ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) PDP Working Group call
Wednesday, 15 November 17:00 UTC
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Coordinator: Recordings have started. You may proceed.

Terri Agnew: Thank you. Good morning, good afternoon and good evening, and welcome to the Review of All Rights Protection Mechanisms, RPM, in all gTLDs PDP Working Group call held on the 15th of November 2017. In the interest of time, there'll be no roll call as we have quite a few participants.

Attendance will be taken by the Adobe Connect room. If you are only on the audio bridge, could you please let yourself be known now? Hearing no names, I would like to remind all to please state your name before speaking for transcription purpose and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this, I'll turn it back over to our co-chair, Kathy Kleiman. Please begin.

Kathy Kleiman: Hello everyone. Welcome back from Abu Dhabi, for those who traveled there. Our first - this is Kathy Kleiman. Phil Corwin - I'm pretty sure Phil Corwin is on the call and J. Scott Evans I believe is on mute and will be joining us shortly via web.

So we welcome you to the call, and I'll start with statements of interest. And I

know there is at least one update to the statements of interest out there. But perhaps there are others who must transition at the end of year. Does anyone have update to statement of interest? Phil, go ahead please.

Philip Corwin: Yes. Thank you, Kathy and it's good to be back from Abu Dhabi and back to work on RPMs. I think most of you know that a week ago Monday, I shut down my private law practice and assumed the position of policy counsel in Verisign's legal department. So I'm now an employee of Verisign. And in fact, I'm on the line from headquarters in Reston, Virginia.

So I don't expect it to change my approach to administration of this working group as one of the co-chairs, but I have changed my SOI the other day at ICANN and it reflects my new position, and the fact that I'm now related to the contracted side of the house, rather than the non-contract side.

So that's it and thanks to all who have sent good wishes. I appreciate it.

Kathy Kleiman: Great. And let me add my good luck in your new position, and I'm very glad you're continuing as co-chair. Terrific. Any other updates to statement of interest? Okay. I'm actually going to add kind of 1a to the agenda items to see if this time is working for everyone.

We're now at - with the time change, we went from 1:00 p.m. Eastern to noon Eastern, similar changes percolating across the US. We were trying not to conflict with I believe registry calls, maybe registrar calls. Are we in conflict now with any stakeholder group calls? Or is this a good time for everyone? I'll just pause for a second. If I don't hear any objections. Oh, the registry call immediately precedes this. Okay, terrific. So this is good time. So we'll be continuing at this new time. So a new time for some of us. Terrific.

Then let us go - actually, can we go back to the top of the slide please, the slide deck? So what we're going to do is, in Abu Dhabi we began the review of the URS, the Uniform Rapid Suspension. And we started with slides, not

these slides. We started with another set of slides that provide an overview of the URS, what the rules are and how the rules operate.

If you have questions about that, and there was a session that talked about some of the data that Barry Cobb had collected for us about the URS. We should probably re-circulate that information again. But that was one of the discussions in Abu Dhabi.

Then we reviewed the charter question that was given to us by the GNSO council. And can we go to the next slide please. Next slide. So the charter questions that were given to us by the GNSO council. Now, in the past we've split the sub teams to review, edit, clarify and consolidate the charter questions.

But it actually seemed very productive in Abu Dhabi for us to move through the URS charter questions together. And we actually got through a path of all of them. And so we're thinking - so the co-chair thought, let's not go back to a sub team for this.

Let's keep this in plenary, keep it with the full working group and maybe do a quick second pass through for those who participated and we have staff notes that they'll be inserting of feedback as we went through the charter questions. And also for those who did not go to Abu Dhabi and so had to get up at one o'clock or five o'clock in the morning to participate remotely. Although, thank you to everyone who did participate in person and remotely.

So we're going to do another quick path through the URS charter questions with staff as appropriate, inserting proposals that came in and questions that came in from the working group in our Abu Dhabi meeting and since then, on the working group list.

Let me pause. It looks like Brian Beckham would like to comment. Go ahead, Brian.

Brian Beckham: Hi. Thanks, Kath. Brian Beckham for the record. I guess I want to ask a question slash make a comment, which is if I understand you, this is not the opportunity to propose changes to the wording of the charter question, but merely to go through them. The reason I raise that is because I read through them last night in preparation for this call. And quite a number of them seemed like they would benefit from additional context.

So I just want to make sure I understand, as we go through these questions now on the call, are we meant to, on a question by question basis, weigh in with, you know, substantive ideas on how to shape those questions to provide a little more context? Or is this just kind of a path to refresh our memories and we'll take the next step from there? Thanks.

Kathy Kleiman: Brian, that is a great question. Why don't you stay on the call for a second? No. The thought was that this a second pass, that this is absolutely the opportunity to provide edits and context to - because a number of people, I can see a number of people who are participating now, did participate in the last call, but a number of people - in the last meeting on the charter questions, but a number of people didn't.

So this is absolutely the opportunity to provide edits and context.

Brian Beckham: Okay, thanks. Could I briefly react? I'll happily do that during this call. May I suggest that we just sort of give people a chance? I looked at these last night and to be frank, I'm not sure we're going to get very far if we're going to be providing substantive comments on the questions as we run through them today.

So maybe to kind of think about, do we want to open up for discussion on the email list or on the next one or two calls and kind of give ourselves a little bit of, you know, some sort of a point in time to work towards - to give ourselves, on the one hand a goal, and on the other hand a limitation so it doesn't

become a completely open ended exercise, but to give people sufficient time to, you know, get their heads around these questions and shape them in the best way possible to actually take the work forward from there?

