

ICANN

**Moderator: Gisella Gruber-White
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8:00 am CT**

Coordinator: Please go ahead.

Benedetta Rossi: Thank you very much (Barbara). Good morning, good afternoon, good evening. This is a BC Members call taking place on the 28th of March 2013. On the call today we have Steve DelBianco, Elisa Cooper, Aisha Hassan, Charles Shaban, (Mallory Hines), Chris Chaplow, Philip Corwin and Mahmoud Lattouf. We have apologies from Gabriella Szlak and Jimson Olufuye.

I would like to remind all participants to please state their names before speaking for transcription purposes. Thank you very much and over to you Steve.

Steve DelBianco: Thanks Benedetta. Thanks to everyone for joining. This is a BC Membership call pursuant to our charter to discuss a draft comment since more than 10% of the members raised concerns about the comment.

The way I'd like to structure this call as your Policy Coordinator is to separate it into three separate questions. The first question is the BC has an existing

position saying that ICANN ought to develop standards for the administration of UDRP. Back in 2010 we put that together.

There's the question of does the BC continue to believe that ICANN ought to do standards for administering UDRP. And if we do this - if we reaffirm that position, we might embellish it by suggesting how ICANN should develop standards. I don't really think that's going to be controversial.

The second question is that should the BC continue to maintain the position we took in 2010 that says that ICANN shouldn't approve any new UDRP providers until it develops the standard. You see that was our position in 2010.

The question before us today I hope will be should we amend that position because of some expediency or some need - something that's changed in the last two years such as a growing need for UDRP providers that can handle different languages or that's in particular for ACDR. So Question 2 is should we change our position saying don't approve new ones until the standards are developed.

And then finally the third question is does the BC want to comment on the merits of ACDR's proposal? And I think that's an open question. We should potentially investigate the questions that Phil Corwin the Rapporteur raised. Matt Cohen logged in some questions via email that I think Elisa has put into the Adobe.

And that part of our call we can discuss and give the folks from ACDR a chance to respond to see whether the BC wants to take a position about ACDR's proposal and if so, what should it be.

So I'll stop there and take a queue on whether you folks think that's an appropriate structure for our discussion today. Okay. Hearing nothing, we'll proceed on that.

The first question again, the non - I hope the non-controversial one is to look at our 2010 position, which Phil also put into - Phil Corwin put into the draft. And it was on Page 4 of Phil's draft where he simply summarized our position from 2010.

That the BC strongly advocates that ICANN must first implement a standard mechanism with any and all UDRP providers that defines its constraints or authority and powers and establishes regular standardized review by ICANN a flexible and effective means of enforcement.

And that notion of ICANN ought to develop a standard was as Phil said pretty much ignored by ICANN. What we could do in that position here is call for the establishment of administrative standards.

And then Marilyn Cade sent a note to Phil earlier this week, which Phil turned around and said maybe we ought to embellish that position to say that quote the BC advocates that ICANN establish a process involving all existing providers and representatives from the users of UDRP drawing from the constituencies and ALAC and other parties to undertake development of a uniform set of standards for the approval of UDRP providers.

Now that's for the approval of UDRP providers. That's not the same thing as saying come up with the standard for how to administer the UDRP. The second part was the language from Marilyn, which said the BC also proposes that the Board direct staff to undertake a process supported by members of the

community to establish uniform rules and procedures to delineate and enforce the arbitration provider responsibilities.

So there's two calls for ICANN to do something. To set up a standards for approval as well as administrative standards for the UDRP. And hearing all that from Marilyn, I feel as Rapporteur agreed with both of those statements, let's take a queue on whether the BC should stand firm that ICANN needs to develop standards and whether we should advocate particular two processes.

One is a - probably a cross community process to develop approval standards and the other is a staff process to establish uniform rules. Take a queue on that.

Charles Shaban: Charles Shaban, (PCP).

Steve DelBianco: Go ahead Charles.

Charles Shaban: (Unintelligible) if you like me to tell you one of our points, which is we support even to have standards, of course. We are with the standards and we want to do that. But we don't see it as another two years to wait to get the approval at least.

Let us at least get the approval because even after the approval, we still have the process to train some (analysts), 75% already came from other training centers, (WIPO) and so on. So they already have the process.

But at the same time we still need of course some time to develop the center itself that (unintelligible) internally and so on. And you cannot start putting the investment if we don't get at least approval.

So we support the BC position that we need the standards for everyone and we are ready to sign or anything from now that we will help even to establish them if needed. If ICANN will do it, we will get ready to sign and approve it. But we don't see it as a center that we need to wait another two years if ICANN will take two years or one year. We don't know.

So we need at least six to nine months to start operation after the approval. So this is by itself is the time maybe hopefully ICANN within this time will have the standards that - the existing and then you will sign and we'll work on the same standards.

((Crosstalk))

Steve DelBianco: Thank you Charles. Right. And Charles and just to note you actually addressed the second part of the question, which was should the BC continue to maintain that no new vendors be approved until the standard. So you actually were speaking to the - both the first and the second question.

So I'll write you down as supporting the establishment of standards. And I'll write you down as saying that you would vote to change the BC's position such that new standards could - new standards would have to be in place before we approve new vendors.

Marilyn Cade: And can I get in the queue please. This is Marilyn Cade.

Steve DelBianco: There's a lot of background noise from at least somebody on the call. Thank you very much. Marilyn.

