

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) PDP Working Group
Wednesday, 25 April 2018 12:00 UTC**

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Coordinator: Recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the Review of All Rights Protection Mechanisms RPMs, in all gTLD PDP Working Group call held on the 25th of April, 2018.

In the interest of time, there will be no roll call as we have quite a few participants. Attendance will be taken via the Adobe – excuse me, by the WebEx room. If you're only on the audio bridge could you please let yourself be known now? Hearing no names, I would like to remind all to please state your name before speaking for transcription purpose and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I'll turn it back over to our cochair, Kathy Kleiman. Please begin.

Kathy Kleiman: Thanks so much, Terri. Good morning, good afternoon and good evening everyone. This is Kathy Kleiman, one of the two cochairs of the RPM Working Group and I see that Phil Corwin is with us as well.

Today is our first Asia-friendly meeting at this new time and so we'll be interested to know if it's working for people both in Asia and Australia as well

as on the East and West Coast and Europe. As you know, the last meeting of every month, our last meeting of every month is normally scheduled as our Asia-friendly meeting.

So our roll call – our agenda today is four items. Roll call and updates to statement of interest, status of questions for the practitioners, kind of a quick update there of what's happening, we will – Phil Corwin as chair not only of the working group but of the Provider Sub Team will walk us through a finalized list of provider questions but still open for a few tweaks and changes, and then we'll be talking about the agenda for the May 2 meeting. Anything anyone needs to add to the agenda or shall we move forward?

Great. Okay, so updates to statement of interest, has anybody moved around? Any new promotions you'd like to share with us? Okay, I don't see any hands raised. Let's go forward then to the status of questions for practitioners. Julie, I don't know if – I don't see Jason on the line yet, if you do, please let me know, otherwise could you please give us the update for the URS Practitioner Sub Team and the questions that we reviewed in detail last week? Thanks. Julie, will you be coming online to do that?

Julie Hedlund: I'm sorry, Kathy, I was – this is Julie Hedlund from staff. I was speaking but I was on mute so that wasn't very helpful. So yes, the status is that after the discussion on the call last week, staff put the draft questions for the URS practitioners out to the full working group and asked for any comments or suggested edits by close of business yesterday. And so there were several comments that were received and staff has incorporated those comments and suggested edits into the version that you see here displayed in the WebEx room. And this also was sent out this morning.

And so in a discussion with the cochairs also last week following last week's call it was decided that it would be helpful since these questions were originally drafted by the URS Practitioner Sub Team that this final draft would go back to that sub team and then they would resolve the comments and

edits and send the final version to the full working group by next Monday.

Thank you.

Kathy Kleiman: Terrific. Thanks, Julie. And so that will be going – those questions have gone out in the revised form, thank you staff, to the full working group and the sub team – we did decide to do – to return things to the sub team for a last quick check and review so we will see the final questions go out Monday or Tuesday.

Terrific. Any questions about practitioner questions? Great. Well then move onto the third item on our agenda, which is the review of the URS provider...

((Crosstalk))

Kathy Kleiman: Hi, does somebody want to come on the line?

Ariel Liang: this is Ariel from staff. George Kirikos has raised his hand.

Kathy Kleiman: Oh terrific. George, go ahead please.

George Kirikos: George Kirikos for the transcript. Yes, I noticed that my input on Page 6 was relegated to the side of the page but the question actually wasn't changed. Is the intention that the question will actually be changed on Page 6, the issue I had was that the question was targeted towards complainants and their fees and not the respondent and their respondent fees, so I was wondering the comment was captured but the question wasn't changed. Is it the intention that the sub team will have a revised document and then will review it again because it's not the job of the sub team to create a final version, the entire working group has to approve it. Thanks.

Kathy Kleiman: No, it wasn't envisioned that we're going to go back and forth. But I'm glad you raised it. We're talking – George, you're talking about Question Number 3, "Do you believe the filing fee for URS is appropriate?"

George Kirikos: George Kirikos again. Yes, the question I had and they didn't modify the question so if...

((Crosstalk))

Kathy Kleiman: Can I ask why that wouldn't be a question for both practitioners and respondent representatives?

George Kirikos: Because there are filing fees to initiate the complaint but then there are response fees, those aren't the filing fees, those are called, you know, response fees or appeal fees. I have the link to the entire fee schedule of NAF. So the question as originally posited seems to only ask about one type of fees, not all of the fees.

Kathy Kleiman: Okay so you'd like to see a question that says, "Do you believe the filing fees and response fees for URS related actions is appropriate?"

George Kirikos: Exactly.

Kathy Kleiman: Okay, I'm not sure your question was fully understood. I don't see any problem but of course the sub team – let's take it to the sub team and my guess is that will be captured. It makes sense. The types of questions that were – the types of edits that were provided are exactly along the lines of the kinds that you were offering, George, where people brought clarification and additional information that we might not have thought of but served the purpose and the intent of the questions and that seems to be what you're doing.

So yes, we'll take that back to the sub team. I'm glad you raised it. But in this case since we have already been through, you know, several rounds now with the working group I think they'll be ready to go out on Monday night, but

of course we'll circulate the final version to the working group and if there are any serious red flags people can raise them.

Julie Hedlund: And, Kathy, this is Julie Hedlund. I apologize but for some reason my hand feature isn't working for me. I just wanted to note to George that we did capture his request in that staff did not edit the question is because it was unclear to staff what the wording should be. So we certainly did take George's suggestion into consideration, we just didn't know how to edit the question accordingly. So now that George has provided some additional information I think we have what we need, you know, for the sub team to consider the edited question.

Kathy Kleiman: Great.

((Crosstalk))

Kathy Kleiman: ...support in the chat room. And go ahead.

Petter Rindforth: Petter here...

Kathy Kleiman: Petter has raised his hand. go ahead.

Petter Rindforth: Yes, so just speaking also as a member of the sub team, as long as we have a clear question so that we can – that we don't miss to consider it. As said, as the notes are in this document it might not be that clear for all of us, so if staff can just assist in filling in the clear question then we will take it into consideration. Thanks.

Kathy Kleiman: Great. Great. Thank you, Petter. And I took notes as well. Anyone else? Scott, go ahead, please.

Scott Austin: Well while we have George here, and since Petter and are both on the sub team, would it be possible in the interest of brevity of the question just to say,

“Do you believe that the fees you paid for your URS proceeding were appropriate?” and I don't have the question directly in front of me, but I'm just saying taking out “filing” so that then they can identify their fees, address it that way, having multiple questions and more verbiage.

Kathy Kleiman: Hi, George. I think that's a question for you. Go ahead, please.

George Kirikos: I just wanted to wait for your...

((Crosstalk))

George Kirikos: Yes, I'm relatively indifferent as to the form as long as the issue is covered. As Susan noted in the chat, it could be two separate questions or that separate issue could be captured in the written form, you know, if you answer D or E, would it be higher or lower and why? Please suggest, you know, please explain, etcetera. Thanks.

Kathy Kleiman: Great. Thanks, all. Appreciate it. Barring...

((Crosstalk))

Greg Shatan: This is Greg Shatan. I'm only on audio. Could I just jump in for a sec?

Kathy Kleiman: Greg, go ahead, please.

Greg Shatan: Thanks. I think we should, you know, as you said, take this back to the subgroup. I would – I'm a little concerned about the idea of making the question essentially a compound question with a multiple choice answer. We're going to lose the ability to get really useful information out of that. So if anything there should be in two separate questions.

And I think the group tried hard to make sure that the answers and the questions would yield useful results so a question about filing fees is specific

and you can interpret the answer that the question asks about multiple types of fees either listing them out or just lumping them together then we really – it's much hard to know exactly what people are thinking or talking about especially where filing fees are paid every time but response fees are not. So I think we can capture the request for information in a way that makes sure that we preserve the ability to have results that are meaningful. Thank you.

Kathy Kleiman: Absolutely. And happily, Greg, Petter and Scott, are all on the URS Practitioners Sub Team, and so this will go back to you. And we can even keep George in the loop to see if we've captured the spirit of the question, of the expansion that he's trying to offer which does seem to have support.

So great, and this is the procedure – we're kind of working through the procedure now that we'll be taking for all the sub teams that revisions will come, that, you know, the questions will be shared with the full working group, edits will be offered carefully in light of the extensive work that the sub teams have done and out of respect for their work and the balancing that they've already done and then edits will come from the working group and be processed and worked with staff who will incorporate the document of revised and suggested revised questions and then it will go back to the sub team for final scrub.

So that's going to be the process we follow for all three sub teams. And speaking of sub teams, we move onto the next sub team, the Provider Sub Team, which has worked on extensive, extensive questions, 17 pages of questions that we have been looking in many categories for the three URS providers. Great thanks to the sub team for their work. And the chair of the sub team is also the cochair of this working group, Phil Corwin, and he will be walking us through I believe he said in an email not necessarily through every question word by word but through the sections and providing kind of a summary and overview of these extensive questions going to URS providers. Phil, if you're ready, go ahead please.