Kathy Kleiman: That makes sense. Kristine, you're next in line. Thank you.

Kristine Dorrain: Hi. Thanks. This is Kristine for the record. I am assuming that (unintelligible) we're working with the full working group. (Unintelligible) what we've done from the other working group as a sub team so far, which is the growth of the charter questions, but the (unintelligible) those other questions in the left hand column. And then …

Kathy Kleiman: Kristine, this is Kathy. Let me interrupt. You're very muffled.

Kristine Dorrain: Oh, is that any better?

Kathy Kleiman: A little bit.

Kristine Dorrain: Oh, I'm sorry.

Kathy Kleiman: Very slowly, we may be able to understand.

Kristine Dorrain: Okay. I'm then going to quickly see if I can jump (unintelligible).

Kathy Kleiman: Yes. We're having …

Kristine Dorrain: Is that any better or not?

Kathy Kleiman: You'll have to keep talking when you're testing. Keep going.

Kristine Dorrain: Okay. I don't know if that's any better in your end or not. I'm adjusting the volume and I don't know if that makes it clear on my end.

Kathy Kleiman: It's a little clear, but a little lower than me. Brian Beckham is saying it's still muffled.

Kristine Dorrain: Okay. You know what, why don't I just quickly dial in? I'll be right back.

Kathy Kleiman: Okay. Terrific. While Kristine is re-dialing in, does anyone have any comments? And let's move to the next slide please. Okay. So as we're waiting for Kristine to dial back in, this is a slide with questions that came to us again from the council. Response involving the URS, involving the response to complaints, defenses, standards of proof.

Kristine, let us know when you're back in. Okay, thanks. Ryan, did you have something else you wanted to say? Your hand is still raised. Thanks. Okay. As we're waiting for Kristine, maybe I can ask Julie or Mary to read through the questions. Again, we've already touched on them once.

We do have some edits, but we don't quite have a table yet, and maybe it would be sort of everyone to have a table where we're looking at the initial questions as well as whatever additional questions, clarifications, edits and context we'll raise to them. But we don't have that table right now.

Mary, Julie, do you want to quickly run us through this slide?

Julie Hedlund: Hi Kathy. This is Julie Hedlund from staff. Happy to run through the slides, and while we're waiting for Kristine to get back through. Oh, Kristine says she's back. Do we want to revert to Kristine or would you like me to read you the slide?

Kathy Kleiman: Okay, and then we'll go back to the charter questions. Kristine, go ahead please.

Kristine Dorrain: Hi. Thanks. Everyone can hear me better I hope.

Kathy Kleiman: Much better.

Kristine Dorrain: Okay. Fantastic. I will re-troubleshoot the new headset now. Cool. I just wanted to follow up because I know I've been a participant in all of the sub teams so far, and we've kind of followed the same process.

And I wanted to clarify and see if we were planning to follow the same process, which is that - and I know that we're not using a special sub team, but I'm assuming we're going to follow the same process that the sub teams have followed, which is to keep all of the charter question in the left hand column of the table, and then in the middle column, we can add sort of our edits or changes to those questions, things that would help clarify, things that would provide some context.

I noted, to address Brian's point, in every sub team so far, we've lacked context. We've had to send Mary or Sam for a particular charter question that's even listed. So we could try to figure out what the problem is, so we can make sure the question is worded properly.

And then of course from there, at the bottom of that, adding any new additional questions that have come up as a result of our discussions. Is that the plan going forward? And I apologize if you stated that and I missed it. But I just want to clarify if we're tending to follow the same sort of established process we've done on the three sub teams so far, even though this is the full working group. Thank you.

Kathy Kleiman: Great question and yes, that is the intent. That's my understanding of the intent is that we're going to go through, and in fact my first response when I looked at the materials was, I think we need a table. So we're all kind of in the same mood of how we work through the charter questions.

And I'm really glad you raised it, that we keep all the charter questions on the left side, that we go edits and changes in a different column and that we look

at new questions. And fortunately for us, the URS charter only had - the working group charter for the URS questions only had 13 questions.

So our starting point is many fewer questions and then we're looking at in other areas. So it's a limited starting point. If we chose to expand it, you know, that would be our choice. And also as we go through the questions, we should of course be thinking, as we did in the sub teams, about data gathering.

We may - we're not going to be talking about it yet. That will be a later call, but - and that may indeed go to a sub team if we decide it's too time consuming for the main working group. But data gathering is also of course one of the steps farther on in the process.

So thanks for outlining that, Kristine and we have staff who will review the charter questions with us and keep notes as we go through. And if we find that everything that was, you know, needed to be raised, either that these are good questions or that everything needed to be raised already in Abu Dhabi, we can move forward more quickly. But this should bring everybody up to a level playing field on the issues and on the charter questions. So Brian, go ahead please.

Brian Beckham: Thanks, Kathy. Brian Beckham again. I'm happy to go along with the will of the working group here, but I just wanted to raise, again this is my looking at the questions last night. If it's - that's - that we look at this together in plenary, then that's fine.

I just wanted to raise one concern that might be a little unwieldy versus doing some kind of a document exchange over email for my part of the questions. I'm just looking at the first page here of the charter questions and I have an awful lot of notes in the margins.

So I'm not too optimistic that we'll get very far on any individual call, but that

may be the best way forward and that way we can kind of fully air questions or concerns about the charter questions. But just wanted to raise whether we collectively think this is the most efficient way forward, or whether the sub team approach might be worth considering.