Marilyn Cade: That would be probably - that'd be probably me Steve. Marilyn Cade. Can I be in the queue?

Steve DelBianco: You can Marilyn. Having joined late, you may have missed the structure we have here. The first part is to ask the question should the BC call for standards development. The second question should the BC change our previous position, which required standards before new providers were approved. And the third question is should the BC comment specifically on ACDR's proposal.

We are currently on Topic 1. Should the BC continue to call for both standards for administration as well as approval? And maybe it was before you joined Marilyn. But I read the two proposals that you threw into Phil Corwin on the list earlier this week. So go ahead please.

Marilyn Cade: I'm sorry. You've just aligned me with - sorry. Can I - is it okay if I (speak) about my concerns about the BC?

Steve DelBianco: Is it relevant to the topic we're trying to discuss right now?

Marilyn Cade: That's the only topic I'm discussing right now.

Steve DelBianco: All right. So we're taking a queue. Marilyn's in the queue to talk about whether the BC should call for the development of standards and ask for process. Go ahead Marilyn.

Marilyn Cade: Thank you Steve. I think the BC should call for the development of standards. But I don't think the BC should advance that position on any present applicants. I think instead we should try to advance - I've just spent a lot of time with governments on other issues having to do with whether we're going to get what we care about in positions related to new gTLDs.

My view is I'd like to propose that we focus on standards for the new UDRP providers and ask the new UDRP providers to work with us to advance the standards.

ICANN only has a limited amount of - what am I trying to say here? I think it's - ICANN only has a limited amount of - the Board and others only have a limited amount of listening and ability to advance change. Let's focus on what works for us.

And if we can get - if we could propose - if the BC could propose the new standard language and we got an agreement from the present providers or most of the present providers to adopt this, that would advance our concerns.

Steve DelBianco: Thanks Marilyn. Anyone else in the queue on this? Before we leave this first part of the topic, there were - there are two proposals for standards. The first is a cross community process to develop standards for approval of UDRP. And I'm quoting from actually Marilyn's comment.

And the second is where the Board would direct staff to undertake a process of establishing uniform rules and procedures with flexible means of delineating and enforcing the arbitration provider responsibilities. And that I would call administrative standards.

The BC back in 2010 called for the administrative standards. That's not new. But calling for ICANN to develop standards for approval is somewhat new. If there's general support for that in the BC as two standards, we would need assistance either from the Rapporteur on this case, so Corwin or assistance from others, to draft that into a comment that we could put in front of the rest of the BC as soon as possible.

So everyone on this call onboard with two standards that we're asking ICANN to develop, I'll take a queue on that. Do we want to...

Elisa Cooper: (Steve), I think we actually have some other hands raised for your previous question.

Steve DelBianco: Great. We're still on Topic 1. So let me bring up the Adobe and go and see if I can see the hands here. Chris Chaplow, Elisa and Phil. I'm not even sure who was first.

Woman: I think Chris.

Steve DelBianco: Chris, please.

Chris Chaplow: Steve, thank you. I like the structure we're progressing with now. I've just got a question either to you or to anybody really. Is the BC position from 2010 presumably in response to a public comment request, has anything happened since then? The BC put in its position and has there been total silence or is the, you know, what's happened between then and now? Can anybody answer me that (unintelligible)?

Steve DelBianco: Our comment said that nothing has happened. That there's been no progress. But can anybody enlighten that? As far as we know Chris, there isn't any.

Chris Chaplow: Thank you.

Steve DelBianco: Elisa and then Phil Corwin.

Elisa Cooper: Yeah. I would just like to say that I am supportive of having the standards for the providers. And I actually do think it's an important issue for business

especially as, you know, the new gTLD landscape drastically changes and UDRP may become even more important. And I just would hate to see the opportunity for forum shopping if, you know, they are very different standards for each of the providers. And I think that could be a big issue for companies.

Steve DelBianco: Thanks Elisa. Phil Corwin.

Marilyn Cade: And then (too) me in the queue please.

Phil Corwin: Yeah. Steve, Number 1 on the question what has ICANN done in the last 2-1/2 years. As so far as I know they have done nothing to even move towards developing, you know, uniform standards that would be enforceable against all UDRP providers.

I do believe that, and I'd have to look back at a comment or letter I prepared for ICA back in 2010. I do believe there are some approval standards now, you know, where they look at certain things before approving a UDRP provider.

But the problem with the current system is that once ICANN accredits a provider, we don't know what if any continuing oversight they exercise over any of the providers. And there's certainly nothing in writing.

There's nothing - there's no graduated enforcement mechanism like there is with registrars and they developed that after the register (fly) incident in the middle of the last decade where they realized that just having a death penalty enforcement mechanism of withdrawing accreditation or approval was not right way to go.

But I think the key thing here is you have the uniform dispute resolution policy, which is just a, you know, it's words on paper but without - with a proliferation of UDRP providers, which I think we all expect to see more applications with the advent of new TLDs and the advent of IDNs.

If there's no oversight, if there's no mechanism for assuring that everyone whose been accredited is administering the policy in a fairly uniform way, then there's a real danger of different types of UDRP jurisprudence developing and providers diverging in their interpretation of key questions and the uniformity is lost.

So this is really about how does ICANN have some flexible means where they have some oversight responsibilities and they're making sure that regardless of where a complainant goes that a UDRP is going to be handled fairly uniformly as much as you can.

