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**ICANN Transcription**  
**Review of All Rights Protection Mechanisms (RPMs) in All gTLDs PDP WG**  
**Wednesday, 18 December 2019 at 17:00 UTC**

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TERRI AGNEW: Good morning, good afternoon, and good evening. Welcome to the Review of All Rights Protection Mechanisms (RPMs) in All gTLDs PDP Working Group, taking place on the 18<sup>th</sup> of December, 2019.

In the interest of time, there'll be no roll call, as we have quite a few participants. Attendance will be taken by the Zoom room. If you're only on the audio bridge, could you please identify yourselves now?

Hearing no one, I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this, I'll turn it back over to our Co-Chair, Brian Beckham. Please begin.

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BRIAN BECKHAM:

Thanks, Terri. Welcome, everyone. Looks like we have a little bit light attendance, but a critical mass to move to [co-alum]. I think most of you were on the call last week. Kathy did a great job of starting us down the process of looking at the individual proposals to see if there weren't any that didn't have any support or whether they had sufficient support to be put into the initial report.

Just to refresh everyone's memory, we started with a ping-pong approach based on this survey that we did – one that had low support and one that had high support and back and forth along those lines. So we were going to continue to do that today. So that's a way of covering, number one, the reviewing of the agenda.

Let me ask if there are any questions or suggestions with respect to picking up where we left off last week, using the same approach and/or updates to statements of interest.

Hearing none, that takes us to [my chart]. We've left off at #11. I think this had to do with the threshold for the response fee. From memory – please, anyone, feel free to chime in with a recollection – we started a little bit down the path of a discussion of the threshold versus the idea of the response fee threshold being lowered.

I was going to propose that, rather than get into a discussion about whether it should be three, four, five, six, or so on – certainly we can do that if we all are inclined – maybe that we first agree on whether people feel that the proposal itself – the idea to lower the threshold – has sufficient support to be put out in terms of an individual proposal – I see here it's actually a joint proposal –

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for purposes of public comment, rather than try to agree on a specific number.

Any thoughts on that approach for this proposal, #11? With that, if any of the proponents are on the call, that would [inaudible] to see [inaudible] [approach].

UNIDENTIFIED FEMALE: Brian, Rebecca Tushnet has her hand up.

BRIAN BECKHAM: I'm sorry. I missed that. Rebecca, please?

REBECCA TUSHNET: Thank you. I can't support putting this out – I'm obviously not a proponent – as it stands. One point is that, last time, we heard objection that I thought were reasonable about procedural changes that would actually make the URS take a bunch longer as different things were confirmed. This is precisely one of those things, where apparently we would do some verification somehow, which is also not defined, which is a problem. So, to me, this isn't really even a proposal. It has no idea of how you figure out whether [something] was actually a registrant of these things. Apparently, there's a multi-step procedure that seems inconsistent with things other people have said.

Also, the three is crazily low. I agree that we're not going to amend it. So three is crazily low. It's basically almost malpractice

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not to register three domain names if you have business that's getting off the ground. I don't think this makes sense. Thank you.

BRIAN BECKHAM:

Thanks, Rebecca. Griffin, before you react, I just wanted to mention that I think, Rebecca, in terms of the question of how you would identify – maybe Griffin can clarify this – whether it's three or somewhere in between 15, which is the current threshold, that those would actually be registrations in a particular URS dispute. In other words, there would be no "discovery" around that. But maybe Griffin can help us with that.

GRIFFIN BARNETT:

Hi. Thanks, Brian, and thank, everybody. I guess I have a couple comments in reaction to what Rebecca just said, the first of which is that Rebecca clearly has substantive concerns about the proposal, which is fine, but that's not what we're here to address. We're here to address whether there's support in putting this out as a reasonable suggestion that has support among a certain baseline threshold of people within the working group for public comment. Then Rebecca and those who feel similarly to her on the substance would be welcome to submit public comments along the lines of what she just stated as to why she or they believe this isn't a good proposal or whether it could use tweaking to get it into a place that may be more reflective of a good level. So that's the first overarching comment.

I guess, just to react to some of the other individual points, as to what Brian just said, that's correct. So there would not be any

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delay introduced into the process beyond what you would otherwise find under our current system, where, in a case where you cannot identify the registrant due to redactions to WHOIS data and you submit essentially an anonymized complaint, you submit that on the basis of information available as to whether that same registrant owns all the domains. Once the full WHOIS data for the domain names is disclosed as part of the normal process that now find ourselves working under, then you can determine whether in fact a same registrant, based on the disclosed data, is indeed the registrant for the entire set of domains or whether there might be others.

So, again, I don't believe that there's any additional delay introduced into the process through this proposal. I think the delay is a natural result of how the system entirely works now based on that additional back and forth due to data redactions. So I don't know that Rebecca's comment is accurate, but I'm happy to discuss that with her further to see what other areas of delay she might be seeing here.

Finally, I'll just say, again, there were other comments previously about whether reducing from 15 to 3 is the appropriate threshold. Again, that's going to the substance of the proposal. If you think 5 is a better figure, then that's fine. Please comment accordingly in public comments. But, again, going back to my original point, I think we're trying to determine whether there's support among a sufficient number of members of the working group to put this out for public comment, where we can invite those types of substantive responses. I believe, based on just sheerly the number of individual components plus the data from the survey,

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where we had well over 40%, I think, supporting the proposal as written and then an additional 33.3% supporting publication but with amendments, I think, clearly, we have a sufficient threshold met to at least put this out for public comment. Thanks.

BRIAN BECKHAM:

Thanks, Griffin. Maybe, just while we're checking if Rebecca's hand is old or new, I can pick up on something that Griffin mentioned in terms of the process and then respond to two items in the chat. As we touched on last week, we were not minded to make decisions in the fly on this call. We will take all the call notes and come back once we've had a chance to digest all that and see where these land. I think normally that should be reasonably clear in the call. We didn't want to get to a decision-making process on the calls.

Just as a reminder, what we had as a way forward was where there was wide support and limited support. That would pass the threshold for inclusion as – again, this just as an individual proposal, not as a working group recommendation. On the flipside, where there was virtually no support and significant opposition, that threshold wouldn't be considered met.

I think, with respect to that threshold being met or not, the number of proponents is certainly a relevant consideration. Obviously there is some opposition to the specifics, and that's the comment that Paul Tattersfield has made in the chat. So that really goes to the number, but, again, we didn't want to try to home in on that here.

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In terms of Rebecca's comment, I think, maybe just a reminder, both for the URS and the UDRP under the temp spec or its successor, whenever there's a case filed against an unknown registrant, then necessarily post-GDPR there's going to be some delay once the underlying registrant information is relayed to the complainant. So, in effect, you could say that this proposal doesn't add anything new in terms of disclosure of registrant information.

