

ICANN
Transcription ICANN Panama City
GNSO: Review of all Rights Protection Mechanisms in all gTLDs (3 of 3)
Thursday, 28 June 2018 at 10:30 EST

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Phil Corwin: Still, are we recording?

((Crosstalk))

Phil Corwin: Yes?

Kathy Kleiman: Yes.

Phil Corwin: Okay, Phil Corwin again. I'm administering this session; our last session was on process. This session is on substance. We are reviewing in this session the answers received from the three accredited URS providers in which their answers diverged somewhat.

Now there are many, many, this is supposed to be a uniform process, there's a great many questions in which there was some divergence of answers. Even though we have a full 90 minutes for this session I don't think there's any way we can go through every single slide and discuss it extensively. So just so you know process here, I'm going to exercise chair's discretion to skip some slides that I view as being of less significance. Of course everything will be on the table when we discuss actual potential changes to URS.

If there's anyone who disagrees with my decision to skip a particular slide, raise your hand, hopefully if you're in the chat room, raise it in the chat room

because I'm not – I'm looking at the slides, I'm not surveying the room every moment to see who has their physical hand raised but if you think I've skipped something that's really important let us know and we'll go back to it.

And finally, before we proceed, I want to thank Renee Fossen who's here from the National Arbitration Forum here in the physical room with us to answer specific questions and give color to the survey results; and online we have Carrie Sheng from the Asian Domain Name Dispute Resolution Centre, and we also have Ivett Paulovics from the – I believe it's MFST, the dispute resolution provider based in Milan, Italy. We have representatives of all three providers here to explain answers and provide opinions and answer questions as appropriate.

So with that background, we're going to begin the discussion.

Kathy Kleiman: Co-chair Kathy Kleiman. I just wanted to ask who was on the past? It was a question we asked yesterday, and I just think you be recognized for the incredible amounts of work that have been done. And I also wanted to ask Renee Fossen, just to wave so everybody knows who she is with the Forum and to thank the providers who are joining us online as well, but to thank Renee who has just been tremendous, tremendous assistance on all sorts of matters to the working group. Thank you for joining us.

Phil Corwin: Okay so do I have – staff, do I have control of these slides or are you controlling them?

Ariel Liang: This is Ariel from staff. We can control the slide and you can just let us know which ones to – skip which ones...

((Crosstalk))

Phil Corwin: Okay I will just say "next" each time we want to go to the next one. Next. Next. All right, status update, beginning of May we sent 89 questions to the

three URS providers. By a month later they had all responded pending the Forum's response to 20 questions. I would note that that's perfectly understandable the Forum has administered about 90% of all the URS cases that have been filed so far so they have the most experience and on questions where they had to review cases or discuss decisions with examiners we were happy to give them more time.

The sub team began reviewing the responses in – a week later, in mid-June, we developed follow up questions and we reviewed the questions with divergent responses and that brings us to June 28 right here in Panama city. Next.

Okay so we are, as I said, we're not reviewing all 89 questions that were sent, thank goodness. But we are in these slides reflect all the questions where we got somewhat divergent responses from the providers. In some case the divergence is not particularly significant where it's just noted; in other cases it is fairly significant and probably requires some discussion. So – so I guess here we are on the first one and I would – let's this I thought was fairly significant. This is the means by which the providers communicate with complainants and respondents.

And I would note here that the URS rules permit – everything is pretty much fully electronic other than the rules do require that just to make sure that the respondent that to maximize the odds that the respondent has gotten timely notice and has an opportunity to respond with – if they wish to. The rules require electronic email notice but also notice by fax if there's a fax number in the Whois record, and by physical mail.

And we found that the Forum and the MFSD follow the rules but that the ADN only provides the electronic notice and does not use the other two means that are indicated in the rules. So what the working group should do about that is a question for the working group to decide but in this – my personal opinion,

the reason for those additional means is to make sure that the respondent has fair chance to respond in a timely manner for this expedited process.

So and I'm going to keep just going through these slides unless someone wants to speak to one of them by raising their hand in the chat room or in our physical room here. So next slide.

Okay, we asked kind of the version of the same question, what percentage of communications to complainants and registrants are done in ways other than electronically via the internet? And again, this reflects the prior answers, ADN, 100% electronic; Forum, email is the vast majority but US mail, fax and phone for some of them, and those are the ones to the respondents I'm presuming, for the initial notice. And MFSD pretty much the same.

Renee, could I just ask you, when do you use the phone, because that's different from the other providers that responded.

Renee Fossen: Sure, if any party ever has a question we will return a phone call if we have received a phone call, if that's the way they prefer to communicate we would certainly do that rather than send an email even though we may have an email address just to make sure that we're making contact with the correct person, that potentially left us a phone message on our domain dispute voicemail box.

Phil Corwin: Kathy.

Kathy Kleiman: Yes, so by way of reminder, and could you tell us where these providers are located and can, you know, just reminder of what regions in general that they serve? I think the Forum is global. ADNDRC...

((Crosstalk))

Phil Corwin: Well, yes, let me – they're all global in the sense that a complainant has just like with the UDRP, a complainant can choose any of the accredited providers to file their initial complaint. But the Forum is based in Minneapolis, Minnesota, USA; MFSD is based in Milan, Italy; and : I believe – I know they have offices in Beijing, Hong Kong and two other Southeast Asia locations, they are most adept at handling non-ASCII complaints in Chinese and other far east languages so I think some complainants choose them for that. But clearly the Forum again is the one that's received 90%. Renee, could I ask you, how many of those from outside the USA, just rough percentage ballpark.

Renee Fossen: I would say more than 50% if you're looking at the language of the proceedings, and I think that's on one of the answers to the questions we had 577 cases where a foreign language was indicated, other than a non-speaking – non-English speaking country.

Kathy Kleiman: And we have a question from Petter. We have a question from Petter Rindforth. "To clarify, does ADNRC only use email also for their initial communications with the respondent notice of complaint?" I think the answer is yes, they only use email for the notice of the complaint.

Phil Corwin: Yes they've been quite clear on that. And I see George Kirikos has his hand raised in the chat room. So George, go ahead please.

George Kirikos: Can you...

Phil Corwin: Yes, George, please go ahead.

George Kirikos: Yes, I (unintelligible) we should at some point ensure that we've not overlooked answers that were uniform but uniformly wrong or inappropriate. Also I'd like to go back to the previous slide, if we actually look at the policy, Page – Section 2a.1 that says that the notice of complaint should be sent to all email, postal mail and facsimile addresses shown in the domain name

registration data in the Whois database. So the fact that ADN is saying that they only do it electronically is an open admission that they're, you know, not following the guidelines so that should be highlighted. I'm surprised that people haven't expressed shock at that. Thank you.

