

**ICANN Transcription – Abu Dhabi
GNSO – Review of all Rights Protection Mechanisms in all Generic Top-Level
Domains Part 2
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On page: <https://gnso.icann.org/en/group-activities/calendar>

Phil Corwin: If people will return to their seats we're going to get started on the URS portion of our program today. And one of the decisions that the cochairs of this working group collectively made recently was that as we suspend final decisions on sunrise registrations and trademark claims notices, the two RPMs based in the Trademark Clearinghouse, in order to engage in the data gathering survey and other collection exercise that we've described in the last 90 minutes, in order to keep moving and not lose too much time, we're going to accelerate our consideration of the final subject matter of Phase 1 of our charge, which is review of Uniform Rapid Suspension, a subset of the UDRP created for the new TLD program.

So that's my intro. And I believe most of this program is going to be – are we starting with the data, Mary, or are we starting with the primer on the URS and its basics.

Mary Wong: Thanks, Phil. This is Mary from staff. And we were thinking that we could start with the overview for those folks who are either attending the session live or who may be reading the transcript following the session who are not too familiar with the URS so that that can form a good framework for the data that Berry will be presenting, is that all right?

Phil Corwin: Yes, that's great. So let's bring that up. I know we have some slides on that and I'll take over here and go through the slides and then I'll see if there's any discussion of the basics of the URS. And again, this session is not for considering much less deciding potential changes to the URS, substantive changes, this is just to re-familiarize ourselves with the basics of this particular rights protection mechanism and then Berry Cobb will be presenting some initial data analysis that ICANN staff has collected regarding the utilization of the URS.

So this is a URS, Uniform Rapid Suspension. This first slide shows the period in the lifecycle of a new TLD in which a particular RPM operates. So the first one, the Clearinghouse exists throughout as long as the trademark owner wants to continue paying to have their particular mark registered in the Clearinghouse is the basis for sunrise and trademark claims and also for continuing notification from the Clearinghouse of registrations that exactly match their registered mark even after those two RPMs expire.

So you see here at the very beginning before general land rush and general availability there's a sunrise period in which trademark owners can get first priority for registering an exact match domain to their registered trademark in the Clearinghouse.

After that, in the general availability period for a certain amount of time the registration – the attempted registration of an exact match to a mark in the Clearinghouse will generate a notice to the registrant while they're interfacing with the registrar giving them a warning that they're about to match – register a domain that's an exact match to a registered trademark.

And if they go through with the registration nonetheless, and that may be fine if they have – if there's a legitimate purpose to that registration, that's not – so it wouldn't be a bad faith use of the matching domain, then a notice would be generated to the mark holder that the domain has been registered so they can take a look at that domain and know it exists and decide whether they want to take additional action if they think anything infringing is going on.

And then of course the Clearinghouse is made available even after the period in which the domain registrant would get that warning, they can – by keeping the mark registered in the Clearinghouse they get continuing notifications of exact match registrations even when a claims notice hasn't been generated because it's past the limited time period in which those marks are generated to the potential registrant.

But the UDRP, like the URS, is a curative rights protection that is available to the mark holder throughout the life of the TLD, so it's unlimited in its time duration. So next slide.

This is a review of what we've done so far in this working group. We were chartered by the GNSO Council in March of 2016, though it seems like only yesterday. We completed our review of the trademark post delegation dispute resolution procedure in October of 2016, that's a DRP that's never actually been utilized so it was somewhat of a challenge to evaluate since there's never actually been used.

And we may have one narrow recommendation for that particular RPM in terms of allowing similarly situated trademark owners to band together to bring a dispute when it's applicable for use of that RPM.

We started our Trademark Clearinghouse review in March of this year. We pretty much completed our Trademark Clearinghouse review in June of this

year. And we started getting community feedback on sunrise and trademark claims review questions.

Right now, October of 2017, at this meeting, we're continuing our data collection work on sunrise and trademark claims and that last session we just had was about it. And we are about to initiate URS discussion and that's taking place right here now in this room.

And we anticipate the data and survey results that we discussed to be received hopefully by mid spring, by April of 2018, which will allow us to move on to drafting Phase 1 recommendations. And we hope to complete our Phase 1 work of this working group in – by the end of the third quarter, in other words in fall of 2018.

That's a moving target, we never know what we're going to encounter but again, we're trying to fill in the timeline as we suspend for the data surveys and all data analysis and that's why we're starting the URS discussion today.

Next slide please. No. So for those who are not familiar with the details of URS, or forgotten some of them, Uniform Rapid Suspension is a DRP, dispute resolution procedure. It's applicable to second letter domains registered new TLDs launched in the 2012 round.

And I think it will likely continue to be available for any subsequent rounds whether it changes for them is a decision to be made by this working group.

It was created by the ICANN community during the development of the Applicant Guidebook for the 2012 round. And you see various things that happened leading up to 2012. I don't think we need to go through the whole historic background to this.

The URS complements but does not replace or supersede the longstanding UDRP, Uniform Dispute Resolution Policy. It's a narrow supplement to the

UDRP that is intended to offer a faster and lower cost path to relief for rights holders in clear cut kind of black and white cases infringement, know it when you see it cases so they could be rapidly taken down from the DNS.

So the grounds for complaint, similar to UDRP, the complainant must – to prevail – prove three separate elements, they're conjunctive, you have to prove all three. One, you have to show that the relevant domain name is identical or confusingly similar to your work mark and the analysis of that would be very similar to the analysis for UDRP.

There's a long history of cases in the UDRP, exact matches, explains itself. Confusingly similar there's a long history of cases in which the boundaries of confusingly similar have been pretty well set.