With that, maybe I can ask Rebecca whether that's a new or old hand. In the meantime, we can go to Greg Shatan and hopefully try to wrap this one up.

GREG SHATAN:

Thanks. I do support putting this proposal out. I do think that, when we do, we should specifically ask for comments on the threshold. I think that just proposing 3 and making it a binary choice between 3 and 15 would not be a satisfactory way to put this proposal forward. So, when it's framed, it really should be framed for comment on the number so that we can get a range because it may be that 3 is too low. It may be that 3 isn't. But we should get qualitative responses. I think this is definitely the appropriate time to review whether this is the appropriate threshold or whether it should be something less or even possibly something more, although I'll note that, at least as of a couple years ago, I found an article by Doug Eisenberg that said he reviewed all 650-something cases of that time, and only two had 15 or more names. So that seems like the threshold is too high, especially since the idea of this is that it relates to the fact that a pattern of domain name registration is sufficient. It's part of demonstrating bad faith.

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Last, let's keep in mind that this is for cases would be filed because they believe that they can be proven by clear and convincing evidence. So, while it's possible that legitimate registrants for 3 or more names will get caught up in this, it's somewhat less likely. Thanks.

BRIAN BECKHAM:

Thanks, Greg. Before I turn to Rebecca, I just wanted to remind everyone that, if you recall, one of the reasons we're in this path of this process was we wanted to give an opportunity to see if there was a possibility of turning any of these proposals into recommendations that would require more of a substantive discussion during our working group calls. We didn't get any requests from working group members to shift their individual proposals up into recommendations, so we didn't have that discussion process.

So here we're looking less for a substantive discussion about whether it causes a delay in a case or it should be 3 or 5 or 10 and more for whether there is support to put a proposal out for public comment or whether there is, in the nomenclature we've adopted, virtually no support and significant opposition.

With that, maybe I can turn to Rebecca and see if we can't land this one. Rebecca?

REBECCA TUSHNET:

Thank you. Thank you for talking about procedures. Let me just say two things that I think are generally applicable. First, I agree there's no request to promote anything to a working group

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recommendation. The [announce] procedures, however, do suggest that the Chairs can decide, “Well, there was so much support expressed and no opposition expressed that we might come back to you and decide to promote it.” That’s literally the only reason I want to get some opposition on the record.

So, if you guys actually on reflection don’t want to do that, where no proponent came and said that, then I will stop talking on a lot of these. But, otherwise, as long as that’s on the table, then actually I think we do need some indication of opposition, even where – I actually agree – it’s probably reasonable to publish as individual proposals things where there’s substantial support and substantial opposition. That makes sense as a standard.

However – this is the second larger point – the [announce] procedures are actually silent on what goes on if there’s both substantial support and substantial opposition. If substantial opposition doesn’t matter, as this discussion on this proposal so far has suggested, when there is substantial support, I actually think that’d be a reasonable call to make. But, if that’s the case, we can save ourselves a fair amount of time by asking, is there substantial support? Because, if there is, then substantial opposition shouldn’t matter. We should just go ahead and publish it as an individual proposal.

So, once we know what the rules are, we might be able to move through this more quickly. The reason that I came out of the gate like this is because I think this is actually a point of unclarity in what we have announced. Thank you.

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**BRIAN BECKHAM:** Thanks, Rebecca. I note Phil and Kathy are on the call. I, for one, wholeheartedly agree that it's useful to hear from, in this case, you or whoever it might be, just to record that there is some substantive opposition to a proposal. That helps us in terms of just to remind folks that – apologies. We did the best we could. What we came up with is that wide support and limited opposition was getting you over the bar and virtually no support, and significant opposition was getting [inaudible].

With that, I will turn to Zak, with the good reminder from Rebecca that what we're really here to do is see whether ... I think, practically speaking, most of these will end up having some level of support for publication. Maybe what we're really looking at is whether there are proposals with virtually no support and significant opposition. Zak?

**ZAK MUSCOVITCH:** Thank you. Brian, just following up on Rebecca's query about the standard, where are we at with this? If there's significant opposition and significant support, what's the applicable rule?

**BRIAN BECKHAM:** That's a good question, Zak. Maybe we could have done a better job framing this. What we came up with was, on the one hand, wide support and limited opposition, and, on the other hand, virtually no support and significant opposition. So, if you look at the contrasting qualifiers, if you had wide support but then significant opposition, where does that land us?

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I'll see if Kathy and Phil wanted to chime in, but I think what we're really looking for is a knockout in terms of significant opposition. I know that we don't want to make this a numbers game, but let's say we've got 26 participants on the call. Let's say 20 because there's some staff and the Chairs. If 10 or 12 people supported something and 2 or 3 or 10 vociferously objected, then that would seem to have wide support but also significant opposition. My feeling is that that would make the cut for at least publication as an individual proposal.

I see Kathy has her hand up. I'll see if Kathy or Phil can help us through this and I certainly welcome views from you all. We don't want to make a decision unilaterally, but this is my gut reaction to Zak's question. Kathy?

KATHY KLEIMAN: Thanks, Brian. Can you hear me?

BRIAN BECKHAM: Yes.

KATHY KLEIMAN: Okay, great. First, I'd like to ask staff, as we did last week, to go to the next slide on Proposal 11. There are nine comments there, eight of which – we discussed it briefly last week – I think can be deemed as opposition or concerns to the proposal as written. So, even on its face, I think we've got something that rises, certainly, to concerns and objections.

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I agree with you completely, Brian, that we do not have a standard for substantial support and substantial objection. If we're using the Phil Corwin standard of "will it get consensus in the end?" from the working group in a final report, that's a very high bar. If it has substantial objections or concerns, we can wonder about what will happen in the end as we go towards consensus.

But that is not the standard we adopted here, and I agree with you that, while we didn't specify it, the default here, I think, is to put things out for publication. So, if something has substantial support, as this does, and substantial objection, as this appears to have as well, then I think, first, we can lean towards modification, which has been offered in the chat. I'm not sure where that stands, so I wanted to open that. Do we want to put this proposal out but with open questions regarding the issue and then the threshold – what number – to be set. Someone else said it much more eloquently and succinctly in chat.

But, yes, the default is probably putting these out for public comment, in part because they were all scheduled to go out for public comment in the first place. So I'm supporting you on that, Brian. Back to you.

BRIAN BECKHAM:

Thanks, Kathy. I see there's a little bit of a queue. Maybe I can call on Phil first and see if he can't help shed a little bit of light on the process. I've also noted Rebecca's comment in the chat about non-trivial support. I think that that's worth taking note of. Phil?

