

**ICANN  
Transcription  
Review of all Rights Protection Mechanisms (RPMs) PDP Working Group  
Thursday, 01 February 2018 at 04:00 UTC**

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Coordinator: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. And welcome to the Review of All Rights Protection Mechanisms RPMs in all gTLDs PDP Working Group call held on the 1st of February, 2018.

In the interest of time, there will be no roll call as we have quite a few participants. 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? Hearing no name, 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.

With this I'll turn it back over to our cochair, Kathy Kleiman. Please begin.

Kathy Kleiman: Hi, every. This is Kathy Kleiman, one of the three cochairs. I see Phil Corwin is with us as well and I think J. Scott Evans is on the road and traveling and probably will not be able to join us this evening.

I am just back from Names Con in Las Vegas with a cold so you may hear me sniffing through this call a bit. Let me - I first wanted to ask, is there anyone on the call from the Asia Pacific region? If you could just raise your hand in the chat room that would be great. One of the things we're always looking for is, you know, does this meeting make sense and is it useful for people in the Asia Pacific region? So if you're in the Asia Pacific region could you raise your hand or put a check or something like that I'd appreciate that.

Okay, terrific. We have 13 participants for this late night call, late night East Coast time. Let me just double check, are there any objections to continuing with the meeting? We're always looking to see, you know, whether we have enough people, whether, we have a, you know, quorum, but not in the technical sense. Does anyone object to continuing the meeting with 13 participants? Okay.

Well great. So let me - so an overview of today's agenda is first we'll check for updates to statement of interest and then we're going to hopefully wrap up our discussion of URS topics for review by looking, again at the URS discussion document that was provided by the cochairs. We have Phil, who I'm hoping may be able to present this - an overview because we've discussed it a few times, again.

But also we've had some letters filed in comments to the working group, which is a great way to submit comments. So we'll do that and then to - if someone could add to the agenda a third topic which of course previews of coming attractions for next week as we go into a new and very interesting area that's planned for last week, and a lot of work's been done by cochairs and staff in preparation for entering a deeper dive into some material. Okay so we'll do that at the very end.

So first, any updates to statement of interest? Anybody have a new job or position in this January of 2018? Okay. Terrific.

So now we go to - we'll just jump right in and, you know, my hope is that we may not go our full 90 minutes just to let everybody know. So we're looking, and it's been posted, you see it posted as the main slide, the list of topics for review of the Uniform Rapid Suspension system. And I'll just quickly review, we have high level questions that have been edited very slightly from the original 1-5, and these are kind of a template for how we're going to look at - it looks like this document is in everyone's individual control so if you could go down to Part 1 at the bottom of Page 1 you'll see Part 1, Draft List of Suggested URS Topics.

So we'll use the high level topics as a way of screening things like A, the complaint; B, the notice of complaint; C, the response; D, standard of proof, and you can read the rest of them. So we've done very well on that process. And if you jump to - and here I'm just giving you an overview of what we've been doing for the last few weeks. But if you jump to the table, the more detailed table in Part 2, it's Page 3, and it says Part 2, Accompanying Table of URS Charter Questions.

You'll see that the suggested topics were extracted from both original charter questions that were part of what was given to us by the GNSO Council when they sent us our marching orders for starting this working group, and also there were questions that were suggested, particularly at the meeting ICANN 60 the meeting in Abu Dhabi and then added afterwards.

So we're going to now jump - and that table is very interesting so you see both the high level topics and the charter questions in the underlying questions. So but if we jump all the way down to Page 9, Part 3, the cochair statement on URS review, you'll see that the three cochairs have put together just some additional thoughts, which, you know, as members, as cochairs, and which we've done before, which provides some thoughts on particularly at looking at some of the provider issues.

We worked a lot with providers under the Trademark Clearinghouse talking to Deloitte and IBM, and the Forum is the largest provider of URS services, in fact they were just at Names Con in Las Vegas talking about their procedures. And they seemed very happy to talk about it. So some questions have been drafted that would provide kind of a little clearer more detailed jump into that.

I'd like to - I don't know, Phil, how you're feeling. Would you like to take a moment to provide again, a short overview as you have in the past of the cochair statement before we jump into some of the comments that have been raised on the working group? And anyone else who wants to comment, please go ahead.

Phil Corwin: Yes, sure, Kathy. I can...

((Crosstalk))

Kathy Kleiman: Thanks, Phil.