Phil Corwin: George, just to respond to the first part of your comment, for the purpose of today's presentation, face to face meeting, we wanted to focus on the divergent answers. Of course all the responses from all the providers are fair game for review by the entire working group as we develop proposals for any modifications to the URS. Susan Payne, I know you wanted to say something.

Susan Payne: Thanks. Just a quick response, George, I think maybe we might have been looking at the wrong slide but I think Phil was referring to that when he was talking about the means of communication. He – Phil in particular was talking about the divergence in relation to ADN in terms of service of the complaint. It's certainly something that the subgroup has noted and of course it's something that as a group we will need to think further on. So rest assured, no one has failed to notice it.

Phil Corwin: Thanks, Susan. I would further note that unlike the UDRP, ICANN has entered into rudimentary contractual relationships with all three providers, they've all signed a memorandum of understanding which we've looked at and which essentially they commit to follow the rules so that divergence from the rules will certainly not go unnoticed and how – what we might to want to recommend if we want to recommend something in regard to that we might simply want to recommend that ICANN enforce the rule and they probably have the authority to do so under that MOU.

So...

Kathy Kleiman: This is Kathy. I just wanted to add that this is the first time this data is coming back to the full working group so it's a really good opportunity especially for

those who are working in other sub teams to see the data for the first time so we appreciate your sharing it and highlighting these things so we can work with...

((Crosstalk))

Phil Corwin: Okay and let's – you know, just in the interest of getting through as much of this as possible, if you really have something you want to say now of course we want to hear it but again, this is the introductory unveiling of these responses to the full working group. We're going to be reviewing all of this in the working group as we consider potential changes to the URS, so this is not the end of the discussion; it's just the beginning of the dialogue. Next slide.

You know, this is on the same subject. Let's skip this one, we're just – unless someone objects...

Renee Fossen: Actually could I make a comment here? I just have a slight correction on Forum's response. I think...

Phil Corwin: Yes.

Renee Fossen: ...my response was a little bit different than what was recorded on the slide here. The annexes are not sent via email for fear that it makes the email too large and it'll possibly be rejected so those are available on the portal. If a respondent would like to respond there's a link contained in the email that they get and they can request access to look at those annexes.

Phil Corwin: Yes, thanks, Renee. And that's probably a wise practice in my personal view because we all know that sometimes if attachments exceed a certain amount of data size they're rejected by email servers. Next slide please.

Okay, this one, do you receive notification via email from registry operators who are the parties who have to implement URS decisions? If a URS locked

or URS suspended domain has been either deleted or purged or if the registration has expired during the proceeding or if the suspended domain name has been renewed for an additional year, which is a right for a winning complainant. And ADNRC said yes to all questions; MFSD said no to all questions, I think I don't know if Ivett wants to comment on that; and the Forum – Renee, I'm not quite sure how to explain your response, maybe you want to jump in here and just quickly guide us to...

((Crosstalk))

Renee Fossen: Sure, well...

Phil Corwin: ...essential meaning.

Renee Fossen: Well what we did was conduct a search of all the registry operator correspondence that we would have gotten. Those emails are coded that way in our system so we are able to search for them. And I'm not quite sure exactly when we started calling them registry operator correspondence so the 637 obviously does not represent every single case that we've had an obviously we've had correspondence with registry operators on nearly all of our cases.

But of those 637 that we were able to find, we looked at them to see what they said. And A, 17 instances of what if a URS is locked or suspended domain name has been deleted or purged; B, six instances of when the domain name has been expired; and C, 173 instances of when it has been renewed for the additional year.

((Crosstalk))

Phil Corwin: And that renewal is by the prevailing complainant correct?

Renee Fossen: Correct.

Phil Corwin: Okay. And I see Ivett Paulovics has her hand raised in the chat room, probably to comment on the MFSD answer. Please go ahead, Ivett.

Ivett Paulovics: Hello everyone.

Phil Corwin: We can hear you.

Ivett Paulovics: (Unintelligible).

Phil Corwin: Yes, could you proceed with your question or comment?

Ivett Paulovics: Yes (unintelligible) we can do when the dispute (unintelligible).

Phil Corwin: Ivett, I hate to interrupt you but your – the connection is very poor; we're getting a great deal of static and it's very difficult to understand you. So unless you want to dial back in, I'll be happy to recognize you and perhaps you can type your response into the chat. I apologize for that, but it's just – there's no point wasting your time or ours to hear what's essentially static over the phone line. Sorry about that.

So I guess we'll wait for Ivett to call back in or to type a response into the chat. Let's go onto the next slide. Let's skip this one. Okay, this one's important. Have you experienced difficulties in communicating with registry operators in respect of their role in any part of the URS proceeding? And if the answer is yes please elaborate.

ADN said it takes some registries longer to respond than others. Forum reports that there's difficulty and delay in getting responses to verification and lock requests from some registries. There's difficulty in getting the registry and registrar to implement a settlement which involves a transfer at the registrar level, which I think points out that even though transfer is not a

remedy under the URS, there's no prohibition against the two parties settling a URS complaint with an agreement that involves a domain transfer.

And MFSD says that some registry email operators are different from the contact present in the ICANN repository, that's rather surprising and that's my personal view, that should be fixed. And they have had to send reminders to registry operators and submit reports to ICANN for lack of response and implementation. Ivett, you know, unless the connection has improved I want to ask you to respond orally but I'd be personally interested in what when you submit reports to ICANN saying the registry operator, you know, the email address isn't right or they're not responding like they should, what if any response do you get from ICANN? That would be an important fact for the working group to know. So I'm going to continue onto the next slide.

Renee Fossen: I could add something there, I'm sorry, I'm not so quick with my hand.

Phil Corwin: Yes, go ahead Renee.

Renee Fossen: If we can just go – okay I guess it's still there. I will say that the staff at ICANN with this issue as far as what email addresses to reach the registry operators at have been very good in getting back to us and we've had inquiries about that. Usually within a day or so, so I think that's probably likely Ivett would say if she were on the phone, that if she needs to contact we have a direct contact person at ICANN that we can talk to that will give us that information and should for some reason the data that we get from ICANN be blank and sometimes it is, it falls off a little bit and we can usually get that information in a timely fashion.

Phil Corwin: Okay that's good to know. Thank you for that information. So let's go onto the next slide. Okay, do you accept complaints that don't contain all the elements required in URS Rule 3b? And we also asked the providers to provide to us their online forms for complaint filing and identify any deviation from Rule 3b. And the URS says they're not supposed to accept complaints which aren't

complete. And : said, yes, they asked what we mean by – we asked what do you mean by yes and we also asked in light of GDPR do you accept URS complaints if complainant does not provide the contact details of the respondent.

The (do) complaint, I would note at this point that the temporary specification adopted last month by the ICANN Board in response to the GDPR situation does have two annexes; one for the UDRP, one for the URS, which makes clear that a complainant – if a complainant is unable to provide certain required registrant information in the complaint because of GDPR restrictions that complaint should still be accepted by a UDRP or URS provider who can then – has the authority to get that additional information so the (do) complaint becomes a more complete complaint once the provider has it in hand.