Phil Corwin: Yes, thank you Kathy and good day to everyone on the call. Yes, today – just to frame this, the cochairs were just advised by staff a few minutes before this call started that we've heard back from two of the three providers and they project that they can have answers back to us in 30 days on most questions and in 45-60 days on the questions that require review of decisions so – and consultation with examiners.

So we're at April 25, ICANN 62 starts on June 25, two months from today. I think if we press the providers a little bit we can get the 60 days down to 50 or 55. But the bottom line is we need to finish this review today to have any shot at getting all of the answers back by the start of the Panama meeting and most of the answers back in time to have some discussion of the feedback before we – and calls before we head to Panama.

So I'm going to go through this. We're not going through every question today. We're going to go through every question that's marked up in redline as quickly as possible and push to wrap up on this call. Let me ask staff, when we conclude today, assuming we finish reviewing the entire document, is that it or are we going to leave things open for a couple of days before locking this down and get it out to providers? Yes, Mary.

Mary Wong: Hi, Phil and everyone. This is Mary. And in view of the timeframe and the fact that these questions have been circulating amongst the working group for a couple of weeks, our hope on the staff side is that after today, and hopefully we can finish the review today, we can keep the document open for another couple of day let's say, for any final comments and then wrap up next week, because as you said, the providers – some of them will certainly need some additional time and we'd like to provide them with as much of that time as possible before ICANN 62.

Phil Corwin: Okay so, Mary, can you repeat that once more? I just want to make sure I'm clear on the process going forward and everybody else is.

Mary Wong: Sure. So the staff suggestion is that following today, if we complete it, that we can keep the document open for final comments from anyone on the working group given that not everyone will have been on the call today. And we would suggest closing the document perhaps by this Friday if that's amenable to you and Kathy and everyone.

Phil Corwin: Yes, I think that's fine with me. Does anyone have any comments on that? I just want to make sure at least the attendees are agreed on the procedure going forward.

Kathy Kleiman: This is Kathy. If we close it by Friday for input that means the sub team should probably have another – at least the weekend to take a final look. Would you agree?

Phil Corwin: Yes that's fine Kathy. We can lock it down for the full group feedback and comments by close of business Friday, give the sub team until close of business Monday and get the questions shipped out to the providers next Tuesday which I believe is the – well that's May 1, next Tuesday. So I think that's good. We should be able to have just about all the responses back even on the ones requiring review of decisions and consultation with examiners by the opening day in Panama. And our working group is going to have one session on the afternoon of the first day and then two sessions on the morning of the last day so that should work.

Okay so let's plunge into it. And again, if you have any comments about any question that's not redlined, raise your hand or speak up if you're just on audio. Otherwise we are not going through every question on this document today, we're just going through the redline ones.

So start with Question 2, under Communications, "Which of the two sided methods in the URS rules, 2A, etcetera, do you use? What mechanisms do you have in place in either method to track actual delivery to or receipt by the respondent?" Then it contains a quote of the rule and we have a comment

from Justine, "This addressed the comment by George to Question 5 under Notice of Complaint and locking of domain section." And that comment is to be deleted after discussion.

So any comment on Question 2 or is this new format acceptable? And if I don't see hands or hear anyone...

Kathy Kleiman: See no hands, Phil.

Phil Corwin: Okay. On the Question 5, "Do you receive notification via email from registry operators, A, if the URS locked or URS suspended domain has been deleted or purged? B, if the registration of a URS locked or URS suspended domain name has expired? And, C, if a URS suspended domain name has been renewed for an additional year?"

And then there's a comment from George, "Also renewals." Well this new C speaks to renewals. George, is that C satisfactory to you or you think it needs any additional language?

George Kirikos: George Kirikos here. Yes, that's fine. Thanks.

Phil Corwin: Okay. So we're good on Question 5 unless there's – there's a comment from Brian Beckham, "Should this be reworked to capture the expiration concept?" Is Brian on the call with us? Oh yes he is.

Kathy Kleiman: Brian is.

Brian Beckham: Ye, hi, Phil.

Phil Corwin: Okay.

Brian Beckham: This is Brian. There's a new Question B, which captures my comment. It's something that we see from time to time in UDRP cases so I thought it may be worth capturing here.

Phil Corwin: Okay and so new B addresses your concern.

Brian Beckham: Correct.

Phil Corwin: Okay. So we're good on Question 5. Question 6, "Do you receive information from ICANN with regard to the point of contact of the backend registry operator appointed by registry operators." And we took out the (barrow) acronym for George's comment because the term backend registry operator is not used again in the document. That seems fine.

Question 7, additional question proposed by the Document Sub Team and the question is, "Have you experienced difficulties in communicating with registry operators in respect of their role in any part of the URS proceeding? If yes, please elaborate on the same." So we've added that inquiry. Any comments? Seeing none.

Kathy Kleiman: Looks good, Phil.

Phil Corwin: All right, moving on to the Complaints section, Question 4, "What other circumstances, not included in the non exclusive list in URS procedure 1.2.6.3 have led your examiners to determine that the domain name was registered and," it should be "is being used," there's a grammatical flaw there, "is being used in bad faith." Please note the grammar change, staff.

And an additional question here, "Have there been cases where your examiners have not expressly cited a circumstance as the basis of their finding of demonstrable bad faith registration on use." I think that new part gets to some of the decisions we've seen where the examiner has only declared the burden of proof to be met without giving even a one sentence

explanation of what evidence there was of bad faith registration and use. And then we give the relevant text. Now we have comments from Brian, "Providers may not know the answer." The question is asking I think the examiner is looking at.

I think Brian, that we can into a dialogue in this, the providers have indicated they're going to look at the decisions and have some dialogue with their examiners and that's going to take some additional time and we understand that but it's probably important to – the sub team thought this question was important to get some explanation.

And Renee, I know this is a comment Renee made on many of the questions so we're going to see it again, requires the provider to review decisions and potentially party submissions. You know, well we can't scroll back to the prior page to look at the document on that. So well I would say they might review all the decisions or they might just consult with their examiner and ask them to point out cases where they've relied on other circumstances. This doesn't necessarily require the examiners to review every decision they've issued since the start of the URS, which wouldn't be that hard for two of them but would be somewhat burdensome for the Forum.

And so I think this relies more on consultation with examiners rather than review of every decision. So let's get back to the comments on the next page. And Justine thought the value was knowing whether the examiners having determined that bad faith was present, have actually cited one or more of the circumstances or cited any other circumstances or haven't cited any circumstance. And, you know, this cochair at least would hope that this question would say – and we've gotten feedback from the Forum that they intend to do some case review and consult with examiners in answering this type of question and they can get back to us within 60 days when they do so.

So we're not asking something where they've said they can't do it or they can't do it in a timely fashion. So I would hope we could keep this in. Any comment on that? Okay, so the question stays in as amended.

Kathy Kleiman: Great. The only comment, Phil is David McAuley in the chat. "I think it can stay in and that we can understand the limitations around it." Thanks to David. No hands raised. Go ahead, please.

Phil Corwin: Yes, thank you, David. And we all understand the limitations and we live in an imperfect world and we're not going to get perfect responses but we'll be better informed when we get responses than we are now. So onto the next page. And scrolling down to the – excuse me – last question on the bottom of page under the heading Notice of Complaint and Locking of Domain.

Question 5, "Are you following the URS rules for C? If yes, which of the two cited methods do you use? And 4C is electronic copy of the notice of complaint may be provided via email or an emailed link to an online platform requiring users to create an account." George thought the question was somewhat silly and a better question would be, "What documentation records do you maintain that provide proof of compliance with the relevant provider notifications to registrants?"

And I would think, George, that would probably precede a second part which would say, "Which of the two cited methods in Rule 4C do you use for providing the notice of complaint?" So...

Kathy Kleiman: Phil, we have a hand up from Justine.

Phil Corwin: Yes, I see that, Kathy. I am looking up at the screen. Was just finishing reading the comment and opining on it. Justine, go ahead.

Justine Chew: Hi, this is Justine for the record. Phil, I just wanted to put short discussion here, the whole point about – my point was we need this question to the first

section already and George and Brian have already accepted that question so this entire Question 5 can be deleted. Thanks.

Phil Corwin: Justine, you say we've already received an answer to this or they're just duplicate question on another section? I'm not clear on your point.

Justine Chew: No. sure. I was just saying that this Question 5 have actually reworded it and moved it up to the section under Communications, which is Question 2.

Phil Corwin: Okay.

Justine Chew: Yes, the original Question 5 in this current section that you're looking at was commented on by George and Brian and they have accepted the edits which now appear in Question 2 of the Communication section.

Phil Corwin: Okay.

((Crosstalk))

Justine Chew: ...is redundant so we can remove it all together.

Phil Corwin: Okay, well my only comment there, Justine, was – it was quickly on the screen but that question you referenced, I didn't see a reference to it in rule 4C, it seemed to be on a different part of the rules. Although if people think that that satisfies the same point as this Question 5, we can certainly delete Question 5. Can we look back at that first question since we can't scroll through this document.

Okay so, yes, see my only question was Question 2 here under Communications references Rule 2Aii, and the question we were just discussing references rule 4C, so does this one really substitute for that one is my question.