We've seen even in the same provider that similar names get treated differently in different UDRPs, which results in people thinking it's a bit of a crap shoot sometimes as to what results you're going to get. But ICANN should really be doing whatever it can to assure uniform administration.

Steve DelBianco: Thank you Phil. Marilyn.

Marilyn Cade: Thank you. I listened to everything that Phil said and I'm having a bit of concern here. What's our criteria? Are we - can we proposed criteria?

Steve DelBianco: The proposal on the table is two folks and you wrote it. The first was we're asking ICANN to do a process for the standards of approval but we're not telling them what we think the standards are. And the second thing was a staff

driven report on uniform rules for administration. Neither is a PDP by the way.

Marilyn Cade: And shouldn't be a PDP. But thank you Steve for assigning what I said. I'm really trying to understand on this call - we may have - we may have different perspectives that we need to figure out. Are we - can we get ICANN to establish a process for new UDRP providers and make those retroactive.

And of course I think that since we have many providers - sorry. Since we have many new gTLDs most of which in the first 150 days to 200 days will be non-ASCII, I think we need to be saying let's move ahead as long as those providers will agree to help to establish standards. And then what are the standards and how do we help establish the standards?

And I'm not going to speak for Phil but I sort of thought Phil was trying to try and advise - let's try to figure out what the standards are.

Steve DelBianco: Okay. Thank you Marilyn. All right. So it looks like unless there are further comments that we're going to be looking for our Rapporteur, which is currently Phil but others can help. We're going to look for the Rapporteur to articulate two requests.

Marilyn Cade: (Unintelligible). Sorry.

Steve DelBianco: Go ahead.

Marilyn Cade: Sorry. It's Marilyn. Why would that be Phil and why would that not be our other members?

Steve DelBianco: Happy to have any member do it. As I just said, Phil volunteered as the Rapporteur and drafted the comments. I'm going to defer to Phil if he wants to draft new language for the review of the rest of the members. Phil has already taken the language Marilyn that you sent in and said that he agreed with it. So this is the language about standards for approval and establishing of uniform rules.

If anyone wants to participate in that draft, that the beauty of sending out a Word doc is that the hope is that any BC member who wants to contribute can turn track changes on and submit those changes. But if there's consensus on this call that we want to call for two different standards development processes, I'm looking for a volunteer to write the first draft of that part. And it (unintelligible) very long.

After that we need to move to the second question. And the second question, which a number of you touched on, is should the BC change our 2010 position and I'll just quickly read that to you.

Our 2010 position was that the BC could not support approval of any UDRP accreditation application on the grounds that no provider should be accredited until ICANN implements a standard mechanism for uniform rules and procedures, et cetera.

So that was in a word the BC said don't approve anyone until the standards are done. And that was first written two years ago, 2-1/2 years ago. We reiterated it in 2011 and the draft in front of you simply reiterates that position.

What I'm going to propose to the BC is given the need for providers that can handle other scripts and languages like Arabic and the proliferation of new TLDs and the global government concerns that Marilyn mentioned, I would

propose the BC amend that position at this time suggesting that we go ahead and approve new providers while in parallel developing the standards for approval as well as the uniform rules of administration, which would retroactively apply to all providers.

So my proposal is that the BC consider changing the previous position and I'll take a queue on that. I see Phil Corwin and Charles. Charles, I think you were first.

Mahmoud Lattouf: Well it's Mahmoud Lattouf because we are sharing the (MPC). Actually we do agree with this suggestion moving towards a uniform standard to implement - to be implemented for all the dispute position providers.

We do support this notion. As for the second part we also agree with your suggestion that the BC should move forward and approve moving forward for ICANN to accredit new dispute position providers.

Since there are new details that's coming around IDNs we would be facing all the problems with different scripts that not many dispute position providers would be able to handle.

So we would be solving or resolving one problem but causing other problems in different regions. So I suggest as you suggested that you use your suggestion to move forward to pressure ICANN to have a uniform standards for all. But at the same time without delaying the process of accrediting more new dispute position providers.

Steve DelBianco: Thank you. Mahmoud, thank you very much for that. You should know that in 2010 when the BC said no new ones until they have standards that was an

opportunity to exert a little leverage on ICANN pressure on ICANN to develop standards. Okay.

And the fact that ICANN didn't listen puts us in an awkward position now saying, "Okay, we no longer have the pressure. We can't continue to apply the pressure because it's too painful not having a UDRP provider that can handle the new cases."

So we are backing down on this by making the change and it does mean that we've lost some of our pressure points. Phil Corwin?

Phil Corwin: Thanks Steve. Yes, one is very good to hear that ACDR is open to being bound by some enforceable standards. I think, you know, clearly the leverage didn't work.

There's going to need a for folks who can do IDN adjudication. I don't know if the existing providers have a facility say in Arabic, WIPO may. I have no idea whether (NAS) has I tend to doubt it.

So on that part -- on developing the standards I think whatever comment we make we don't have to get into creating a list of everything that should be in a standard.

I think we want to be for a process that addresses all of that. I mean some of the things are obvious. How are you going to make sure that your panel is or all experts in, you know, trademark law and they're all familiar with the current thinking on key issues.

And the only place I know where that is reflected is the WIPO 2.0 Guide for Panelists which the closest thing we have to a listing a precedent for the UDRP.

