, you know, using a variety of inputs. But we should never become just a bunch of kind of folks just wrangling outside data without really, you know, participating in the working group experience fully as participants. Thanks.

Jason Schaeffer: Thanks, Greg. Go ahead, George.

George Kirikos: George Kirikos again. Yes, I just wanted to make a constructive suggestion namely that we do have the properly constructed survey questions so I don't know how hard it would, I think it would be relatively simple, but presumably NAF and the other URS providers have a list of all the respondents or the complainants that had five or – sorry four or fewer disputes under their belt so I think the survey can just be mailed out to all of those other participants and we'd get that larger survey data and, you know, it would give us, you know, much more useful data set than we have presently. Thanks.

Jason Schaeffer: Thanks, George. You know, the one point for the record, before we move on, you know, I want to be clear, you know, we do have, which is actually interesting, you know, and important to note, we do have a respondent perspective here; this is not completely complainants although 13 out of 14 certainly is heavy, you do have a respondent's response here.

So again, it is not again to echo what Phil said, what everybody is saying here, what I tried to indicate, yes, we have our work to do; we are all parties to this. This working group needs to do its job.

This data is useful. It's not conclusive; that's what I said at the outset. I think we can all agree on that. It's – it illuminates and illustrates certain points and highlights issues but nothing here is conclusive and nor should it be taken as such. Berry, go ahead.

Kathy Kleiman: And this is Kathy. Everyone briefly please, because we do need to move onto the Document Sub Team. And we'll have lots of opportunity to talk about this later. Thanks.

Jason Schaeffer: Right. Berry, go ahead.

Berry Cobb: Thank you. Berry Cobb for the record. I just wanted to point out a quick data element which could have been useful for your team but just got to it now, but essentially of the 870 cases there were only 38 cases that contained a response where legal counsel was also a part of that case. And only 21 unique counsel – or practitioners were extracted out of the data that Rebecca's team had put together when they did the coding exercise.

So it is a very small universe of those and it looks, you know, again it's just a quick scan but several of those are – look to either have privacy assigned to it so it was difficult to actually see if there was an actual practitioner there or not, but it is a very small subset of the overall cases especially even though where a response was filed. Thank you.

Jason Schaeffer: Thanks, Berry. Okay, we really do need to move on because I need to make sure everybody else gets their time, Providers and Documents. George, your hand is up so let's try to be quick and wrap it up.

George Kirikos: Yes, I don't want to be pedantic, George Kirikos again for the transcript. I don't want to be pedantic but the reason why do statistics is that we have a sample that is used to gather statistics and you can – and – sorry if the sample is of a large enough size you can extrapolate those findings to the larger group.

And here we have a case where it's under a percent because more than 90% of the respondents are representing complainants instead of the respondents of a dispute. So it's kind of like doing a presidential poll where over 95% of those surveyed are democrats instead of republicans.

Of course you're going to get results that can't be properly extrapolated towards what the election result is going to be. And so that's all I'm saying here that we don't really have a representative sample, you know, unless you're going to weight John Berryhill's response 13 times more than what it should be to kind of even things out, which is kind of what they do in election polls, they do that weighting.

And obviously, you know, weighting that one person is very difficult to do. The real solution is to go out and get more data, like it shouldn't have been limited to just, you know, five or more respondents, that was like a fundamental flaw that should have been brought to the attention of the main group. And so if it's not going to be – responding to Berry's about number of those that were represented by counsel, then just survey the respondents themselves; they would be in the best position to know where the process worked for them.
Thank you.

Jason Schaeffer: Okay. Thank you, George. Appreciate your comments and concerns. Kathy...

Kathy Kleiman: And thank you, Jason. Thank you, Jason and the Practitioner Sub Team...

((Crosstalk))

Kathy Kleiman: ...for the presentation. Anything else, Jason or should we kind of give the material to the working group and move on?

Jason Schaeffer: No, I'd like to – I'd like to wrap it off and hand it off the next group. Again, the only thing I'd like to include is that, you know, on both sides of this issue

again, I caution everyone, including you, George, and including all the others, you know, what are the fears that we have and are they actually legitimate fears or are they just our own biases?

Everybody needs to come to the table with that. And if those fears are not really borne out, you know, then maybe there really is not a big problem; maybe there is, maybe there isn't, I'm not seeing it.