And the complainant has to hold a valid national or regional registration for that trademark and show that it's in current use or that the trademark has been validated through court proceedings or that a specifically protected by a statute or treaty in effect at the time the complaint is filed and that would be, for example, names of IGOs would be international intergovernmental organizations would be protected by statute or treaty.

So and you have to – in addition, once you've established that standing portion, that you have a valid and currently used trademark, you have to prove that the registrant had no legitimate right or interest in the domain name and also that domain was registered and is being used in bad faith. Now all of that is just about identical to UDRP.

Let's continue. But there are differences in the URS and we'll get into that now. In current use, what does that mean in relation to national or regionally registered marks? Use can be shown by demonstrating that evidence of use which can be a declaration, a one-time specimen of current use, and commerce was submitted to and validated by the Trademark Clearinghouse.

So if you've already put this mark in the Clearinghouse, you've cleared that hurdle or you can submit direct proof of use to accompany the URS complaint, so you don't need to pre-register a trademark to bring a URS, you simply have to provide that proof of use and have it accompany the complaint when filed.

What does registration and use in bad faith mean? Well that's a non-exhaustive list of circumstances including registering acquiring domain name primarily for the purpose of selling it to the mark owner or the mark owner's competitor for consideration beyond your out of pocket costs, so you basically register it with the intent to sell it to a third party not for your own use.

Two, the registrant has engaged in a pattern of conduct for registering domain name to prevent mark owner from reflecting the mark and the corresponding domain name. So if the registrant has some serial history of being found to be a cyber squatter, that would be considerable evidence.

If you're registering the domain name primarily to disrupt the competitor's business, that would be a factor to be considered and if you're using the domain name to intentionally intend to attract for your own commercial gain Internet users to the registrant's – seeking the registrant's Website by creating a likelihood of confusion with the complainant's mark, as to the source sponsorship, affiliation or endorsement, of the Website or a product or service. So typical example would be a typo-squat where you're trying to – the registrant say is a manufacture of shoes and you're selling competing shoes or non-authorized shoes from the – or perhaps counterfeit goods but you've attracted people to your Website through this illegitimate registration.

So continuing on, okay, so the complaint must be filed via an electronic form in English. And there's an additional 500 word freeform text permitted to accompany the complaint to give some background to the URS provider.

Within two days after the complaint is filed the provider contacts the initial administrative – conducts initial administrative review to determine that the complaint contains all the necessary information that it's a complete complaint.

That initial review is not a determination on the merits, it's simply making sure that the complaint is complete and can go forward. At that point the registrar of the targeted domain name by the complaint is notified and must lock down the domain and prevent its transfer within 24 hours of receiving the notice of complaint following the administrative review.

And then the provider must notify the registrant within 24 hours of receiving notice from the registrar that the domain has been locked and that's to keep the registrant from moving the domain somewhere else and to prevent the effectuation of suspension if that's the determination. So next slide.

Excuse me, I'm just going to put my jacket on, it seems to have gotten colder in this room. Maybe it's just jet lag. Okay, so the notice to registrant is required to be clear and understandable. It's in English but it will also be translated into the predominant language of the registrant's country or territory so they have meaningful notice that they've been targeted by a URS complaint. And it must be sent via email, fax where available and postal mail. The complaint and the exhibits are sent electronically.

The registrant then has 14 calendar days from date – from the date of the sending of the notice of complaint, which should be given the electronic transmission, the same day the registrant receives it, to file a response if the registrant wishes to defend themselves. The response must not exceed 2500 words and it cannot include an affirmative claim for relief except for allegation of abuse of complaint.

So basically you have to set forth why the charge is not true. You can only add if you think the complainant has filed the complaint in an abusive

manner, you can add something on that, but otherwise your response is restricted to addressing the elements alleged in the complaint.

The response – respondent may request a limited extension of time of up to seven calendar days if there's a good faith basis for doing so. And if the request is received during the response period after a default or not more than 30 calendar days after determination.

I'm going to ask staff here, because I've forgotten this, what would be the point of giving the respondent a seven calendar extension after there's been a determination? Are they permitted to come back and contest the determination? And I guess the sub-question would if they've already filed a response do they get to amend that response? Or would this only be available if they defaulted, that is did not file an initial response but came back and said well I didn't have time to get good legal advice but now I want to file a response? Anyone know the answer to that?

I can understand seeking a response before – an extension before the determination; I'm not quite sure what the – what good it would do after there's been an determination as to whether the complaint has prevailed on all three points. Well we'll look into that as we continue looking into the URS but that – I have forgotten that part and I'm not quite sure why that exists.

The provider must determine on the same day the response is filed that the response is compliant with the requirements for a valid response. And let's continue. Okay, so the response can refute the claim of bad faith registration by setting out any of the following facts.

That, one, before notice – before notice to the registrant of the dispute, that is of the URS filing, the registrant's use of or demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services, that would be one defense there, one refutation; or second, the registrant as an individual business or other organization, has been commonly known by

the domain name even if the registrant has acquired no trademark or service rights. So a typical example there would be if it was a first or last name and it was your first or last name and it happened to match the trademark.

Or three, the registrant is making a legitimate or fair use of the domain name without intent for commercial gain or to misleadingly divert consumers or to tarnish the trademark or service mark. So following the compliance check of the response, the provider must immediately send the complaint response and supporting materials to a qualified examiner selected by the provider, so the dispute resolution provider will generally have a number of qualified panelists available to determine these disputes.

So once it's determined that the complaint was complete and the response is complete, the provider sends both of those to the panelist for a determination under the standards of the URS.