Justine Chew: Sure. This is Justine for the record. If we can get to double check but I believe Rule 4C actually refers back to Rule, what is it, 2A...

((Crosstalk))

Phil Corwin: Okay. Well I see a comment from George that if we go to the top of Page 5, let's take a look at that. Okay, I see the comment but still my question is the question in Communications references a different part of the rules than this question we're discussing removing. I don't want to belabor this, I just want to make sure we're not missing an opportunity to ask about something important.

Justine Chew: Sure. Can I suggest – sorry, this is (unintelligible) can I suggest that we take this offline?

Phil Corwin: Okay.

Justine Chew: I'm pretty sure that the two are related so, you know, staff can confirm...

((Crosstalk))

Phil Corwin: Okay and I accept that rationale, Justine, I just wanted to point out that this question that we're discussing deletion references a different part of the rules than the question under Communications. Let's take it offline, let's have, you know, an email dialogue on it and make a decision by Friday.

Kathy Kleiman: Great. And I think you're both on the same sub team so that makes it easy.

Phil Corwin: Yes.

Kathy Kleiman: Mary Wong has her hand raised. Mary, go ahead please.

Mary Wong: Thanks, Kathy and Phil. Actually I raised my hand before Justine said taking it offline. So just to note that I have put the text of 4C in the chat to Justine's point that it actually is related to Question 2 and that Rules up there. Thank you.

Phil Corwin: Okay. Okay well then we may be able to drop it, we'll just make that decision after the call. So we're now on Page 5, Response. Question 1, this is to the Forum and MFSD, "Have your examiners received any responses alleging abusive of complaint? If so, how do the examiners act in determining the validity of the allegations in those cases? What decisions were rendered on that claim?" Brian thought providers may not know the answer. And again, this comment from Renee that we've seen before.

I think we've covered the fact that the providers have indicated they either plan to look at decisions or consult with their examiners and can get back to us within 60 days so at maximum, so where that's the only concern I think we should just leave the question in since they've indicated a capacity to get an answer back to us. Any – Justine, is that an old hand or a new hand?

Justine Chew: Sorry, old hand.

Phil Corwin: Okay. All right so I don't see any other hands up so let's move on to Question 4. "Have you ever extended the period of time for the following of response by respondent under exceptional cases per URS Rule 5E? If yes, what have you considered as exceptional cases in these instances?" question seems understandable to me. Any comments? Going once. Going twice. Onto the next question.

Oh there's a comment on that question – yes, again this is about the division between providers and examiners, the two comments, and we've covered that so we can keep the question in. Moving down to Question 11, "Do you believe the deadline for filing responses is long enough? Please provide your

rationale. If not, what time period would you support keeping in mind that the URS is supposed to operate with rapidity.”

Comment from George, “The question appears targeted to registrants, not providers. Providers should be there to neutrally implement the policies adopted. There’s no balancing question. And keep – adding in overriding with rapidity would affect the answers creating bias.” Let’s open this to discussion. My thought would be that maybe rather than asking providers whether they believe the deadline is long enough whether they or their examiners have received feedback from any respondent saying we couldn’t prepare an adequate response in the time given, although they do have that ability to ask for an extension.

Should we keep this question in, take it out or modify it? Susan Payne’s hand is up.

Susan Payne: Sorry. Thanks, Phil. Yes, Susan Payne here. I agree with you about the feedback point and I think that’s probably what we were looking for although we haven’t expressed it as such. So perhaps we should be saying something like based on the feedback you’ve had from respondents, if any, do you believe that the deadline is long enough or, you know, something like that because that’s really what we’re asking is, you know, as the operator of this system have you been, you know, have you had significant numbers of comments back saying I can’t make the deadline for whatever reason and for whatever value that would be worth.

Phil Corwin: Okay. I see George’s hand up. George, would you want to suggest a revision to this question or do you want to see it taken out?

George Kirikos: George Kirikos here. My preference would be to have it deleted because it’s really targeted at registrants but going along with Susan’s argument, she suggested modifying it, you know, saying based on the feedback they received to provide the rationale. I would just ask instead if we’re going to

keep this question that we just ask for, you know, have you received any feedback that the response period is too short, etcetera. We don't need them to make the analysis, we could do the analysis ourselves, we just want to get the data from them whether they've received any feedback that the response time is too short. Thanks.

Phil Corwin: Okay. I'd be fine with that. George, why don't you – you don't need to do it on this call, put that suggestion in writing, get it to us today and we'll lock it down by Friday. So we'll be asking the providers for whether they've received feedback from – indicating that – and this would be aside from requests for extensions whether there's folks out there affected by a URS who think the response time is too short, have they received such feedback. That'll be the point of the revised question.

And we will move onto the next one. Okay, Question 14, we have the same comments from Brian and Renee and I think we've already covered that that the providers can get responses to us, so unless there's other comment we're going to move on.

And Question 15, slightly different comment from Renee so let's look at this. "What percentage of URS cases were brought against registrants determined to be domain investors?" and then there's a parenthetical providing I guess a definition or classification of domain investors. And the – Renee's comment was, "Requires the review of decisions party submissions and it may or may not be clear from the submissions, unlikely providers have retained such information separately."

So and let me just add context, I think there's language in the URS stating that acting as a domain investor in and of itself is not evidence of bad faith registration and use, there has to be other factors there. So I think that question – this question is trying to get reference that part of the URS. What do people – I guess we could preface this by, "to your knowledge," or "based on responses what percentage?" We could add little context for it. But I think

it may yield some useful information. Is it okay with folks if we keep this in?
Do you want a slight modification?

Kathy Kleiman: Phi, this is Kathy. It seems like if you did add a short preface of words, as you were suggesting, you know, based on your knowledge or something signaling that they don't have to do – the providers don't have to do a deep dive to get the answer on this...

Phil Corwin: Yes.

((Crosstalk))

Kathy Kleiman: ...extensive research. I think that would make sense.

Phil Corwin: How about say, "Based upon information contained in URS filings?" and that could cover cases where a complainant said, you know, this domain registrant is a domain speculator and that's bad, which would trigger that – or where the – in defense the response said, hey, there's nothing wrong with what I'm doing, look at the rule. So if we say "Based upon information contained in URS filings, what percentage?" that would ask them to restrict their answers to actual evidence they've received in filings from either complainants or respondents and not guess at this.

Kathy Kleiman: Makes sense, Phil. We have hands raised from Zak and Susan.

Phil Corwin: I see two hands. I'm not sure which one was first. I'll call on Zak first because Susan spoke recently then we'll call on Susan. Zak.

Zak Muscovitch: Thank you. Zak Muscovitch. I don't have a problem with the question but I'm concerned about the definition of domain investors. For example, it could be interpreted by the provider that holding a portfolio of domain names that are all cyber squats for traffic monetization or resale qualifies as a domain

investors, or it could be interpreted by a provider that if it's a portfolio of generic words, that's what qualifies as an investor.

So without that kind of clarification about the terminology of what constitutes a domain investor, we could be getting answers that are totally different based upon the respective interpretation. Thank you.

Phil Corwin: Yes, Zak, I think that parenthetical is referencing the actual language in the URS rules that says that engaging in specific activity in and of itself isn't evidence of bad faith registration and use. So it was trying to reference that. Maybe staff can – I want to hear from Susan, maybe we can set this one aside and have staff after the call, provide us with that information and specifically reference that part of the URS rule so we're using the exact same language in the parenthetical that's in the rules. Susan.

Susan Payne: Yes, thanks, Phil. Yes, I'm familiar with the language in the rules and so I can see where this is coming from although I'm afraid I can't remember from being in that subgroup our discussion on this and how we came to the conclusion that we wanted this question in. But I'm wondering if we should remove it. Partly for the reason Zak expressed which is, you know, what is a domain investor? And bearing in mind that the rules make it clear that whilst holding a portfolio of domains for traffic monetization and/or resale isn't automatically bad faith, it will depend on the circumstances of the case. And so really what does it matter what percentage of URS cases are brought against those types of registrants?

You know, the decision will be based on all the circumstances of the case, not purely on that factor alone. But with respect to the suggested language that you made, and sorry I can't remember exactly what you said, but it struck me that that was effectively suggesting that the providers do an exercise which Renee has already said she thinks is going to take a lot of time and/or going to be very difficult if not impossible for them to do which is not only kind of looking back at decisions and seeing if there are references which in itself

is onerous, but actually scrolling back through the submissions from the two parties as well, I mean, that's a huge exercise.

And I think you know, we've had a lot of conversation about whether this is an appropriate task for this working group to – and whether it's us or whether it's us expecting the providers to be going back and essentially reopening cases. I mean, to me that seems disproportionate. And as Renee has said, you know, she thinks it's very unlikely that the providers will have retained this information in a way that will enable them to do this exercise.

Phil Corwin: Okay well let me – I don't want to spend too much time on this one. Let me ask Zak, Zak, since your counsel to a trade group of domain investors, I guess if we got an answer to this, let's say we got an answer back saying oh 10% were brought against domain investors based on what we found in filings, what would that tell us? It wouldn't tell us whether the decisions were correct or not because it would then require further inquiry into whether the decisions were correct that the – the part of the rules that says that being an investor in and of itself isn't evidence of bad faith registration and use was overcome by other facts brought to the examiner's attention by the complainant.