Again, I don't have particularly strong feelings, but thought it's worth us considering. Thanks.

Kathy Kleiman: Okay. And of course for lengthy materials, you can post the discussion to the working group and then staff can cut and paste and incorporate to the tables that they'll be creating. I should say, this was a discussion of the co-chairs that we stay in plenary right now. But speaking of co-chairs, let me call in Phil Corwin.

Philip Corwin: Yes. Thank you, Kathy. And these are personal views right now. I think we're all - those of us who were particularly in Abu Dhabi and some of us were tied up with the inter leadership conference last week. And then one of us is trying to get used to an entirely new job.

The co-chairs have not had an opportunity yet since ICANN60 to be on a call together with staff. we're in a phase, a period here and phase one of our work where we need to consult with staff on the status of moving our data survey forward as quickly as possible, so we can return to trademark claims and Sunrise registrations as soon as possible with the benefit of the data we get back and the analysis of that data, but that's going to be a while.

We have to get a firm grip on what time period we're talking about. But that means that we have a significant amount of time before that data will be back so we can devote to a thorough vetting of URS. So one of the considerations is, while these questions are being defined, neutral additional questions being proposed.

If that went to a sub team, what would the full working group do? One way to

handle that might just be to say we're going to be - the agenda for the next few calls is going to be that vetting process and those who want to be on should be on, and those who want to leave it to others for - to refine the questions, can pass on those calls.

So it might be a distinction without a difference for between that process and a sub team. But mostly I'm saying that we're just reorganizing here and I think we should use this session to review the questions and then the co-chairs, we welcome feedback from all the members on what's the best way to proceed as given the time we have before us to devote to URS, whether working group members to prefer a sub team approach or a full vetting by the full working group with participation by those who are interested in question refinement in addition.

And we're going to wind up in the same place, which is having a final set of questions hopefully after a few weeks, maybe by the end of the year, maybe early in January and then proceeding to identify the data needs and other things we need to answer those questions.

So I hope that's helpful from the perspective of one who's just getting reorganized after the whirlwind of ICANN60 and getting back on - back up to speed back stateside now that I'm back. So I'll stop there and hope that was of some benefit. Thank you.

Kathy Kleiman: Great benefit. Thanks, Phil and thanks for summarizing kind of the online discussion of the co-chairs. We have lots of people on the call today, 40 participants. So absent any further objections, let's - or concerns, which are always plus, let's go forward.

And Brian, thank you for re-emphasizing that, that we shouldn't be moving on that. Our first path in Abu Dhabi was really just the first task and that this all - the subsequent questions deserve a second path as we look at them and analyze them, again for edits, context, clarification and consolidation. Okay.

Let me turn it back to Julie to review the questions on slide one of five. Julie, go ahead please.

Julie Hedlund: Thank you very much, Kathy. This is Julie Hedlund from staff. So I'm on slide four for those who may not be in the room, but I think most are. And this is slide one of five of the URS charter questions. These are questions that relate to responses to complaints, defenses and standard of proof.

The first one of four on the slides, the first question, should the ability for defaulting respondents in URS cases file or apply for an extended period e.g. up to one year after default notice or even after a default determination is issued, which the case the complaint - in which case the complaint could be reviewed anew, be changed.

Kathy, I have to ask, do you want me to pause after reading these or do you want me to just summarize them? How would you, or should I just read all of them on this slide?

Kathy Kleiman: Yes. Go ahead and read all of them on the slide please, because since this is the second path, I'm not sure we have to go through one by one the way we did in Abu Dhabi. So if you can read the other three, that would be …

Julie Hedlund: I'll read all of them on the slide. Thank you very much, Kathy. And this is Julie again. The next question was, should the response fee applicable to - complainants, pardon me, listing 15 or more disputed domain names by the same registrant be eliminated?

Third bullet, Is the URS's clear and convincing standard of proof appropriate? And fourth, are the expanded defenses of the URS being used? And if so, how, when and by whom? And then another question for you Kathy is, staff could also read out the comments that we did get at ICANN60 on a couple of these questions, if that's helpful. Just let me know.

Kathy Kleiman: Yes, that might be helpful.

Julie Hedlund: Okay, and I see that Paul has asked for the slides to be unlocked. They are unlocked now, so you can go through them yourself. Kathy, I see Brian has his hand up.

Kathy Kleiman: Susan has her hand up. Susan, go ahead please. Susan, if you're speaking, you may still be on mute. Okay. Susan hasn't dialed in yet. Well, let's - actually before we read additional material, let's pause to take a look at comments to the questions and let's go down.

So first question as Julie read, should the ability for defaulting respondents in URS cases to file or apply for an extended period after the default notice be changed? And other wording as well. So should we be changing the process? And well, let me ask, does anyone have any comments on any of these questions since we're looking at them as a block right now?

I do know that questions and a lot of additional materials have been submitted about clear and convincing evidence. And so there will be different questions on that. Phil and then Brian. Go ahead, Phil.

Philip Corwin: Yes. Thanks, Kathy. In considering this first question, I think we might use this second review to get a little more into the details of what happens here and what the thinking was that when the URS was created for these provisions.

So this question relates to, there was a URS filed. We know there's a short reply period, which can be extended by up to one week, but that takes some response from the domain registrant. So it is a default case. No response. There is a determination let's presume against the registrant.