Next slide. Okay the registrant, under the URS also created some affirmative defenses that can be used by a registrant to demonstrate that the registrant's use of the domain name is not in bad faith. For example, by showing that one, the domain name is generic or descriptive and the registrant is making fair use of that generic or descriptive term; two, that the domain name is operated solely in tribute to or in criticism of a person or business that is found by the examiner to be fair use, so there's the fair use concept.

Three that the registrant's holding the domain name is consistent with an express term of a written agreement entered into by the disputing parties, and that is still in effect. That would typically arise when there was some underlying contractual dispute between the complainant and the domain registrant, and usually certainly in the UDRP and also in the URS it's limited to determining the factors and not to determine contract disputes between the parties.

And four, the domain name is not part of a wider pattern or series of abusive registrations because it is significantly different type or character to other domain names registered by the registrant. So those are the affirmative defenses created under the URS in addition to the general defenses and trying to refute the allegation of no legitimate right and bad faith registration and use.

And it was noted that in the URS that trading domain names for profit, holding a large domain portfolio and sale of traffic, that is parking, do not in and of themselves, amount to bad faith. Now their actual use may constitute bad faith, it just means that if you're a domain investor of some type that you buy domains for resale in the secondary market for these other uses that in and of itself does not mean you lose on the complaint, it has to be shown that your particular use is bad faith use.

So next slide. So default, and we'll get statistics on a number of default, but default is a term that refers to when the registrant provides no response to the complaint. So even if no response is received by the deadline, the 14-day deadline for responding, the examination still has to review on the merits. Again, this is quite similar to the UDRP. You don't automatically lose if you fail to respond.

The provider must provide notice of default to the complainant and the registrant so they're both aware that no response has been filed by the registrant. The registrant is prohibited from changing the Whois information and the Website content to argue legitimate use. That is to change that after initial notice of the complaint.

If the default determination is in the complainant's favor, the registrant has up to six months from the date of notice to file for a de novo review and in essence to appeal the initial decision that was made with no response and staff will inform us how many if any of these types of requests for de novo review have been received on – in the URS so far.

And the registrant can request an additional six month extension if the request is filed before the expiration of the initial six months. That doesn't undo the suspension, it just keeps the registrant's rights open for that period of time. The registrant may file response after the default period if it's filed in accordance with requirements and proper notice provided. The domain to resolve the original IP address as soon as practical but remains locked as if the response had been filed in a timely manner.

And the filing of response after default is not technically considered an appeal but rather a new de novo review. So I'll continue through, I think we're close to the end here on reviewing the basics of URS. Okay, the URS does require that the examiners selected by any particular accredited URS provider they must have demonstrable relevant expertise and be trained and certified in URS proceedings. I imagine our working group will be reviewing the providers to see if they've complied with that basic requirement of having knowledgeable providers available.

And the providers must maintain a publicly available list of examiners and their qualifications so the public can take a look at that and see that these folks meet that very basic criteria. The examiners are supposed to be rotated to the extent feasible to avoid forum or examiner shopping so a provider shouldn't be using the same panelists for 98% of cases if they've got a panel of a dozen or two dozen or three dozen of them.

The burden of proof is a major difference from the UDRP. The burden of proof to prevail in a UDRP is preponderance of the evidence basically 51%. The burden of proof for URS since it's supposedly a rapid procedure for pretty much black and white cases of infringement, is clear and convincing evidence, that's somewhere in between the beyond a reasonable doubt standard which is required in some jurisdictions for criminal convictions and the threshold for the UDRP, it's hard to put a numerical value on it but it's the stronger evidence.

If it's a – if there are kind of shades of gray case where you need to make additional inquiry about the domain it more properly belongs in the UDRP, shouldn't be in a URS. So the complaint should be dismissed if the examiner finds that there's no genuine issues of material fact. And – is that correct? Wouldn't the complaint be dismissed if the examiner finds that there are genuine issues of material fact, that it's a shades of gray case? Maybe I'm misunderstanding the wording. But if there are real factual questions that have to be looked into more deeply, that would be a more properly a UDRP case.

And the URS is not intended for any use in proceedings with open questions of fact but only clear cases of trademark abuse. There's no discovery in the URS. There's no oral hearing. The decision is based strictly on the written materials that form the full record. There's no – you can't ask for a three person panel as in a UDRP case where either party has that option. But again, to keep the cost down there's just a single panelist or examiner in the URS.

The decision must be issued in writing and include some reasons for reaching the decision. And the provider must publish the decision on its Website and inform the complainant, the registrant, the registrar and the registry operator via email. So any more slides here or are we – okay, let's go on.

So if the complainant wins the domain name is suspended for the balance of its registration period, that is the registration period for which the registrant who is not found to have been a bad actor originally registered it. So if it was just registered for a one year term the domain would be suspended for the remainder of that year, two year term similarly.

During that suspension period, the domain will not resolve, it will redirect to a URS information webpage. And the Whois registrant information will remain

unchanged but the registry operator must ensure that the Whois show that the domain cannot be transferred, deleted or modified during that suspension period. And the complainant has the option to extend the suspension for one additional year by paying the applicable registration fee to the registry. Now there are concerns that – about the domain being available for re-registration and potential use by another bad actor at the end of the suspension, and that's certainly an issue that this working group will be looking at as we get deeper into the substantive elements of the URS.

Next slide, if there is one. Okay, abusive complaints, and again you'll remember that the one place where the registrant in their response, if they file one, is allowed to address something other than refutation of the elements of the complaint is to allege that the complaint was brought abusively by the complainant. And this can – that can be looked at by the examiner.