And the Forum said, no, they don't accept any incomplete complaints as did MFSD and they added they accept (do) complaints from 25 of May which as I just noted is specifically permitted by that annex to the temporary specification. So again, we see here the Forum and MFSD only accepting complete complaints and ADN deviating somewhat so again it's something we need to earmark and get back to because we – this is supposed to be a uniform process both in substantive standards and in procedures.

Okay, next slide. The complaint – what are the circumstances not included a nonexclusive list in URS procedure, has led your examiners to determine that the domain name was registered and was being held and was being used in bad faith – registered and used in bad faith. Have there been cases where your examiners have not expressly cited a circumstance as the basis of their finding of demonstrable bad faith registration and use?

ADN said no; Forum said no to other circumstances but is aware that some examiners not expressly cited a circumstance as the basis of their finding; and MFSD said yes to other circumstances but then said there were no cases

where an examiner hasn't cited underlying rationale for finding bad faith registration and use by the applicable evidentiary standards. So we'll be looking deeper at that and the idea has circulated among some members of the working group that we should perhaps give further guidance as to what basic elements should be in every URS decision and that'll be something we'll be discussing over the summer.

And Renee, you have your hand up.

Renee Fossen: Yes, Ivett does as well but since you called on me I'll just quickly go first. I just wanted to point out with respect to this question, Forum relied strictly on examiner responses. We haven't taken the time yet to go through all the decisions we're still kind of looking at that angle but we obviously did not have time to do that, go through every decision.

We – I sent the questions out to our examiners so that they could respond on our behalf and with respect to this question, so I did get some responses and those are the basis for the answers to this question. So we may have additional information as time progresses on this question.

Phil Corwin: Okay. And I no longer see Ivett's hand up. I just want to say Ivett – if – we're happy to hear from you at any time, the problem was technical that we – there was just so much static on the line we couldn't understand your input but we – you can certainly type anything in the chat and if we can get a clearer connection with the help of staff we're happy to have your oral input.

Kathy.

Kathy Kleiman: And Kathy Kleiman. And a quick note that this is one that has also been examined by another sub team, the Document Sub Team has also been looking at the complaints and the nature of the complaints. So beginning to think about the crossovers between our Data Sub Team and where information from one can feed into the other.

Phil Corwin: Okay. Next slide. Let's skip this. Oh this one I think this was, has any complainant expressed difficulty regarding the 500 word limit for the complaint? For the two providers that have just done a small number of cases the answer is no. Forum said yes. Renee, can you give us any more detail on the kind of you know, input you've received and has anyone suggested what word level they think – word limit they think would be sufficient?

Renee Fossen: I have...

((Crosstalk))

Phil Corwin: Given the expedited nature of the process and the need to keep it low cost?

Renee Fossen: Yes, it's a struggle I think. And I haven't received any specific numbers from anybody that said anything about it so but certainly I guess in my opinion I thought 500 was okay, I haven't heard from more than a handful of complainant attorneys that have said that it's not but – or that it is, but I don't know what that balance would be. I think for our purposes certainly something under 1000 as far as what the examiner would have to do for work because obviously if we increase this then the respondent will have more words as well.

Phil Corwin: Right. Yes, I think it'd probably be if we're going to consider an increase for the complainant we'd have to consider whether it should be a corresponding increase for the respondent and what that overall increase would do in terms of burden on the examiner, but we'll deal with it because we did get response from practitioners which we reviewed yesterday where some of them had indicated some problems both with the word limit and the ability to provide attachments in the initial complaint, so I'm sure we'll be looking at that over the summer.

Next slide. Okay, do you check to determine whether a domain that is cited in a new URS complaint is already subject to an open and active URS or UDRP proceeding? And if you do, how do you find the information? ADN said yes, they conduct crosscheck. We've gotten back to them to find out how they do that.

The Forum relies heavily upon information in the complaint but conducts searches if there's a suspicion that there may be another action pending. And MFSD said yes, they conduct a manual online research at the URS and UDRP provider websites, so that's – when we think about the work done by the examiners for rather low fee it's not just reviewing the complaint and the response and issuing a decision, it's also things like this.

Next slide. The complaint, have you accepted any complaints that multiple related companies brought against a single domain name registrant? Two of the providers said yes; MFSD said no and again they and ADN have a small number of cases. And Forum says yes, 21 cases involve such circumstances.

Kathy Kleiman: Can Renee talk about that?

Phil Corwin: Did you want to add anything on that, Renee? Any detail?

Renee Fossen: Well typically it may be a trademark holder that also has a subsidiary or something like that where they list both in the caption and so we do count that as a multiple related complainant.

Kathy Kleiman: Okay thanks.

Phil Corwin: Okay, next slide. Hello? Next slide.

((Crosstalk))

Phil Corwin: Oh let's go back to – now we've skipped...

Kathy Kleiman: (Unintelligible).

Phil Corwin: Okay well that's just interesting, how many complaints have you accepted that listed 15 or more disputed domain names registered by the same registrant? The two low level – low volume providers said no; the Forum says – said yes, they have six cases that listed 15 or more domains and the record holder is one complaint list 474 domains. We might suspect that that particular registrant was not observing trademark law. That's just a guess.

Next slide. I think this is – we asked, just an opinion, it's not data, what do you think about loser pays model? That would levy additional cost against the losing party. And two of the providers said they're against it. ADN said they're not against it. We can – if the issue of loser pays is suggested by a working group member, as we move forward, we'll consider that answer and maybe ask for more detail about the reasons for your answer.

Next slide. Okay, has the fee structure been a major deterrent of the filing of complaints or responses? And again, the fee average is around \$500 I think in that range and what's your fee at the Forum?

Renee Fossen: Three hundred and seventy five.

Phil Corwin: So it's even less than that. And there's no fee to the respondent unless there's a very large number of domains involved. And all three providers said no, they don't think the fee structure is a significant deterrent. And I think from the practitioners we've never heard the cost as being a significant factor in deciding to go for a UDRP rather than a URS. Next slide.

I think this one to make it quick, a very small number of complaints have been found noncompliant and were rejected for that reason. The complainant can always correct it and resubmit but most complainant attorneys are getting it

right. But there have been a few complaints found noncompliant with what's required. Next one.

Now this is important in terms of the respondent having adequate notice, have you received any notification of non-delivery of communications? If the respondent didn't receive notification on the first attempt how could they know the complaint? What steps did you take if you get the non-delivery notice? ADN says they have no knowledge of non-delivery. Of course they only do electronic delivery, I guess the only notice they'd receive would be a bounce back or a delayed delivery notice since they don't follow the other two methods.