So what is - after that - and this is a question I don't know the answer to and I think we want to re-familiarize ourselves with the process and whether it

makes sense. After that, is it one year from the filing of the URS? I get that's the logical reading.

And so 10 months go by, the registrants lost the default determination. I'd like to assume the domain was registered in a - for a period where it's still up and running and hasn't gone back in the pool. What's the effect of filing this reply after many months? And is that a good policy decision? That's the question I'd want to focus. What's the practical effect of this?

I can understand, given the short time period, that we want to give a registrant who may not have gotten a timely notice or wasn't able to secure counsel in that short time, some leeway. But I think the question is one, is a year necessary? And two, what's the effect after whatever the time period is of filing this reply? Does it revive everything and require a second panel decision? So that's what I had. Thanks.

Kathy Kleiman: Terrific. Thanks for both the context and the clarification questions. Actually staff was - and see that staff is copying that for our table as well as the data gathering question because have people been using this? That would be interesting as well. Brian, go ahead please.

Brian Beckham: I put my question in the chat. Thanks.

Kathy Kleiman: Okay. Or should this be broken up into different questions? Good question. Claudio, go ahead please.

Claudio DiGangi: Thanks, Kathy. So my question was, are we also at this stage providing additional questions that may fall under this category of standard approved defenses and response to complaints? Or are we just focusing on tweaks to what's already listed here on the slide?

Kathy Kleiman: There was certainly a public outreach, or the (accounts have a public outreach in Abu Dhabi. So unless there are any objections, I would think

we're open to additional questions that are related to this category and we'll put them under a separate section for evaluation. It will automatically come in, but they're for evaluation by the working group, because we certainly had proposed additional questions coming out on the list after ICANN60 and those are part of our materials.

So we're still in the period where additional question can be offered.

Claudio DiGangi: Okay. All right, great. So should I provide that now?

Kathy Kleiman: Certainly. If you want to type it in, or do you want to provide it on the call right now or do you want to?

Claudio DiGangi: Yes. Let me just …

Kathy Kleiman: Go ahead, please.

Claudio DiGangi: So okay. So one issue I believe related to standard of proof that came up, and I think there's certainly a little crossover in terms of how we categorize these questions. But there was I think, or there is a provision in URS for abusive complaints that are filed by trademark owners. And I think there's something in there that says if there are over three abusive complaints filed, there might be some restriction on the ability of the trademark owner to file further complaints.

In the context of that particular issue, something that was discussed was, should there be something similar on the flip end for respondents or registrants who might be simply registering domains? And within that discussion, one compromise proposal that was put forward was shifting the burden of proof.

So if the respondent has lost five or more proceedings, the standard of proof, the burden would be shifted and it would then be on the respondent to meet

the burden of proof. So that would be the particular question I had in mind. Thank you.

Kathy Kleiman: Terrific. And I'm going to ask staff to hold that, Claudio until we get to slide three of five, which deals - because of the different categories, three of five and it's titled, misuse repeat offenders language. And I think what you're saying would fit into there. So flagging it and thank you for doing that.

So we're still on slide one of five, response to complaints, defenses, standards of proof. Susan, go ahead please.

Susan Payne: Yes. Hi. It's Susan Payne. Apologies about earlier. I could hear everyone fine and I completely forgot that I hadn't connected my audio. Yes. I just wanted to mention that obviously one of the things that we did when we worked with sub teams on the other charter questions was that we tried to revise question four or rather, you know, keeping the original question, but also suggesting an alternative version that was more neutral.

And a couple of the questions on this slide, you know, seem to me to be reasonably neutral. The first one I'm not entirely sure of. I kind of would need to get my head around it a bit better. But I mean the second one is not terribly neutral at the moment in terms of, you know, it's only talking about the fee in one sense.

It's not for example talking about, you know, should there be a response fee for any response for example? Now, I don't necessarily - personally, I don't necessarily want to start trying to draft on the list while we're on the call, although if that's what is expected, then I guess we can do that.

But I just - I guess I just wanted to flag that. There is that exercise of neutrality that's required and I wouldn't want us to get to the end of this supposed second path and be told that that's it with that, because I think there's work needed to be done about neutrality and so on.

Kathy Kleiman: Okay. Thank you for the comment, Susan. We have some neutrality work.
We've certainly done neutrality work in the past.

Jonathan Matkowsky: This is Jonathan.

Kathy Kleiman: You have that balance. You have that balance between trying to move
forward and how much we want to edit. Petter, go ahead please.

Petter Rindforth: Hi. Petter here. Just a practical proposal. If it would be more easy to
read and understand so that we are clear on which part of the URS that
needs question, a reference to have a short note or reference to the specific
part of the URS added to each question. I mean I know that we all have the
full documents, but it could be good when we discuss it, then also so that
everybody else outside the group can understand what each question refers
to.

Kathy Kleiman: You haven't memorized every sub point. Neither have I. That's a very good
recommendation, Petter and I hope staff will put that into - and I have to put
that into the next table. Claudio and then J. Scott.

Claudio DiGangi: Thanks, Kathy. So I think again this would possibly fall under the first
slide. I'm looking at it as a potential scope issue, the scope of the URS. And
this is actually something that I think came up on the CCT review team. They
I think put forward a proposal that if not the URS, but there could be a
mechanism to address abusively registered domains that are not necessarily
identical or confusingly similar to a trademark.

and so to the extent that's something that could fall under the URS and to the
extent it relates to the scope of the Rights Protection Mechanism, I think the
issue would be should the first element be modified to include domains that
are abusively registered that may not be identical or confusingly similar to a
trademark? Thank you.