So, Zak, would you prefer to see this question reworked or deleted? Do you think it'd be – yield any useful information regarding the application of URS against cases brought against domain investors?

Zak Muscovitch: Yes, Zak Muscovitch. Based upon the way you put it and Susan's comments and my own aforementioned comment, I don't think there's much utility in the answers that could come from the question and could cause more confusion. So my inclination would be to remove it and failing that to...

((Crosstalk))

Phil Corwin: Okay, does anyone on the call have a disagreement with that and want to argue for keeping it in?

Kathy Kleiman: Phil, it looks like Mary Wong is trying to...

((Crosstalk))

Phil Corwin: Yes, Mary.

Kathy Kleiman: ...join the call.

Phil Corwin: Go ahead, Mary.

Mary Wong: Thanks, Phil. Not a disagreement and just the staff view here wanted to draw your attention to the fact that Rebecca in chat has said that the research she is doing may have coded some of this, maybe not specifically but there's a category of other cases to the extent that this type of reasoning was captured in the determination. So we also wanted to express some slight concern about having the providers go through not just the determinations but all the parties filings as well.

So from the staff viewpoint, it may be helpful to not have this question for now, review what Rebecca has done when she's in the position to share it and then decide if it would be appropriate for the working group to follow up.

Phil Corwin: Okay. All right, you convinced me. I think the fact that we want answers back within two months and this same data may already be captured by Rebecca's survey of cases is a good argument for deleting Question 15, so it's out on the cutting room floor.

Next question, we're on Page – was there nothing on Page 8?

Ariel Liang: This is Ariel. Nothing on Page 8.

Phil Corwin: Okay. So great, we skip to Page 9 where we've got an additional – two additional questions. The first one is proposed by George. "Has any examiner been removed from the pool of examiners for any reason? If so, why? What behaviors would disqualify/bar an examiner from future cases?" Okay this is a – I'm just observing there's a multipart question. "B, is one permitted to continue to be an examiner if one has represented a client in a domain dispute where there was a determination that the complaint was an abuse of the process?"

I'm going to raise a question here, I'm trying to – I know UDRP is a concept of attempted reverse domain name hijacking. I'm not sure – I don't recall it having an abuse concept whereas URS has a specific concept of abuse so we might want to – if we keep this we might want to tweak it a bit to refer to the actual terms used in the procedures and see what is the procedure for assigning examiners, how large is the pool of examiners, randomly assigned and then there's a reference to studies.

So that's additional to the – and then there's a comment from staff, "Providers have provided information on the way they assign examiners below. Is the question still necessary?" And then staff have put in the response from the providers regarding assignment. So let's have a discussion of this. The – so Question – staff suggesting that Part C of this question is not necessary, that we already have a response from all three providers on C.

Zak, is that an old hand or a new hand? Zak's hand is gone. George's – wait, no Zak's hand is still there. So, Zak, did you have a comment?

Zak Muscovitch: No, that's an old hand and I'm trying to remove it, my apologies.

Phil Corwin: Okay. George, go ahead.

George Kirikos: Yes, George Kirikos here. Actually Zak had done a lot of research on, you know, assignment of – or sorry, the distribution of cases for the UDRP at NAF, and so this question kind of tries to examine that in the context of the URS. If, you know, half the cases are being determined by a small number of panelists and that kind of implies that the true pool of examiners is very low and none of the responses of the providers really addresses how large the pool of examiners is and whether it's really random or not so that's the basis of that question which was Zak's prior research for the UDRP. Thanks.

Phil Corwin: Okay, well let's open it up to discussion. Does anyone – let's start with Parts A and B, does anyone want to be on record for or against Parts A and B of George's proposed question? Kathy, I see your hand – no, Kathy's hand is gone. So no hand is up. So I would say A and B, oh Zak's up. I assume you put it back up, Zak.

Zak Muscovitch: Yes, thank you. Zak Muscovitch. I think in terms of staff's comment that the question is answered below, to some extent it is. But there's, as George pointed out, there's a difference between how many panelists are on the roster and how many are actually deciding decisions. And also perhaps some drilling down about the exact nature of how panelists are appointed is in order. So I'm in favor of Questions A and B, and I'm also in favor of Question C. Thank you.

Phil Corwin: Okay. Well let me propose this rather than spend a lot of time, A and B, there's no objections, A and B are in. I would ask that C, rather than a general question about procedure which has been generally answered by the providers, that it might be better to have more targeted question regarding the size of the examiner pool and whether random assignment is used or how many have actually decided.

Okay, something like that, so if I could ask Zak and George to try to rephrase the question offline and get it back to us today, a more targeted version rather than a general question about general procedure, and then we can take a

look at that and put that more targeted question – more targeted Part C in the question, would that be acceptable?

Kathy Kleiman: Phil, this is Kathy. Could I comment on C?

Phil Corwin: Sure.

Kathy Kleiman: It makes – it absolutely makes sense. I just wanted to offer a phrasing that adds a little more detail. Perhaps, and I give this to Zak and George, what is your procedure for rotation of the examiners as required by Rule, and someone would have to fill in the rule. There is a required rotation here; this is not – URS is a different pattern of assignment and there's supposed to be rotation if not all examiners then by language, so if there are three examiners who speak Japanese and for whatever reason this was going to be conducted in Japanese, there would be the rotation of the Japanese examiners, if I remember correctly. So that may be a concept that we want to explore further.

Phil Corwin: Okay. I see George has his hand up. George.

George Kirikos: Yes, George Kirikos. The part in 12C in the brackets where it says, "i.e., how large is the pool?" That's kind of all the targeted stuff so we can try and break that out separately and I put i.e. in hopes that other people also had follow up issues that they wanted to tack on so if others wanted to do that maybe they should do that now. Thanks.

Phil Corwin: Okay, so let me ask, George, can you and Zak maybe get a more targeted version of this question back to us by say close of business today that not so general in nature, and doesn't have parentheticals but actually asks on specific – asks for specific facts related to the rotation requirement in the rules. And I see Brian's hand up, so let's continue. And then Mary's hand up. So Brian, then Mary.

Brian Beckham: Yes hi, Phil. Thanks. Brian Beckham for the record. I was just wondering, Kathy, would you mind pointing me to the provision in the – I don't know if it's in the URS itself or in the rules, that speak to the panel rotation question?

Kathy Kleiman: Brian, I have to say I don't have the rules up in front of me, normally I do. So but it's there. Can we handle this offline? I'll send it to you after the call...

((Crosstalk))

Kathy Kleiman: ...and we'll include George and Zak, unless Mary...

((Crosstalk))

Susan Payne: Kathy, sorry, it's Susan. It's 7.3.

Kathy Kleiman: Seven point three. Thank you.

Susan Payne: In the procedure.

Phil Corwin: Okay. Thanks for that intervention. Mary.

Kathy Kleiman: Thank you.

Mary Wong: Thanks, Phil. And actually this was about 12B and staff just had a question, more for clarification and to make sure that this is going to be asking specifically about abuse of the process, because our recollection that there has not been a case of an abusive complaint because we recall that it might have been Renee who said that there's been no entry in the abuse case database so if that's the case and that's what is – this question is directed towards, we're wondering if it's still necessary for 12B.

Phil Corwin: Okay, I see George's hand up. George, respond.

George Kirikos: George Kirikos here. The issue is that there have been some high profile UDRP decisions that have been mentioned on the domain name blogs where panelists have actually represented complainants in reverse domain name hijacking determinations. So the complainant basically gets the embarrassment of having that decision against them. But of greater concern is that the – that there's no ramifications for the complainant's lawyers who are often panelists or at least sometimes are panelists. So there should probably be perhaps some consequences to a panelist representing a complainant in a RDNH case. Thanks.

Phil Corwin: Okay, so George, I think what you're trying to get at is right now there is no specific rule that says you can't have an examiner who has done this or that, and you're trying to find out whether the examiners themselves and their – the providers themselves in their practices say oh, well, you know, if you ever brought an abusive URS and I guess staff has informed us there has been none to date, or if you ever brought a UDRP determined to constitute reserve domain name hijacking, you're not – you are not permitted to be a panelist.

You're trying to find that out and I guess the point of that would be for this group whether we should want to consider an amendment of the rules to have a specific prohibition.

I would say if B is going to stay in, again, it has to include that – right now it just talks about abuse and that's not a concept in the UDRP or DNHs, so I think this question needs to be reworked somewhat and then the working group can do what it wishes to do with the answer, which may be nothing or something that's down the line.

And we're at the top of the hour so can we – with the understanding that B needs to be clarified regarding RDNH and UDRP, I think we can leave it in for abuse because we want to know if they have a policy about examiner qualification regardless of whether abuse has been found. And we're going to

get a reworked version of C back from George and Zak by close of business today.

And with that I'm going to – George, is that a new or an old hand?