The Forum says yes, that mail was returned on 151 URS cases. And out of those 151 a response was received in 29 so apparently they got the notice some other way but not by physical mail. MFSD said yes, but didn't elaborate on the number or the type of communication that was – that didn't work so we can delve into that a bit more but I think that in my personal view illustrates the reason why we have a rule that requires that respondents get notice of the complaint filing through more than one communications method because they don't all work all the time. Next slide.

All right, this is interesting, have your examiners received any response alleging an abusive complaint? And if you did, how did your examiners act in determining the validity of the allegations? Etcetera, I'm not going to read the whole multipart question here. The two low volume providers said, no; the Forum was much greater case experience says yes, they've had responses alleging an abusive complaint but no findings of reviews have been made. And they're not aware of any other affirmative claims for relief beyond an allegation of an abusive complaint.

Renee, I just wondered when you receive these allegations of abusive complaints, what's the – is there a – is there a reason or is there a predominant reason for the allegation coming from the respondents?

Renee Fossen: I looked at several of them and the main reason is they – blackmail, they've claimed that it's blackmail. And that the attorney that's – that has been contacting them about the domain has been – they claim abusive I guess so it's more the attorney that's contacting them than the actual complaint itself, you know, there may have been contact prior to the filing of the complaint.

Phil Corwin: So...

((Crosstalk))

Renee Fossen: They took offense to the way that they had been...

Phil Corwin: I'd have...

Renee Fossen: ...contacted.

Phil Corwin: I think we'd have to look at some of those letters that preceded the filing of the – to – on each case to decide whether...

((Crosstalk))

Renee Fossen: And we wouldn't have that.

Phil Corwin: ...they were abusive but some people may regard any letter from an attorney discussing potential legal action as threatening.

Renee Fossen: And there were other things too. Things that really didn't even make any sense, I mean, that would give rise to an abusive complaint. And unfortunately I don't have my notes. I didn't look at every one of them that I was able to find but...

Phil Corwin: Okay.

((Crosstalk))

Phil Corwin: But when you've looked into the complaint you've never found grounds for...

Renee Fossen: No.

Phil Corwin: ...believing that. In fact, the complainant was acting in an abusive manner, we can delve into that in detail. Yes, Susan, I think you wanted to – okay.
Others?

Renee Fossen: Brian had something too.

Kathy Kleiman: This is Kathy. I'm looking at Section 11 of the URS abusive complaints and this was a new part of something we created for the URS, it's not in the UDRP. So the URS shall incorporate penalties for abusive of the process of trademark holders. So there may be an opportunity to clarify here, abuse of what and that might help for these types of filings in the future.

Phil Corwin: Okay, next slide. Yes, this one – the URS allows the respondent to ask for a little more time to prepare a response so we asked, have you received those requests? What percentage? How many were received after the default – which is 14 days after complaint filing or after determination which is no more than 30 calendar days. The two low volume providers said no. The Forum said yes, they've received requests for extensions in 36 of the cases. And nine of those 36 were received after the default date. No extensions requested after final determination. And then there's some additional data that I don't know Rene wanted to explain that additional data, you're probably more conversant with it than I am.

Renee Fossen: I do only because it's incorrect. That should be 13 out of 36 instead of 13 over 18 and 13 – or 5 out of 36 were withdrawn. So if you add those up – five plus 13 plus 18 equals 36.

Phil Corwin: So...

Renee Fossen: Yes, I think when staff took my answer they just...

Phil Corwin: Well that's interesting – I find that interesting that 13 of the 36 cases where they asked for an extension they got the extension and then you never heard from them again.

Renee Fossen: Correct.

Phil Corwin: Okay. Duly noted. Next slide. Okay, have you ever extended the period of time for filling of a response under exceptional cases per URS Rule 5e and in those, if you have, what have you considered an exceptional case? The two low volume providers, not applicable. The Forum said yes, they liberally grant extensions to respondents if a reason is provided.

And among the reasons that have been provided more time needed to find counsel, personal issues such as death or illness of a family member, traveling abroad without Internet access, settlement attempts failed more time is needed to respond, several more – other UDRP complaints to respond to. That would raise my eyebrows. And notice was sent to inactive email so I guess they said we got late notice and we need some more time or problems figuring out how to use the portal. I presume you could try to give them some assistance in using the portal when you get that...

((Crosstalk))

Renee Fossen: Yes, so if they call or email us we call them back and walk them through how to get onto the portal.

Phil Corwin: Okay. All right let's just keep going through. Okay, I'll skip this one, we can get back to that for working group discussions. Okay, who determines

whether a response is non-compliant, you or the examiner? The Forum screens all response compliance issues; the MFSD only screens nonpayment issue, I guess that'd be nonpayment would only arise where the respondent if they had a great number of domains in a case, if they didn't file the response and flags other potential noncompliance issues for the examiner to consider. And ADN only flags superficial formatting and noncompliance issues and leaves the rest to the examiner. So some divergence there we can delve into that further.

Susan.

Susan Payne: Thanks, Phil. It's Susan Payne. Yes, this is – this quite interestingly ties back into the one where the ADN said that they accepted noncompliant complaints and we raised a question with them and it does look as though, you know, there may be a difference of interpretation in terms of what was meant by the question in the sense that, you know, they accept them and then later on someone else determines that it's noncompliant.

Phil Corwin: Duly noted. And I want to just note that we're at the halfway point in terms of the time, for this session. We're making good progress in going through these so I've mainly – because people haven't had a lot of comments or questions about them. And so let's go onto the next one.

Okay, what are the fees associated with these late responses? There are fees if you respond late and the numbers are laid out here – I'm not going to do the euro to dollar conversion for the MFSD but the fees are listed and I think we can discuss whether any of those are, you know, create a burden for the respondent in further discussion but they – I would note the Forum has a flat fee, has flat fees while the other two providers have fees based on the number of domains involved for a late response. Just note that in passing.

Next slide.

Back to word limits. Has a respondent expressed any difficulty with regard to the 2500 word limit for the response, which I would note is five times larger than the word limit for the complaint. Do you believe that the balance of the word limits for the complaint and response is reasonable? And if not, what balance would you suggest? ADN had no answers. MFSD said they haven't received any complaints. And they think the balance is right. And Forum says, yes, and not long enough for both respondents and complaints but doesn't have an idea of what any adjustment should be. And...

Renee Fossen: Yes...

Phil Corwin: ...I forget what the word limits are for UDRP but if we start making this look like the UDRP it starts losing its distinctiveness.

Renee Fossen: Yes, that's true. Yes, I haven't heard from any respondent as to what would be sufficient for a word count either.

Phil Corwin: Okay. Next slide. Okay, where do you acknowledge responses were filed containing facts it sought to refute claims of bad faith registration by setting our circumstances other than those in URS procedure 5.7, which is a list of defenses that the URS specifically recognizes, were they persuasive and should additional grounds be added to 5.7? The two low volume providers said no. The Forum with a lot more cases said yes, but none of the responding examiners found them to be persuasive and they see no benefit to expanding 5.7 to include additional grounds.