Kathy Kleiman: Okay. I'm going to divide that into two, Claudio and others can disagree with me. But it seems like we're reviewing the Rights Protection Mechanisms as they exist. That's our first mandate. And then changing them would be a second call. So we should separate and clarify that in our questions, the questions that are directed towards review which - versus the questions that are directed towards change.

But with that said, let's add that suggestion into the discussion. J. Scott, go ahead please. I'm glad you're online now.

J. Scott Evans: Hi. Can you hear me?

Kathy Kleiman: Yes we can.

J. Scott Evans: Okay. First of all, I think Jonathan (unintelligible) and I want to make sure that he gets in the queue. He still wants to be in here. I don't know (unintelligible).

Second, I'm wondering if what we don't want to do is go through all these questions and then put them into buckets of what issues they are specifically trying to address. And then once we identify the problem, so you know, questions four, six and seven are trying to address that, you know.

And then we refine those into neutral questions that will get us information to allow us to have solutions or proposed recommendations for solutions that would address the issues, because as Mary pointed out and has pointed out several times, one of the things that is hampering our work, is these questions have never been added by anyone. They were all just scooped up out of public comment and other submissions with regard to other things around RPMs and dumped into this document.

And so they do come and point the view with agendas of others as they

should. They were written by advocates for a particular position. But it's our job that as you drill down, could we - what are we trying to solve for and then peg those questions and - because I think the questions do a better job of identifying issues and problems with the process than they do with actually asking questions if we get information to allow us to propose recommended solutions. That's just my two cents.

Kathy Kleiman: J. Scott, before you leave the call, I hope you're still on, it looks like, you know, staff did that first path of creating buckets. That's why we have, you know, this is respond - this slide is response to complaints, defenses, standards of proof. The next slide is remedies, appeals, costs. The next slide is misuse, repeat offenders and then we have two slides about questions about providers and knowledge about by participants.

Are you talking about different types of bucket or should we - are you recommending we stay with those bucket?

J. Scott Evans: I'm fine with staying with those buckets. that's just - if the consensus of those buckets are fine, then move on and take the first group and then begin to look at how we can take question one, which I put in the comment is extremely convoluted. And it could be, you know, a simple question with regards to, you know, should timing mechanisms be changed?

We then view the current timing mechanisms be changed, and then do a list of the timing mechanisms that are in there that are raised here. The question - you get lost in those questions. And I'm an English speaker and I get lost in the questions. But with an international audience, I think it's very convoluted.

And I think they're a way to get to the heart of what the question is asking, but make it much more easy to follow and understand. And I think that's what we're trying to do. I'm fine with the buckets. Let's get everybody on this call on both. I think we're fine. We have consensus on the buckets. So that is done thanks to staff.

Then I think our next thing is to go to each bucket and then start looking at the question and start taking suggestions of how we can, either as Brian Beckham is putting it, from a context to it or simplified so that we have a mutual question speaking information that will allow us to craft the recommended solutions.

Kathy Kleiman: Thank you very much. That makes sense. It looks like there's support for what you're saying. I'm going to recommend we do a lot of this on the list, because if we're editing - well first, we're going to need the table to work with and then editing online with the full working group probably is going to be difficult.

But is there any objection to using the bucket that we've got that have been created by staff? They put a good amount of time into creating this, which we appreciate. So we'll use those buckets. Let me pause. It looks like Jonathan Matkowsky was trying to speak up. So let me pause. He's on audio and see if there's something he wants to add.

Jonathan Matkowsky: Thanks. I've been struggling to get into Adobe Connect. So I apologize in advance. I don't have the slides in front of me. So I'm looking for them on the Wiki right now. Just a background to the question that I would like to propose to the group.

Under the UDRP, when allegations are entitled to some way, and when they - and when a respondent defaults, inferences are drawn and that's typically done as a matter of jurisprudence, like a body of the case law that's been developed over the years.

In the context of the URS, which for the standards was specifically to the standard of proof for clear and convincing evidence, I'm not sure whether or not we should conclude to leave it to the, you know, to a developing body of jurisprudence, or we should potentially add a clarification depending on how

we come out as a group on the issue, add a clarification to the rules as to whether or not allegations, bare bone allegations are entitled to any weight in a complaint when, you know, when there's a default, when the other side doesn't show up.

So should inferences of any kind be drawn? So even though the standard of proof is clear and convincing, should the panel give any weight to an allegation that goes uncontested in a default proceeding. Thank you.

Kathy Kleiman: Great. Thank you, Jonathan. And okay, it sounds like a question to be captured, as well the question perhaps to be asked to the URS providers about how this is being treated now. Okay. It looks like …

Jonathan Matkowsky: The way it's being treated now is it's not specified in the rules. And it's inconsistent at best. You know, allegations - I think it's because there hasn't just been a body, and I might be wrong. I'm having to write every piece. So yes, it would be good to get other people's input, but I know in some cases allegations are not entitled - are not given any weight, even when they're- even when they go uncontested.

And that might be because, you know, the standard of proof overall is clear and convincing as to whether or not, you know, in meeting that overall standard, the allegation should be entitled to weight, you know. That's really a - whether we want to add that to the rules, that's really a question for the group.

Kathy Kleiman: Okay. So do you want to put something - we've captured some of you thoughts now. Do you want to add more on this to the list and see if can capture it into the table?

Jonathan Matkowsky: I don't think there's anything more. We captured the question I just put forth. I think we're good. Thanks.