I know others are not seeing it. George, I would – I'd ask you to consider what is your fear that is happening to respondents that we're not aware of. A lot of competent people are participating in this working group, including yourself, you're participating, so we just need to move on.

We have the same issues with the Document Sub Team and the Data, these are all useful points, but I think we can move on and let's just use this for what it's worth. Thank you.

Kathy Kleiman: Terrific. Thank you, Jason. And this is Kathy signing off and handing it over to Brian Beckham both to present and to run the meeting and he'll hand it over to Phil from there. Over to you, Brian.

Brian Beckham: Thanks very much, Kathy. And thanks, Jason. I just – my own quick summary, it sounds like a lot of good information from the presentation we just got and maybe a few things to get a little bit further across the finish line but really appreciate that.

So this is the presentation from the Document Sub Team. And for just to refresh our memories, the Document Sub Team was formed to identify sources of data where we might find answers to some of the charter questions where we were looking to provide answers and data points to help us with our effort here.

We actually finished our – that phase of the work quite early. At the time J. Scott was leading that particular sub team, I think we had three or four phone calls where we kind of went through the URS documents chart staff helpfully prepared. If you all recall at some earlier point we took some of the charter questions and we tried to sort of rework those into the five overarching themes that Heather had kind of reframed for us and then there were I think about a dozen broader themes so they were things like the complaint, the response, the fees, things like that.

And so what we did was we went through each of those themes and we thought where are the places where we might be able to identify data that would help inform our discussions on that particular theme? So like I say, we actually – we had the good fortune in that sub team of finishing that work quite early. So we were presented with a little bit of a fork in the road at that point as to what to do and this primarily revolved around the question of the kind of broader review of the URS determinations.

And so just to sort of test the waters a little bit, if you will, what we decided was we would review I think it was 14 cases where there was an appeal. And so we – that was kind of the next phase of this Document Sub Team work. And once we concluded that we then went back through our initial exercise of identifying the data sources and over the past month or so we went back and we said, okay, well we identified the data source, some of it revolved around information coming in from other sub teams so this would be, for example, of the Practitioner and Provider surveys.

And we thought, well let's have a look and see what those surveys actually told us and what the reviews of – we – I mentioned we did the initial review of the appeals cases, we then looked at a kind of a broader subset of cases where there was a de novo review, etcetera.

And so we went kind of line by line through this chart, through each of the dozen or so themes, and we looked what was the data source, what did it tell

us and then we started to try to pull together recommendations. So with that we have nine substantive slides.

And I apologize, I should have had this slide up as I was just talking. But this effectively kind of re-summarizes what I just summarized in terms of the initial genesis of this sub team and where we are today.

So where we are is we started to look at the document chart – sorry, the URS chart again and we went topic by topic through and saw you know, what did the data tell us?

In effect, I would say that the, you know, kind of along the lines which was mentioned earlier, we came to the conclusion that overall things seemed to be working as intended with the URS and there were some kind of minor areas for improvements. And so we'll try to walk through some of those.

So you see on the screen the first topic that we went through was the complaint. And part of this was in the kind of the first bucket was the administrative review that the providers undertake and then there was another question about the types of marks that are included in complaints and in decisions.

And so you see there on the administrative review side, primarily based on the feedback from the Provider survey, there didn't seem to be anything jumping out at us that was screaming for any policy recommendations.

You see the second bullet there, that goes to the question that I mentioned earlier about the types of marks. Part of this of course related to questions that had been raised earlier about the nature of marks, namely some marks that were dictionary terms or used in a trademark sense and what that meant for recipients of a trademark claims notice, but of course that's a completely different topic than the URS that we're on now.

You see the next bullet is the filing period and the word limit and so there was feedback from the practitioners, and I believe even a little bit from the providers, which effectively was reflecting feedback they had from filing parties. There were some suggestions asking whether the current word limits were appropriate for the URS and so we just identified that as an area where people had some views.

We didn't think it was important to recall that of course any recommendations that seeks to kind of expand the parameters of the URS, if you will, whether that's timeline, word limits, fees, things of that nature, the remedy is another good example that of course the URS was meant to be a complement to the UDRP.

So to the extent we start to kind of, you know, suggest changes to the URS that take it more into UDRP territory, the sub teams thought that was certainly something that the full working group should bear in mind, you know, just to make sure that we're coming out at the end of the day if that's our – indeed intended policy recommendation with a mechanism that complements the UDRP but not to have two mechanisms which effectively do the same thing.