I just would point out that again as illustrated by this question you – a respondent can raise a defense that isn't listed in 5.7 and the weight given to that defense will be determined by the examiner in the case.

Okay, next slide.

((Crosstalk))

Phil Corwin: What's that? Thank you. Have you received either anecdotal feedback from respondents regarding the URS rule and procedures? Two low volume providers, no. Forum has found that some respondents didn't know how to proceed and needed the Forum's assistance and there were some complaints regarding your online filing portal. Renee, why did they find your portal so confusing?

Renee Fossen: I don't know.

Phil Corwin: Or difficult? So I think what I'm reading here is we have some somewhat – some unsophisticated registrants who've never dealt with a dispute resolution procedure like this before and need some assistance in...

Renee Fossen: Correct.

Phil Corwin: ...dealing with it.

Renee Fossen: For the most part it's just general education on what it all means.

Phil Corwin: Okay. Kathy.

Kathy Kleiman: This is Kathy. I should add with the new TLDs this is somewhat of what we expected as well, that there would be kind of new audiences and new outreach for domain names.

Phil Corwin: Okay, next slide.

Michael Graham: Phil? It's Michael Graham.

Phil Corwin: Yes, Michael.

Michael Graham: I'm wondering if I could ask Renee a quick question on that?

Phil Corwin: Sure.

Michael Graham: When the respondents come back not knowing are those dealt with on an ad hoc basis or do you have materials to send out to them to help them navigate the process?

Renee Fossen: Typically our case coordinator is one of which has a lot of experience, is able to explain exactly on an individual basis usually on the phone or via email what the process is about, how it works, why they're getting what they're getting. If it's something that they then get a response back from on a case coordinator level then it's sent to me and I will deal with it and try to explain it to them.

Michael Graham: Thank you.

Phil Corwin: Let me follow up, Renee, this is just off the top of my head, but would you see any merit in maybe the providers getting together and preparing like a basic FAQ for respondents about how to deal with a URS complaint? It wouldn't try to give them legal advice but just to explain the process and then each provider could translate that basic document into other languages that they get complaints in.

Renee Fossen: I would be open to that idea because certainly there is a line that you are able to cross when it comes to legal advice and many people want you to give them that information when they're calling and asking the questions and we just can't do that.

Phil Corwin: Okay. And then I see in the chat that George Kirikos has asked, whether the online website for NAF is entirely English, for example, he seems to think it's only in English. Maybe you could respond to that.

Renee Fossen: It is in English.

Phil Corwin: Okay. And I think Susan and Kristine have – want to intervene. Please go ahead, Susan and then Kristine.

Susan Payne: Yes, thanks, Phil. Just to go back to the brief exchange you just had there about some guidance sort of, you know, easy to understand guidance for respondents, or indeed for I guess the complainants as well. But I'm just not sure that this is really something that the providers should do. I mean, if – and I'm not objecting to the idea of guidance at all but I think perhaps is that not something that ICANN itself should do?

And so, you know, the providers would then just maybe have a link on their websites to a central place? It seems to me that that ought to be ICANN's responsibility and indeed if there's a need for different languages, again it shouldn't really be down for the providers to do that I don't think.

Phil Corwin: You know, I think the basic concept is should there be some basic FAQ sheet for – maybe I'm incorrect but I'm just presuming that complainants who have filed a complaint have gained some sophistication about the process in doing so when that some registrants are completely clueless when they get notice of the complaint and might be in more need of help but I'm not against a basic FAQ for complainants either being developed and posted. Kristine.

Kristine Dorrain: Thanks. This is Kristine. I mean, to echo what Susan said and also to draw an analogy to the three other Trademark Clearinghouse Sub Teams that we had going and they – we went through this with all of them as far as when ICANN creates a consensus policy or whatever this is, then ICANN – if there's an educational component that would be on ICANN to educate the people in the community that are using that whether they're on the complainant or the respondent side.

If there's something specific to a provider, the provider should have their own educational materials on how to interact with their website, but that's

been like kind of said multiple times in multiple subgroups so one I think action item might be for staff to not that this an overarching issue that's seeming to touch on so far all of the various topics that we've discussed is a general topic of education and who should be providing that. Thanks.

Phil Corwin: Thanks, Kristine. And I think what I'm starting to hear is general agreement that it might be useful to create these basic FAQ documents but maybe we shouldn't put the burden on the providers, maybe we might wind up recommending – and this will be implementation phase that ICANN work with the providers to create those basic documents that the providers can then either link to on their website or send out with the notice of the complaint or, you know, we can get into those details in implementation but there seems to be some general agreement that this is worth looking at further. And I think that's good, you know, we can.

All right, next slide. Yes.

Brian Beckham: Sorry, I just wanted to jump in on and sort of agree with Kristine and build on that a little bit. I think it's, you know, it's interesting to think about tools to educate filing parties in URS or UDRP cases or you mentioned Trademark Clearinghouse or elsewhere. But I think we need to be a little careful about that because don't forget that these are services that are provided in a competitive environment. I'm not aware that ICANN would require registries or registrars for example to sort of collectively come together and produce guidance for you know, users; it's an interesting idea and I think there could be some ways to kind of, you know, provide that through ICANN but just wanted to express a little caution that we leave the providers to, you know, provide resources that they think are useful for the parties you know, in their own way that they think is best also. Thank you.

Phil Corwin: Thanks, Brian. And I don't think anything we've been discussing would preclude providers from developing their own materials, but we can get onto this and the discussion over the summer. Next slide please. Oh, so Brian, I

see Ivett has her hand back up. Let's hear from Ivett, hopefully we have a better phone connection to Italy. Go ahead, Ivett.

Ivett Paulovics: Yes. Can you hear me well?

Phil Corwin: Much better than the first time. Thank you.

Ivett Paulovics: Okay. Thank you, Phil. Phil, yes I wanted to comment on the – on this matter that already the policy and the rules require that in the notice of complaint should be some information regarding the procedure. So the respondent who receives the notice of complaint has already some information contained in the notice of complaint so regarding the timeline of the proceedings that the respondent may seek legal assistance to represent himself or herself in the administrative proceeding and also indication that read the response all evidences should be filed because there will be no in person hearing, and the rapid nature of the proceeding requires to file everything at the beginning.

And also in the notice of complaint there is a link to the rules and to all the information. And I think on the website of all the three providers there are also links to the rules and for example when a respondent creates an account to file its response, the response form itself contains some instructions how to respond to a complaint. So I think there are many many information for the respondent how to defend himself or herself in a URS proceeding.

Phil Corwin: Ivett, one, I want to say that was beautifully clear connection and we're glad we're able to hear from you directly now. And two, I think you pointed out something very important and we ought to take a look at what's in that notice before thinking about whether any additional information is required to be developed. So thank you for that input. Next slide.