The examiner may determine that a complaint was abusively filed if it was presented solely for the improper purpose – for an improper purpose such as to harass, cause unnecessary delay or needlessly increase the cost of doing business, and that the claim or other assertions were not warranted by any existing law or the URS standards or the factual contentions in the complaint lacked any evidentiary support.

The examiner may also find that the complaint contained a deliberate material falsehood if it contained an assertion of fact which at the time it was made was made with knowledge that it was false and which if true would have had an impact on the outcome of the URS proceeding. And there are penalties for bringing abusive complaints and you see them here, if a complainant files two abusive complaints or one deliberate material falsehood complaint they are barred for one year from filing any other URS complaints.

And if a complainant is found to have filed two deliberate material falsehood cases, they could be permanently barred from using the URS. I guess we'll find out from the staff analysis whether there's ever been these type of

findings in a URS decision. And the findings of either abuse or deliberately material falsehood can be appealed on the sole basis that the examiner abused his or her discretion or acted in an arbitrary and capricious manner. So those were some differences from UDRP.

Okay, after the decision by the examiner either party may file an appeal within 14 days of a determination. The appeal is for a de novo determination, that is not a review of the underlying decision but a brand new decision, but based on the existing record; a new record is not created. But there's a limited right to introduce new evidence predating the filing of the complaint and material to the determination. There's an additional fee for filing that additional evidence.

The panelists in that case have discretion to request additional statements from the parties. Finding an appeal, while it's waiting to be heard, does not change how the domain name resolves based on the initial panel determination. And the fees are borne by the appellant that whoever's party files the appeal has to pay the additional fee for the de novo review.

This response has to be filed within 14 days of the response to the appeal has to be filed within 14 days of the filing of the appeal. And the remedies on the appeal are limited, it's either the examiner there must either affirm the original decision or overrule the earlier determination. So anything – here we are.

Okay, so – what's that?

Mary Wong: (Unintelligible).

Phil Corwin: Okay. As of today, there are three ICANN-accredited providers of URS dispute resolution procedure services. One is the National Arbitration Forum, noted here as the Forum located in the United States. That was – they were accredited in February 2013. The Asia Domain Name Dispute Resolution

Center was accredited in April 2013. And both of those providers are also UDRP providers. And the MFSD, I'm not sure what that acronym stands for, I believe they're located in Italy, which of course is in Europe as noted on the slide, they were accredited more recently in December 2015.

Each provider must proceed under the rules of the URS as we've just gone through them, but each of them has their own supplemental administrative rules and official to the official URS procedures and rules. So anything – oh. And here's the links for those of you who are mavens for digging deeper, here are links to the URS procedure rules and technical requirements and to background on this PDP and on our working group wiki space.

So I'm going to stop there. I hope that wasn't too tedious or boring but just to give everybody a common fact basis for remembering all the fine details of the URS which is again, similar to the UDRP, but different in a higher evidentiary standard from affirmative defenses and some differences in the response time and appeal mechanisms. So I'll stop there. Any questions or discussion on the basics of the URS? Yes.

Ariel Liang: This is Ariel Liang speaking. There is a remote question from Claudio. "Are we going to review/discuss the providers' supplemental rules for example to what (accent) may the supplemental rules effect the policy?"

Phil Corwin: Well I'm sure – speaking for myself but I'm pretty sure my cochairs would agree that we, at some point in our review of the URS, we more likely than not will review those supplemental rules just to make sure that they're simply administrative in nature and have not in some way changed the balance set in the URS policy. But we're not going to be doing that today.

Yes, Ariel.

Ariel Liang: Thanks, Phil. This is Ariel. Just want to recognize Lori Schulman also asked a question, "Does the infringing site stay up for six months appeal period?" And

a couple of people have answered in the chat. So just want to recognize the question.

Phil Corwin: Okay, well since the answer is the chat, I won't make up my own but I'm pretty sure once it's determined it goes to that URS page, it's redirected, that the registrant who's found to have acted in bad faith registration and use that content is taken down.

And George Kirikos, I see is asking, "Why was the complaint forced to be in English? Isn't that detrimental respondents from non-English countries?" I think that's an issue – I don't recall the reasons why the original IRT then the STRT then the Applicant Guidebook Working Group decided that the complaint would be in English. We did review that the registrant gets a copy of the complaint both in English and in the native language of their country of residence. But – and I'm sure this working group can debate whether we should permit complaints to be filed in languages other than English.

I – does anyone in the room remember why the complaint itself was required to be in English? I don't recall personally. George, all I can say is that we'll look into that and it's certainly a topic that would be relevant for the working group to look at going forward. Mary, go ahead.

Mary Wong: Thanks, Phil. And thanks for the question, George. I don't have a specific answer and there are experts in the room who can correct me if I'm wrong. I actually believe the language issue is covered by the URS rules and not necessarily in the procedure itself. So it happened sometime during the development of the rules and we will look into that background to find the documentation for it. But to the extent it makes a difference it was developed for the rules rather than the procedure.

Phil Corwin: Well thank you very much for that clarification, Mary and that it was determined in the rules rather than the policy. But I think certainly the members of this group they want wish to look at that and see whether we

should consider allowing trademark owners to file complaints in languages other than English, that would be – certainly a relevant topic for this working group to look at in the course of our URS review.

Any other questions or – go ahead. Please state your name before speaking.

Ty Gray: Yes, hello. My name is Tye Gray. Thank you, Phil, for this. I just wanted to basically get a clarification on where we stand with this. Thank you for the overview. You mentioned the decision to move forward into the U.S. was a decision made by the co-Chair of (ICANN). I don't know exactly. Do you recall when the decision was made just for my own benefit?