You see on the bottom there, the one outstanding action item, there were some questions about the SMD files and I actually went on the Trademark Clearinghouse website this week and they have an example you can see of an SMD file. And this relates to a comment I made in the chat earlier during Jason's presentation which was that there some concerns raised by practitioners that there wasn't sufficient information in the SMD file for them to actually, you know, see what was the relevant mark, the jurisdiction, the dates, that sort of thing.

And so there's an action item for staff to see if there's either some sort of decoding software that would help unpack that a little bit or indeed whether it might be possible to include the information that's not in there that practitioners would find useful.

The next topic was the notice of the complaint to a respondent. And so you see that there was some feedback from the providers that there were no specific issues identified from the practitioners but from the providers there may be some need for additional policy work.

And then in terms of the role of the registry operators and registrars, the providers of course for you that were involved in that sub team, this will be no surprise, but the providers identified they had overall things were working well but they had a few instances where they had difficulty getting registries or registrars to timely provide answers to their questions or in some cases implement the decision to suspend the domain name. And so that's something that has been noted.

The action item that relates to that was – and you see at the very bottom of this slide there's just a note that we need to obviously be careful not to overload people with requests for information but the action item was to contact the top registry operators that had actually had a URS case filed under their registry, and to see if they couldn't help shed a little bit of light on this question about just the communications and how that worked between the providers and the registries and the registrars.

But of course we want to kind of make sure that we're not overloading them so that staff was going to help us look at what would be the best timing for that depending on the sunrise and the claims survey issuance dates.

The next topic that we covered was the response and this included the duration, the fees and anything related to the response. And you'll see in a subsequent slide we refer actually back to this slide on Topic C on the response. Again, based on the Practitioner survey, at least of the Document Sub Team, we didn't identify any additional areas where policy work seemed to be required.

You see there are some of the statistics that were pulled out of the research. This was the Excel spreadsheet that Rebecca Tushnet helpfully shared with the working group. And so you see the number of cases where there was a response filed generally and then within the 14 day response period and then the cases where a response was denied.

And you'll see on a later slide we had an open question as to the exact kind of relation of the different response opportunities and the timelines related around that. And we had a good conversation within our sub team over the past week or two, but we thought that was frankly an open item that we wanted to flag up for the full working group.

And then you see in terms of the question about the response fee for the cases where there were 15 or more disputed domain names, unfortunately we didn't have a lot of information to pull out of that because all of the cases where there were 15 or more cases did not have a response.

So we thought this was probably something that we wanted to simply flag as an open item where we didn't have any particular data pointing us in one direction or another in terms of a policy recommendation, so we wanted to positively – excuse me – seek feedback during the issuance of our initial report from the community if there's anything that can be drawn from that.

The next topic we covered was the standard of proof. It's just to recall in the UDRP, that's often expressed as on balance or the balance of probabilities and in the URS that's a clear and convincing standard. So one of the things we discussed in our last call was there's not necessarily a specific numeric threshold for this clear and convincing standard but it's supposed to be some of the terms that have been used in the policy development for the URS were slam dunk or black and white.

And I believe in the IRT bringing this together, the thought was that it was so obvious that you could decide this over a cup of coffee, so it was really just

meant to be open and shut, no open questions; either it's decided one way or the other quickly and it doesn't require a tremendous amount of information in front of the examiner.

So the one thing that did come up so the overall recommendation was – and again this relates to the idea that there's meant to be a URS which is a lighter complement to the UDRP, so we thought certainly there was no data that pointed to us – to any conclusion otherwise but we came to the conclusion that it didn't seem appropriate to recommend changing the burden of proof from the clear and convincing standard that the URS has. And again, this goes to it being a lighter, quicker more obvious complement to the UDRP.

The one thing that we did identify was the potential need for an examiner's guide to help them. For those of you who haven't actually looked at a URS determination, some of them are frankly difficult to understand, some of them are pretty light on details. When you strip away some of the kind of standard information, the recitation of the URS policy and procedural elements the parties' names, things like this, in some cases frankly you're not left with a lot of information.

And so that makes it difficult for someone who hasn't been privy to the pleadings to understand why the determination went in the direction it did. And it was interesting when we looked at the IRT report there was actually an appendix which suggested this very item, which was a kind of a checklist of the kind of core elements that ought to be in a URS determination.