Okay, have you received any joint requests for a stay of the administrative proceeding? And if so, how many cases were reinstated or otherwise dismissed upon expiration of the stay? ADN and MFSD, no; Forum says, yes,

that occurred in 58 of the cases they handled and 36 of those 58 cases were ultimately joined by the other party and order staying the proceeding was issued. So that was – is that a judicial proceeding or what was the cause?

Renee Fossen: This didn't really answer the question I guess. I missed the second part which I do have the answer for today. So we had 58 requests for a stay; 36 of those requests were granted because the other party agreed and of those 15 were dismissed upon expiration of the stay for neither party getting back to us or reinstating. And then of those 12 were response cases and ultimately 14 of those 36 were withdrawn.

Phil Corwin: The case...

((Crosstalk))

Renee Fossen: Likely for...

Phil Corwin: The case was withdrawn?

Renee Fossen: Yes.

Phil Corwin: Okay well that's interesting. Are those stays usually requested because both parties want to try to settle?

Renee Fossen: Yes.

Phil Corwin: Would that be – okay. Thank you for that input. And Ivett, your hand is still up. I'm going to presume it's an old hand unless you – it just disappeared so my presumption was correct. Have you received any requests for a stay after the appointment of the examiner? Again, this is only relevant to the Forum. Yes, the request for stay is ordered by the examiner in those instances. Next slide.

This is kind of an opinion question. What factors should we, the working group, consider in regard to evaluating a processes and practices pertaining to examiner selection and training? ADN said panel selection and training process must be flexible and not rigorous with no further elaboration. Forum requires dispute resolution experience, language skills, experience in IP domain name disputes, willingness to take a lower than market fee and availability, fast turnaround and uses a lot of people with prior experience in the UDRP, which most of this is the same other than the burden of proof for the complainant.

MFSD starts off with the language skills, again, experience in IP domain name disputes and ADR proceedings. Looks to UDRP experience and they – there are education and training opportunities. Do you have any specific – Renee, could ask if there are any specific training you put your examiners through just so at least they're aware of the differences in procedure and substance between this and the UDRP?

Renee Fossen: Yes. Sorry, yes. Now I've only been on board for a year and a half so I have only gone through one training session with – or two with the examiners and panelists. However, it's my understanding that it was done pretty regularly prior to my joining Forum and there was a presentation that's put together and small groups of examiners would participate on a webinar type program so they could ask questions – live questions as the presentation was being presented.

Phil Corwin: Okay.

Kathy Kleiman: Susan, go ahead.

Phil Corwin: Go ahead Susan.

Susan Payne: Yes, I wonder maybe we should go back to : in relation to their response because I – I think this maybe a kind of language thing but I'm just not sure

that they really mean that they don't think there should be rigorous training.
So maybe we could just do a follow up with them.

Phil Corwin: I think that's probably a good idea, ask for some further explanation because flexibility is good but we have to stick to the rules. Next slide. Why have the qualifications of some of your examiners not been published? I would not the rules require that they should be published at the provider's website. ADN publishes them subject to the examiner's consent on how much information can be made publicly available. That seems to me to be at some odds with the rules that if you agree to be an examiner you should – you're doing so with knowledge that your name and qualifications are supposed to be listed.

MFSD said they all – they do it in all cases for all examiners. Forum said one panelist's information was not available on the Forum's website because the panelist is not a Forum panelist but was requested to participate as part of a three member panel which is a right for a party to the proceedings to invoke.

And the Forum doesn't obtain the CV of panelists from other providers for that very limited purpose. So I think we can take a look at that in further discussion, but other than that one instance it looks like all the other qualifications are listed on the website.

Renee Fossen: I believe that there were two indicated in the actual question. I went through all of them and I was only able to find this one so it's possible that there might have been a past issue with the other one at the time. And I will note that initially also that was listed that we had 126 or so URS examiners and we can filter that – need to filter that for just the URS examiners because that's the entire panel, not just URS so we actually have 41 on our URS panel which is included in the spreadsheet that staff has put together.

Phil Corwin: Kathy.

Kathy Kleiman: Kathy Kleiman. And a quick note about qualifications of examiners since there's an exploration of conflict of interest, you also need to have the qualifications and certainly some of the background to help with that exploration.

Phil Corwin: Okay next slide please. Here we go, conflict of interest, what's your policy for examiners? How do you make them aware of their obligations to be impartial and independent? ADN, says if the parties consent a person may serve as an examiner even if he or she has any interest in the dispute whereas the Forum and MFSD says no indication of any exceptions. Next slide.

Okay, can you provide a copy of any oath taken by your examiners to affirm that they will be neutral and independent? Is it signed? ADN says email, I'd ask staff, did they provide us with a copy of the document?

Ariel Liang: This is Ariel Liang from staff. Yes they did and in fact there's appendix C that's for Forum's response and that's also in the Google spreadsheet, and I can put the link in the Adobe Connect chat.

Phil Corwin: Okay, the Forum has a neutral oath form and MFSD has email and confirmation on a determination form. Renee, you get them to sign that or acknowledge understanding and commitment in some way?

Renee Fossen: Yes.

Phil Corwin: Great. Next question. Okay, has any of your examiners voluntarily disclosed any conflict of interest? If they didn't, what action was taken upon a discovery of a conflict? And if it was disclosed, did the examiner do this before and/or during the case proceeding? ADN did not give us a direct answer; we probably need to get back to them on that. MFSD said yes, if it's before the appointment they request the examiner to disclose any possible conflict, no instance of the conflict coming up after acceptance of a case. Forum says, yes, the case coordinator notes the conflict of interest; it's then reassigned to

the next examiner in the rotation. No instance of a conflict arising after acceptance of a case by an examiner.

Next. I'm delighted that this group has so little to say on these slides, so we're getting through so many of them. How large is the pool of URS examiners? This one struck me as worth further inquiry only in that Forum which handles the most cases has 41 examiners; MFSD has 23 examiners as of early May, and ADN has 180 but I'm guessing that may be somewhat due to the unique structure of ADN, which they have four separate offices in different locations in Asia with some degree of independence between them. So I'm – personally I'm less concerned with the number of examiners than in the expertise and impartiality of examiners, but there hasn't been much for those 180 ADN examiners to do given their volume of cases.

Next slide. Procedures for case rotation of case assignments, ADN says assignment depends on the nature of the dispute, availability, nationality of the parties, and number of other factors. Forum says there's a rotation with four cases assigned at a time with some exception made for availability and language considerations. And MFSD has a rotation and the assignment depends on language skills and availability, and I'm sure they're handling cases being in Europe in many different languages from complainants and respondents throughout Europe and other locales.