Phil Corwin: It was made just in the last few weeks and it was when we realized that this, I think it was around the same time that (Janice O'Connell) granted our data survey request and we realized that we would be not able to return and to make final recommendations on the clearing house.

Not on the clearing house, on sunrise registrations and trademark claims until that data collection and analysis was complete. And we didn't want to just suspend operations for months. So in order to lose as little time as possible from the need to conduct a data survey, we decided we'd rather, our original plan was to go sequentially and reach URS at the end.

But now it seems appropriate that we have work to do to begin review of the URS and as with the other RPMs we'll be proceeding the same way. But after this initial review of the basics of the URS which we just completed and initial data collected by staff, we will next work at the charter questions related to URS and conduct the same type of review.

Are they duplicative? Should some of them be combined? Are they subjective? Are they biased one way or the other? Can they be made more neutral? What data is available? What data do we need to answer them?

What data of that is available? Which data needs to be developed to answer them?

And then of course we always have the freedom to say, are there additional questions that working group members want us to look into in conjunction with the U.S. So it's the same basic procedure we followed for the other rights protection mechanisms.

Tye Gray: Okay. Thank you for that. Just again, to repeat what I just said in the last session as well. To the extent that we look forward, I suppose it would be, we just wanted to caution we would try to keep it as much data oriented and objective as possible because we feel that we don't want to be leapfrogging ahead and going back to substantive issues.

And don't want to really bring up topics and then have to table them and get cutback in some earlier process. So to the extent possible, we just wish caution that we don't want to start blending these sort of substantive issues into the objective data collection. Than you.

Phil Corwin: Well we've striven to do that as much as possible. You know, you can't, the co-Chairs do not try to sensor working group members from bringing up issues they have but we do understand we need a firm basis in data before we start addressing substantive questions of policy.

And any other questions or comments? Was there any other questions in the chat? So I think with that we can proceed and I think turn over to Berry Cobb who's going to review initial data analysis relating to the URS that staff has compiled so far. Thank you.

Berry Cobb: Thank you Phil. Berry Cobb for the record. There's going to be two documents that we're going to review quickly for those that are on the Adobe Connect session and for the ones in this room.

The first one is not going to be readable to you but there's a reason why. I just want to show you a quick glance at what kind of the raw data, so to speak, looks like and the reason why we're going down this road.

The second document will basically match what we did a few weeks ago when we reviewed the sunrise data. And I'll note first that this is a first run at this so it's an extreme first draft.

Welcome input here not only at the meeting but shortly after this session will also send these documents to the list for the working group to review through. So what we're looking at in the Adobe Connect room and at the walls here at the meeting room is the raw data of all the URS cases.

This data was first started to be collected as an output or an input for the output from the consumer choice and competition review team. ICANN staff predominately on the GDD team are collecting this data from all the providers that are pulling UDRP data to a certain degree as well on a quarterly basis.

And this is, the access to this as you can imagine is inconsistent across the providers. As was noted in the presentation earlier, there are three that provide this data from a URS perspective.

And it's our hope or at least partially my hope that after we've gone through this exercise of reviewing this data, we learn the good things, the bad things about this approach which hopefully can set us up for easier success whenever we get to the UDRP data.

So there are about 740 cases. That number will be on the next document. But what you see here is almost just over 1700 rows of data. And primarily what I've done is extracted out all of those cases that had multiple domains per case. For example I think there was one in there that had 20 plus new GPLD domains listed into it.

And the reason for that was to kind of get into a more hyperactive detail about what actual domains are coming through the URS and that is also to connect with the further review that the working group will eventually get into when we start looking at some of the claims notifications and trying to draw that connection there.

The other reason it's also presented in this column format and what I didn't explain a couple of weeks ago with the RPM data is that within Excel, not everybody loves Excel. I do. There's a feature in there call pivot tables and pivot tables are kind of a poor person's way of getting to relational data.

So you can relate one column with another, a set of completely different data with a different column and look at how some of those statistics are, some of that data rolls up and mostly just trying to get to a kind of a visual representation of what that view holds.

So (Ariel), can you switch over to the other document now? Oh, and I should say the other reason that that will be sent to you is just like under the sunrise documentation, there are links to the actual cases so if anybody wishes to go explore the details of what a particular case, you know, what it's outcome was or some of the details in responses and those kinds of things.

So I'll go through, unlike last time, I'll go through this document in one quick brush. I don't think much of these charts are more self-explanatory except a few at the very end and we'll just save questions for the end instead of going through by one page at a time.

Page one should be familiar to all of those in the working group. This is just to provide context on the number of delegations across the years since they were starting to be released towards the end of 2013. We provided the slide with the sunrise that provided much more context but ultimately there's one a little bit further down that will show about the number, the quantity of your (test) cases by year.

This page two is just a quick definition of what the URS is which we've extensively gone over in the prior presentation. There's links to the procedures and the rules. And just a couple of things about the dataset characteristics. First, as I mentioned, this is ultimately from three providers that offer URS.

And as I mentioned, another team within staff kind of helped us collect that thus far. The scope of the data is, first URS case was filed in February 2014 and the conclusion is June of 2017. We recently did get the September data or the most recent quarter of data but I didn't have time to fill this in.

And one of the other aspects about this approach to the data, you know, when we looked at our timeline of deliverables and getting to our initial report and public comment period, the way this is setup is I should be able to fold in more recent data into this and just refresh any charts or tables that the working group wishes to publish into the initial report.

And that way we can try to be as most current as possible whenever we get to the more formal deliverables. There is a little bit exclusion in the scope of the URS cases.