So you see this wasn't meant to be necessarily the comprehensive list but just some of the things that jumped out at us on the sub team were, you know, the trademark at issue, the domain name at issue, some of the relevant dates, etcetera. And so this was one of the things that we flagged as a possible recommendation for the working group to consider.

Jason talked earlier about the idea of an examiner's guide that – so the examiner's guide that we talked about in this sub team was more kind of like a template if you will, of what should be in a determination and Jason mentioned earlier the idea of some sort of a jurisprudential overview.

We wanted to caution that it was probably difficult to draw lines around what would be a hard versus an easy case, and also that the URS it's only been in operation for a few years, we have actually I think less than 1000 cases still, so it may be a little early to be able to draw up some sort of a jurisprudential guide.

And of course the decisions themselves are a lot lighter than the UDRP cases, so it could be that the URS simply doesn't lend itself as neatly to the type of, you know, guide that you have in the WIPO overview as would be possible for the URS. And as Phil mentioned earlier, of course it could be possible to draw some inferences from what's in the UDRP overview to the extent those could kind of map over to the URS.

The next two topics on this screen that we looked at were the defenses and the remedies. On the defenses, you know, this is an area where of course within the sub team we were very well aware that there were some stakeholders who would prefer to have, you know, additional defenses or less defenses. But there didn't seem to be any issues jumping out at us again here.

There was – I apologize, I don't recall the title of the document, but there was actually towards the back of one of the documents that staff helpfully prepared a kind of summary of the defenses that were used in cases.

And again, they seemed to be sort of – there weren't any particular themes where you know, one defense was used much more than another; it seemed to be really down to the specifics of the case. And they seemed to be fairly

comprehensive. And again, the actual URS spells out that these are examples of defenses; these aren't meant to be comprehensive.

So the fact A, that the – most of them seem to be being used and they're nonexclusive led us to the conclusion that there wasn't a burning need to make any specific policy recommendation on additional defenses at this time.

One of the questions that came up was the notion of delay or latches. We actually looked through the Forum's database and we didn't actually see any cases where this was actually a term that came in the determination. That's not to say that a party wouldn't have raised it in its pleading but if it weren't reflected in their determination we wouldn't know that.

And again, you see just the kind of final bullet in this section that the URS is actually still relatively young. I believe the first case was in 2014, so, you know, the theory behind delay, you know, it may be that it's too early to tell.

I can say from kind of anecdotal experience in the UDRP type cases where it's raised, you tend to sometimes be looking at delay of a decade or more. And obviously that's simply not possible in the URS term since it's only been around for a few years. So again, this wasn't an issue that jumped out at us in terms of making a possible policy recommendation.

In terms of the remedies, this was something where on the one hand we came to the conclusion that the suspension remedy was working as intended. Of course we all know that this is what's in the – this is what's in the terms of the URS itself and this was something that was decided by the IRT, endorsed by the STI and that's what we have today. And again, this goes to kind of the philosophical underpinning of the URS which is that it's meant to be a lighter complement to the UDRP which has a different transfer remedy.

We were of course aware that there were stakeholders that would like to see a different remedy, but that of course is a bigger policy question that frankly

we didn't see any data pointing us to a strong need to make a recommendation in that direction and this is something where you know, frankly if people do feel that that's an appropriate remedy that's something that's, you know, that's for them to put forward whether in the context of this working group or comments on the initial report. But again, we didn't see any indication that the suspension remedy wasn't working or that it needed to be changed.

There was one recommendation and to be frank, I don't know how this would actually work in practice. Certainly if people had more insight in this that would be helpful. But there was a recommendation that once the suspension remedy ended in a URS case to not allow that domain to be listed by a drop-catching service.

Again, I don't know how that would work, if it's even possible but that was a recommendation that was made so we wanted to make sure and capture that for the full working group to consider.

The next topics we covered were the appeals and the overlapping process steps. And these kind of worked together in our discussions. So I mentioned earlier that we – once we concluded the first phase of our work, we moved to reviewing the 14 appeals cases. And once we had concluded with that work, we actually looked at the further – excuse me – subset of the de novo review cases.