Kathy Kleiman: Okay. Thank you very much. Okay, so it looks like we can move on to the next slide. Again kind of in the broad brush, and thank you everyone for confirming that we did not get this all done in Abu Dhabi, that this is a useful exercise to go back to this again. Okay. If everyone can move to slide two of five, which is slide number five. Julie, back to you.

Julie Hedlund: Thank you very much, Kathy. And this is Julie Hedlund from staff. Then again on slide five, which is two of five of the charter questions. These are those that relate to remedies, appeals and costs. The first bullet is, should the URS allow for additional remedies such as a perpetual block or other remedy e.g. transfer or "right of first refusal" to register the domain name in question?

                   Next bullet. Is the current length of suspension to the balance of the registration period sufficient? Third bullet. How can the appeals process of the URS be expanded and improved? Fourth, is the cost allocation model for the URS appropriate and justifiable? And fifth, should there be a loser pays model? If so, how can that be enforced if the respondent does not respond? Thank you.

Kathy Kleiman: Okay. So the bucket here is remedies, appeals, costs. Thanks very much, Julie. George, you're first in the queue.

George Kirikos: George Kirikos for the transcript. Thanks. I don't have any comment on those questions, but my - I have a new question to add, or new issue to add that would fall I guess under the appeals category. This is actually an issue that arose in the IGO working group and applies to both the UDRP and the URS.

                   And to put into context, one of the assumptions of both the UDRP and the URS is that either side can go to court and the UDRP and the URS don't create new law. They just are now alternative mechanism for handling the

disputes. And so there's underlying assumption that actually both sides can go to court.

Now clearly for the trademark holder, they have a cause of action for trademark infringement and going to court isn't an issue. But we've seen in a couple of jurisdictions, namely Australia and the UK that there have been some isolated cases where the courts have said that the respondent in the UDRP, the domain name owner, has no right to appeal the UDRP.

And those are very disturbing decisions because it attacks the underlying assumption of the UDRP and URS that court action is available to the domain name holder and that respondents don't gain any new rights by initiating a UDRP or URS first.

So they don't gain any tactical advantage so to speak that the same dispute could be heard in a court first or second and there'd be no prejudice due to the UDRP or the URS having been filed first. And so the question is, you know, what to do if a court determines that there is no right to review the UDRP or the URS decision?

And I know from the chart, you know, you can seek a declaration of non-infringement in the UK. But there have been some decisions saying that they're not even going to hear the case, because there's no cause of action. And Paul Keating brought up this issue in IGO working group. You know, respondents are offering in the UK and in Australia because of this.

So we need to first investigate whether this is a problem, and I think it is, at least in a couple of jurisdictions. And if it is a problem - sorry, if it is a problem, how to handle it. Perhaps the URS or the UDRP decision needs to be set aside so that the, you know, respondent has all due process, you know, forcing the trademark holder to file properly in a mutual jurisdiction under a trademark action, et cetera. So that's my problem or issue that needs to be added to this section of the questions. Thank you.

Kathy Kleiman: George, did you want to submit that in a few lines because, you know, you - I could see that this would be a distinction in the IGO, INGO working group. And it is an issue that of course has been raised about the lack of access to a lack of cause of action under national law involving different types of UDRP and URS.

George Kirikos: May I - if I - it's not an issue isolated to IGOs. It's an issue that was brought up (unintelligible). It's an issue for any domain name holder. I think the Yoyo.email people were one of the examples that with of course the case was thrown out and apparently it's happening in Australia as well. So basically it's an underlying assumption of the UDRP and URS that others can go to court. If that underlying assumption proves false, then what we do?

Kathy Kleiman: Good question. So I'm hoping staff has captured this that and that you also submit it in writing as, you know, so that we have kind of your phrasing on this. But I think it went to the table. Thanks. Claudio, remedies, appeals, costs. Go ahead please.

Claudio DiGangi: Thanks, Kathy. Just a wordsmithing comment on the first question. I would suggest changing it so it reads, should the URS allow for additional remedies? And where it says perpetual block, I think we should change that to suspension because, you know, block could mean something else. And I think what's intended here is that the suspension would be indefinite. And then that's the main comment, but there's just some repetition the way it's phrased here.

It says for additional remedies such as perpetual suspension or other remedies. So it's kind of repeating remedies twice and we might just want to say, should the URS allow for additional remedies, comma e.g. a perpetual suspension, transfer or right of first refusal. Thank you.

Kathy Kleiman: Okay. Thanks for that clarification comment. Maybe changing block to suspension, which is of course one of the terms that is used in the URS. Sounds like a good one to me. Paul McGrady, go ahead please.

Paul McGrady: Thanks, Kathy. Paul McGrady here. I just want to nip something in the bud before we get too far down the road. George kept talking about the URS and the UDRP. The UDRP is for phase two, not phase one and we don't want to go down the path of only evaluating the UDRP during phase one.

I'm sorry. I think I got that confused. UDRP is phase two, not phase one. We don't want to go down the path of accidentally reviewing the URP during phase one because that's not what the charter says and that's not what we're doing right now.

And so I understand George has a concern, but I think in future we need to be very crystal clear that right now we're talking about the URS and not the UDRP. We do not want to conflate them and I think that we need to very careful in that space.

That having been said, in relationship to the URS issue that George raised, I don't know of any cases anywhere saying URS decisions cannot be appealed. George may know that for URS. Again, not talking about UDRP because this is not phase two.