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PHIL CORWIN:

Thanks, Brian. My inclination on something like this and generally is that, if something has substantial support – I think with ten working group members behind this, even though there’s substantial opposition – we’re just talking about putting something out for comment here. On this one, as Co-Chair, I would say, yeah, but the bias should be more toward publication than not since this is not a working group recommendation. It’s just simply something we’re inviting community feedback on.

On the substance – this is a personal view – I might be inclined to report some reduction, but it’s obvious to me, just from this discussion and what I think would happen with community comment of, “Well, there might be, in the end, some consensus for some reduction from 15,” that I don’t ever see consensus around 3: an 80% reduction. But that’s what the purpose of community comment is: to see what merits and demerits the community sees in the concept of reducing the threshold and where they might aggregate around a lower number if there is support for that. So I hope that’s helpful.

BRIAN BECKHAM:

Thanks, Phil. Sorry, Zak. Is that a new or old hand? Then I have Greg.

ZAK MUSCOVITCH:

New hand from me. Thank you, Brian. I have a different from Phil’s, which I understand and respect. To me, the objective of the exercise we’re undergoing through now was to determine whether there were any individual proposals that we could pare away and

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cut down to limit the number. The ones that had no chance of consensus were the ones that we would be eliminating. So, if we're changing that right now, I'm against that because the question of whether to lower the threshold or, arguably, raise the threshold is a legitimate question.

However, if you're going to put in a proposal that has a number of 3 that's so low, when you know that there's so much opposition from other members of the working group and likely from the public, what you should have done instead is reach some kind of compromise with other people in the group to find a number that's agreeable. Then it becomes a group proposal.

But, if it's just going to be a self-serving super-low number, I don't think that it's going to get consensus, and it shouldn't even be put out for public comment because that's just an additional proposal that has no chance in heck. Then we're back up to 32 or 33 again, when the whole idea was to get back to maybe 25 or 20-something like that. Thanks.

BRIAN BECKHAM:

Thanks, Zak. That's a fair question, which is whether this is likely to get consensus. Greg?

GREG SHATAN:

Thanks. I think that, if you look at the slide that's up in front of us now, it's not objection to asking the question per se but more all seeking fishing for what might be the right number to put out or the right number to ask for or to ask for a comment between 3 and 15. So I think this all points to modifying this slightly or framing this

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with a question that asks about the number and probably requires some introductory materials as well because this is a fairly uncommon part of the URS and should not be left out there without any kind of context. But I think that trying to use the idea that it says 3 to [sink] the proposal entirely isn't appropriate.

Also, I think we're trying to somewhat mimic, if not exactly use, the standard methodology for decision-making in working groups with full consensus, consensus, and then the third being strong support but significant opposition, all the three of which will move things forward but where, in the last two, a minority report might end up coming through. I don't think we necessarily need to go to that point for this, but I think the point is that strong support is where most support it but there's a significant but clearly smaller number that doesn't support.

In some cases, people have been talking about substantial support versus substantial opposition. If we're going to try to make those into numbers, that would seem like divergence because the substantial on both sides should be roughly the same or else you shouldn't call them both substantial.

In any case, I think we're looking for some sliding spectrum, where, if support outstrips opposition, we move forward. If opposition outstrips support, then that likely results in it being sunk. If it really seems like there's divergence or equipoise, I'll be with the others to think about how to handle that. But I think I'd probably err on the side of publication, but not necessarily. But I agree that that decision should be independent of whether any one proposal is attractive or not to somebody suggesting what the decision should be. Thanks.

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BRIAN BECKHAM: Thanks, Greg. I'm going to call on Cyntia and Paul and then hopefully draw a line on this one. I've taken note of some of the comments in the chat. Cyntia?

CYNTIA KING: Hi. Can you hear me?

BRIAN BECKHAM: Yes.

CYNTIA KING: One quick comment and then one question. The comment is this. We're talking about the URS here, where the standard of proof is clear and convincing. It's a higher standard of proof than a UDRP. So the idea that 3 is a very lower number, while that might be true in a UDRP setting, I think in the URS that makes it a little bit different. So ... hello? I think that the number between 3 and 15 is a fair question to the public.

My question is this. What happens once we submit this to the public? If it's going to come back to the group for a discussion of the public comment, then I think that we don't have to have a huge discussion about whether 3 is too low and stuff if it comes back to the group. Thank you.

BRIAN BECKHAM: Thanks, Cyntia. Paul?

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PAUL MCGRADY:

Thanks. I think we're a bit going off the rails in the sense that, on the last call, we came to the agreement that these would be up or down on supporting for publication or not the proposals as they are. I do take onboard the concerns raised by Zak and others that, once we start to modify them, it gets really complicated and it starts to feel like a consensus call, like Greg was talking about, which I don't think is appropriate for this stage right now. So, again, I think this call is just meant to be a temperature-taking exercise for the Chairs to determine whether or not there is substantial support to publish these. That decision will ultimately be taken by the Chairs with the assistance of the GNSO Council liaison and then staff. So I don't want us to get bogged down trying to rearrange these in order to get everybody onboard. That's not what this exercise is about.

Like Cynthia mentioned, these will come back. For example, [this particular] proposal, if it's published and we get a lot of comments back saying 3 is way too low and it should be 6 or 7, or 15 is the only answer, that information will come back from the public from public comment, and the group can do what it wants to with it at the time. But I don't want us to get bogged down on quasi-consensus teaching on each of these and horse trading to get them out the door. Either there's substantial support to get them published or there's not. Thanks.

BRIAN BECKHAM:

Right. Thanks, Paul. Anyone else before I try to wrap up on this one?

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Okay. So I think we've usefully covered a little bit of the decision-making process going forward. I think, for this one, again, we don't to make necessarily decisions on the fly on the calls here, but it seems that there is sufficient support to include this. As Kathy reminded us, the default would be for publication. Obviously there's some opposition, but it feels like we have enough on this one. If you agree, in the interest of time – of course, we've taken notes along the way with staff, and we can certainly take onboard ... There was a suggestion earlier, when this is actually framed for the initial report, to frame it more as a question of seeking input from people on what they felt an appropriate number should be. Probably some people would find that it should even be higher or there shouldn't be a response fee. But we can certainly work those more substantive concepts into the proposal based on the conversations that we've had over the past couple years.

Unless anyone has any strong objection, I think we probably have what we need on this one to make a determination on whether to include it in the report or not, which would take us to #18. #18 was that there was a proposal about a notice [of] objection appeals-type process. Obviously, the proponent of this, George Kirikos isn't here on the call.

I don't mean to put you on the spot, Zak, being a practitioner in Canada, on whether you might be able to understand this. My rough reading is that it's something along the lines of the DMCA notice and takedown counterclaim. Obviously within the URS and the UDRP, of course we covered that last week. But, to the extent that these proposals cover the UDRP, that particular part would be struck because we're not actually in the UDRP review process.