Thirteen of them as of the close of June 2017 are still in pending status because there wasn't any outcome that kind of would have made some of the charts down on the bottom look different and thought it best to wait until there was a conclusion on those.

And there are a couple of other key GTLDs which are not new GTLDs that didn't seem relevant. A couple being country codes .pro recently had converted over into accepting URS. And there was one of course, .com which was not assigned to URS and that was actually withdrawn. It must have been an error or something along those lines.

All right, we'll move on down to page three. We should be able to go through these pretty quickly. So one of the common themes you'll see on these slides and which was also mentioned in the analysis group report in the section that they did under the UDRP, URS cases.

Those numbers are actually based on the total number of domains and not the cases themselves. Like I've mentioned earlier, I've taken that same approach so most of the numbers are based on the domains. But just recognize, you know, when we're talking a smaller set, it's actually, you know, think about the difference between cases versus the number of domains.

So up to June, there were 748 URS cases, again excluding some of those that I mentioned earlier for a total of 1729 domains. On an average about 2.3 per case with a median of one. So, you know, the idea there is there's a ton, most of those cases are just usually one domain.

Now the following table, table two is just a quick review of the breakout across the three providers. The takeaway here is that forum, the majority of most of the cases and then of course, NFSD, just was set up in June of 2015. Okay, the next page on page 4, I believe, sorry, page 3, is just a bi-calendar year of the number of URS cases that came across.

So we can see 2014, February 2014, where some of the first sightings of the URS case. 2015, roughly about the same number. 2016 is definitely a much larger increase. And again, this is based on the number of domains not the number of cases.

As we take a second run of this I think a good compliment to this will be also showing the number of cases just so there's a little bit more context. And then 2017 looks to be about on the same pace for 2016 but again, that's only a half years' worth of data.

Moving onto page 4, what this one gets into is just, as I mentioned, we broke the raw data out by domain. And so now I'm able to then sparse out which top level domain was the most prevalent in those cases. This is a chart of those TLDs that are greater than ten domains across all of the cases. There were a total of 212 of the new GPLDs with again, a total of 1729 domains. And if we need to be, I can extend the list out to show all 212 but it drops to one pretty quick.

Okay, now on, oops. Sorry. Page 5, chart 3. This is where we start to get into the actual outcomes of the cases. There's a table with its complimentary chart and then there's some definitions down below. And we did get some feedback from the Chairs in reviewing this.

That's actually going to be the next table and chart. We didn't have time to put it together but we will in the next version of this. And the data that was provided, especially from (Forum), there's basically kind of two result data elements that are attached to each case.

One of those is basically the overall determination and then the determination type. So for instance, the result is that the domain name was suspended and that it was a final determination.

So here is really just the determination type I believe which gives a breakout of whether the claim was denied which again, you know, the details of the rules of that can be found in the rules and procedures documents. There was one that was a split decision and there's a little bit of detail on the bottom of that.

The main category is that a number of these are suspended. What we don't have a breakout of is whether the claimant had prevailed or not which we'll talk a little bit more on the next slide. And then of course there's a category of whether its withdrawn.

And as you can see of course the forum itself was the predominant one.

(Susan Payne): Sorry, just wanted to ask for some clarification. Sorry (Susan Payne). On the previous slide you had suspended and you said that you didn't have anything to tell whether the claimant was successful.

So that question which I don't really understand because surely it's not the URS case has been suspended. Surely, it's the domain that has been suspended. So surely the claimant has been successful. Isn't that the whole point?

And then withdrawn, is that the claim like the URS claim that has been withdrawn? Or is that something else? Thank you?

Berry Cobb: Thank you (Susan). So yes indeed this is ultimately the outcome for this particular chart. And I really wish we had time to do this better but and (Cathy) alerted us to it but we didn't have time to do it.

And we'll definitely get to it on the next chart. So for sure withdrawn, is that there were 51 domains that were withdrawn. There were probably 30 cases that were actually withdrawn. So again, we've got to keep this number between cases and domains when we're looking at some of these.

And like I said I do, especially for these charts, I think it's beneficial to get out of the domain counting space and back into the case counting space so that it provides more appropriate context. And yes, suspended is that the domain is suspended but there's a further attribute to that about final determination versus default determination. And again, we'll get, we'll touch on that on the next slide. Please (Phil).

Phil Corwin: Yes, very quick question Berry Cobb. On the claim denied, that means the claimant didn't prevail. It's possible that they failed to prevail on the high evidentiary standard. Do we have any statistics on whether any of those

cases were refiled as UDRP compliant with the (unintelligible) burden of proof?

Berry Cobb: Thank you (Phil). Berry Cobb here. Not from the raw data. I believe and it's the next, these next two charts where at least from my opinion staff hasn't really talked about what the actual review. It's the rest of, these next two charts, where at least from my opinion staff hasn't really talked about what the actual review of URS is going to look like.

But certainly that's probably one area that's going to warrant attention and I think the only real way we're going to get to that is by rolling up the sleeves and reviewing those maybe 30 odd cases that equated to 56 domains on why that was denied.

But in the raw data that we're capturing off of the provider sites, it doesn't provide that level of detail. And, you know, maybe even as a next step for the next iteration of this we can look at trying to when creating a framework by when each one of these kinds of cases is reviewed, we can put a little checkmark.

If there's something that looks repeatable we can try providing a visual representation of why those were denied or what happened at the next phase. So I'm going to move onto the next page real quick. There are a couple of definitions that again go with the claim denied with decision, et cetera but I won't bore you with the details right here.