And so you see in the majority of those cases the complainant prevailed. During our call, David McAuley helped us, he actually looked through these de novo review cases. And I think the term that we kind of settled on in the sub team was that it seemed to be kind of a grab bag of cases. And there were no themes that really jumped out particularly by way of suggesting a particular policy recommendation one way or the other.

As with the determinations generally, we thought, and again, David, certainly feel free to jump in and add anything here. But we thought that certainly with the appeals cases some kind of clarity around the terminology, some of the terminology the de novo, the appeal, the review, etcetera, seemed to be kind of used interchangeably in some of the appeals determinations and it wasn't always entirely clear what the prior – the prior history of the case was. Sorry, I see David has his hand up so maybe I'll just let him jump in there. David, please.

David McAuley: Thanks, Brian. David McAuley for the record. I'll just say that having read a number of appeals and de novo reviews, I think you summarized it very well. But it is actually surprisingly, in my opinion at least, quite a problem. And that is when you review these cases the terminology, even within one case, is quite confusing. And terms like complainant, respondent, appellant, appellee have to be standardized in my view so that the reader is not put through some tortuous reading cycle.

And something like, you know, complainant, appellant below, I mean, appellant, complainant below or respondent below, something like that. And then additionally using sections talking about the procedural history below, it's really scattered, various all over the place.

But if someone reads the procedural history in a determination, they may not come away with what comprehensively happened below. But anyway, you summarized it well; these are things are – these are administrative issues that I think we might want to take a little bit of notice of. Thank you.

Brian Beckham: Thanks, David. And this is Brian again for the record. So the other recommendation where we did not come to any conclusion on the sub team was that there was – there were up to three instances where a defaulting respondent could have the merits of the case heard. And so the question was whether this makes sense, whether it would be possible to consolidate those somehow.

Again, we didn't come out with a concrete recommendation one way or the other, we just wanted to flag this as a potential area where there may be some streamlining possible and wanted to flag this up to the full working group for its consideration.

And of course it may be even that within the working group there are different views to this, may be an area that we want to flag in the initial report for broader community feedback.

On the next topic, cost, I mentioned earlier that we would kind of refer back to Section C which was on the response fees which we covered earlier and on the loser pays model. Again, this was something that we didn't see anything jumping out at us and we wanted to just flag that there may be feedback from the providers and practitioners. I recall from looking at the Provider survey there were some questions about how if there was a loser pays model it would work in practice.

And whether that would require extra steps and whether those judgments would be in fact enforceable. So this was something where we again didn't come out with a strong recommendation nor did we find any – excuse me – data pointing us to a recommendation one way or the other but wanted to make sure that we knew that even if people were suggesting it that the providers had raised some questions about this, the kind of practical details of how a loser pays model would work.

The next topic that we covered was language. And I think there were kind of two buckets here of language. There was one which was the language of the actual determination and so there were a handful of cases I think there were – you see down there 30 cases where the – there was a question in fact I think I'm confusing the numbers there. In any event there were a handful of cases where language was tagged as an issue in Rebecca Tushnet's

research. And staff was going to go through and produce a summary of those to see.

So basically that would be a case where for example the complaint was filed in English, the registrar told the provider that the registration agreement was, for example, in French or Chinese or some other language than English, and then there's a question that the provider has to initially consider and then the examiner has to consider which is what's the appropriate language of proceeding in that case both for the actual proceeding and for the determination.

And so this was an area where we wondered whether it would be useful to develop some guidance for both examiners and parties in cases as to what some of the forks in the road might be for language determination cases.

One of the things – it's actually not here on the screen but with respect to the language, was there was a question – this goes to what we covered earlier in terms of the providers communicating with the registries and the registrars. And I think there was a question or a suggestion whether those communications – if providers were experiencing some difficulty if kind of standardizing those communications would be useful.

The next topic was abuse of process. And this was one where there was no data to really help us, you know, look at this and make a recommendation one way or the other. None of the determinations from a search on the Forum's website actually had a finding of an abusive complaint made. It could be that some respondents had alleged that but the examiner didn't find that that was appropriate to make a finding in that direction in the case.

And if you recall, there was – there were some penalties for abusive complaints so I don't have those committed to memory but I think there was sort of if you were found to be having filed an abusive complaint once or twice then you would get warned and then if it happened a third time I think you

may have been barred from filing a further complaint of a year or it may even be indefinitely. But in any event, we didn't see any data that led us to a recommendation the this abusive process provision in the URS needed to be changed.