Steve DelBianco: So a question for you, if we were to - if you were to participate in the drafting of the BC's comment, do you believe that we should be mentioning specifics like that WIPO standard in our comments next week? Or is that something that happens during the standards development processes (unintelligible)?

Phil Corwin: Well, I think we can use it as an example. You know, that is a list of, you know, that gives guidance on all the different issues that have risen in UDRP practice over the last decade and where the thinking is among WIPO panelist.

They don't look at NAF or CAC or other providers but on the other hand they are the only provider that has created that kind of database and they are the world intellectual property organization.

So they're both the UDRP provider and the UN agency charge with global IP responsibilities. So I think it can be mentioned as an example of what should be looked at but I don't think in this weather we should be advocating a particular set of standards...

Steve DelBianco: Okay, question for you, so when you say...

((Crosstalk))

Phil Corwin: ...addresses key questions. And I have no problem sharing responsibility for this drafting with other folks. In fact, I would welcome it given my own work.

Steve DelBianco: Yes, I knew you would. Question for you, the WIPO example that you were about to say, is that an example of how a provider selects panelists or is it an example of standards for selecting a provider?

Phil Corwin: No, the WIPO guidance is an example of a database indicating precedence on questions that have arisen in UDRP.

Steve DelBianco: Beautiful.

((Crosstalk))

Phil Corwin: ...and it is anything to do with the operation of the providers.

Steve DelBianco: Beautiful, so what that is - is an example of - example of administrative standards that our UDRP provider would use in the operation of - of administering UDRPs? It's not about selection, it's about operation.

Phil Corwin: Yes, I wouldn't even call them administrative, I would call them, you know, you know, where UDRP -- precedents for UDRP can practice similar to a legal precedence if this was a court situation.

Steve DelBianco: Okay, thank you Phil. I see (Nat Cohen) has his hand up and (Nat) I don't know at what point you joined but we are right now in the point of the discussion of asking whether the BC should change its position established 2 ½ years ago, change its position that said don't approve any new UDRP providers until the standards are developed.

So that's the topic we're on right now and after we finish that topic we'll precede to whether and what we would say about HGDR's proposal. So having seed that up for you (Nat), what's - what's your intervention?

(Nat Cohen): Thanks Steve. I did show up about 20 minutes into the call, so I apologize for missing the beginning of the call. By the way, can you hear me? Is this working?

Steve DelBianco: We do.

(Nat Cohen): Okay great. My understanding is that the issue being discussed is, you know, whether to try and amend our position so that the standards, you know, we want ICANN to prepare standards for UDRP providers.

And whether that's to be done in parallel with approving new UDRP providers or whether we should request that - that be complete before, you know, crediting new UDRP providers.

My concerns on that or that this process could drag on for years there's no -- and in the meantime we've already had these new UDRP providers operating without any standardization, so that sounds to me like a major negative.

And the question is also, what is the need for new UDRP providers? There's been some discussion about the need for, you know, ones that are familiar with Arabic language and whether there's adequate representation in that area of the world to handle, new IDNs and new gTLDs.

The WIPO - WIPO has a list online of panelists and their locations around the world and there are - they indicate they have panelists from Egypt, Syria, Turkey, Jordan just counting the list. So it seems that there is already adequate ability to handle cases in those languages from an existing provider.

And the -- so the question is, what is the need and the benefit of accrediting a new provider and compared to the downside of having yet another UDRP provider operating without standardization and given the complainant selection.

You know, the way it's set up that way we have now a new provider that's trying to compete in the market and can increase the amount of co-complainant bias that's already in existence in the system. So those there are my thoughts and concerns.

Steve DelBianco: Thank you (Nat). So I note that you say you're - you would vote no on the question of changing our position because you believe it's a loss of leverage and you suggest there's perhaps a lack of need.

And as we address that you're the first person on the call to suggest we not change. I'd like to hear from others to understand what the - what the general consensus here is.

So rather than debate the specifics of (Nat)'s point I think it would be better to hear from folks sort of an up or down basis. Do we believe we should change the position or should not?

Marilyn Cade: Hi, it's Marilyn, can (unintelligible)?

Steve DelBianco: Yes, Elisa then Marilyn.

Elisa Cooper: Yes, I support (Nat)'s position and I think one other point I just wanted to mention is that I think the largest provider of IDNs today -- at least the last time I checked -- was actually very fine. And so, you know, it's not that we

don't have IDNs today. We certainly do and there is a mechanism to address that with the UDRP.

Steve DelBianco: Marilyn, you're next.

Marilyn Cade: Okay, I'm kind of confused here. We're not talking about -- I apologize if I'm being in need of information -- but we're not actually talking about whose providing IDNs today.

We're talking the fact that we have new IDNs going forward. I mean including many of the Arabic region. And we need to have providers that are cognizant of the concerns of the business users.

So I'm a little confused here. Saying that they are fine is providing second-level names doesn't really resonate to me. I don't kind of get it. I'd like to come back and let Elisa explain, you know, how that's relevant. I'd like to focus instead on what the purpose of this call is.

And the purpose of this call I think is to allow a new provider to give us information and to assess the questions that arise. Is that right?

Steve DelBianco: That's part of it - that's part of it Marilyn but we're trying to wrap up right now. I'd like to hear from the rest of the members on the call. A simple yes or no, do you believe we should change the position? I've heard two yes's and two no's.