But even if such a case does exist in a jurisdiction outside of the US, the really simple solution here is simply to make the federal courts in the United States one of the appeals jurisdiction, because in the US the ACPA is very independent of ICANN Rights Protection Mechanisms and courts will allow you to file under the ACPA's reversed domain name hijacking provision if you happen to have a case.

So that's a quick easy fix. Thank you, George for raising the issue. And but I

do - even though it's a fairly easy fix on the issue to be raised, I do think we need to be careful not to conflate URS with UDRP. Thanks.

Kathy Kleiman: Thanks, Paul for your comment, although we're going to see as we go down into other charter questions, that people did ask - there were some questions that did raise URS and UDRP. And of course, you know, what we need to do is file that question away when we get to the UDRP, as well as applying it to the URS as appropriate. But thanks, and if you have an answer to the issue, that's great too. Jeff, go ahead please.

Jeff Neuman: Thanks, Kathy and I apologize. There's some noise in the background here. So hopefully not too loud. This is Jeff Neuman. I'm going to try to go back to my Neuman role at the high level here. And I want to make sure we're kind of all on the same page about this, because I'm not sure we are.

A lot of these questions, whether it's on this slide or even the past slides on complaints, defenses, standard of proof, et cetera, a lot of these questions were raised and answered or responded to or the subject of compromise between the years of 2009 and 2012. What I'm afraid of is that we're going to get into the business of re-litigating these thing if you will. Maybe that's not the right word, from a philosophical standpoint, as opposed to relying on actual cases or where evidence has shown there to be an issue.

So things like, you know, is clear and convincing standard of proof appropriate on one of the previous slides? These have been discussed and subject to compromise, et cetera. If we can show that based on its implementation that it's proven to be a problem and we need to readdress it, then by all means let's re-address it.

But I want to make sure we're not just readdressing things for the sake of readdressing. And so what that means is, it's going to be important for context as to why something is the way it is. And also a realization that it was subject to a compromise potentially for a particular reason.

And that philosophical debate of, you know, whether clear and convincing is the right standard, or looking at the next slide as, you know, should there be a loser pays model? Or even the previous slides before that on other thing. We need to be sure that when we discuss these issues, number one, we need to get all of the context for why a provision is the way it is, which includes all the previous debates and why we came out the way we did. And then look to see if there were any problems caused by that.

To the extent that there were problems, absolutely let's address. If there are no problems yet that we've seen, then my recommendation is that there is no need to address because it's purely philosophical and then those can be crossed off the list. So I want to make sure that we're kind of all in agreement as a group that that's the way we should proceed before we actually, you know, work on editing these questions and doing all sorts of work that could take us months down the path of looking at things that may not have shown to be problems yet. Thanks.

Kathy Kleiman: Jeff, hold on just a second. This is Kathy. This is valuable insight because you're doing this of course in another working group. So are you saying, and let me try some different words and see if it means the same thing. That, you know, as a review team we should be reviewing first the existing rules to see whether they're effective, whether they're used, whether they have problems.

And from there, look at what the problems are and then think about the solutions, versus looking at changes that are being suggested upfront. Is that another way of saying what you're saying, or is that different?

Jeff Neuman: Well, it's a good question and recognizing the wording you're trying to get me to take. To the extent that it was established GNSO policy, to the extent that certain language is there because it was a compromise that was agreed to by the community, we should not be then re-litigating those issues.

If something was a decision, let's say in an unrelated group that I know you're referring to, which what passed top down from the board, as opposed to it …

Kathy Kleiman: Absolutely no. I wasn't even thinking of close to that. Actually I wasn't.

((Crosstalk))

Jeff Neuman: I just want …

Kathy Kleiman: I was just trying rephrase what you were saying, and some of the words because I was thinking of the same issue because what's our starting point and what are you looking at?

Jeff Neuman: Right. So from that perspective, to the extent that a lot of these things were actually a subject of compromise, we should make sure that we looked back at how we got to where we were. And it was decided by the community that we should proceed in one way.

We should not be re-addressing those issues and just, you know, as another chance to litigate because we didn't like the way it was originally. We need to show that there was a problem or that the original assumptions made by the group did not turn out to be correct and you know what, it turned out - you know, in Kristine's email she said, you know, I don't understand the provision that says that registrants shouldn't be allowed to change their content.

And you know what, upon rethinking it, it's a problem because registrars can't - or registries can't actually prevent a registrar from changing content, you know. That's one thing. That's the problem. But just, you know, re-litigating a clear and convincing standard because we didn't like the way it initially was, that's the type of thing we should avoid.

Kathy Kleiman: Terrific. Thanks for raising this, Jeff and articulating it so clearly and in context. And it also would make our job a much easier and faster frankly. Looks like J. Scott agrees if I'm reading his comments directly - correctly. I think Jeff is saying that we need to identify a problem caused by the current policy.

If it is simply we do not like the policy or part of the policy as written, then we do not need to re-negotiate. Okay, that's J. Scott. So let me call on our third co-chair, Phil Corwin. Phil, go ahead please.

Philip Corwin: Thank you, Kathy and two quick comments. One, I'm in general agreement with what Jeff just said. The URS which is - you know, on this question that here, I think the word appropriate is the wrong word and we need to rephrase this question. The standard is there because URS was created for black and white cases that could be handled rapidly with very short word limits on the complaint and the reply, something where kind of know it when you see it and not shades of grey cases.