Phil Corwin: And thanks for handling the call overall, Kathy. Yes, the statements, you know, we've seen it before. It was issued on November 30 of last year. It basically begins by reciting a bunch of fairly general and unfocused questions that are in the charter regarding URS and overarching questions relating to all the RPM reviews. And then when you get down to the top of the second page it basically says that the cochairs propose that - to have a more focused evaluation of the URS that we actually evaluate them according to the rules under which the - and procedures under which the URS is supposed to operate, which are in the Applicant Guidebook and the URS rules and the procedures and in the memorandum of understanding that ICANN has entered into with the three accredited providers.

So it's basically first question is, "Have they administered the RPM in a manner that's consistent with the procedures, rules and the MOU? Has there

been any oversight by ICANN to ensure the MOU compliance?" since it's a rudimentary contract? And also, "Has ICANN received any complaints about URS administration? And if it did, how is it dealt with?" So this would, you know, we've got the rules, the procedures, the rudimentary contract. Are they acting in accord with them? Has ICANN taken a look to see if they are doing so? And has ICANN gotten any complaints? You know, if they haven't gotten any complaints great, but if they have we'd like to know if there's been any further inquiry or follow up action.

The next one is would require somewhat more subjective and qualitative review which is basically URS is a subset of UDRP limited to supposedly black and white cases that meet a higher standard of evidence, a clear and convincing standard, not preponderance of the evidence, which is UDRP and has - have their decisions under URS been limited to such cases or have the panelists wandered into shades of gray cases rather than referring them to the UDRP as would be proper?

And then the final bullet point is since at the time we issued the memo or the communication ICANN staff had already informed us in the working group that there had been some small percentage of URS decisions appealed. What was the result of the appeals? Were they original decision sustained or reversed? And that's pretty much it. So it's really - and it was just for working group just kick a discussion to basically say that the charter questions are fairly general and non - and subjective and how can we have a more objective review of the URS? And it seemed like reviewing the actual performance in regard - in the context of the relevant requirements would be a reasonable way to proceed. So I hope that's helpful as a quick recap.

Kathy Kleiman: Very helpful, Phil, thank you very much. And before I call on George I will just note that in the charts that we have of the suggested topics, the high level topics, we have Section M - M as in Mary - URS which is about URS providers and has, you know, an area Number 1, evaluation of URS providers and their respective processes including training of panelists. So we do have

a section about URS providers and evaluation so I just wanted to point that out.

George, go ahead please.

George Kirikos: George Kirikos for the transcript. Thanks. Those were the four questions that appeared on Page 10 of the PDF, correct? I just wanted to note that directly before those four questions it says, "The cochairs, therefore, propose for a working group for a working group review a discussion," and here's the key part, "in addition to or as a focused substitutes for the above and other relevant charter questions." We should address these specific questions.

And if you go back to the - to Page 9 where it has those two sets of overarching questions it seems to me that there's like slightly different coverage between the four points on Page 10 - sorry, the four bullet points on Page 10 and the two bullet points on Page 9. So I think that these should be considered as supplementary, you know, in addition to. And I don't see how the word "focus substitutes" would work because they don't actually substitute for the two on Page 9. So I support all six of the bullet points in other words being...

Kathy Kleiman: Wait, George, before you go. So you support keeping them - you support having them as part of our review?

George Kirikos: Right. But...

Kathy Kleiman: Okay.

George Kirikos: I suppose the words "in addition to" and not the part that says "as focus substitutes." If you substituted them then you'd actually be replacing the questions on Page 9 and the questions on Page 9 are totally different than the ones on Page 10.

Kathy Kleiman: Okay so in addition to, that - I will make a note.

George Kirikos: All right, thanks.

Kathy Kleiman: Thank you. Jeff, go ahead please. Oh I should just share with everybody, Jeff and I were on the same flight this morning from Las Vegas. Go ahead, Jeff.

Jeff Neuman: Thank you. This is Jeff Neuman. And it was not delayed, which maybe you were my good luck, Kathy, because usually every flight I'm on gets delayed.

Kathy Kleiman: And you lose your luggage too, so I'm glad you didn't lose your luggage.

Jeff Neuman: Right. So on the bullet point, the URS decisions which Susan has commented on as well, I really have a problem with this notion of a qualitative review. And the reason I do or - and why I kind of support the alternate framing which is, you know, how have the providers been trying to ensure that the clear and convincing evidence standard is enforced, I support that.