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But, reading this myself, I had a question on how this relates to the existing appeals processes and if this was really some sort of suggestion to overwrite those with a different type of appeals process.

As I said, the proponent of this isn't on the call, so maybe I can open it for comment, on the one hand, if people have any light to shed on what this means, and then, on the other hand, whether people feel this should be included or not in the initial report.

I see a comment from Michael Graham in the chat opposing this. Rebecca, please?

REBECCA TUSHNET:

I think, as we all know, this issue addresses a very niche issue that nonetheless has actually taken place. So we know that it can happen, that somebody can end up ping-ponged between systems in ways that make them unable to challenge a determination in venue that actually has the ability to do real fact-finding where that might be appropriate.

So I support the idea of putting out for public comment a set of proposals that point to the issue which has, though rarely, come up and could come up again. There are different ways we might do it. I think putting a menu out is a good idea to actually get people thinking about whether this is something that can be solved because it does seem like an access to justice issue, to have one system tell you, "Well, go to the courts," and have the courts tell you, "Well, no. You can't." That's why I would support publication for feedback. Thank you.

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**BRIAN BECKHAM:** Thanks, Rebecca. That's a good reminder that, actually, as it says on the top of the slide there, Proposal 18, 19, and 20 are all related. Just to remind everyone, Proposal 19 was that, if the respondent didn't have a court option, then the decision would be set aside – the URS decision, that is. Proposal 20 was to always include the United States of America in the mutual jurisdiction provision.

I don't know if there was any inclination, for example, just because, Rebecca, you mentioned this as an area of interest, to combine those proposals into something that covered this idea of access to justice.

I see Phil in the chat and then I've got Rebecca. The reason I ask Rebecca is because we, of course, are asking the question on whether there's support to include this in the initial report and, as it stands, it may merit bringing 18, 19, and 20 together somehow to allow people to have a better opportunity to give more meaningful input in terms of the public comment. Phil?

**PHIL CORWIN:** I personally oppose all of these proposals. Number one, they all address not just URS and UDRP. UDRP is out of scope for this initial report. Second, I know that a UDRP, while it's called an appeal, is not really appeal. It's a de novo report by a court under applicable law in which the prior UDRP decision plays no role at all. So this amendment before us is unnecessary. I believe it's the same process for URS.

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For the other two, the next one on vitiating the prior decision, this is exactly what came out of the IGO Working Group that was rejected by the GNSO Council and has resulted in that working group's recommendations not moving forward.

The final one I'm giving everyone is U.S. jurisdiction. If they don't have mutual jurisdiction – a law that allows them court access – that would be extremely controversial and relates to jurisdiction issues which accompanied the IANA transition.

So I think all of these should be rejected, number one, because they go beyond the scope of Phase 1 and include the UDRP. On the merits, they lack merit. Thank you.

BRIAN BECKHAM:

Thanks, Phil. I have Rebecca and Susan.

REBECCA TUSHNET:

I will try not to get more into substance, although I would have substantive things to say if we were doing that. I'm just trying to answer the question that was asked to me. I'm not opposed to doing some work on framing this, although I think it's a little inconsistent with the treatment of the previous proposal. So are we tweaking? Are we not? I'm sympathetic to Susan's concerns. We did a survey on the assumptions, apparently, that there would be amendment process. If there is, that's fine. But, if not, I think there's enough here to get people thinking, especially since they are framed as being about the same problem, which, again, is a problem that has actually occurred. It's not theoretical.

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So that's where I am. I will take guidance from the Chairs and the rest of the working group on whether I should try and write something. Thank you.

BRIAN BECKHAM: Thanks, Rebecca. I have Susan and then Kathy.

SUSAN PAYNE: Thanks, Brian. I think my reservations about this one come from the conflating of the URS and the UDRP. Obviously, when we come onto the UDRP, we may well be having this kind of discussion again. But the UDRP is a very different beast in that there is not kind of appeal at all, whereas the URS was deliberately built in with what we've all discussed in this group as being multiple opportunities for second and third and fourth bites of the apple. So to conflate the two of them and propose to treat them in the same way doesn't recognize that.

I don't think that the problem that we supposedly have encountered wasn't a URS problem. In the URS, if you're unhappy with the outcome of the decision, you have an appeal path. I don't see that this is a problem that's a URS problem. I'm actually not acknowledging there's a problem at all but to the extent that we think there is one.

BRIAN BECKHAM: Thanks, Susan. Kathy and then John McElwaine.

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KATHY KLEIMAN:

Thanks, Brian. For those who weren't on the call last week, with my Co-Chair hat on, we decided that, as a matter of possible, we would just delete the words "and UDRP" when they appeared in proposals because that is outside the scope of the proposals. So that's what we did with the prior proposals that we did last week. So this would really [read: "For our purposes, I propose the URS to be modified"] if we want to carry on the same de facto rule.

Without my Co-Chair hat on, I don't think we should be conflating 18, 19, and 20, as they are individual proposals and as a lot of us don't have the same background as some people who have thought extensively on these. But this does seem to raise an interesting question about access to courts, which we certainly assume exists both for the URS and for the UDRP. But, again, we're not dealing with the UDRP. I don't see any reason not to put it out for public comment and see what comes in that may prove useful, both for the current Phase 1 as well as help inform Phase 2. Thanks.

BRIAN BECKHAM:

Thanks. I have John McElwaine, Greg Shatan, and Zak Muscovitch. If I could ask whether you have any specific comments, of course feel free to open up on whether this should be put out for public comment or not as an individual proposal. John?

JOHN MCELWAINE:

Thanks. My only comment with respect to Proposal 18 – apologies that I got an emergency phone call from my daughter during part

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of the discussion – is that I don't understand at all what it's getting at. I don't know what "to set aside a decision" means or what "a clean slate proceeding to a court" means. I don't see how we can recommend court costs being assessed later as a penalty.

But the main thing I'm hoping might help is we look at Proposal 19 and 20. That might help make a little more sense, but I don't think that this is clearly enough explained to me personally to recommend it going out to publication or not. Thanks.

BRIAN BECKHAM: Thanks, John. Greg?

GREG SHATAN: Thanks. I agree. I think this whole proposal is essentially void for vagueness or not making sense. It really goes beyond anything we can even talk about. Essentially, all this is is a proposal to pay a fee and then have the URS decision set aside. It doesn't create by itself – we can't create by ourselves – a pathway to appeal. If the appeal is a de novo appeal, this whole thing would be irrelevant. This really depends on interlocking mechanisms between the British Columbia civil resolution tribunal and the British Columbia provincial court system, which has a specific method for filing a notice of civil resolution tribunal claim in order to appeal a civil resolution tribunal claim.