George Kirikos: Yes, I just briefly wanted to say that the way I tried to word is I wanted to capture both in one question that it's either or, if it's abuse of the UDRP or abuse of the URS, if either situation existed would there be consequences for the attorney that, you know, they lose their panelist card or examiner card and face that consequence. I'm assuming the answer is no, but if they actually do disqualify them in the future then that would be a good thing and wouldn't – would kind of prevent the need to make an explicit policy of that nature. Thanks.

Phil Corwin: Okay, so we're going to ask staff to revise that to incorporate the exact UDRP concept of RDNH. And I would think we want to ask something, "Do your policies permit one to be an examiner if an individual be an examiner if he she has represented a client," something like that. It needs some clarification and we'll let staff work on that and get us something back today. And we need to move on to Question 13.

We have 28 minutes left and seven pages left. So Michael's proposed question, "Would you say that substantial majority of your examiners are professional experience that mainly draws from representing trademark holders seeking to enforce their rights or mainly draws from domain registrants seeking to stand against trademark claims or a mix of both?"

This is a very multipart somewhat ambiguous question and I'm not sure if the providers would even know this information. Brian, your hand is up.

Brian Beckham: Yes, thanks Phil. This is Brian Beckham. I wanted to just mention that I've seen a number of cases where attorneys represent both parties, both respondent in appealing cases after a UDRP or filing a UDRP or defending a

UDRP. But that only comes to light after the fact, for example if we see a pleading or if there's a court case that's made public. And there may be some difficulty in really getting to the bottom of this question because it would require attorney to disclose client lists that they might not be willing to do and the providers might not be fully aware of. Thanks.

Phil Corwin: Okay, I'm going to call on Michael next because it's his question and then on Susan. Michael.

Greg Shatan: Greg Shatan, can I get in the queue, please?

Phil Corwin: And Greg wants to get in the queue. Quick comments, please, we're under time pressure. Thank you.

Michael Karanicolas: Hi. Michael Karanicolas...

Phil Corwin: Okay.

Michael Karanicolas: Michael Karanicolas for the record. I'll just note that we have several questions, a lot of questions in this that begin with, "Are you aware of? Or, "Do you have any knowledge of?" There's going to be a lot of these questions that potentially providers might not be able to answer, "I don't know," or "I can't respond to that," is a perfectly reasonable response if they don't have the specific information. And in terms of the wording of the question itself, I mean, this is specifically in response to objections that were raised about people representing both sides, so I'm trying to give as many different options to facilitate whatever response that – whatever answer could be there. So that's why the question is phrased the way that it is. Thanks.

Phil Corwin: Okay, Susan.

Susan Payne: Yes, thank you. I just think this is – I think this is one where the providers won't be able to give us a response, but I also think it's one where it's –

where no one could give a response. I mean, I think people can wear multiple different hats at different times so you can be the representative you know, oftentimes representing one side of the equation and one case in another side of the equation in another. But equally you can be – you can be a trademark holder and therefore the claimant one assumes in one case, and in the next case you can be the respondent.

So even someone that you might – we might perceive to be a trademark holder, that doesn't mean they're never on the receiving end of a UDRP or, sorry, a URS. And in any event, I'm not sure what it is we think will be useful or usefully – what useful information will it get us to either being told that one, you know, it's impossible to tell you the answer to this or to, you know, people can wear multiple hats.

But even if we were to get an answer that says, oh yes, lots of people represent trademark holders, well so what? You know, all lawyers have obligations of professional ethics, and I think this seems to be suggesting or seems to be going to the potential suggestion that perhaps you know, in some way if you mostly represent one side or mostly represent another side you're incapable of making a neutral and impartial decision based on the facts before you.

And if that were the case, you would be in breach of your professional ethics obligations and apart from being removed as an examiner, you ought to be disbarred. So I just don't see the point of this. And I think it's a waste of time asking it; I don't think we'll get anything useful out of it.

Phil Corwin: Okay. Cyntia.

Cyntia King: Can you hear me?

Phil Corwin: Yes.

Cyntia King: This is Cyntia for the record. So I've really thought about this question given the back and forth in the email, but my objections to this question remain the same, number one, providers will not know what the status us of their examiners, necessarily, and I don't think that we should ask them to speculate on this kind of a question. Many of the questions that were asked, "ARE you aware of?" are regarding the actions of the providers themselves and not of their examiners. So unless they begin using a question that says, "Are you a this or a that?" I don't see how they could answer the question.

Secondly, the examiners, again, may not be willing to say or may not be able to say because their clients could straddle both worlds. Clients can be both a, you know, a trademark owner and a domainer or, you know, people with feet in both words. Half of my clients are that. And then secondly, examiners don't control the instructions that their clients give. And I think we're kind of asking a question that an examiner even if he were to represent certain clients like if we're asking have you been – have you been on the other end of an RDNH – or RNDH, then I think that we're asking them to be responsible for – to some degree instructions and information that they are given by their clients.

So again, I think that this information at this point is unknowable. I think that we could institute a question, you know, or ask providers in the future to capture this information but at this point they would just be speculating and I don't think that speculating helps us. Thank you.

Phil Corwin: Okay, and Michael, I see your hand up so quick repost.

Michael Karanicolas: Well...

Greg Shatan: And I'm still in the queue.

Michael Karanicolas: ... Michael Karanicolas for the record. What I...

Phil Corwin: Oh yes, Greg, I forgot.

((Crosstalk))

Phil Corwin: Sorry. Let's have Greg, I had a brain glitch and forgot he was waiting in queue because he's not in the online room. So, Greg, go ahead.

Greg Shatan: Thanks. This is Greg Shatan for the record.

Michael Karanicolas: And then Michael.

Greg Shatan: I think the question ignores the fact that examiners for the Forum are neither; they tend to be retired judges and not practitioners in the trademark arena at all. So, you know, the question kind of is – makes us look a little foolish since it appears that we don't know that.

Secondly, I think the idea of trying to figure out what people do with their lives other than being examiners, you know, the best we could do is with any kind of useful information is just to find out how often they represent complainants or respondents and then, you know, what – I go back to what Susan and Cyntia said, what are we trying to imply there? Is there some sort of idea that there's bias? And, you know, is there is bias if you represent respondents? And as someone said, respondents, you know, aren't necessarily standing against trademark owners, they can be trademark owners.

So the whole question is loaded. And, you know, as well, the idea that is examining kind of, you know, potentially – a potential bad act on one side, you know, we'd also need to ask whether you've represented respondents who have been – who have lost multiple URS or UDRP cases or who have been found to be, you know, repeat cyber squatters. And I think you know, and as Susan said, there's a real problem with attaching the desires of the client to the actions of the lawyer unless, you know, then you get to where you're implying as somebody I think said that the lawyers are peddling the cases to the clients. Like, you know, sort of like the plaintiff's bar does.

You know, that, again, you know, getting – there’s all kinds of levels of loaded bias and ignorance in this question that it would be an interesting study if we could figure out what the study was supposed to be and how to make it neutral, but to try to get this whole thing into one question, to my mind, just looks like a dog’s breakfast, and I’m no hungry. Thank you.

Phil Corwin: Okay, Greg. George, let me have a quick comment from you and then I’m going to suggest something.

George Kirikos: George here. Yes, I think Michael is trying to raise an important issue here. He may not have captured it in the current form of the question, but the issue is a good one. I wouldn’t dismiss it as Greg has. For example, you know, the Supreme Court, you know, the justices are appointed by the President of the United States and, you know, if you’re appointed by a Republican judge, you know, sorry, a Republican President there tends to be a certain expectation as to how you will be voting on various issues; tend to be more conservative. And if you’re appointed by a liberal Democratic President, you’ll have a certain perspective.

And since these cases, URS cases are only decided by one panelist, then if there has been, you know, if there’s a lack of diversity in the background of the panelists, then it’s really, you know, you’re facing, you know, the odds are stacked against the complainant – sorry against the domain registrant. If the – there’s no diversity in the background of the panelists.

For example, just to pick a random example, Gloria Allred is famous for only representing...

Phil Corwin: Okay, George...

((Crosstalk))

Phil Corwin: ...we really.

George Kirikos: No, I'll be brief.

Phil Corwin: Short statements.

George Kirikos: She was a mediator in a case you would obviously expect that she would want to be dismissed as – if by one of the parties given her background of only representing women. And so that's kind of I think what this question is trying to ask whether there's that diversity. Thanks.

Phil Corwin: All right. We've had a robust discussion on this for many minutes. Let me observe that there's a long history of Presidents of the United States being disappointed when people they appoint to the Supreme Court did not vote the way they expected them to from past view so it's very hard to predict how people are going to go. This is a procedure solely for black and white cases where there's overwhelming evidence of cyber squatting and we shouldn't presume that people who have represented trademark holders are going to find a black and white case to be established when it hasn't or that those who have represented domain registrants are going to ignore clear evidence of black and white cyber squatting and say it doesn't fit.

So I would propose that Michael – I'm concerned by the multipart nature and kind of vague focus on this question. Can we ask Michael to rephrase with a focus not on knowledge but whether the providers have panel selection policies that encourage a diversity of background in their examiners in trademark to the extent that they've engaged in trademark practice. Would that be acceptable? Michael?