The reason I don't support a qualitative review of these cases is because I think it's, you know, obviously at the end of the day there is some subjectivity in determining whether it's clear and convincing evidence. And reasonable minds can always in a way differ. I kind of look at it like reviewing - if a jury trial in the United States, and sorry, this is US focused, but if a trial by jury is reviewed on appeal, generally what the courts will review are the instructions given to a jury. But they would not put themselves in the place - a judge on appeal wouldn't put themselves in the place of a juror to determine whether the jury was reasonable in deciding to go one way or the other.

But what it does do is say, okay, well the instructions that were given to the jury, the appropriate instructions so that the jury could apply the appropriate standard? I look at this kind of similarly in which we could say, you know, what has the providers, what are the in essence jury instructions that the provider gives to the panelists? And, you know, are those instructions, we

can review those instructions to determine whether we think they're in line with the URS, I have no issue with that. But to actually go back and put in our own qualitative kind of assessment as to whether each of us thinks it met the clear and convincing evidence standard is going to be way too subjective for us to review. And it's...

((Crosstalk))

Kathy Kleiman: Jeff.

Jeff Neuman: Yes?

Kathy Kleiman: Can I ask you a question? What if there's no...

Jeff Neuman: Sure.

Kathy Kleiman: ...evidence whatsoever in that decision, nothing, zero. Does that...

Jeff Neuman: Again, I think it's - I just think that that's not our role because we can't overturn the decision anyway. What we can do is we can improve the jury instructions, if you will. We can then go and say, you know, what did the provider advise their panelists? Is this the right tithing? Does this meet what we believe should be instructed to the panelist? And if not, let's figure out a way to improve it. But a qualitative review of decisions is not fair, it's not something that - I think it's reasonable minds would differ. Thanks.

Kathy Kleiman: Okay. A quick note, qualitative review may have lots of different meanings and I'm not sure the cochair statement was meant to be an appeal of any sort. I think what we're going to find, and I already kind of tipped my hat on it, that, you know, some of us have been going through some of these decisions, not in the systematic way that we're about to, but there are some decisions that don't have a modicum of evidence. If I were involved in them, I

would have no idea why I won or why my domain name was suspended. So in terms of...

((Crosstalk))

Kathy Kleiman: ...kind of a base qualitative review - no, Jeff, it actually wasn't a response to you and I think we've got Greg and, I mean, you're welcome to respond. But that's an issue, guys, that's got to be an issue, if there's nothing, no way to understand what the decision was based on. Anyway. I think Jeff, I think Greg's in the queue. Go ahead, Greg.

Greg Shatan: This is Greg. I'll let Jeff respond first, thanks.

Jeff Neuman: Thank you, Greg. Yes, I put myself at the back of the queue just in case. But, yes, so I think, yes, Kathy, I think again, you know, we could - we could explain, you know, talk to the providers and we can make sure that the instructions include what we think might fit the standard or review that. But to get - to go back and review the decisions that have already been done and act in a way kind of like an appeals court, if you will, it's not the right - it's not the right thing for us to do. I just - I really strongly object to us doing that and not because I'm representing any interest here, I'm actually this is really just a personal thing, having participated in jury trials here in the US on the jury.

You know, if the instructions are correct, and we're happy with the instructions, we have to leave well enough alone as to the outcome in my view. Thanks.

Kathy Kleiman: Okay, thank you. Greg, go ahead please.

Greg Shatan: Thanks. Greg Shatan for the record. I also think this is a problem. I share Jeff's concerns. I also note Kathy, that you made a rather brazen assumption that we're about to do a qualitative review...

Kathy Kleiman: Hey, can we please...

((Crosstalk))

Kathy Kleiman: Out? Let's not get into personal - I'm getting offended and other people are too. Let's leave...

((Crosstalk))

Greg Shatan: I wasn't saying you were brazen; the assumption was brazen to distinguish between a critique of what was said and the person saying it. I'm saying that the statement was - assumed too much because we haven't agreed to do this. And I think that frankly also as a supposedly neutral cochair I think it's, you know, it's doubly objectionable that you can even be supporting one view or the other much less assuming that your view carries the day. And that's not personal, it's just a discussion of the - of the issues and the way they're being handled.