Next slide. Have you ever removed an examiner from the pool for any reason? Why? And what behaviors would disqualify an examiner from future cases? ADN said no but their answers are incomplete. Forum says no but they would –reasons they would use would be failing to comply with deadlines, failing to understand the policy or rules, repeatedly not being available due to schedules or conflict of interest. MFSD, again, no one's ever been disqualified but noncompliance with a variety of reasons including rendering a determination contrary to the policies or with insufficient and illogical reasoning.

Next slide. Still on the examiner. Do you permit one to be an examiner or continue being an examiner if one represented a complainant in a URS or UDRP proceeding where there was a finding of reverse domain name hijacking? ADN said they wouldn't permit such an examiner to continue to be one. MFSD says no because they don't monitor UDRP proceedings with findings of RDNH and evaluate on a case by case basis should that happen. And Forum the answer we have here, and we can ask Renee to maybe provide more detail is not applicable, didn't provide complete response. So, how would you –if you knew that someone had been counsel on a case where the UDRP panel had said you shouldn't have brought this case, it was attempted hijacking, would you let them continue to be an examiner?

Renee Fossen: I think we would have to certainly assess it at the time and if it ends up in federal court or a court of competent jurisdiction outside of the UDRP I think we'd wait for the results but likely suspend the examiner or panelist until that determination was made.

Phil Corwin: Okay. Thank you for that response.

Kathy Kleiman: (Unintelligible).

Phil Corwin: Greg. Greg Satan has emerged from the underworld to join our working group. I didn't know you came out in the daylight but we're delighted to have you here.

Greg Shatan: Thank you very much.

Phil Corwin: Mr. Satan, would you like to ask a question or make a comment?

Greg Shatan: Yes, my question is whether we asked whether anyone was permitted to continue being an examiner if one represented simply anything – I don't know if there's a respondent side version of reverse domain name hijacking but did we ask whether and if you represented respondents in some fashion that

might be thought to be scurrilous whether you could continue to be an examiner? It seems like a kind of one-sided question.

Phil Corwin: You know, I would dismiss that comment and I would further add that in the rules for the new TLD program both serial cyber squatters, which I think was defined as having three or more UDRP cases decided against you as a registrant within a – I forget the number of years – were barred – supposedly barred from being applicants. I'm not sure that was enforced but it's in the rule book. And at the same time anyone who would have been found to have attempted reverse domain hijacking three or more times in that same time period was barred from being an applicant.

So yes, we – yes so, Greg, Mr. Satan, you're suggesting that if someone has repeatedly represented I guess the term would be serial cyber squatters whether they should be an examiner. And I guess that's a valid notion.

((Crosstalk))

Phil Corwin: But we can discuss that further.

Greg Shatan: Thank you.

Phil Corwin: As we look at URS policy.

((Crosstalk))

Phil Corwin: Yes. Paul, Mr. McGrady.

Paul McGrady: Thanks. Paul McGrady here. Not – I don't want to go too far into this other than to note that in Western civilization generally speaking the lawyer is not sent to prison with his client if the client's found guilty and is a basic premise of the advocacy system, otherwise everybody would be an accountant and

nobody would take the risk to be a lawyer. So I'd just caution that we don't go down too far into this cul-de-sac on this one. Thank you.

Phil Corwin: And I would just note, Paul, that we're not speaking here in any hypothetical case about sending anyone to jail; we're just talking about whether they should continue to be allowed to preside over cases for which they receive meager compensation. Yes, Michael Graham.

Michael Graham: Yes, just to end this sort of thing, I think the troubling aspect of that is not that it's referring to the serial – or the party that's committing that act but the party that's representing and that as a troubling question but we can pacify, thank you.

Phil Corwin: Yes, and on that that George Kirikos said – believes they're not the same. He said this in chat – because RDN is abuse of the policy and procedure. We can discuss this further in the working group whether we should have any explicit standard for removal of examiners with particular background. And I'm sure we'll have a lively discussion on that question.

((Crosstalk))

Kathy Kleiman: How we doing? Good.

Phil Corwin: Pretty good. Time check, we have 14 minutes left. Staff, how many slides do we have left because these aren't numbered.

((Crosstalk))

Phil Corwin: Twenty so we're unlikely to get through all 20 in 14 minutes so I'm going to just skip through a few of them if they don't seem particularly meaty. Next slide. Okay, this one's important, what steps do you take to ensure your examiners have demonstrable relevant legal background? And to ensure that your examiners have a diversity of relative experience, and in parenthetical,

have represented both respondents as well as complainants or I guess would be trademark owners versus domain registrants, and please explain.

ADN said they just review the resumes and interview the examiners. MFSD said they have an open, transparent and nondiscriminatory selection process. And they engage with various Internet stakeholders including domain owners associations and encourage professionals having language skills in thorough experience in domain name disputes to apply to be examiners. And Forum says, most examiners have been deciding URS cases since its inception.

They look at UDRP panel experience, they keep a repository of qualified applicants and they also state it'd be inappropriate to require an attorney to disclose a client list. And they don't think a classification either way negates or promotes an examiner's qualification. So we appreciate that input on that question.

Next slide. Any difficulties or issues with the current URS language requirements and what steps have you taken to comply with and implement the current requirements? This is important because both complainants and registrants may well not be English speaking much less English reading. And ADN all communications only in English. They do receive inquiries particularly from respondents regarding the language of the proceedings.

The Forum provides translations where required, necessary and appoints examiners that speak the language of the respondent. And MFSD provides translation and appoints examiners that speak the language. So I think yes, I have to note again that ADN seems to be out of step with the other providers on a fairly critical issue. Kathy.

Kathy Kleiman: Kathy. I'll just note for purposes of cross reference that the Harvard Law School materials that Rebecca Tushnet put together has a tab on language as well talking about certain cases that went through and where language was an issue.

Phil Corwin: Okay. And 10 minute warning, you're all free to leave in 10 minutes, or now but you'll miss the best part. Next slide. Next. These are all about language. We'll look at these in more detail in deliberations on this. Next slide. Okay, can you provide any information as to whether and in how many instances it's been demonstrated the respondent had the capability of understanding English in addition to their primary language? ADN, no elaboration. MFSD listed a number of disputes without further detail; we can get back to them on that.

Forum handled 577 cases and – Renee, how many did you handle in total, was it like about 800 or just ballpark.

Renee Fossen: Yes, probably 825 at the same time that these numbers were pulled...

((Crosstalk))

Phil Corwin: So this is significant, in about 2/3 of the cases the registrant addressed – indicated a non-English speaking country that is the primary language in the country was not English. Likely inflated by 10%-15% due to privacy, use of a privacy proxy service. And those 577 cases they received 103 responses and only 10 of the 103 demonstrated that an understanding of English.

Renee Fossen: And by demonstrated because it wasn't defined in the question, that was at the panel – or the examiner found that the respondent could understand English.

Phil Corwin: Yes.

Renee Fossen: Not that the complainant contended that they could, which doesn't mean that they could or couldn't.