So essentially, because of that, there is this right to essentially stay the ruling below, so to speak, in order for it to be up on appeal. So it doesn't create a clean slate, actually. As far as I can tell, the notice of objection that's filed says that the decision is not

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binding and the claims are continued into the provincial court, which may require a deposit as a condition of continuing the claims. The provincial court may order that a penalty is paid to the other party. This is an entirely different system of jurisprudence, and we can't just import these ideas here.

Really what this amounts to is this idea that, for money, you can pay to have a decision essentially set aside or stripped of its application until such time as an appeal is taken forward. That really turns the whole concept of suspension on its head.

The rest of the proposal here is just stuff that's completely outside of our ability to rule on because it's stuff that goes to saying what courts can do, and we can't say any of that stuff. Thanks. So I'm opposed.

BRIAN BECKHAM:

Thank you, Greg. Noting the opposition. I think I had Zak and then Kathy.

ZAK MUSCOVITCH:

Thank you. I'll just briefly share some comments on each of the three individual proposals. Touching on what Greg said in regards to Proposal #18, the URS is, in my view, complicated enough as is without introducing this whole new framework from British Columbia, which, even as a Canadian, I have no clue about. It may be that this is a meritorious proposal, but just to stick it out to the public without any study or background or detailed information, even amongst us members of the working group? We barely understand it. So I don't think it's appropriate to send it out

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I also note there's corroboration on that to some degree from the survey, with the combined 22 or 23% who are in favor of putting it out, which is a smaller number than the next [slide].

For Proposal 19, this one has a combined, from the survey, 38% support for publication with substantive amendments. I'm more concerned about this issue when it comes to UDRP, but I think that there's enough of an issue here for even URS that, combined with the 38% support for publication in some form or another, it's worth considering putting it out for comment.

Essentially what the issue is is that I understand that, in some jurisdictions – Australia, the United Kingdom, etc. – if you try to bring a court case based upon a decision in a UDRP – I'm assuming similarly for a URS – the courts won't entertain the case, period, because they say there's no cost of action. In that case, the losing party, whether it's the registrant or the complainant, ends up with no possible remedy to overturn the decision in court. So this is something that, to me, is worth considering.

For the next one, Proposal 20, it's the proposal that the URS be modified in the event ... Sorry. I got it reversed. Sorry, everyone. This is maintaining the status quo. Anyhow, this one has very low support combined – about 19 plus 7, so 26% -- so it's probably not worth putting it in.

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**BRIAN BECKHAM:** Thanks, Zak. I think these three present a particular issue in that they're meant to be tied together. But it's not entirely clear, certainly for #18, how they're all meant to fit together.

Maybe what we can do is park #18 and move into #20. Maybe I can ask if, following up on Zak's comment just now, there are any comments in terms of support for putting #20 out or excluding #20 from the initial report.

I'm seeing a few comments in the chat, one from Michael Graham not supporting the three of them together, and, from Jay Chapman, not supporting 18 but supporting 19 and 20 with an amendment.

Anybody have any comments that they would like to make in the call on Proposal #20 on the screen here?

Again, it would be helpful to hear, besides the chat, if only for the record, if people feel strongly – I think, Kathy, yes, that's an old hand from Zak – whether this #20 has support for publication or not.

Okay. I know we had an order of going back and forth from the survey results of high support and low support. But maybe, just to close this off, if we could look at #19 on the screen and see if people have any support for that.

In the meantime, I've got Phil and Susan. Phil?

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PHIL CORWIN: In regard to #20, I was to supplement my prior remarks. I've also put some things in then chat. The question of whether a party has standing to bring an action is U.S. court is something that we have no authority over. It's up to the courts to find a nexus in standing.

This is basically proposing that anyone who registers a domain, no matter where they are located in the world and no matter where the registrar and registry is located, nonetheless have action to U.S. jurisdiction because ICANN coordinates the technical aspects of this whole system. I think it's a very misguided and dangerous proposal and one that, even if we were to adopt it, U.S. courts are under no compulsion to follow. Thank you.

BRIAN BECKHAM: Thanks, Phil. I've noted some support for your comment on raising some concerns about Proposal #20 and suggesting that it wouldn't be right for publications.

Unless there are other comments on 18, 20, or 19, maybe – yeah, Kathy, we can look at #19 on the screen and see if we don't have any comments on 19 to wrap up this group of three.

Phil, I think that may be an old hand. I have Kathy.

KATHY KLEIMAN: Thanks, Brian. I thought we should just read a quick paragraph and then go to the next page of the slide just because we're seeing some support for 19 in the chat. I propose that the URS – I'll delete "and UDRP" – be modified so that, in the event that a

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court finds the registrant has no cause of action to bring forth an appeal of an adverse URS ruling in that jurisdiction, the URS decision be vitiated (set aside).

Can we go to the next slide, please? Because there were comments on this from those who responded. Of the three proposals, this is the one where we see comments that said Proposal 19 alone should be put out for comment. Ditto for two other people who responded. Right of review of the merits of the URS claim by a court of [competent] jurisdiction is critical to ensure the URS does not create rights that do not exist in the law and.

“Too easy to circumvent all RPMs if implemented.” So we have four of the five comments that are supporting putting this proposal out for public comment. I thought maybe, if there were other people who wanted to express support or concern, of all the three, this one seems to be the most ripe for consideration of publications. Thanks.

BRIAN BECKHAM:

Thanks, Kathy. I have Cyntia and Greg. I want to avoid doing this as much as possible, but maybe if I could just take my Co-Chair off for a second and raise personal concerns about this potentially having forum-shopping and gaming concerns, maybe we can hear from Cyntia and Greg.

CYNTIA KING:

Hi. The fact that there were three or four comments that said we should put this out, I think, belies the fact that there were a

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number of people who said that this was just not appropriate to put out for all of the reasons that Phil claimed. I think 18, 19, 20 all have to be tabled. Thank you.

BRIAN BECKHAM: Thanks, Cyntia. Greg?

GREG SHATAN: Thanks. I am opposed to putting this one out. I think the fact that a couple comments – three, maybe – that were recorded that seemed to support putting it out does not rise to the level of having substantial support. It's a pretty small number compared to the total number of people talking about these things.

I think the idea of putting this forward for ... The whole concept of vitiation just seems to me to completely destroy the concept of the decision standing on its merits. Vitiation implies that there's a reason to destroy the underlying ruling, that, basically, where it is applied there could be no reason why it should go forward.

The issue of non-appeal or no place for an appeal to be taken is an issue to framed as such. But we've moved past the issue to a remedy without even having really framed the issue or whether it exists or how often it exists or what should be done with it in the case it exists to this idea that somehow you can blow up a well-formed decision, or at least an arguably well-formed decision, only because there's not a second bite of the apple available. There are other ways to deal with that, but the idea of vitiation is like the death penalty for minor offenses. Then we'll increase the penalties as we move up. Thanks.