So in any case, I think the idea of doing a qualitative review when you don't have the complaint, when you don't have the answer, when you don't have access to the panelists, is just basically an invitation to take potshots at decisions. We could ask the service providers whether they review provisions - review decisions to see whether they meet a minimum standard and whether there is a minimum standard. You're assuming that there's a minimum standard and that it's being somehow being - not being met. We haven't established that.

I think we're supposed to review the procedures and the proceedings or rather the way the subject - the providers do their work. So I'm strongly in favor of Susan's take on this, which I think was also supported on - by Brian Beckham in the email exchange if I remember correctly. And I think we generally have to consider what the process is by which this group is going to

indicated that it supports adopting any of the - these cochair suggestions because there is no presumption that they're - that any of them are adopted.

The first two I think have seemed relatively unobjectionable, and they are objective, which is good. And I think when you introduced this maybe it was Phil who introduced it and said that the idea was for these to be objective, and then all of a sudden Number 3 here is incredibly subjective and is going to be based on an insufficient amount of input but a whole lot of kind of people, you know, loaded for bear and hunting it seems for something they've already assumed they will find which is a very bad way to begin what's supposed to be an objective investigation. So in short, I think Number 3 should be tossed in favor of Susan's suggestion or words to that effect. Thank you.

Kathy Kleiman: Great. Thank you, Greg. Two questions I heard you raise, I don't know if they were captured in the notes were, is there a minimum standard? And is that minimum standard being met? So I just wanted to make sure that that was in the notes.

Justin, and I'm just going through some of the chat. Justin says, "Can someone point us to some stats on such anomalies and how rampant it is?" that's an interesting question. And Phil Corwin writes, "The cochairs did not envision there would be any reversal of prior decisions," of course. Rebecca, please go ahead.

Rebecca Tushnet: Thank you. Rebecca Tushnet. So I think that we're sometimes using subjective in a kind of unhelpful way in this discussion because if you take the position that, you know, in the end it's always subjective whether a particular decision was good or not that sort of then why do we have a domain name system where we let people transfer stuff? That we - we thought that there were some cases of clear abuse, which I think is correct. But that's actually a judgment, it is literally a judgment, it doesn't mean it's actually subjective, we

have standard and ideas about how people come to consensus even when they have to make a judgment.

But I think the broader point is we're not a court of appeals, nor is the panelist a jury, nor is this a US, you know, federal proceeding. There is an appeal process in the URS, this is not it. Perhaps a slightly more apt analogy is we're a legislative review panel looking at what the rules should be. If our current rules are producing a bunch of bad results, we need to know that. If they're producing a bunch of good results, by the way, we also need to know that.

We're not limited to checking the jury instructions and of course a court of appeals in the US is not limited only to that by the way even if the standards for reversing a decision aside, so even if you took this analogy seriously it would be a mistake to say that all we get to do is look at the jury instructions.

I actually was thinking more about Miranda, the decision in the US about how police officers have to give you a warning about anything you say can be used against you. It'd be ridiculous to say that in evaluating whether that rule was doing what we wanted that we should only look at what police captains officially tell their officers. We'd actually want to know what's going on. And, you know, if it's going well that's good; if it's going badly there are things we might be able to do.

I take seriously the concern that we won't necessarily have all the evidence in front of us. There are ways around that if we identify decisions that, you know, on first glance seem troubling. We can certainly ask the complainant. There are other things we might do especially if there is contact information for the person - for the registrant. But we don't know any of that until we look at what's actually happening.

And, you know, there are resource constraints so we may have to pick and choose. But I think we can all recognize that that will, you know, be grounds for a debate too. You know, we can talk about what sample we have. But I

think the idea that we should sort of turn off our judgment at the point at which we ask well did they say the rules correctly, I think that would be a mistake. Thank you.

Kathy Kleiman: Terrific, Rebecca. Thank you. I hope, like others, your suggestions are captured in the notes. It's hard to kind of follow everything all at once. Before I call on Jeff a question kind of - Jeff and others can comment on is should we be reading in more detail Susan's comments and Brian's comments? A lot of people are referring to them. Does anyone, you know, need us to go review them or did they review them sufficiently on the list? Jeff, go ahead please.

Jeff Neuman: Yes, thanks. This is Jeff. Rebecca, your analogies are just as bad as mine, right. It was - I could argue a million holes in your analogies just like you did with mine. I was trying to make a point. At the end of the day it is - it does come down to a judgment based on the facts before it and what's presented. It is not something that - it's not like reading a Miranda rights, did they do it or not? That's pretty easy to tell. You know, you can go back and did they read Miranda rights? Cool. Yes or no.