((Crosstalk))

Renee Fossen: Yes, in the decisions – determinations.

Phil Corwin: Yes, and I would just observe personally that there are various levels of understanding, one might go to Paris and know enough French to know how to ask you know, where the train station is or how to find the bathroom but not be able to participate in a French court proceeding. Next slide.

Michael Graham: Phil?

Phil Corwin: Yes.

Michael Graham: Michael Graham, real quick.

Phil Corwin: Yes, Michael.

Michael Graham: I notice that there were two different sort of things being tracked here that the 577 cases were based on addresses in non-English speaking country did not specify whether or not the respondents were non-English speaking. So I guess there's a little disjoint in that answer in terms of being able to rely on it to say you know, 100, you know, certain number of these did not understand English other than the 10 that demonstrated it.

Phil Corwin: Yes, and good point, Michael. And I would just say, you know, a lot of people in non-English speaking countries do have some English facility because it has become a global language for business and other purposes, but there's no way to know definitively unless the respondent comes back and says I need a translation, I need to conduct this proceeding in my native tongue, not in English. If they don't respond you're just guessing.

Next slide. Default, have any of your examiners drawn inference per rule 12f when a party is not in compliance with URS rules, procedures and supplemental rules in the absence of exceptional circumstances. What

inferences were made? Two of the providers said no, Forum said yes and pointed to one – two particular disputes, and I guess we'll have to look at those disputes to glean some more meaning out of that response.

Next slide. Oh Michael, is that an old hand that's up in the chat? Okay. Okay, examiner determination. It quotes Rule 13a, providing an examiner may quote, make a determination in accordance with any rules and principles of law that it deems applicable, unquote. And the question is, are you aware of instances where an examiner has invoked substantive criteria beyond those articulated in URS rules, procedures and supplemental rules?

MFSD said no. Forum said no though it may happen subconsciously. And ADN said references past UDRP URS cases in addition to URS rules and procedures. So I wouldn't find that surprising since the URS was designed as a supplement to the UDRP and is very similar to it in so many ways but with a higher evidentiary burden.

Next slide. And we have five minutes to go. Okay, how do you compel your examiners to comply with your template in writing their determination? Do you intervene on an administrative capacity to ensure that your examiners provide the most comprehensive written determination they can? How do you strive to standardize the completeness or quality of examiners' written determinations beyond the use of that template or form?

ADN says they routinely go through examiners' decisions to ensure that standards I guess are being complied with. And will note examiners they don't think have adhered to the standards they want to achieve. Forum doesn't intervene unless there's a determination or series of determinations by the same examiner that are questionable in some way. And MFSD says examiners are encouraged to refer to WIPO overview. Brian. That's WIPO 3.0 of your UDRP jurisprudential overview. And adopt the best practice of well-known international dispute resolution providers, for example, WIPO and Czech Arbitration Court.

And the only sanction applicable by MFSD is the de-accreditation and delisting of an examiner. They do monitor case law and examiner education.
Next slide.

Okay, interesting question, the URS Document Sub Team has suggested a guide for URS examiners be developed to assist them with understanding the distinction between clear cut and more difficult cases. Do you agree? If you do agree, who should develop this guide? ICANN, each separate provider or providers collaborating on a uniform guide. ADN said yes and in a collaborative fashion. MFSD said not necessarily but if we were going to do we'd want to collaborate with the other providers. And Forum likewise said, not necessarily but if it's going to be done it should be done in collaboration.

But Forum added, the idea of a guide is not strongly supported by examiners. Some indicate that the UDRP precedent and the WIPO overview are helpful in drawing the necessary distinctions noting that many are also UDRP panelists. One examiner was I guess forcefully against the idea believing that guides stultify – our vocabulary word of the day – stultify the process.

((Crosstalk))

Phil Corwin: Next question, and two minute warning. How many slides left, staff?

Ariel Liang: This is staff and it's 15 slides left.

Phil Corwin: Oh we're not going to get through those 15 in two minutes. So we're not going to get to the end so please review these slides at your leisure, it's a nice thing to do when you're sitting on the plane leaving this meeting, I know you're going to want to be thinking about ICANN issues on that flight. So we'll get back to all these slides.

How do your examiners apply the clear and convincing evidence standard, which is one – that of course is one of the major distinctions between UDRP and URS; UDRP is just preponderance of the evidence. ADN can't elaborate. Forum says many of our examiners are also UDRP panelists and have told us they understand the distinctions. Others are retired judge and have – judges and have the relevant experience to understand the different standards. And MFSD has a more detailed way in which they try to ensure that understanding. And they provide them with some guidelines so interesting answers.

Next slide. Yes, this one is I think important because it's an area where some decisions have been criticized. How do you ensure that examiners actually provide some explanation of the facts and reasoning and support of their determinations? And if you don't do that, why?

ADN provides examiners with online guidelines which require them to provide some explanation. Forum doesn't undertake to review each determination to see if there's an explanation of the facts and reasoning. And MFSD has an online determination form and it kind of repeats the answer from the preceding questions. And I think that's probably an issue that's going to come up in our further discussions of possible URS recommendations.

Kathy.

Kathy Kleiman: No, go ahead.

((Crosstalk))

Phil Corwin: Okay well we are at 1:00 pm. Let me say – we have about a dozen slides we haven't reviewed. What subject are those final slides are, still on examiners or on something else?

Kathy Kleiman: Want to just...

Phil Corwin: Staff?

((Crosstalk))

Phil Corwin: Remedies, okay, we know there's some criticism with remedies. Determinations and publication, that's about it. So those are the two subject areas we didn't get to the responses. I would summarize by saying we've sent a lot of uniformity in the responses but some divergence, particularly on the part of ADN.

These are just the responses in which the providers have not given identical answers, just because they've given identical answers doesn't mean we should be satisfied with those answers, we're going to review everything but I think it's been a good session for kind of getting a feel for how the providers are running the administration of the cases and I think personally while there's probably some areas we might want to suggest greater enforcement or more rigor and maybe a change overall it seems to be working pretty well. And did the co-chairs have any final comments because they think there's another group coming in here shortly...

Kathy Kleiman: Yes.

Phil Corwin: ...I think Council's coming in.

Kathy Kleiman: I'd like to propose a round of applause for Phil for guiding us through this marathon of provider questions.

Phil Corwin: Thank you. And I would definitely say, Kathy, it just proves that I can be coherent on – mostly coherent on just five hours sleep.

Kathy Kleiman: That's amazing. Well thank you all very much for being here. We appreciate you being with us in the room and online. And the next working group

meeting will be Wednesday July 10 and the chairs and staff will be getting details out to working group members as to what we'll be doing then and based on the previous session we'll probably be positing some suggestions for procedures for handling URS policy determination. So thank you all very much and enjoy the rest of your stay in Panama and safe travels home.
Thank you.

Kathy Kleiman: Safe travels home.

END