This is not a definitive vote. I'm just looking for a sense of the call please.

Marilyn Cade: I - Steve I hear you and you know its Marilyn's thinking. I've provided an alternative position which is let's call for...

Steve DelBianco: We've a- we've already adopted that - that was already covered on the call and we have agreement with regards to do that. This call is for the development of standards Marilyn.

The question now is do we drop the previous BC position the standard tax to precede new approval. I'm simply looking for yes and no's on that, so bear with me and we'll get to the question. Chris Chaplow, for instance, did you consider that we ought the drop requirement for standards? (Mallory), any one...

Chris Chaplow: Yes, I got mute off. Yes on the proviso that providers subsequently come - accept the standards that eventually we hope get approved.

Steve DelBianco: Great, thank you Chris. Aisha, Celia, anyone else want to weigh in? (Mallory)? Not hearing anything.

((Crosstalk))

Man: Hello?

Man: Hello?

Steve DelBianco: Yes.

Charles Shaban: Yes Steve, this is Charles Shaban. I wanted to take (unintelligible). If other members want to speak before me please.

Steve DelBianco: All right, I'm going to close the second part of the discussion which was lended to vote to change. I don't think this call has a strong consensus one

way or the other but as a policy coordinator I will want to put this question in front of the BC. Its part of the draft we will ask all the members to vote on.

So - so far we've established we're going to ask the parallel development. We'll let the members vote on that and that is a vote to change the current BC position.

Let's proceed to the third question which is, should the BC comment specifically on ACDR and if so, how do we address that? There's a potential for the ACDR representatives on the call that they could suggest that we not comment on this proposal.

If on the other hand there's an interest in having the BC comment on ACDR both (Nat Cohen) and Phil had raised four or five questions about ACDR and we could go through that.

But let me first ask ACDR do you want the BC to comment specifically on your application?

Charles Shaban: This is Charles Shaban. Yes, of course. Steve we - we support this because this is -- I think if you allow me to say just two sentences which is I think the BC should concentrate in addition to the standard of course, but not to be the only facet to decide whether to - to support or let's say to amend the position as to the second question.

Maybe if you can, you know the ACDR will be connected to one of the famous firms here which is a member of the BC of course, (unintelligible) International.

At the same time (unintelligible) intellectual property firm and (unintelligible). I think most of the people who work in the IP knows us so we a little bit surprised that the BC -- we expect maybe this from non-profits or something.

But the - the BC specific, we are a little bit surprised because we are trying to - to help the business people around the world the IP people and so on to be sure there is no problem especially after the pool of new gTLDs which -- although the current maybe as we said out of the people - out of the (unintelligible).

But at the same time when you have these new IDNs and the new gTLDs in general even English and (unintelligible) and Chinese and so on. Do you think the current would be able to - to cover all of these problems which might happen let's say do the business?

So just I wanted to add the sentence please before and we are ready to answer any questions.

Steve DelBianco: Thank you. In the draft that the BC circulated Phil Corwin who was the Rapporteur and raised comments about ACDR's proposal which he sort of tied in to the BC's existing position, a notion of consistency, different approaches to IP, the level of experience of panelists and finally the notion of a search tool that - that's only aimed at the center's discussion.

So Phil made four - Phil Corwin made four rather sort of minor points about ACDR. But he basically came down to sticking with the BC position in the past.

So Phil I could ask you to - to explore those questions but I thought I'd give (Nat Cohen) a chance to put a couple of his questions in front of Charles and Mahmoud's so that they could reply. Would that be all right with everyone?

And I believe that Elisa if - if we're able to advance your PowerPoint there that shows some of (Nat Cohen)'s questions -- is that right?

Elisa Cooper: Yes, I can't - I can't do it but (Bene) can.

Steve DelBianco: Thank you (Bene). So why don't we take these one at a time and give ACDR all the time they want to - to reply. The first question Charles do you have visibility of the Adobe room, or should I read that question?

Charles Shaban: Yes, it's on the Adobe. We can see it. (Unintelligible) is I'll provide you with panelists. As I said in the beginning I think around 70% of them already have the training and they are working with the panelist with WIPO or other current.

As for the others the ACDR I do not understand the proposal. It's the link to the other side or part of intellectual property maybe and this site is mainly for intellectual property, awareness training and song.

So we are ready to have any training cost needed for any of the panelists or where needed. We can't even invite speakers of the trainers to be from - from the current registry.

And in general I think we noticed the advantage for our sense or how we see it, is that we learned from the mistakes let's say from the current and they fixed it, once of course fixed it.

But this time at least for us we knew the drawbacks from the beginning so we can start from the beginning hopefully with much less let's say problems. You want me to move shortly to the second question or whether there is any other issue?

Steve DelBianco: Is there any BC member on the call who wants further explanation of the amount of training ACDR provides? Great, go to the second one then please.

Charles Shaban: Okay. To have use of the panelists, (unintelligible) other UDRP.

((Crosstalk))

Charles Shaban: Of course we - we will -- let me just...

Steve DelBianco: You know, it's quite useful. If we go with a parallel process after you've begin you'll -- this is an invitation to say, do you think you have a way of harmonizing the UDRP approaches even before ICANN's finished the standard development?

Charles Shaban: Sure, sure, we - we like this of course and we should have policies even before we even start operation as we said. So we will work on learning even from the other experiences and will harmonize between all the panelists.