This is not that. There's no yes or no review you do on clear and convincing evidence. And I do have to state that we are not an independent legislative body. Most of the people in this group have come to this group with a view or a perspective. We are not completely independent. There's no one in this group - and I'll say that even including the cochairs - no offense to the cochairs - there's no one that's completely independent whether you come from a registrant perspective or an IP perspective, or a registry perspective, or a registrar.

So we have no qualifications to do any kind of review of the type that you're suggesting or that's suggested with a qualitative review. Let's not kid ourselves, okay? Let's do what we can do to determine, you know, what does

it mean by clear and convincing evidence? We can discuss that, we can discuss...

Kathy Kleiman: Did anyone else just love Jeff? Yes, okay...

Terri Agnew: Hi, this is Terri. It looks like he did lose his connection. I'm sure he'll be rejoining here shortly.

Kathy Kleiman: Alas, okay. I'm hope - well, it looks like he's still - he popped off. He may have lost his Internet connection as well. So I'm actually going to put myself in the queue and take off my cochairs hat. I wish Jeff were on. But we are indeed not an independent legislative body; we can't be. But no legislative body I know is actually independent. Independent in that sense, meaning they don't have biases, they all do.

But we did make these rules. We did adopt them. And it does seem to be our job to review them. And this is a proceeding for clearly abusive cases. And I don't know how we certify that to ICANN unless we look at them and look at them closely. And that's, you know, that would appear to be part of our rules, our obligation to ICANN in this proceeding is does this set out to do what it intended to do which is the rapid takedown, faster than the UDRP of clearly abusive cases. That was at least what I thought we were writing with the STI which as you know I was a member of the team on.

Phil, let me go ahead please, and I'm hoping Jeff is coming back as well. Phil, go ahead, please.

Phil Corwin: Yes thanks, Kathy. And if Jeff gets back I'll be glad to yell to him. I just wanted to make a few points, which I hope no one will find brazen or controversial. One, I think I've heard general agreement so far that a URS review should be objective, and I would hope that would mean just as we reviewed Trademark Clearinghouse to make sure that only marks that met

the criteria for registration were getting in, that we would, you know, want to do that kind of objective review against the procedures, rules and MOU.

Second, I want to point out that unlike the other RPMs, with the exception of the one that's never been used, the trademark dispute resolution procedure, this is the only RPM we're really dealing with in Phase 1 of our work which is going to be affected by the overarching question of whether the RPM should become consensus policy that is applied to all legacy TLDs for which they haven't yet been adopted. Right now the URS is only available at a minority of registered domains, not the majority, that consensus policy doesn't really apply to legacy domains in regard to Trademark Clearinghouse or claims notice, but it very much applies to this one.

And that would argue for a fairly rigorous review before you want to make sure this is being done right and working for all parties before you apply it - would recommend applying it to the majority of the domains.

And then I want to bring up two issues and - that concern me and my review, these are personal remarks now. But I don't think anything earth-shaking would come out, I just want to raise it as illustrations. One, there are minimum requirements for what's supposed to be in a URS decision. I forget where they come from right now or the elements but we'd want to see that decisions did contain the minimum that was supposed to be in each decision under the rules, procedures and MOU.

And I have seen URS decisions which basically just say this party brought a complaint against this domain and I, the examiner, find that the evidentiary burden was met and therefore I ordered the suspension of the domain. And you can read the decision and not even know what the trademark as at issue or what was at the Website or even if the Website was being used. So we might look at that and say well, just as we're trying to build in additional data collection for other RPMs, we might want to up the requirements for what's supposed to be in a decision. It wouldn't seem that burdensome to me

personally to ask the examiner to name the trademark involved and to state what if any content was at the domain. So that might be a result of that type of review, qualitative review, but the result is not anything I think would be earth shattering or highly objectionable.

I've also seen decisions which clearly stated that the domain was dark, that it was not in use. And that introduces a consideration that the working group might - a question that the working group might consider which is when you have a RPM that's supposed to find bad faith registration and use by a high standard of evidence, should you allow suspension of domains that are not being used?