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BRIAN BECKHAM: Thanks, Greg. Rebecca?

REBECCA TUSHNET: Thank you. I'm puzzled by the idea that this would be some sort of huge loophole. The proposal is literally the most limited possible way to get to a court, which is you have to show that a court won't let you come as long as URS is still in place. This isn't like filing a DMCA counternotification, which is, by the way, is almost never filed anyway. It's actually interacting with the processes of a court. Again, we have an example of this problem occurring, so it's not like it's a hypothetical.

So I support publishing this to get [thoughts] on whether there are alternate ways to deal with this problem and whether this would be a way similar to going to court and filing, which is not something that is trivially done and not something that could easily be used to erase any given URS proceeding. Thank you.

BRIAN BECKHAM: Thanks, Rebecca. I think, Greg, that's an old hand.

GREG SHATAN: It's a new hand, actually. Just briefly, I found a list of elements – again, it's research on the fly, so I apologize – that typically make a court ruling vitiatable. One is existence of inherent fraud. Another is the existence of lack of bona fide jurisdiction in the

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court that made the decision and existence of an inherent lack of due process of bona fide law.

So what are the grounds for vitiation here? We're taking a tool that has specific application and just using the word to apply it to something completely out of context. So it concerns me. We're talking about a quasi-judicial/legal process. If we're going to take on the concept of vitiation, then we have to have the concept of proving that vitiation is appropriate. I haven't seen anything that says that this is in any way an appropriate place to advance this concept at all, except that somebody likes the idea. Thanks.

BRIAN BECKHAM:

Thanks, Greg. Any final comments? We're on #19, but – Jay Chapman, please?

JAY CHAPMAN:

Thanks, Brian. I was okay with putting this one out for public comment. George isn't here, but I think, in his idea on this, the point would be not that the decision would be set aside but that, ultimately, a complainant in that situation and the respondent would be put in the same position as if the URS didn't even exist, ultimately forcing, I guess, the complainant to go to court to file an actual court action in order to try and have – it's not like the complainant would be completely out of possibilities of what to do.

Again, I'm not going either way on whether that's appropriate or not. I'm just trying to give some background on where George was coming from. Thanks.

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**BRIAN BECKHAM:** Thanks, Jay. I'm seeing a few comments in the chat, some going to the level of opposition, some going to the substance. Maybe we can do a final call for comments in terms of support and opposition and move on from these three proposals.

Any final comments?

Paul McGrady, please?

**PAUL MCGRADY:** Thanks. All that a registrant would need to do to avoid the URS or UDRP would be to register in one of the jurisdictions where there isn't a right of appeal. So what Proposal 19 is is a proposal to dismantle the URS and the UDRP. We're here to review and revise them, not to dismantle them, as far as I know. Thanks.

**BRIAN BECKHAM:** Thanks, Paul. I think, Jay, that's an old hand. Maybe we can just do a final call for comments on this. Of course, we're noting the comments in the chat. These are recorded. Staff and Co-Chairs and the council liaison will go over these when we next have an opportunity to get together.

I think that takes us to Proposal #27. As we get to the proposal – I think this was Zak Muscovitch's proposal – I think the proposal was that URS providers would post CDs of their examiners. I'm assuming, by virtue of the proposal, that this is not happening in some cases.

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Are there any comments by way of clarification from Zak and/or comments in support of including or not including this in the initial report for comment? I will just note that it looks like a pretty large majority voted in support of including this from this survey.

Susan?

SUSAN PAYNE:

Thank you. Hi. I'm not exactly against this. Indeed, I think, when I responded to the survey, I was in support of it going out to comment.

But the only thing is that I wonder if this individual proposal is actually superseded by the recommendations that we've had come out of the sub-teams that now are working group recommendations because we do have one which essentially talks about the need for panelists' qualifications to be published and particularly references the fact that one of the providers, I think, wasn't doing a good enough job. So I just wonder whether this really is needed in the sense that we've already got a recommendation that we're going to put in the initial report and will be out for public comment.

But I'm not necessarily objecting. I think this seems a reasonable thing to seek input on. It's just I think we were already seeking input.

BRIAN BECKHAM:

Thanks, Susan. Any other – Michael Graham is seconding that in the chat with the question on whether this would already have

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been a recommendation. Apologies for doing this on the fly, but, looking at the actual URS rules, #6 said each provider shall maintain and publish a publicly available list of examiners and their qualifications. So this seems to be something that's already covered by the existing URS rules. I'm assuming, from the fact that we have this in front of us, that wasn't the case for one or more of the providers.

Kathy, please?

KATHY KLEIMAN:

Just agreeing with you, Brian. That wasn't the case for one or more providers, based on the research that was done and the data that was gathered.

There seems to be no opposition to publication. There's just a question of whether there's redundancy. So maybe we could ask staff to work with Zak to help him see, since we don't have it in front of us, the extensive tables that we worked on so extensively of sub-team recommendations. Maybe staff could send to Zak what it was that we agreed to in final, if the working group agrees. Zak can see whether he thinks his proposal is now duplicated by that. If not, then there seems to be support for publication. Is that [okay with everyone]?

BRIAN BECKHAM:

Yeah. Thanks, Kathy. I think that makes sense to look at the sub-team recommendation and, of course, the URS rules.

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Quickly Zak and then Greg. It seems that this one should be relatively uncontroversial, but maybe Zak can help us with a little bit of the background. And then Greg, please.

ZAK MUSCOVITCH: I'm just stunned at the detail I was looking at a year ago to come up with something like this, but I seem to recall that the issue was keeping the curriculum vitae current. I think that's the distinction from the current rules. But, honestly, if this is covered more or less in the working group proposal, I'm perfectly happy to withdraw it. Maybe after this call I'll just go over and confirm that.

If anybody wants to speak up and say this really needs to go in, then maybe let us know. But, otherwise, I'm perfectly happy to withdraw it.

BRIAN BECKHAM: Thanks, Zak. This certainly makes sense. If this is overtaken, then it would be redundant.

Greg?

GREG SHATAN: Thanks. I think that, if there is an enforcement issue, we may want to note that in our report without a recommendation, per se. If the rule itself is redundant of the rule that's already there, or if the point is that the CVs or qualifications were very stale, just like some people's photographs, they should be updated more regularly. I think that's an appropriate thing to be put forward, but I

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think this one just needs to be edited to fit with what the actual lay of the land is. So I'm not opposed to putting it forward. I just want to put it forward in a way that properly reflects what it's building on and if it's an enforcement issue versus a change in rule.