We will make sure to have a new, for example, wonderful things that every year I think they have this meeting for all the panelists. So I think we should do something like this and to - to make sure that all of our panelists work in the same -- are using the same procedures and follow the best practices on this - the legal information, anything for this.

Steve DelBianco: Great, thank you. The third question was, what oversight do you plan to exercise over your panelists? I'm sorry, Phil Corwin, did you have your hand up?

Phil Corwin: That was from before Steve, let him continue. I don't want to interrupt.

Steve DelBianco: Thank - thank you Phil. So question for you was oversight.

Charles Shaban: Oversight. Yes, again as we mentioned this is point four of the proposal which is again administrative who would bug you. Out of this we should continue over sighting not only depending -- let's say -- as one of the (unintelligible) I heard at the beginning of this call.

I heard maybe one of them speaks now that when they approve the sensor ICANN has a lot of things to do but after that maybe the pullout is not as expected. And this is why you are asking for the new policies.

But we think from the beginning we should keep following everything and we - and we mentioned this in the supplement even rules the other proposals.

Steve DelBianco: Thank you and I agree, you're proposal was clear on this. So a question for (Nat), (Nat Cohen), you're the one who wrote these questions. And the question for you is, is all of this based on having previously read their proposal (Nat)?

(Nat Cohen): Yes, have -- I did read through it but I did not read through with probably the level of detail that would be, you know, as I should have. So I apologize that some of these were already covered. I think it's helpful to - to draft some of these in more detail in this context.

Steve DelBianco: (Nat), I appreciate that but for Charles and Mahmoud if the answer to any of these questions is, it's already in our proposal, you can answer it very quickly or we can get to the next one.

Charles Shaban: Thank you (Nat) for the question, no problem. We understand the proposal is a little bit long sometimes and not everything, so okay. But we think again, number four I think is covered with number three almost the same thing, unless (Nat) has another issue.

Man: (Nat).

(Nat Cohen): Yeah, the - part of these questions is just to - is also to point out how difficult it is to accomplish. You know to ensure that there is a harmony and to manage (pallets) once they are accredited. Because the other provider's (unintelligible) is not to single out the ATDR because the other (forums) don't do a very good job of that themselves and there is a wide diversity of opinions and they don't harmonize very well and they don't have procedures as far as I know to be (a credit).

And it's just to point out that the UDRP providers are operating in a framework without really much guidance or much ability to harmonize, which is what is making it more complicated to add yet another (forum) to an already very diverse group that operates without much procedural ability to harmonize their views.

Steve DelBianco: (Nat), this is Steve. I would really want - what you just said sounded very articulate and I would really welcome you to participate in this redraft so that you can make those points not about ACDR's proposal, but make both points about calling for the urgency that ICANN needs to develop administrative standards and rules.

(Nat Cohen): Thank you.

Steve DelBianco: And I don't think it's (unintelligible).

(Nat Cohen): But the challenge with this is - my view is that the foundation on which the whole UDRP program is built is fundamentally flawed and it's putting more and more UDRP providers on top of that is going to cause the whole thing to crumble down, and one of the main problems is that the complainant selects the (forum), which leads directly to (forum shopping).

So if you had a more neutral way of selecting the forum so the respondent and the complainant were more equally - they participated in that. That would address one of the fundamental flaws and would remove a main concern I would have about accrediting new UDRP providers. So it's - you know if we could address that fundamental flaw, then I would have much less concern about bringing in new UDRP providers, but with that issue there with reform shopping, it makes it very hard to feel comfortable bringing on new UDRP providers. That's my central core concern.

Man: And I doubt there is much that ACDR could do about the forum-shopping problem.

(Nat Cohen): Right and that's kind of my rhetorical point behind some of these questions as well.

Steve DelBianco: Got it. So Mahmoud and (Charles), why don't you move on to the next page, Question 5, and (Benny) could you advance the PowerPoint? Thank you.

Mahmoud Lattouf: And this is again - thank you Steve. This is again - I think it was talked about briefly in the proposal, which is we - with us, tentative to sign

(declarations), to sign any kind of conflict of interest or there would be of course something to be (unintelligible) at the beginning and official of course agreement.

Steve DelBianco: Yeah, conflict of interest is - the conflict of interest seems to be a particular kind of bias. I think (Nat) is asking something about a general bias (to complainants) and (Nat) what are you getting at here. How does somebody screen their panelists to make sure they are not generally in favor of (complainants)?

(Nat Cohen): Yeah, there is a general bias, which is you know partly resulting from the complainants selecting the forums. There is also a - and that might be connected to or you know independent from a second bias, which is that the other UDRP providers select their panelists from the ranks. You know a large number of them from the ranks.

And I just looked at the GAC a little while back to check arbitration court and think a majority of them were active trademark attorneys who were concurrently representing complainants in front of UDRP forums. So you have someone who one days who is writing complaints and representing complainants and the next day is sitting as a neutral on a forum as a panelist reviewing the - you know and interpreting arguments that are very similar to ones that they just made yesterday as a complainant. Not that the same party is involved, but there is a lot of interpretation going on at the UDRP level and you have people who are taking pro complainant stances and then serving as neutrals.

And a large number if not a majority of panelists are from the ranks of active trademark attorneys. And so to me the way to minimize some of that other form of bias would be to be more - you know to try to make an effort to select

from maybe academics, or retired judges, someone who is not you know earning their living you know representing trademark matters.