And you can argue that both ways, you could say, well no, if you're supposed to establish bad faith use by a clear and convincing evidence and there's no use there shouldn't be a suspension or you might make the argument well the URS is a subset of the UDRP and in the UDRP there's something called the passive holding doctrine, which is addressed at Section 3.3 of the WIPO guidelines which does allow sanctions against a domain even when it's not being used.

There's a blank page or a coming soon page. If you find certain elements such as distinctiveness of the complainants mark, failure to submit a response by the registrant, active attempts to conceal identity or provide false contact details, and implausibility of any good faith use to which the domain name might be put, you might say well, in that case a URS is perfectly appropriate as a subset of the UDRP but you might -but the working group might decide that in such a case given the higher evidentiary burden that's supposed to be met we'd like the examiner to insert an extra sentence or two explaining how the passive holding doctrine applied.

So those are two examples where I think a qualitative review would not be second guessing so much as informing the working group as to whether

some additional information should be in future decisions. So that's my view on that and I hope that's helpful and not too controversial. Thank you.

Kathy Kleiman: Phil, before you leave, would that - based on what you just said, do you think a rewriting of the third bullet point might be in order in light of this domain name?

Phil Corwin: Yes, I wouldn't object to rewriting any of this. I just think that some qualitative review of the actual decisions would be a worthwhile exercise for this working group and would not be an attempt to call out the examiners for doing a bad job or trying to reverse decisions but might be saying we need to adjust what's required in the decisions going forward.

Kathy Kleiman: Okay, terrific. Thank you. Thank you for your detailed comments. And it looks like they're addressing some of the questions that have been raised in the chat about what we might look at in this type of review. Jeff, welcome back.

Jeff Neuman: Thanks. I don't know what happened there. Yes, I just - on the question of - well maybe this a question first. It's my understanding that the decisions, URS decisions are not - they're just like - there's just an answer or just a declaration of what the decision is. Do they provide any written opinion or any kind of support for their decision or it's just the decision? It's my understanding I thought it was just the decision so I don't know how we would...

((Crosstalk))

Kathy Kleiman: It's not. Jeff, it's not. And some of them are much better than others. They're shorter, they're a lot shorter than the UDRP decisions but some - when we go through, you know, even with a random sample we'll see that some of them actually, you know, say why the decision was made and some of them appear not to do anything other than recite what the standard is.

Jeff Neuman: All right well perhaps, I mean, that was - sorry this is Jeff. Just perhaps that's, you know, was when we designed it initially it was really just, you know, to issue a finding; it wasn't necessarily to provide a rationale and that could be something that we as a group make a recommendation on whether they should or should not include a rationale. And the thought was...

((Crosstalk))

Kathy Kleiman: When you say "we" is that IRT or STI? Because it was my understanding in STI there would be a decision.

Jeff Neuman: It was both. It was definitely IRT and I remember with STI because we all discussed, Kathy, you remember, we all discussed that issuing decisions with rationale or with a lengthy - or with an explanation...

Kathy Kleiman: A lengthy rationale, right.

Jeff Neuman: Well, even a detailed rationale would increase the cost substantially and that was something we were all seeking not to do which explains why there's not uniformity as to whether there is a rationale. But be that as it may, that could be an area of discussion as to whether we think panelists should issue a rationale. But I just again, and I don't necessarily agree with Phil on some of the interpretations of the doctrines and figuring out what constitutes "use" because "use" is not just websites but there's other uses, but they are larger questions that are usually brought up in the UDRP context which are not clear and convincing. Thanks.

Kathy Kleiman: Terrific. Thanks for your comments, Jeff. I thought that someone else had popped into the queue, was there anyone else who wanted to speak on this? Okay. Let's see, Greg, go ahead please.

Greg Shatan: Thank you, Kathy. Greg Shatan for the record. Just to say in response or not so much in response to what Phil said, you know, my concerns continue

about 3 as it stands, but I'm glad to see that Phil favors some form a rewrite so maybe we can you know, square the circle on this question in some fashion.

I was concerned about the idea that we would get into examining the underlying jurisprudence because that's even taking us into yet another step into kind of second guessing slash, you know, a level of review that I don't think, you know, we've discussed at all. So that may have been just my misinterpretation of what Phil said. But I think that that's kind of a whole other can of worms that I don't think we should open.

Shifting gears a little bit, I'm you know, I was looking at the ADR forum's URS rules and all it says about in these rules that the examiner's determination shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name of the examiner. That's I guess the question is, you know, how do they police that? You know, is there any kind of supervisory review, not second guessing but maybe in terms of looking at which examiners seem to be doing a good job or not.