Michael Karanicolas: So I'm more interested in the current composition than in the policies, but if that's the avenue forward then sure, we can rephrase it to, yes, sure then we can...

((Crosstalk))

Phil Corwin: Okay, could you get something back to us by close of business today on that?

Michael Karanicolas: Sure.

Phil Corwin: Thank you. All right, moving on with 16 minutes left, we may need to go a few minutes over. Language Question 4, comment from Renee, again, well we found out the providers are going to talk to examiners so we're going to keep Question 4.

In Person Hearings, George, well we've got a RPM here which is designed to be quick and like the UDRP, has no in person hearing, so I'm not sure that if a party raise – said, you know, I'd like to confront my accuser and have cross examination – this is a different kind of expedited proceeding. I might tend to agree with George here that this question doesn't make a lot of sense given that the URS design is designed to be a very rapid procedure with everything done by an electronic filings. Would anyone object to removing this question? Seeing no hands, hearing no voices, this question is out. Next page.

Okay, we got a lot of red on this page. Default, with reference to URS Procedure 6.2, how do you assist in ensuring that the registrant is actually prohibited from changing content on their site during the default period? And this is the registrant will be prohibited from changing content. I'm reading from the procedure now, and is also prohibited from changing Whois information. Well Whois information we – the other parties do have some control over that. I'm not sure – this is for registry operators who are the active part in URS.

And George contends that the registry operators don't have such ability to prevent changing content, only the web hosting provider could do that. And Justine comments, "When I first raised this question, I was uncertain the

Whois imposes question, by right it would be the registry operators but to follow up was taken – it's hard to read this." Justine doesn't have a problem posing it to providers just to gauge their knowledge.

So we've got a question here that the providers may not know the answer to and have no control over whether the procedure can be enforced. But they certainly – how do you assist, other than providing notice to the registry after the notice of default, I don't know what more the providers could do. What do people think? Should we keep this question in or take it out? It seems to be asking providers how they do something they have no control over.

Kathy Kleiman: I don't see any hands up, Phil.

Phil Corwin: Kathy, how do you think we should handle this one? Should we keep it in, throw it out or change it?

Kathy Kleiman: I don't know. That's a good question. I would recommend taking it back to the sub team and having one last quick discussion.

((Crosstalk))

Phil Corwin: All right, George has a hand up. George, can we make this quick? Go ahead.

George Kirikos: We already know the answer to this question so I don't know why we would ask a question that we already know the answer, like, only the hosting company can stop somebody from updating their Website so the registry operator can't do this because they're usually not going to be the hosting company, so why waste, you know, give them a break and not ask them a dumb question period.

Phil Corwin: Yes, I tend to agree but let's leave it open, if someone or if staff can come up with a – or someone in the working group comes up today with a way to rephrase this to ask the providers something they actually would have

knowledge of or control of, but other than that I think it's probably – isn't a productive question and should go. So we'll handle it that way.

Question – “In what percentage of cases if any has the registrant submitted an answer within six months after default?” and, okay, staff, do we already have this information from Berry's survey or not? If we already have it there's probably no point in asking it.

Ariel Liang: This is Ariel from staff...

((Crosstalk))

Phil Corwin: Let's go to the source; let's go to Berry, not to cut you off, Ariel. Berry.

Berry Cobb: Thank you, Phil. I do believe we will get to that within the coding exercise from Rebecca's research. They are capturing the fields of when the complaint was submitted, the response and determination date. And we'll be able to take those – that coding of those fields and subtract the date differences to understand if it occurred within the 14-day period or within the six-month period. So I do believe we'll be able to get to that data and if we can't get to it by the next meeting you'll kind of have a small preview when we go through the appeals exercise of what the duration was between those specific dates and so, yes, we'll be able to extract some sort of percentage number of those where there was a response.

Phil Corwin: Okay, so Berry, you're saying you're going to have that information for us. George, quick comment.

George Kirikos: The modification to the – after six months, not before six months would actually be of some interest so if the question is modified to be after six months instead of within then that might be useful.

Phil Corwin: Berry, would you have that information as well when you do your analysis after six months?

Berry Cobb: I believe so. It all boils down to the date that is documented on the case and again, we'll be able to formulate that delta between those and understand the duration of whether it falls within or after the six month period.

Phil Corwin: Okay, well I would suggest that if Berry's going to have information for us from the case review of both submission of answers within six months and after six months post default, we don't need to ask the question, let's take the question out.

Onto the next page, okay, so we're on Page 11 now, is that correct?

Ariel Liang: This is Ariel. We're at the bottom of Page 11, Question 3 and the comments are on Page 12 at the top.

Phil Corwin: Oh okay. All right well those are the same comments from Brian and Renee that we saw before and we found out that the providers can get back to us so we can keep the question in. Same situation for Question 3 under Examiner Determination so we can keep that in. Move onto Page 13.

Kathy Kleiman: This is Kathy, you're doing great on this marathon run, thank you.

Phil Corwin: Thank you. Thirteen, I just lost 13.

Brian Beckham: Phil, this is Brian. I'm sorry, I have my hand up, I don't...

Phil Corwin: Oh sorry, Brian.

Brian Beckham: Quite all right.

Phil Corwin: Caught up with dealing with the document.

Brian Beckham: This is not an easy technology. Sorry. Brian Beckham for the record. I don't want to take us back a page but on – I had a question about Examiner Determination Question Number 3. It seemed to me that that was something that was perfectly allowable under the applicable rules, and so if we want to just ask if that's been used that's one question and maybe it would just be a matter of phrasing that a bit more specifically. But I wonder, is this question asking something different? In other words, what was this question trying to elicit out of providers or examiners?

Phil Corwin: Yes, Brian, to the best of my recollection I was trying to see if any decisions contained standards for finding probably in favor of the complainant beyond those in the URS rules and procedures. Of course I'm not sure such a decision would be permissible. It's pretty clear about what has to be shown by clear and convincing evidence.

Brian Beckham: So this is Brian, could I just – maybe one way to reword this would be to say, you know, noting that Paragraph 13A provides that an examiner make a determination in accordance with any rules and principles of law that it deems applicable, are you aware of examiner determinations which have invoked this particular rule?

Phil Corwin: I think that's a good reformulation. Any objections to Brian's reformulation? I think it makes it a clearer question and easier for the providers to respond to. So we'll take your – we'll take it, Brian. Is your hand still up for another reason or will you take yes for an answer? Brian took yes for an answer.

Onto Page 13, Question 8, the comment from Renee, so the question is – Question 8, "Among your examiner's determination how many did not provide the reasons on which the determination is based but simply state that the URS elements have been established?" We went over a question a few minutes ago that got to the same point about what was contained in the

determinations. I don't know if we want to take this one out or have a belt and suspender approach.

I'm okay with keeping it in; if they've answered the question, they're already going to know the answer to this one and it's a bit more focused. Mary.

Mary Wong: Thanks, Phil. And in addition to the possible duplication, the staff was wondering – the way that the question is phrased by stating that the URS elements have been established, those could be substantive reasons on which the determination is based. So it might be that this question is trying to get at any additional factors or additional reasons that may be documented in the determination. We're not sure if that's what the question is supposed to get at.

Phil Corwin: Yes, I think the question was trying to get at how many of these decisions – and we have seen some anecdotally simply state that I found that the complainant you know, demonstrated that the domain was registered and used in bad faith by clear and convincing evidence and doesn't go onto say what facts were put forth that were evidence of that. I think it was trying to get at that – determining that number of cases or that percentage. Again, I'm not sure we need it because we already have another question that gets to the same thing.

And, Mary, you're saying that you would suggest rephrasing to make the question more clear, is that correct?

Mary Wong: Well I guess we were just asking what the actual purpose of the question is. And what you said, Phil, actually makes it clearer, that we do have a concern also about possible duplication, and on top of this, this does involve quite a lot of work for the provider because they will have to look at the cases separate out the ones that merely state that the elements have been established and then look at the ones that are left over. So again, if the

objective isn't very clear or necessary, then we're not sure that this even needs to be rephrased.

Kathy Kleiman: Phil, this is Kathy. Is this a good time...

Phil Corwin: Yes. ?

Kathy Kleiman: ...to take back to the sub team because it is an important question and it is addressing issues (unintelligible) addressing issues and questions that have been raised in public sections as well as other discussions.

Phil Corwin: Good idea. So I would say on Question 8 let's refer it back to the sub team to look at the other question that asks for the examiners to look at the content of the decisions and see – determine whether this question is still necessary and if it is to rephrase it to make it more clear as to what it's getting after. New Question 10, proposed by George, "Does provider have clerks or other staff that ghost write decisions for examiners before the examiner has made a determination independently; the examiner can simply sign their name to if they agree to it."

Justine, George, she found your question incendiary and wants to discard it. But if it remains she wants to reword it extensively. Let me say this, personally, I don't know that the providers – if the examiner is an attorney in private practice and has an associate or a paralegal that they ask to do some preliminary work on a URS case, I don't know if the provider would even know that. So I think we might ask as Justine said, "Do you provide any secretarial or paralegal support to your examiners for the preparation of decisions?" But beyond that I don't know that they would ever know when a decision is turned in how much the examiner did themselves and how much they assigned to somebody else in their office.