Steve DelBianco: Okay and as a general matter in that, I understand that as a general matter, but ACDR did put out an extensive list of panelists and let me ask you guys to comment on that. Does your list of panelists - is it heavily biased towards those that are advocates for complainants?

Man: Steve, this is (unintelligible). So it sounds like it is becoming a little bit - not very clear, but I think I understood the question. In addition to the agreement with the panelists from the beginning, we are asking them to sign a declaration of independence for each case. This is especially to touch on that point, which we want to be sure that they don't have an issue with that case (in specific). So before they start let's say any case, if the trademark maybe is linked to one of their clients or something, they should from the beginning inform us and we will choose another candidate.

(Nat Cohen): Yeah and if I may jump in. I'm making a somewhat different point, which is not that they have any direct conflict of interest with any parties involved in that particular case, but just that the - you know just as we have here with the Supreme Court, we have different judicial philosophies represented and that's why there are so many political battles about who gets appointed to the court. Not because of specific conflicts of interest, but because of the you know legal perspective and the way that they interpret the law. I'm just saying that selecting panelists from people who are active trademark attorneys are going to have the perspective that you know they almost can't help how that's very pro complainant, because that's what they do all day.

So in terms of just making your panel more neutral, it would - I was wondering if you have - you know if that was a concern of yours. And if you

try and - I could tell by telling the panel of bios. You know I couldn't tell that well if they were active trademark attorneys or not. But I was just wondering if you had a - you know if you were aware of that concern. You know if you were you know taking steps to try to recruit more broadly outside of the you know people who are actively representing corporations and you know their IP work. Thank you.

Man: Yeah I think we are - again, I think this is related to your question of (unintelligible). I noticed that too. Some of the panelists are from academia, but to be honest with you, let's take on some (unintelligible) to say we only want trademark attorneys or you want academia. But since is the (unintelligible), we will make sure to check certain on that if you want. But at the same time, the current panelists - some of them are already from academia, as we know.

But when we started, we tried to concentrate more on let's say the (unintelligible), especially from the region and outside the region, so have people from different. But we weren't targeting trademark attorneys (in specific). And at which point by the way, we will take it under consideration because we expect maybe let's say some of the (unintelligible) added will be changed. So we can work on that and concentrate on adding mainly from academia since you think it's better if of course they want.

Because you know from let's say from other practices that sometimes more business people like these (unintelligible) academia or especially the judges. And in this region, I think it would be hard to have judges in our region, but we will check outside the region.

Steve DelBianco: Thank you. Thank you.

Man: So for Questions 5 and - yeah, that's a great answer. For Questions 5 and 6, it would be helpful for all of the BC if you looked at your list of 17 panelists and just categorized them. Let's say I have five that are judges, five that are academia, and seven that are advocates for complainants. That would be a helpful item to understand. And if in fact you have an intention to try to create balance with the next panelists you select, that would also be useful, because I actually didn't see that in the proposal either.

So I think you've handled 5 and 6, why don't we move on to question 7?
Charles and Mahmoud, Question 7 was how do you handle (unintelligible)?

((Crosstalk))

Mahmoud Lattouf: Well (unintelligible) because it's a little bit long. (Unintelligible) I didn't, so from the IT side, I'm probably more from the (unintelligible) from the business side, as you know. That's why he is the (unintelligible) of the BC. (Unintelligible).

Man: (Unintelligible).

Steve DelBianco: (Nat), you wrote the question. So (Nat) let me ask you. Is this really a question for ACDR on their proposal or is it another general point you are making for why we need (standards)?

(Nat Cohen): This actually is specific for a procedural question and maybe it goes into too much detail for the purpose of this call, but it is actually specifically directed to ACDR because they are the ones who draft their own supplemental rules and they have full control as far as I understand over the supplemental rules that they you know issue.

And one of the burdens of responding to a complaint is the supplemental filings where a complainant will issue another you know - will file. After you file the response, they will file another response to that, and usually it's only supposed to be done if the panel requests it.

But often, it's don't you know without a request and then as a respondent you don't know whether the panel is going to consider it or not. And if they do consider it, you often don't have much time to respond before their deadline comes for issuing the ruling, so there is a possibility for abuse.

And (Paul Keating) who is an attorney who handles all of these matters has written about a case where a very short complaint was made. He responded in detail, and then a huge supplemental filing was made that brought up a whole bunch of different issues and then the decision came down without him having a chance to respond to that basically brand new complaint.

Steve DelBianco: Right.

(Nat Cohen): So there were some issues there.

Steve DelBianco: Okay and I know that on Page 9 of ACDR's proposal, it says and I quote, "The ACDR will decide on additional submissions in accordance with the supplemental rules." So it might be that in writing you guys could follow up with what you have in mind for your supplemental rules and maybe that is the best way to be responsive to this question.

Man: We expect to leave this any kind of extension needed to the panelists themselves. So after we decide on the panelists, they should decide if any requests will be asked for the extension. We will leave it to the panelists to

decide and in those cases, I think we mentioned in the proposals that it shall be - it will not exceed ten additional calendar days.

Steve DelBianco: Is there anything more that you would want to say? Got it. Is there anything more that you would want to say to the BC about the supplemental rules you would require your panelists to follow?

Man: Well we can send them more information if you want about any other supplements and rules, but I'm not sure I understand (the need now exactly).