You know, if we are going to get into an actual review of opinions or decisions I think there are a whole bunches of questions about process but I'm not even going to get into those because I'm still proceeding on the assumption that we haven't decided to do that and we may well decide not to do that. So I won't go into, you know, process questions that are hopefully down a road we won't travel. Thank you.

Kathy Kleiman: Great. Thank you, Greg. So let me dive into something that Brian Beckham, who of course can't be on the call, it's the middle of the night European time. So Brian said - without reading his whole email - that he'd like to reiterate his observation that the four cochair questions are already covered in both Parts 1 topics and Part 2 questions respectively at M. And it is difficult to see the need for yet another separate document or set of questions to consider.

Now that of course makes sense. So would anyone object to moving the cochairs' questions with revisions to reflect the discussion of today and the array of different questions people have and concerns that people have into Section M, the URS provider section? So we'll put it in - and it would probably belong in the third column so that we can see kind of the discussion that we've been having for these last few weeks on the cochair statement and then discuss it as we evaluate M1, evaluation of URS providers and their respective processes including training of panelists.

So we've kind of framed the discussion but like with everything else we haven't said exactly what will happen. We're framing the topic and we'll dive more deeply into it when we get there. Okay. David says, "No objection here to such a move and reflecting this discussion." Thank you. And of course we'll put out that reflection discussion in highlighted form so people can see it and make their own edits and discussions. It may take us a little while or a few days to do that but that will come out and then others are welcome to edit as well per our usual form.

Jeff says, "Yes, makes sense to me to move these to Section M and it answers my earlier questions too - or Question 2." Okay, Greg, go ahead please.

Greg Shatan: Thanks, Kathy. Greg Shatan again. I would also agree with the idea of reorganizing the questions so that they're more, you know, where they should be. You know, right now we have I think what five standard questions at the front; four cochairs' bullet points; two overarching questions and a partridge in appear tree, and they're all - and then we have the big chart of all the questions. So, you know, right now what we have is definitely a work in progress in terms of organization. And I think we should try to rationalize the - this into a one sort of a straight through process as opposed to that Christmas carol that we have at the present point.

Kathy Kleiman: Greg, hold on. Hold on. What I was thinking of was not the whole partridge pear tree epic song. Of course the overarching questions are already in our materials so it would be and a lot of the cochair statement, Phil, if I'm misstating anything let me know, a lot of the cochairs' statement is by way of background so that anybody reading this could easily have the context. But I think we're really talking about the four bullet points on Page 2 of the cochairs' statement which is Page 10 of the materials in front of us, the last page, you know, those four bullet points as revised and discussed extensively. I think that's what - does that address your concern?

Greg Shatan: No, that was all I was referring to in any case, I was not referring to all the - bringing all the narrative at all.

Kathy Kleiman: Okay.

Greg Shatan: What I was just saying is that we have in addition to the four bullet points there are the two overarching questions and the five golden rings in the front and...

((Crosstalk))

Greg Shatan: ...the question of how we would deal with all of these and whether there are - they weren't five golden rings, they were five overarching - overarching was the two. There were the five points that were kind of I think they're originally proposed. So how we integrate this into a reasonable process document I think is open - is an open question. I think we don't need the background and the narrative stuff but we should kind of have ultimately kind of one set of queries that we go through and not kind of these ancillary outcroppings. Thanks.

Kathy Kleiman: Okay. Thanks. Okay, any other comments and to staff, is there anything that from - because I know you've also - or anyone who wants to address Susan and Brian's letters, is there anything you think we haven't addressed? I've got

them both in front of me, I've been checking off issues that they raise. Is there anything else we need to raise to move forward? We've talked about now the action item of moving this to Section M.1 and so it kind of fits - M.1 of the chart Part 2, the more detailed chart with the four columns - and so it kind of fits into the overall format that we have of kind of the underlying questions and then the high level questions and so it fits into the overall format.

Okay, George, you've posted a lot. Let me pause and see if you want to actually come online and talk about what you've been posting or raise other any other issues. I'm not going to read everything in chat but if you want to come online that sounds great.

Okay, we are almost at 12 o'clock Eastern Time, so we've been on the call for an hour. And normally our Asia Pacific calls are a little shorter. Greg, is that - oh George, go ahead. Thank you for responding. Go ahead please.