The next chart is kind of a different slice of the same data and as I mentioned earlier, there was a determination and then basically a determination type in that data. And so again this is really just a listing. You know, what are the total ones that resulted in determination type of default versus final determination versus withdrawn?

There is a big note down here, kind of a disclaimer and why don't I turn that over to (Mary) just real quick because she'd more expert at some of this than I am. And we'll know for sure in the next iteration that we think there's two or three other charts that will benefit what we're seeing here.

(Mary): Thanks Berry Cobb. This is (Mary) from Staff and actually I think the explanation for column one was something that, a question from the Chair, particularly (Cathy) caused us to look at this data again.

And what we realized is that we look at column one as default. That simply shows the number of domains for which complaints were filed, that the respondent did not provide a response. And then under the URS, that's considered a case in default. The rest of the columns do actually go onto the outcome.

For example, some complaints would be withdrawn which is column three and in column two, those that went onto final determination. So there was a little bit of a mismatch in terms of you're not looking at exactly the same thing across these three columns although at the end they do end up to the total number of domains that Berry Cobb noted.

And so one thing we did want to do, consistent throughout this document, is to have that total number consistent so that there's no question as to what that data is or where it comes from. And that's also the reason why we did focus a lot on these tables and charts on the number of domains and start switching back between domains and cases.

As Berry Cobb said, we might do that as a deeper slice in the next one. But for column one, because it's in default, when we looked at the data a little bit more, there were a few cases in default status for which as we noted, there was no response filed yet the complaint did not prevail. In other words, the ruling went against the complaint.

And this is obviously because under the URS all default cases still have to proceed to examination. So there is a handful of cases and we just wanted to note the difference and the fact that we did not capture that handful of cases. So if for example it was five cases that number would have been, you know, 1395 minus 5 for the forum.

And to do that would have meant a new table and it would have probably changed that last total number. So we thought that the only way was to put in that note that you see at the bottom of the page. But as Berry Cobb said, the next cut we can take that to a little deeper level of detail and come up with an additional table that will hopefully better explain that.

Berry Cobb: Thank you (Mary). And please go ahead.

(John): (John). I have one for the record. So I think one of the problems I have with defaults in with final decisions is kind of loading the question as making it look like a transfer somehow is less legitimate if it was a default compared to a final decision.

I mean I think it's a good thing to look at but kind of loading it together with an analysis of the types of decisions, is probably not the place we need to be putting it. Does that make sense?

Berry Cobb: Thank you for that. And that's pretty much what (Cathy) had alerted us too as well. When we reviewed them, the raw data that we get or the way it's basically taken off of the site, it puts both of those together and this is definitely one of those areas where the data presented doesn't match across the three providers.

But as we noted, we'll definitely take a much more detailed look at this and figure out the best, appropriate way for working group deliberations when they get their reviewing case outcomes. (David McCully), please.

(David): Thanks. (David McCully). Is an examiner able to find an abusive complaint on their own without being asked by the registrant to do that? And the reason I ask is if a default case can't get past the examination, is that an abusive complaint?

Berry Cobb: Thank you (David). Good question. I can't answer that one.

(David): I'm just curious.

Man: So for the record, I'm just guessing at this. I think if it's, if the registrant doesn't respond and therefore isn't able to say this is some revenge filing or we have an underlying contractual dispute, there'd be no way for the examiner to know that.

I think the examiner could find underlying without a response that there was no material basis to the complaint, that there was a material (unintelligible) possible. Whether that would happen I don't know. But just thinking about it, there are certain types of abuse where the registrant would have to speak up I think to flag it for these other narrower types of abuse.

Where it's possible, the examiner might determine on their own that there's no basis for this complaint.

(David): Sure.

Tye Gray: Thanks. I just wanted to jump in. And this is (Tigre) for the record. With regards to finding abuse, you need an EDRP for that. You don't need to respond showing up for a finding of abuse. You need an EDRP I think at that point. Just to help clarify.

(David): Thanks.

Berry Cobb: Go ahead (Mary).

(Mary): This is (Mary) from staff. So following-up on (David's) question. We're not aware of any cases but for informational purposes, as you know the procedure does say that the examiner might find either a material complaint or an additional deliberate falsehood.

Based on the fact that the determination is made just on the record before him or her, then presumably that would push the examiner if he or she saw something on the record, if he said so.

In order for us to actually know whether that was done, we suspect we'd have to actually go and look at the various cases, the few hundred that Berry Cobb found.

Because even though the procedure requires the providers to track these, they're not necessarily listed as separate outcome. So if they may be contained within the cases, we can certainly take a look at that.

(David): Thank you everyone.

Berry Cobb: Yes, I guess to tack onto that, one of my to dos, is again going to the providers, especially for EDRP down the road, you know, to start getting to that.

But I am curious about, you know, as we start to mature what some of the format of this data looks like that we can try to define a more consistent method by getting an export or having that data available so that if there is one that you just mentioned (David), that, you know, there can be a column there that already flags it so we don't have to do that.

Or maybe there's another search function on the provider sites where we can find that and at least get to that that way. All right. I think there's only one or

two more charts left. Again, there's some definitions for that previous one that I listed below. We won't go through those in detail.

And like I said there's a part two to those. Table seven, chart five, this is a quantity of domains disputed again by result and by determination type. And this might get a little bit closer to where we were determinant end charts or tables five and six.

Again, this is kind of just a pivot table taking the result or determination by this determinant type. And looking at the totals. I'm not a big fan of how this is presented. And again, it probably will be better to look at this on a case basis instead of by domains.

But again, it's just, it's a combination of the previous two charts. And the last page, these are pretty easy ones.