George.

George Kirikos: Thanks, Phil.

Phil Corwin: Let me know, we're one minute past the endpoint and we have four pages too so...

((Crosstalk))

Phil Corwin: ...go ahead, we're...

((Crosstalk))

George Kirikos: There is a basis for this question. Back in 2010 there was an incident with NAF where they were caught by me copying and pasting really gibberish nonsense text across a wide variety of decisions which is evidence, although not proof, that someone was, you know, ghost writing the decisions and copying the identical text. And this was across different panelists, different cases, 41 different cases. And it was actually Paul Keating that hypothesized that there is some ghost writing going on not by some associate of the panelist but by the providers themselves that they're drafting the response or sorry, drafting a decision, which then the panelists can either agree with, disagree with or just sign their name to.

And so I think there's an expectation that the examiners are doing all the work themselves otherwise, you know, why even have them. So this is what this question is trying to get at. Thanks.

Phil Corwin: Okay, and I see Cyntia's hand up. Before she speaks, let me point out, we're at 9:32 am so we're two minutes past the scheduled end time. I'm going to hope that people can stay on another 10-15 minutes so we can wrap this because of the importance of finishing this today, if we're going to get responses back by the start of the Panama meeting from the providers. Because of our jammed schedule with working group calls the next two weeks, so this cochair is going to keep plowing through.

Cyntia, go ahead.

Cyntia King: Hi, this is Cyntia. You know, I will note that many attorneys use the same language over and over if they see language that works. So that could be part of it, but George's – what George is saying happened would be a pretty egregious error. So maybe what we should be asking is, if the providers provide any prepared language or approve of prepared language, that kind of thing, something that just asks them if they are aware or if they approve it or provide it. Maybe we could just, you know, ask if...

((Crosstalk))

Phil Corwin: Yes, I think that's a good question. George, could we ask you to go back and rephrase this question today so it asks about whether the providers ever provide any suggested language to their examiners or provide any clerical or paralegal or other help to the provider in preparing their decisions so it's focused on what the providers would know. They're never going to know about what the examiner did within their own law office. Would that be okay?

George Kirikos: Sure, but it – George Kirikos here. Just, you know, it's still trying to capture whether the providers are doing, you know, all of the work and then the panelists are just signing it. But I can try to phrase it more neutrally...

Phil Corwin: Yes. And leave out the phrase, "ghost write." People thought that was a bit incendiary. So we'll look for it and receiving that revised language later today. Thank you. Moving onto Page 14, on Question 5, so the question is, "To implement the URS procedure, technical requirements are assumed to be eligibility restrictions for TLDs why the inconsistency?" you know, Renee said – this is a different comment from Renee, they didn't create the requirement so they wouldn't be able to speak to any inconsistency and Justine thought that was a good point.

Yes, I tend to agree, why are we asking providers about an inconsistency they have no control over? We're now aware of the inconsistency and as a working group we can recommend reconciling it but I would think this one should go unless we're going to ask them to provide us with an opinion as to how the inconsistency should be resolved, but asking why it exists doesn't make much sense.

((Crosstalk))

Phil Corwin: Any comment on whether we should jettison this question or rephrase it to ask for their input on how to resolve it?

Kathy Kleiman: Phil, this is Kathy. Perhaps a third alternative, move it to a special set of questions for the working group itself as a policy question.

Phil Corwin: Could you repeat that, Kathy? I'm not sure – were you saying we should – right now I'm trying to determine if we should keep this question in or throw it out. What's your view on that?

((Crosstalk))

Kathy Kleiman: That it's probably not – personal opinion – that it's probably not a question for the providers but it probably is a question for the working group as a policy issue.

((Crosstalk))

Phil Corwin: Yes, I agree with that but there's no reason to ask the providers.

Kathy Kleiman: Just suggesting that we create a separate annex that preserves it so that we don't lose the work that's done, not give it to the providers but ask staff to create a special annex to make sure that at some point it comes back to the working group.

Phil Corwin: Yes, I agree. So let's take this out, the working group's now aware there's an inconsistency in its responsibility, if that bothers us to suggest a resolution. Question 6, additional question proposed by the Document Sub Team, "Have you received any notices or queries from any party regarding procedural and/or implementation anomalies or mistakes following the issuance of a determination, for example, resolution of a domain name to a particular name server following issuance of a determination."

I don't have any problem with keeping this in, anyone – Justine, is that a hand up on this question? Go ahead.

Justine Chew: Thanks, Phil. It was just an edit to a point that Brian made I think it was, if I'm not mistaken, oh no maybe not, someone from the Documents Sub Team. And I just wanted to add a supplementary portion to the end of the paragraph which is something that I've typed into the chat because this portion gives us a yes or no answer so we want to know, you know, in addition to yes or no answer. Thanks.

Phil Corwin: Okay. "If yes, what action did you take on/in the notice or resolve the query?" so I guess – if you ask what action did you take on receiving – I think we need to just – Justine, if you could – I'm fine with your general thrust of your suggestion, I think that language needs to be made a little more clear, a little more grammatical. Could you take a stab at that and get it to us today? And with that we'll keep Question 6 in.

Justine Chew: Will do.

Phil Corwin: Okay. Move onto Page 15.

Ariel Liang: Phil, this is Ariel from staff. We skipped a question on the bottom of the Page 13, Number 4.

((Crosstalk))

Phil Corwin: Oh sorry. I'm just so anxious to wrap up I missed it. What page we're on, 13? I'm sorry, this technology gets very difficult sometimes, pages jumping around.

Kathy Kleiman: It is on...

((Crosstalk))

Kathy Kleiman: The question is on 13 but the comment is on 14.

Phil Corwin: All right, so let's jump to 14 and wait, let's look at the right question. "During the one additional URS suspension available to the successful complainant, domain name must remain registered to the original registrant, should the registration information be altered in such circumstances?" And then the comment on 14, yes it is seeking an opinion – I think there's nothing wrong with seeking their expert opinion sometimes. Doesn't mean we have to take it. But I think it's useful sometimes to ask. So I'd say let's keep it in. Justine, is that an old hand? Yes.

Justine Chew: Yes it is.

Phil Corwin: All right, Question 5 on Page 14, why did we just jump to 15? Now we're back on 14. I tell you, bring back Adobe chat.

Ariel Liang: Sorry, this is Ariel (unintelligible) on Page 13.

((Crosstalk))

Phil Corwin: Yes, this inability to scroll from page to page is maddening sometimes.

Kathy Kleiman: I agree completely.

Phil Corwin: Now I'm back on Page - okay. All right so we're done with Page 14. Page 15, Effective Court Proceedings. "How often, if ever, was related legal proceeding initiated prior to or during the URS proceeding? What was the effect on the URS proceeding?" George thought it would be of interest to ask about after a URS and Justine didn't think providers would keep track of anything after the URS. I tend to side with Justine, I just don't know that providers would be tracking a case about whether there's subsequent legal proceedings between the same parties.

They would know if there was another – a UDRP or a court case related to the URS pending at the same time as the URS. So George's hand is up. George, make your case.

George Kirikos: Yes, somebody would know because if there was a court challenge there'd be notification to the provider or to – sorry to the registry operator or to the provider that, you know, the name should be set back to its original question, etcetera. There probably haven't been any court challenges at all but is kind of more geared towards the UDRP in the future, that we should have access to that on legal disputes. Thanks.

Phil Corwin: All right, let me say, George, the questions were asking on URS, since there are differences from the UDRP, are not – do not dictate what we're going to ask UDRP providers way down the road when we get to Phase 2 of this, so I would tend – since it's quite unlikely there's been any subsequent legal proceedings and we don't know that the providers would have any knowledge of them, I would tend to keep the question as is since we're concerned about provisions of the rules and procedures relating to concurrent related legal actions whether it's a UDRP or a court case. So that okay if we keep it as is?

Kathy Kleiman: Phil (unintelligible).

Phil Corwin: Who's that?

Kathy Kleiman: Excuse me, this is Kathy.

((Crosstalk))

Phil Corwin: Yes, you're almost un-hearable, Kathy.

Kathy Kleiman: Okay. There is a suggestion from David McAuley if we did want to expand it that we would add the words "that the provider knows of." So you know, how often what the provider knows of was there a related legal proceeding initiated prior to, during or after a URS proceeding might be a way to do it. Trying to indicate we're not asking them for a deep dive.

Phil Corwin: Okay well since David made the suggestion I'm going to ask him to submit a revised language to us by COB of today of that one sentence. I think David can probably fit that in his day and then we can consider it okay. Onto Page 16, oh there's a lot of red on this page, I'm not happy with that. But part of it bleeds onto Page 17.