George Kirikos: George Kirikos for the transcript. Yes, I was just pointing out that it's not literally impossible to review some of these decisions if one finds that the actual reasoning of the panelist seems questionable given their own statements. And I posted an example to the chat room of [expedial.reviews](#) where it seems very questionable for the panelist to claim that that domain couldn't be consistent with comment and criticism, he claims, you know, it's not consistent with any accepted definition which seems incorrect to me.

And it was only resolving to registrar's holding page. So I think there are examples out there just it seems that for whatever reason there's different views as to whether we should do that review. And I'm obviously on the side that we should do it. Thanks.

Kathy Kleiman: Okay, thank you for your comment. Thanks for coming online to share it. And thanks for the link, it's in the chat room, I'll go to that after the call. Mary, I apologize, you've had your hand up and I didn't call on you, I apologize.

Mary Wong: Not at all Kathy. This is Mary from staff. And I'd actually typed a reason for raising my hand into the chat because it certainly isn't staff's role to suggest to the working group which parts of members' email is or is not relevant so our suggestion from the staff side was that since we had Brian's statement up here on the screen for a couple of minutes and permitting that folks on the call will have looked at it, we could do the same with Susan's to make sure, as you ask, that whether there is or is not something in there for further discussion or edits as the case may be.

Kathy Kleiman: That sounds like good plan. Thank you. So we've got I think you said Brian's letter up, we can all scroll through it and it looks like we've already adopted - well not looks like, we've already adopted his suggestion in the first substantive paragraph. And there is discussion in the chat room of what George posted all of which I'm looking forward to reviewing in detail after the call and jumping into this case which - URS result which a number of people seem to know.

Okay, comments on - why don't we post Susan's letter? So Susan also in the first paragraph - sorry, second paragraph, notes that the topics should be - I'm just reading - should be incorporated, sorry, the four cochair questions, four bullets and now the four bullets as revised by this discussion, should be incorporated into the topics/questions, not listed as a separate statement. So I think we've definitely addressed that.

Okay, she raises questions about Bullet 3 and raises a number of issues that we've discussed today. So hopefully she will be - as everyone will have an opportunity to look at this after it's been edited hopefully her comments will be incorporated with that as well. I'm just reading down through the letter again.

Okay, so let me give everyone a minute to read this in their own time and in their own way and see if there's anything else we need to discuss. Terrific. I'm going to move on - first I'm going to - I'd like the record, you know, the notes to reflect our thanks to Susan and Brian for submitting substantive

comments. This is a great way to do it if you can't be on a call, and even if you can and you've got substantive issues to be considered it's great to put it in writing. I know it takes time and I know none of us have lots of time or any time, but it lets people think about it and review it and come to the meetings prepared to discuss it which is awesome, so, you know, I think the notes should reflect our great thanks to Brian and Susan for doing that and really kicking off our discussion today.

Okay, so I think that wraps up the discussion. Does anyone else want to comment? I mean, do we have any general comments on the tables that we're looking at, on the overall document that we have now moved through all the way to the end of Page 10? And Mary, would it be appropriate for you to give the preview of the call agenda for February 7, which is at our usual time? Or would you like me to?

Mary Wong: Kathy, why don't you go ahead and do that preview.

Kathy Kleiman: Okay. So the cochairs agreed in the meeting that we should let you know so that you could put out the word to other people in the working group that our next meeting on February 7 at the usual time is going to be a review of the URS template. Berry Cobb couldn't join us tonight or he'd be giving this introduction. But there's been a lot of work on the URS template and what it might look like and what the elements might look like.

Not a substantive review, that's obviously - however you define it or however you don't, not what we're talking about today but kind of an overview of the cases of the 800 plus URS cases and kind of a quick overview and a spreadsheet of what elements we might look at and so, you know, really beginning to dive. And so Berry is going to walk us through the template, the URS template with this overview of elements and the background of how it was created and share it with everyone and for discussion and review. So it is a good call to be on as it's kind of the beginning of the next step, the beginning of the deep dive into the material itself.

Any questions, any comments, any closing thoughts? Then I wish you a good morning and good afternoon and evening and a good night to everybody going to sleep on the East Coast. Thank you very much. And thank you, staff. Bye-bye.

Terri Agnew: Thank you. And once again the meeting has been adjourned. Operator, (Mary), if you could stop all recordings?

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