The next topic of education and training, this has been raised on a few occasions. And there were some – we looked – one of the resources we looked at was the providers' websites, of course they have model pleadings that help parties understand the kind of –t the big picture and I believe on one of the providers' websites they even had a reference to a training that they provided, but this was again an open question you know, should there be some sort of a basic FAQ posted online? Should there be some sort of training? And this goes both to the parties and practitioners. And so this is something that we wanted to say that the Providers Sub Team may have additional suggestions here.

But certainly the idea of some sort of a basic FAQ for parties was something that seemed to get some traction and in parallel I know in the Provider survey the question was asked what type of training they provided to the examiners.

Finally on the topic of providers and alternative process, again, these weren't areas where specific data pointed us to particular recommendations. In terms of the alternative processes, I believe that somewhere along the way the idea of mediation as a possibility had come up and some parallels were drawn to the Nominet system, for example.

But of course you know, to the extent we get into discussions around alternative processes, you know, it's important that we bear in mind that the URS is already an alternative to the UDRP and that in some of those ccTLDs for example, Nominet which is often mentioned where you know, there's a mediation possibility or different types of a summary of a full judgment or appeals that those are actually subsidized by the registry so that's something of course that you know, we can recommend things but we have to just

appreciate that these recommendations don't occur in a vacuum just so we understand the big picture.

So that's a quick rundown of what we covered in the Document Sub Team. And I'd be happy to see if there's any questions otherwise we can turn it over to Phil.

So I see, George, please go ahead.

George Kirikos: Yes, George Kirikos for the transcript. Yes, I do want to note that these recommendations are just of the sub team members and shouldn't be given any extra weight to the group particularly because the data that's forming the basis of this – these suggested policy choices is not representative of respondents, it's still weighted heavily towards the providers and the complainants of URS cases. And so there's various topics that I won't go into now that I disagree with the suggested course forward. Thank you.

Brian Beckham: Yes, thanks George. And I apologize if that wasn't clear. Certainly all of the things that we've covered in this sub team were meant to be referred up to the full working group. I would just add you know, to the comment that we did actually look at some of the determinations so that could be another just to, you know, bear in mind that you know, we – of course we looked at the Providers' and Practitioners' surveys and then we did do a pretty good dive into some of the cases themselves.

I don't see any other questions. I think maybe sorry I see George again.

George Kirikos: George Kirikos again. Yes, I did want to point out, for example, the issue of latches and statute of limitations. That's something where it wouldn't be reflected at all in the data but it's certainly a topic that we need to discuss because these policies are probably not going to be reused for another 5 or 10 years so it's essential that we get it right going forward.

Can't imagine that, you know, that a domain name owner wants to be subject to these procedures after they've owned a domain name for 5 or 10 years, and even worse if this policy becomes a consensus policy that applies to dotCom owners who've owned their domains for 20 or 30 years. It's ridiculous to have a 14-day response period for a rapid procedure once they've owned it for 20 years where a case conceivably could not even be brought in the courts because of a – of a delay. Thanks.

Brian Beckham: Thanks, George. And that's certainly, you know, in terms of a statute of limitations, of course it's up to the working group to agree on whether that's something that they want to make a policy recommendation on and then the duration of the time to submit a response is of course a different question. Maybe we can move over to Phil and if other questions come up we can tackle those, you know, together.

I'm hoping that we – I know we only have 15 minutes left but I think maybe some of this that Phil will present we did see in Panama so I'm hoping that we've left enough time to at least get through a good deal of this. So with that, Phil, I'm happy to turn over to you.

Phil Corwin: Yes, thank you, Brian. And thank you for that great presentation and for taking over responsibility for that group even before you were confirmed as co-chair. And thanks also to Jason and Kathy for all their work on the Practitioners' Sub Team. I'm now going to – given the limited time, this is going to very view from 20,000 feet on the URS Providers' survey.

Of course all these surveys, the weight to be given to the data collected and the recommendations that's up to the full working group. And we're in now way bound by sub team suggestions, the full working group can act or not act or act differently as it wishes.

So let me get into this. We surveyed all three of the providers. I think everyone is aware that 90% plus of the URS cases have been brought with

the National Arbitration Forum so the other – the data from the other two providers while useful, is kind of supplementary to the data from the providers.