Lastly, I object to the spelling of Zak Muscovitch's last name as Muscotitch. Thank you.

BRIAN BECKHAM: Thanks, Greg, for the eagle eye on Zak's name. Susan?

SUSAN PAYNE: Thanks. I just wanted to clarify. When I was looking at this just before the call, I was looking at the recommendations that came out of the sub-teams. Whilst we've been talking, I've been just trying to find where that language has gone to in the more recent document that we've been working on with staff's recommended language. I haven't been able to find it, but obviously we're just in the middle of the call. So I guess I'm supporting the idea that perhaps we need to just quickly look at this and see whether Zak's proposal is adequately covered. I don't want to have misled you all that this is a duplication, in case, actually, the language has now gone missing. Sorry.

BRIAN BECKHAM: Okay. Thank you, Susan. I think that we've probably, unless there are – Zak, is that a new hand or old hand?

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ZAK MUSCOVITCH: Very sorry. Old hand.

BRIAN BECKHAM: Old hand. Okay. It sounds like we've got what we need, especially noting that this was part of sub-team recommendation. Unless there are last comments, that takes us to #32. As we move there, this was effectively a proposal to get rid of the URS. While it comes up on the screen, that's my Cliffs Notes version that I have jotted down here.

You see Proposal 32 on the screen. Yes, it says I proposed that the URS be eliminated as a mandatory policy for new gTLDs.

I'm seeing a few comments I can't quite make out from Greg Shatan in the chat. Let me see if there's anyone who wants to comment on this, on whether that should be included in the initial report or not. Any comments on Proposal 32 about eliminating the URS?

REBECCA TUSHNET: Sorry. I stepped away from my computer. Can I get in the queue?

BRIAN BECKHAM: Please, Rebecca.

REBECCA TUSHNET: As long as the standard isn't "could possibly become consensus," I think this should be published. It reflects an ongoing disagreement about whether the game is worth the candle. That is

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a long-running debate. Although it is a minority position, it's not a lone position. So I think it meets the standard to go out for public discussion to signal the ongoing existence of the debate. If the standard is "could possibly become consensus," it shouldn't be published, but it doesn't sound like that is where we're going. Thank you.

BRIAN BECKHAM: Okay, Rebecca. I didn't quite follow. Zak, please?

ZAK MUSCOVITCH: It seems that this is related to David McAuley's Individual Proposal #31 as well. Are these just flip sides of the same coin? In other words, are both of these individual proposals asking the public whether they're in favor or not of the URS becoming a consensus policy? If that's the case, I think that maybe it's just a matter of rewording them or combining them so that it's a singular proposal.

BRIAN BECKHAM: Thanks, Zak. It looks like, in fact, there are two parts to this. One is speaking about new gTLDs. The second touches on, as you've mentioned, David McAuley's proposal, which, if I remember, asks the question of whether then URS should be a consensus policy.

That brings us to David McAuley in the queue.

DAVID MCAULEY: Thanks, Brian. Hello, everyone. Thanks, Zak, for asking that question. I just wanted to make one subtle distinction here. They

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sort of are the flip sides, but the individual proposal that I made under #31 I made on behalf of the company. I want to make it very clear that it is not a proposal to make URS consensus policy. It is a proposal to seek public comment on that. That's all that it is. It's really nothing than more than taking the second question in the charter list of questions and putting it out for public comment right now. The charter asks, should URS be made consensus policy? So I wanted to make it clear that that's not what we're suggesting – that it be consensus policy. All we want is input on this. So that's all I have to say right now. Thank you.

BRIAN BECKHAM:

Thank you, David. I'm trying to find – I see Paul McGrady has put in the chat ... Thank you, Paul. I was going to remind of us this very point, which is that the charter is to look at whether the RPMs are fulfilling their purposes and whether additional policy recommendations are needed to clarify and unify the policy goals and not to eliminate the RPMs, which of course went through a lengthy process to be created in the first place.

Greg?

GREG SHATAN:

Thanks. I do not support putting Proposal 32. It seems like the opposite of Jeopardy – the game, that is – where we're phrasing a question in the form of an answer. We can certainly put forward that question of whether URS should become GNSO consensus-policy, to which there are two answers: yes and no. We could put forth both answers, but the idea of putting forth the question and

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then, as a proposal, one of the answers just seems bizarre. So, while I recognize that the debate is there, if we're going to frame it as a debatable point, it really doesn't make any sense to put forward one of the answers as a proposal, even in the individual proposal. We put forth both, but even that's just adding on. So I think recognizing that there is a question in the air I think is appropriate. Rebecca points obviously to the fact that the question is in the air. But this would just be a bizarre way to raise it. Thank you.

BRIAN BECKHAM:

Thank you, Greg. Rather than jump around to 31, maybe we can take note of David McAuley's proposal. I think we have sufficient feedback on this, both in terms of how it relates to Proposal #31 and with respect to the working group charter, which would take us to #36, which had to do with the appeals processes.

Maybe one of the proponents of this would be able to summarize. David?

DAVID MCAULEY:

Thanks, Brian. Let me just mention that, on Proposal #36, I made a proposal along these lines. Then, in addition, the other people listed, I think, jointly made a similar proposal. So what I think exists here – Proposal 36 – is a construct that we came up between the two. So I think that's an important thing to say.

I'll be very brief and then invite any of the others to make a comment. What I was getting at when I made my proposal was that, between the URS procedures Section 6 on default and

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Section 12 on appeals, it appeared to me that where the respondent does not reply and [the case is] a default, there can be as many as three de novo reviews of the complaint. Now, admittedly the first one would be without benefit of a respondent's statement. But, on the other hand, that doesn't lead to an immediate win for the complainant because they nevertheless have to carry the burden of needing the elements of proving a URS violation.

But then, Under Section 6.4, if somebody has a default ruling against somebody, they have, I think, up to a year to seek a de novo review. Then there's appeal under Section 12 for another de novo review.

So what I was getting it is, shouldn't we, in case of default, lengthen the time in which someone can come back in and seek a de novo review? But shouldn't we limit that to one?

So I should stop talking now and ask the others who were involved in this if they would like to say anything. Thank you.

BRIAN BECKHAM:

Thanks, David. It sounds like it's really an attempt to streamline or bring a little bit of clarity to these different appeals processes.

Griffin?

GRIFFIN BARNETT:

Thanks, Brian. I think David stated it very well. I just wanted to comment to support everything David has said to summarize the

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rationale behind this. It was to identify and try and streamline some areas that seem duplicative, that just didn't seem to make sense in the URS context of an efficient mechanism. Thanks.

BRIAN BECKHAM: Thanks, Griffin. Noting the proponents – David and the folks listed there – and the comment from Zak in the chat, let me ask – I saw a hand from Kathy go up and down – if there was anyone – it sounds like there's some support from different folks on this – who opposed putting this out in terms of the proposal for a comment on the initial report.