Three, "Has ICANN ever requested any information or data from you since entering into your MOU?" George said, "Why ask them? ICANN would have the information." Justine says, "I don't see any harm." I would say leave it in, let's ask them then we can ask ICANN later and see if their answers gibe. I'm suspecting there hasn't been but let's – I don't see – it'll take the providers 10 seconds to answer this. In fact I would say maybe we should ask a follow up, "If so, can you provide the type of information and data requested?" What if they say, "Yes," we say, okay, the natural follow up is, what did they ask for? So I would think if we're going to ask this we want to follow up incorporated in the question.

Kathy Kleiman: Phil if the goal of the question – this is Kathy – to just see if ICANN is monitoring its MOUs.

Phil Corwin: Right.

Kathy Kleiman: Okay.

Phil Corwin: Okay so let's keep it with a supplement that if so, what was requested, question mark. That at least if any of them say yes we'll have some more information. Question 4, "Do you maintain regular communication with ICANN? If yes, what areas of the URS do such communications touch on?" George thought the question was incomplete.

Kathy Kleiman: There were recommendations to combine 3 and 4...

Phil Corwin: What's that?

((Crosstalk))

Kathy Kleiman: Phil, this is Kathy. There are recommendations to combine 3 and 4, may I suggest since no one's talking about taking anything out, just combining, this might be something to take to the sub team.

Phil Corwin: Yes, I think that's probably a good suggestion. I'm going to ask staff to take a stab at combining them with the additional providers that I had suggested for Question 3 and get that back to us today and send one combined question on that. We're getting close to the end, Question 6, "Do you think it'd be feasible to add a requirement to respondents who abuse the process should be sanctioned? What would be an indication of respondent abuse beyond bad faith registration and use of a domain name?"

Okay, and George had multiple objections to targeting this at respondents. I think the reason it was is because there's already abuse provisions in the rules and procedures for complainants and this is really an opinion question from asking providers whether they think there should be something similar for respondents. I don't know how respondent would – we see most

respondents not responding; we see defaults prevailing over cases with responses. I guess the respondent, if they gave fraudulent nonfactual – put forth fraudulent or incorrect facts in their response that would be abusive. They'd probably lose.

Kathy Kleiman: The chat does seem to be raising questions about this. Cyntia is saying, “Agree with George, why just respondents?” Zak, why are we asking providers this? It's pure policy.” And agreement with Zak from David McAuley. Do – interesting, this may be a question to be stricken or substantially rewritten.

Phil Corwin: Okay, let's do this, let's – if folks concerned about this section have suggestions for rephrasing it where it's more neutral and is based to some extent on facts and not just pure opinion, let's please submit that today, otherwise the question is out. It's really a policy question and we can address that policy question without any solicitation of opinions from providers. Okay, and I think that brings us to the final question. I really thank everyone for hanging in on this so we could finish this today.

This is George's question referencing the – I believe the 2009 action brought by the Minnesota Attorney General against the National Arbitration Forum. To my knowledge there was no determination as to the accuracy of those allegations. The Forum chose to end its consumer arbitration business and withdraw from that practice. And I will say, George, when the sub team discussed this, and I'm trying to get onto – God, I hate this technology. Now I can get to Page 17 to George's questions.

So George's questions referencing the 2009 allegations, which were never ruled upon by any court, he's asking – he wants to ask NAF how their business practices handling domain name disputes differ from those of the arbitration business it left. How can domain name registrants be confident the same abuses, which were alleged, are not present in domain name disputes? And then he wanted information about the beneficial owners of NAF.

George, I have to say the members of the sub team – and I see two hands up – felt one, that this question had been asked and pretty much answered orally by NAF's counsel at the San Juan meeting. And also that since this was based on allegations that were never proven in a court and that we were looking at all the providers to see whether they're in fact complying with the URS rules and procedures, that this question was unnecessary and might I say was somewhat in the form of the classic when did you stop beating your wife question that it would ask NAF to basically concede to some extent that the allegations were correct in answering the question. And that it wasn't appropriate for this working group to be asking that type of question.

So I'm going to stop there and I'm going to let Susan chime in and then George respond to what the information I just conveyed and whatever Susan has to say.

Susan Payne: Thanks very much, Phil. In a way what I'm going to say is could we perhaps take this conversation offline or onto another call at a time when we have time? You know, we're 20 minutes over the call here and we're trying to finalize this document to get it out to all the providers and this is a very specific question about some past history relating to one of the providers and it's not about the URS rules specifically. And so we may or may not decide he's merit in asking this question and I'm not expressing an opinion on that for this purpose.

But I'm just saying I don't think it lives in here. I think if we want to ask – if we decide as a group we want to ask NAF this question, we can send them a separate question, you know, if we feel we do want to give them this opportunity to put their thoughts in writing. But quite apart from thinking that it doesn't live here, I also think, you know, if we ask this question in this document we run the risk that the response to all of the questions that we're asking is held up while this has to go through NAF's legal counsel. And frankly if it was me at NAF, I would do that. And so we may never get the

responses to the things we really need because it gets held up whilst a response to this specific question is being crafted.

Phil Corwin: Okay, Susan. And I'm going to – just before hearing from George, and note that George said in the chat that he wanted to give NAF a good faith chance to improve on their prior answers. Cyntia said, "Why not ask all providers are they clearly disclose potential conflicts?" that would be conflicts for the providers, not for their examiners. David said, "NAF always has the opportunity to say more, why ask about it here?" Justine agreed with Susan. Kathy said, "That was a good suggestion." Mary said, "The working group can agree to forward the question just to Forum or not." More agreeing with Susan.

So, George, let's go here with the understanding that if we don't include this question in the list today it doesn't foreclose discussion about whether a specific targeted question to NAF on this with some rewriting can be endorsed by the working group. It just wouldn't be decided on this call. Go ahead, George.

George Kirikos: George Kirikos here. Yes, that would be fine. They did answer orally but they didn't really give a fantastic answer so this is a good faith attempt to let them improve upon their answer. These were very serious cases, it wasn't just the Minnesota Attorney General, there are also civil cases, or at least one civil case so they were, you know, they did leave the consumer arbitration and these cases never usually go to a file judgment, there was obviously a settlement which was a very serious settlement.

So the question was, you know, did they learn anything from that or is it just business as usual? So they could say something like well, we made these various modifications, has there been any procedures to ensure that these issues don't arise in domain disputes as was alleged in the consumer arbitration. They didn't give an answer like that but, you know, giving them a fair chance to talk about what changes if any they made. Thanks.

Phil Corwin: Okay, George. So we're going to strike this question for now and – but we're not disposing of the issue; there can be more dialogue within the working group on a targeted question related to the 2009 Minnesota Attorney General action posted to the Forum, we're just not going to settle that today.

So with that I want to thank everybody for hanging in. I hate to have gone over by so much but it was really important that we finish these questions today and by doing so we can now get them out to the providers by early next week which should ensure that we have answers to most and hopefully all of them by the time we all arrive in Panama for the beginning of ICANN 62. So with that I'm going to rest my voice and turn it back to Kathy to close out the meeting.

Kathy Kleiman: Terrific. Huge thanks to Phil for the marathon run through 17 pages to the sub team to all of your work and to all the commenters who reviewed this (unintelligible). A quick note that this will be going out – the questions will be going out and we're expecting the answers back in several waves, easy answers first and longer answers second, but we've asked the providers to provide answers as soon as possible on most of the questions.

And now I'm going to turn this over to staff for a quick notice of the agenda for May 2 and also an update on next steps for our nomination of our new cochair and Brian Beckham has accepted that nomination this week. Julie, Mary, could you take us through the next steps for next week and perhaps the week after?

Julie Hedlund: Hi, thanks. This is Julie Hedlund from staff. And just very, very quickly so for the next meeting we are anticipating discussing the report from the Documentation Sub Team and I don't have that right up in front of me at the moment, apologies. But and then also – I don't know what to add based on what you just said about the nomination for Brian, Kathy, apologies.

Kathy Kleiman: Okay. We'll be circulating the calendar, it's – and the agenda. It's my recollection that on May 2 next week at the regular time we'll be talking about John's URS 2 proposal and that the following week – May 9 we'll be working on finalizing the cochair nomination. But I could be wrong about that because I don't have the draft agendas in front of me. Mary, do you have a recollection?

Mary Wong: Yes, Kathy and Julie, everyone, this is Mary. So as Julie said, for 2 of May next week, it is the Document Sub Team and discussion as you said, Kathy, of the proposal from John McElwaine. There has been discussion amongst the chairs and staff on – about the 9th of May agenda given that Brian has accepted the nomination, thank you, Brian. So, Kathy, I believe the next step is for the chairs to send a note to the working group to outline a proposed approach for either electing or confirming Brian possibly at or around 9th of May.

Kathy Kleiman: And of course final confirmation from the GNSO Council but interim appointment can certainly come from the working group is my understanding. So thanks, everyone, for this marathon two-hour session. Let me let you go back to your evenings and mornings. Anything – we still have a few days to post onto the list if you have changes. And thanks to everyone for getting back on the questions that they will be editing on the providers list. Thanks so much. Take care.

Terri Agnew: Thank you. Once again, the meeting has been adjourned. Please remember to disconnect all remaining lines and operator, if you could please disconnect all recordings. Have a wonderful rest of your day.

END