And we thank the providers for all their work in responding to our questions and follow up questions and requests for clarifications. It took them quite a bit of effort to get back to us on all the points we raised. And we still may be raising a few additional clarifying points.

So with that background, let me jump in. I think given the amount of time I'm just going to cover the green sub team suggestions in this document. I don't think we have time today to discuss the staff suggestions, but everybody now has the full document, can review it and we can get into greater depth in a future call.

So this is under the complaint topic, the GDPR issue. Sub team recommendation to ask the Asian Domain Name Dispute Resolution Center, I'll be calling them ADN from now on for brevity, to explain why they accept complaints that do not contain all the elements required in the URS rule 3B.

And I will say generally we found some practices with ADN that raised some eyebrows where they were deviating from the black letter policy of the URS and were – well certainly the sub team has targeted some of those findings with suggestions and I would think that for the full working group I don't want to predict but asking URS providers to follow the basic rules and not deviate would not seem too controversial.

Let's go onto the next page. So no sub team suggestions here. Let's keep going until we get to sub team suggestions. On the SMD file, the recommendation is for the sub team to ask all providers to confirm that their examiners are able to obtain the jurisdiction information of the trademark category of goods and services. This is important to know where the trademark is registered for these cases.

Next page, and we have many pages here, I forget, this is along document. I remember I believe 30 plus pages. Under administrative check, this is whether the providers checked to determine whether a domain cited in the URS complaint is already subject to an open UDRP or court case.

And again, with ADN we're going to ask them how they conduct cross checks to determine whether a domain name is already subject to open and active URS or UDRP proceeding. I misspoke about court cases although I think that's covered – that is covered as well in the policy.

And to ask the Forum what triggers their suspicion that a domain name is subject to a pending URS or UDRP case. And we recognize that with a number of different UDRP providers and with all the jurisdictions in the world for court cases it's impossible to be 100% sure.

And it's certainly the respondent is the one with the best knowledge of whether there's already an action pending against the domain and is in the best position to raise it. But we do expect the providers to do adequate due diligence on this subject.

So let's go to the next page. Notice of complaint, this is delivery. Now the policy requires that upon receiving the complaint that the respondent be notified by an email to the address in the Whois database, by a fax to the phone number there and by a postal mail to the address that's listed. And this sets aside the GDPR issue of access to this data, although the ICANN temporary specification continues to make that data available so far as we're aware – available to URS and UDRP providers.

We found that the Forum and MFSD were following the policy but that ADN was only sending an email. Could we go back there? I don't know why the page just jumped. And that's certainly for me personally raised a concern. We need to make sure that the – if the respondent chooses not to respond in any

way, that's their choice but the lack of response shouldn't be because they have not received adequate notice, so we are recommending that the – we look at changes in the operational rules particularly ADN's to assure compliance with that notice to the respondent.

Next page. Keep going. Let's keep going. Okay, response, and this is about compliance checks for factors beyond the two items stated in URS rule 5G. And who determines whether a response is noncompliant. Generally we found that the examiners sets in their court to look at the response, it's not the providers' job.

But the recommendation is the sub team to review the following documents to consider whether further deliberation is needed and that's the Forum's appendix B and the MFSD's checklist for administrative review of the response. So no clear cut deviants there but a little more due diligence required on that issue.

Let's keep going. Okay, reasoning and determination. This was you know, and Brian alluded to this, I think all of us who have looked at URS decisions have seen some which simply state that the elements have been satisfied and order suspension. And there's absolutely no explanation of what evidence that decision was based on. So the recommendation is the working group is to further examine divergent practices and requirements of the providers with regard to examiner providing reasoning and support of their determinations.

It doesn't seem like asking for that would add much time or labor burden to the job of the examiner to deliberate on the Forum's practice which significantly deviates from that of ADN and MFSD. And when we scroll down next page, we can look at that. And just jump back so I can read the last point here? Working group discuss whether providers should give further guidance to examiners as to what, let's skip down now, basic elements should be included in every URS decision.

And I would say there was a feeling within the Provider Sub Team that providing that guidance of what elements – basic elements should be in every URS decision would probably be a good step. And we see here the responses that the various providers have given on that.

And so let's skip onto the next one. But that is a significant issue. It's difficult in an appeal or in any future review of the URS to determine whether decisions were correctly made if they simply state we found the elements satisfied without citing the evidence on which that determination was made.