Steve DelBianco: You are right. I don't think they need to know it right now. It would be good to - it's the second element of extra information that has come out of these questions. The first was with respect to Questions 5 and 6, the notion of the balance between judges, academia, and advocates. And I think it would be helpful to have you - it doesn't have to be submitted to ICANN. It can be submitted to the BC. Let us know what you have in mind for the supplemental rules that you would require your panelists to follow, since I think that's why their draft is the unsolicited supplemental filing.

Man: We will (unintelligible) and send it to Mahmoud to send it to (Delhi).

Steve DelBianco: Thank you. Let's go to Question 8 please.

Man: Forum shopping, yes.

Steve DelBianco: And before you answer, (Nat), this is a general concern we discussed earlier and I'm not a lawyer, right. But it strikes me that I don't think that the provider of UDRP is in a position to stop or reduce (forum) shopping. So if that's the case, we don't need these guys to respond to it as we debate whether to endorse their proposal.

Man: Exactly.

Steve DelBianco: Okay, so you can...

Man: they are going to be in some ways competing against (WIPO) and NAS to be selected by complainants so they - you know that (forum) shopping is a very real you know issue that they can address. Because I mean obviously, they want to be - attract you know UDRPs to their forum, but how are they going to do that in a way that doesn't introduce a pro complainant bias into their system.

You have (WIFO) and people creating pro you know standardized responses for complainants. You have trainings on how to win UDRPs that they are providing. That's the core issue of what is the ACDR going to do to attract complainants and attract them and select them as a forum.

Steve DelBianco: (Charles) and Mahmoud, anything that you would want to say about that?

Man: the problem is that we couldn't understand the question correctly, but I understand the complainant or the respondent to (select it). You move to Number 9 sorry.

Steve DelBianco: No, Number 8. I asked (Nat) if this was a general issue and he says yes it is general, but it is also specific. He is asking you if there is anything that you would do - like the way you are going to run your providers. Is there anything you would do to discourage forum shopping in the sense that the complainants would select you because you might be biased for the complainant? That's a very hard one to answer.

Mahmoud Lattouf: Yeah, this is Mahmoud. As you mentioned, it's not really a problem specific to ACDR. It's for everyone and everyone should be cooperating in order to avoid (unintelligible). But at the end of the day, we will - the ACDR will be implementing the same rules and procedures as other providers in order to prevent forum shopping. And once I can have this uniform standard, this concern will be eliminated because everyone will be having the same procedures.

So I think it's a general problem that should be addressed by all providers, not specifically for the ACDR itself. So the ACDR will be implementing the same rules and the same procedures as other providers in order to prevent forum shopping. But at the end of the day as I mentioned, this is a general problem and not specifically to the ACDR.

Steve DelBianco: Thank you. And Number 10 - you've already answered Number 10 with a yes. So the only question left is Number 9, which is what are your views on letting complainants and respondents to select a provider such as randomly assigning the provider unless you both agree. Do you have a view on that?

Man: we would follow on this again with what the general rules will be. But from us, I think yes, we do support it because it will make let's say both sides not having any issue let's say with the provider itself. So the complainant is (unintelligible) to know that this provider is neutral. He will think of it (unintelligible). If this will (unintelligible), of course we will support it.

Steve DelBianco: Thank you. Thank you. So we are already six minutes after the hour and we booked this call for one hour. So at this point, what I would like to propose is that if (Charles) and Mahmoud - if you would, would you be willing to respond to (Nat)'s question. You already have given us a lot of answers on here and sometimes it's a one-word answer.

Like with Number 9 and Number 10, it's a one-word answer yes. With Numbers 5, and 6 and Number 7, the answer might be longer in terms of articulating your judging academia or articulating your supplemental rules and that would be helpful. If you could respond in the next couple of days to the BC, I think this will tee it up as we try to get volunteers to help you draft that part of our comment.

So I will take a cue on closing comments right now knowing that we've reached a couple of decisions of what the next draft will look like, but it will ultimately be up to members to approve the new draft. I will take a cue for closing comments.

Phil Corwin: Steve.

Steve DelBianco: Phil Corwin.

Phil Corwin: Phil Corwin here and I will be brief. On one note, I had posted in the chat room that there is an existing ICANN process for the approval process for resolution service providers. It's fairly (Moldy). It was adopted in 1999 and implemented in January 2000, so I just wanted to point out and to look at the standards of approval. there is an existing document for the task that I don't think we have to address in the letter if not to create you know standards for approval at a (whole cost), but to review the existing standards and see if they still cut it after...

Steve DelBianco: Phil thanks for that research. Can I ask you and (Nat) in particular to review that standard for approval? And if you find it's deficient in any particular way, can you draft a few paragraphs for the BC to put in our comments?

Phil Corwin: Sure.

Steve DelBianco: Thank you. Any others in the queue? Great. Thanks everyone for participating, particularly the folks from ACDR. So we are looking for some follow ups from Phil and (Nat), follow ups from (Charles) and Mahmoud on answering that question, and then I will organize some notes about what happened on the call and I will look for volunteers who were present on the call to help together second draft for review by our members.

So with that, we will close the call and thanks again to everyone for participating and we will see some of you in China.

Man: Thank you.

Man: Thanks.

Steve DelBianco: Thank you.

Coordinator: Thank you very much and I will stop the recording.

END