Greg?

GREG SHATAN: I'm just having a little problem tracking the language. I do support putting this out. In the first line, should "replace" be "reduce," as in "reduce the current URS appeal filing period to 60 days," instead of, "replace the current URS appeal filing period to 60 days"? Just a clarification. Either way, if it is something that's supposed to be replaced, then it also needs to be fixed. It just doesn't scan. Thanks.

REBECCA TUSHNET: Can I get in the queue?

BRIAN BECKHAM: Yeah. Rebecca, and then I have David McAuley.

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REBECCA TUSHNET: Thank you. This just seem to me to evidence-based. We had a survey. Has this actually ever caused any delays? The proponents don't seem to have – [in a] situation where it did, it didn't seem to me to meet the standards for evidence-based changes. If I lose on that, that's fine. But I wanted to put it out there. Thank you.

BRIAN BECKHAM: Thanks, Rebecca. David and then Kathy.

DAVID MCAULEY: Thank you, Brian. I raised my hand to speak to Greg's point, but I'd also like to respond to Rebecca.

With respect to Greg's point, the word "replace" I think is just the result of the fact that we were bolting together two separate proposals. The proposal, as I understand it – Griffin may correct me if I'm wrong on their side – is simply to eliminate one of the de novo reviews and basically enlarge the time within which someone can seek a de novo review after a default entry.

With respect to Rebecca, I would respectfully disagree. I think that, if the rules on their face are self-evidently in this way, which we think and I think is overgenerous and perhaps not correct, waiting for the first instance to then correct it is not merited. I actually think that this can stand. This proposal stands on its merits. Thank you.

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BRIAN BECKHAM: Thanks, David. I've noted Griffin's comment in the chat, and then I have Kathy, Scott, and then Griffin in the queue.

KATHY KLEIMAN: Hi. Thanks. Taking of my Co-Chair's hat, this proposal is a significant change from existing rules. URS was not intended to be UDRP, as everyone knows. What I think is interesting about this proposal is that it's not arising from sub-team recommendations after all of the data analysis and review, that it is coming via an individual proposal. It is a wide change.

So, if we're just talking about putting things out for public notice, that's one standard. But we've raised the standard to really whether there's support for this kind of change.

If we put this out, I do think we have to explain to the public what the existing rules are and how it was intended to have a second de novo review because the timeframe is so short. Can you imagine someone coming in and filing a URS now? For many public interest groups, they're going on vacation. Their offices will be shut for a week, often two weeks. They won't find out about the URS until the suspension takes place. Then the idea was to give them a de novo review where they have the opportunity to respond, as well as an appeal for right to appeal. That was the original thinking.

So, if we're going to change it, I think we have to provide some background to this proposal. Again, I note that it didn't come from the sub-team, so it's interesting to come in now. So I express concerns about this. Thanks.

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**BRIAN BECKHAM:** Thanks, Kathy. Before I have Scott Austin, just a reminder that this is just whether to put this the initial report as a proposal. Then, of course, depending on the public comments, we could have a conversation about the different appeals routes in the URS. Scott Austin, please?

**SCOTT AUSTIN:** Thanks, Brian. Just a couple of questions, really. Several people have brought up the question. I agree with Greg that it doesn't track the language. But is the standard here that we just put the language as written out and then people are allowed in the comments to make proposed wordsmithing changes? Because, as it stands, I really think it does need to be altered slightly. I had the term "enlarged" used. Perhaps that's a "replace "replace" with "enlarge." I'm interested in that.

On Kathy's comment about the sub-team, I thought that, in some of the questionnaires and the responses to those questionnaire – I'll defer to Griffin and/or John because I think we both talked at length about the results of the surveys – there was some discussion about the appeals period and also the de novo review periods and that there were some suggestions that came out of that, although I don't know that it necessarily directly [tracks] this language.

But my main question is, what do we do about the proposal that look like they really do need, still, some wordsmithing? Can we do

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that now or do we have to wait and send it out as-is for comment?  
Thanks.

**BRIAN BECKHAM:** Thanks, Scott. Griffin? Just a reminder. We're coming close to the end of our call. I'm happy to stay on a few minutes, but just a reminder. Griffin.

**GRIFFIN BARNETT:** Thanks, Brian. My line got disconnected briefly while, I think, Kathy was finishing her comments. I was a little bit concerned by some of the things that I was hearing because there were some comments about how this was a big change and so therefore that has an impact on whether to publish it. I was hearing that this wasn't somehow precipitated by discussions of the sub-team, so that somehow should prejudice [the] publication in the initial report.

Maybe I misunderstood Kathy's comments, but I don't think either of those would be valid reasons for not considering a publication of a proposal because the whole point of the individual proposals were to fill in gaps of things that sub-teams and other working group discussions didn't get to. So I was a little bit confused, I guess, by those comments.

Just to clarify, perhaps, it's hard to interpret the proposal a little bit without all of the additional context, which was provided in the submission. But obviously it's all been stripped away for purposes of representing just the proposal itself here on the slide.

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So let's keep that in mind. Let's keep in mind that we did do a fair amount of actual research into URS cases in the development of this recommendation to see how post-default de novo review periods under the URS were being used. Long story short, they weren't really.

So what we tried to do here is address the issue of finding a better way to provide post-default de novo review. I believe – it's been quite a long time since I've reviewed this compared to the current rules in detail – we're actually enlarging the initial period in which to request de novo review. So that's why changing "replace" to "reduce" is not appropriate because I think we're actually lengthening the initial period and then basically cutting out a second period. Again, it's just reconfiguring things to just make it make a little bit more sense based on the evidence that we had of how the post-default de novo period under the current URS rules were working or not working.

I hope that's helpful. I know we're short on time. But, again, I think, if we want to add back additional context here, that may address some of the concerns and questions that folks have raised. Thank you.

**BRIAN BECKHAM:**

Thanks, Griffin. I've also noted comments from David McAuley in the chat about that this would actually extend the response period. I think this one we're going to have draw line under and pick back up on the 8<sup>th</sup> of January. The additional context is helpful, but I think we probably have to come back to this one, Proposal #36, to kick off the new year for our working group;.

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I will wrap up myself and say thanks, everyone, for all the work on this. Have a great New Years. We'll see you in the New Year. I will turn it over to Julie and Ariel to see if they have anything to say in conclusion.

JULIE HEDLUND: Thank you, everyone, for joining. Thank you so much, Brian, for chairing. Happy holidays to all and a happy new year. We'll look forward to having you all join on the 8<sup>th</sup> of January for our call next year. Thank you.

BRIAN BECKHAM: Thanks.

**[END OF TRANSCRIPTION]**