Technical requirements, now this involves the fact that the prevailing complainant can extend the domain registration for an additional year under current policy. That may or may not be adjusted when we get to looking at proposed changes but that is the policy right now.

But the thing is that even though it's the complainant extending the registration, the losing original registrant is the one who continues to be in the Whois record as the registrant even though they're now out of the picture.

So the recommendation is to examine – reexamine the URS technical requirements and discuss whether technical requirement 3 and registry requirement 10 should be amended so that the extension of the domain registration at the request of the complainant reflects the complainant as the registrant during that one-year extension rather than the losing original registrant.

So let's go – okay, late response fee, working group to discuss whether any of the late response fees – can we jump down – create a burden for the respondent. That's something we can certainly discuss when we get to the decisional phase. Let's keep going. We're at Page 26 now, I think there's about a 36-page document and we're at 2:27.

Okay, abusive process, recommendation working group to consider potential recommendation on the incorporation of penalties for the abuse of the process by the respondent in the URS rules. But that would require abuse – clarification of what exactly is being abused. So that's something we can certainly get into and discuss in the decisional phase of our work.

And I do want to remind folks that we've already discussed the fact that if we get to proposals for changes in the URS for which there's a substantial view within the working group that they're intertwined with UDRP policy issues or there's simply no consensus at this point in time they can be deferred to Phase 2 of our work, just wanted to remind everyone of that.

So complainant and respondent education, this is on Page 27, we're going to review the notice of complaint and providers online forms instructions before considering whether any additional education materials should be developed. So that's a possible recommendation for additional education.

Let's scroll down. Examiner education and training, we weren't completely satisfied with the response from ADN on their panel selection process. And we're going to be asking them to elaborate and provide more information on that. URS providers, it just says working group to deliberate on these issues. And let's go to the next page, see what else we have.

And that involved the fact that the – there's some gaps here particularly with ADN on verifying the credentials and publicly displaying the credentials of their examiners as is required by the policy. So okay, down on Page 32, we're going to ask ADN to confirm whether their examiners have voluntarily disclosed any conflicts and working group is to deliberate on whether any explicit standards for removal of examiners with particular background is needed, for example if someone has repeatedly represented serial cyber squatters. So all this is for further discussion and deliberation at the full working group level.

Row 92, this is about inferences from URS Rule 12F and sub team working group to examine the following cases to determine whether further deliberation is needed and those are two MFSD cases. Let's continue, we're about toward the end of the document and toward the end of our time. Anything further or is that the end of it?

So obviously that was a very quick survey from 20,000 feet. We didn't look at the staff recommendations but all of you have the document now. And we'll be engaging in further discussion on all these sub team findings as we prepare to entertain proposals from working group members for either changes in URS policy or better guidance or enforcement regarding the administration of the policy.

So I will stop there. We're 31 minutes past the hour, one minute over. And does anyone have a quick question? Otherwise we'll get to noting the next meeting and next steps and any other business. And thank you, Kathy, yes, I think we all found as we got into these sub teams that the effort was very substantial both in the number of questions putting together the questions, putting them out and doing initial reviews of the answers, so yes, and I'd be glad to take questions at the start of the next meeting given the time situation or on the working group email list between now and the next meeting.

So I'm going to turn it back to staff to note our next meeting time.

Julie Hedlund: This is Julie Hedlund from staff. So the next meeting is next week, Wednesday, that's the 8th of August and it will be also at 1700 UTC for 90 minutes. And that is also noted in the chat.

Phil Corwin: Okay and Brian, I see your hand up.

Brian Beckham: Yes, thanks Phil. I just wanted to just for everyone's benefit to say that of course we have a meeting scheduled for next week. I believe we have a co-chair call scheduled for tomorrow if I'm not mistaken, so maybe we can get

back to the full working group over email with our kind of anticipated next steps and agenda for the meeting next week.

Phil Corwin: Yes, and I see Kathy has typed in, "Good idea." And I agree, Brian. So and I think with that we can probably wrap it up and further discussion on any of these presentations can take place on the working group email list until the next meeting.

So thank you all who attended today and thanks very much to all the folks who participated in the three sub teams, a tremendous amount of work done collectively at that sub team level to inform the full working group. Good-bye.

Julie Bisland: Okay. Thanks everyone for joining. Today's meeting has been adjourned. Operator, can you please stop the recording? And everyone have a good rest of your day.

END