(Brian): All right. Thanks. (Brian Zumulik). Just curious. On the page you were just looking at, if you could scroll up a smidge. Down a bit. There you go. So claims denied by default, could you explain what might happen in those circumstances? When would there be a default when the claim was denied?

Berry Cobb: No. What I would need to go is go back to my spreadsheet, filter out what those 20, well, 56 domains and then the 27 there which again is probably four, five cases. And look at exactly what those were. And then this is why I did or we will send the raw attachment.

You know, I think through that PDF you could search claims denied and cycle through them. There's not a whole lot of them obviously that will pop up and then you can hit the link to the case. But that's what I'll do as kind of an action item as well.

I'm pretty confident that the number is correct. But just exactly how it's showing up that way, I can't answer just now. Okay, and by the way, I thank

you for the question because that's the kind of input we want on this so that we can make this better.

Man: Well if the question was, how can you have any claims denied and have the domain names still, have a default and still the claim denied, was that your question? That's because any of the (unintelligible) we decided on merits.

So there was certain circumstances where even though the respondent never showed up, the panel has still ruled in favor of the respondent.

(Brian): Thanks for that. That's good to know. I was hoping that that's what that data was suggesting but it's a good concern. Thanks.

Berry Cobb: Yes, definitely. Thank you. Okay, now the final page. There were a handful and I think that this is only there were 5 appeals across these 28 domain names. All of those were with Forum.

And I know we're going to have to go back and redo this one as well but ultimately this is one of those that we just need to review the case in detail to see exactly what happened. But, you know, by appeal I'm assuming that there was, you know, a first determination made.

It was appealed and then some bigger subset of that still resulted in a final determination. And then the last one is just a time base. So basically just from the date the complaint was received by the provider to the date or time stamp that's listed there with the decision.

And that's just an average across the three providers. Again, take note that's on a domain basis but, you know, if the same set of ten domains are in the same case, they're going to have the exact same average number of days.

And the other takeaway probably from that is obviously Forum has the most cases of the three providers. So that in terms of the significance of this 17 point, four days duration.

Phil Corwin: Berry Cobb, (Phil) here. (AD&D or C) and (AD) or Forum are just, we're in a day of each other on average time to decide a case. MFSD is 60% or longer. Of course that's on a very small basis of decisions.

Any idea why that difference or maybe that's just something we make inquiry about in the course of URS review.

Berry Cobb: Thank you (Phil). I think that it's for sure we'll figure it out more in the inquiry but I just know that MFSD, 1, 2, 3, 4, 5, 6, 7, we're only talking 12 cases.

So it could have been easily one of those that influenced the others but they look to be roughly I'd say probably the median is 25, 27 days across those. But we can get more detail to that.

Phil Corwin: Thank you.

(David): Thanks Berry Cobb. (David McCully) again. Just one question. That's an interesting set of statistics. And so my question is, those are calendar days, right. We're not talking about just business days?

Berry Cobb: That is correct.

(David): Thanks.

(John): (John) for the record. Going back to table four where you're listing the number of URS decisions I think by (Topple) domain, is it possible to get another I guess you said pivot chart. Is it possible to get a column there that identifies when those (Topple) domains launched?

Berry Cobb: Yes. So it's kind of a preview to our discussion that we had earlier with the sub-group metrics team about getting all this various data. So what I'm trying to do is as I acquire all of this I'm putting it into one spreadsheet. One of those tabs, a few of those tabs are all the sunrise data. And one part of that has all of the launch data.

So I could, at least for maybe the top 30 here I could copy over their launch information of when they went through sunrise, went through claims and then compared at, to the domain names of those cases and maybe some kind of scatter plot along those lines.

That might be an interesting view.

Berry Cobb: Yes, next steps. I think as we mentioned there's another run at this. We'll send what we have now out to the list so you can take a closer look. It's probably going to, you know, with the rest of the meeting and flying back, it's probably going to be a couple of weeks before we get another version of this.

And any other feedback you might have on the list, please send it to the list and we'll start to incorporate that. And I think, you know, as we're working on parallel to this, the next step is trying to go get other different data and I won't expand on that right now.

So I guess that's it.

Phil Corwin: Well thank you very much Berry Cobb for that very comprehensive initial review available. URS data, we've got eight minutes left in the allotted time of this working group. If anyone has any further questions or comments and particularly if anyone has suggestions for additional data they would like for us to try to develop on the URS, I'd entertain that.

Now I'd ask everyone to keep short if you have comments. Oh, Staff has a follow-up and then if anyone has questions or comments, we'll open it up and then we'll get out of this room and proceed with the rest of the evening.

Berry Cobb: Thank you.

Phil Corwin: Staff go ahead.

Berry Cobb: Thank you (Phil). This is Berry Cobb again. I lied to you. So there is a next step and that is to go fetch who has information for these URS cases as really more in preparation for the claims review and the data requirements and to answer those charter questions.

Obviously, you know, URS cases that are less than a year, most of those domains are still going to be suspended so that will be easy. The older ones are going to be a little bit more of a challenge because we might have to go fetch originals from when the name was registered to what happened through the process of lifecycle or process through the URS, once the name was suspended and what happened to it afterwards.

And so that is the next step. Thank you (unintelligible)

Phil Corwin: Okay. Anyone have further questions? Comments? Suggestions? I don't see anything in the chatroom. I don't see any hands up. I don't see any hands physically raised in the room.

So unless someone objects right now, I'm going to call this meeting to a close six minutes early and let us all proceed with the rest of our evening because it's been quite a long day and many of us are quite jetlagged.

So we are now officially adjourned. Thank you for attending and for your contributions.

END