So I'd be perfectly more interested in finding out whether the accredited providers have been following the standard. I'll assume they are but, you know, I'll adopt what - the Ronald Reagan standard, trust but verify. We ought to look at some of those cases and make sure they're sticking to the standard. But let's presume that they are. Then it wouldn't seem to be a barrier or creating a problem.

But yes, we should focus more on identifying problems or failures to adhere to the policy as adopted rather than re-litigating debates that took place years ago. The other matter I wanted to comment on was the one brought up by George and commented by Paul within our IGO Working Group, where I am a co-chair.

Yes, we have discovered that the US is one of just a few jurisdictions that has a law like the ACPA that allows registrants to go to court and litigate their

rights and their domains. ICANN has no power to create those rights in other jurisdictions.

The reason so many registrants from outside the US can get ACPA review is that they use a US based registrar which creates one of the - gives them mutual jurisdiction.

The one thing I defend from was that Paul's simple and easy suggestion of making access to US courts available for all registrants, I'd be wary of that one because of the ongoing debate on ICANN jurisdiction and the accountability where I can imagine a lot of raised eyebrows that that - I've heard that some members of the GAC want to continue that jurisdiction debate even beyond work stream two of the accountability work.

So I think there's some political considerations on that suggestion, whether UDRP should have an internal appeals mechanism, is something we can deal with when and if we get to it. It's not relevant to the phase one discussion. Thank you.

Kathy Kleiman: Thanks so much for your input, Phil. Appreciate it. Let's not spend too much time coming up with solutions until we come up with the question. Paul, go ahead please and then let's move on to slide three of five. Paul, go ahead please.

Paul McGrady: Thanks, Kathy. Paul McGrady here for the record. I'll be very quick. Just to respond to Phil Corwin's comment, which is I guess I don't understand why we have problems if the US is one of the few places that have the right of appeal. It seems to me that they would reinforce ICANN's jurisdiction in the US, not make a political problem.

Of course, all jurisdictions are more than capable of developing ACPA like legislation if they would like to do that. Thanks.

Kathy Kleiman: Cool. Thank you, Paul. Phil, go ahead please.

Philip Corwin: If I could just very quickly respond. My concern is that if we established in this area that a domain name registrant in country X used a - resident in country X used a registrar on country X, nonetheless has rights to proceed in court in the United States because ICANN administers the domain name system.

I can imagine many matters - members of the GAC going completely apoplectic over that and creating a lot of problems on jurisdiction issues that have been mostly dealt with successfully. So that's the reason for my concern. Thank you.

Kathy Kleiman: Thank you. Thank you for the preview of discussions, both for the URS and the UDRP. Okay, moving on to - let's see. We've got another 25 minutes. Let's see if we can get through the charter questions one more time, which we should be able to. We've just got a few more slides, and review everything so that people can go online, think about it. We can work with the table. Julie, to you on URS charter question slide three of five. If you could walk us through them please.

Julie Hedlund: Thank you very much, Kathy. This is Julie Hedlund from staff. So on slide six, question three of five. These relate to misuse, repeat offenders and language. Bullet one is, what sanctions should be allowed for misuse of the URS by the trademark owner?

Two, is there a need to develop express provisions to deal with repeat offenders, as well as a definition of what qualifies as repeat offenses? Bullet three. Has ICANN done its job in training registrants in the new rights and defenses of the URS? And bullet four, what evidence is there of problems with the use of the English only requirement of the URS, especially given its application to IDN new gTLDs. Thank you.

Kathy Kleiman: Great. Thank you, Julie. This is Kathy again of course. So in light of our - the discussion we just had over the last few minutes, I'm glad to see that some of these (unintelligible) here apply to how is the URS being handled? What are the problems under the existing URS that people might be having? Say its English only, and how to better prepare people for using the URS.

That sounds, you know, central to our review task. So that's good. With that said, let me turn it over to Jeff and then to George. Paul, are you still in the queue or is that an old hand? Old hand. Go ahead, Jeff.

Jeff Neuman: Yes. Thanks. I think, and again I'm not sure how we're using the session, but on the first question here, I really think there are precursors to this, right, which is, has there been - is there any evidence of misuse of the US by trademark owners? Number one.

Number two is as - I forgot who pointed out in the chart because it's now kind of passed by, but there are sanctions that are in URS for abusing. And so the question really should be, what additional sanctions or have the existing sanctions been seen to be ineffective or, you know, whatever it is.

But this is one of those questions that builds in assumptions for which I think there are precursors that need to be answered before we even get to a question like this. Thanks.

Kathy Kleiman: Terrific. Thank you for your comments, and hopefully staff is catching some of those precursors as you call them, which would get to, you know, reviewing the existing process as you pointed out through the old compromises that were created before we look at whether we need to revise anything. George, go ahead please.

George Kirikos: George Kirikos again for the transcript. For the last question, I think the specificity with regards to IDNs is actually relatively minor, because if we look at the quantity of IDN registrations, they haven't been significant.

However, the much more significant matter is that Chinese domain name registrants across all user TLDs, have been more than half, I think statistically. I can't remember the exact specifics at present. But that's a much more major concern rather than IDN registrations. Thank you.

Kathy Kleiman: Terrific. Thank you, George. Let's go on to the next slide, URS charter questions four of five. Julie, go ahead please.

Julie Hedlund: Thank you very much, Kathy. This is Julie Hedlund from staff. Slide four of five of the charter questions. These are questions about providers, applicable also to the UDRP in phase two of this PDP.

The first bullet is, assess the benefit of the arbitration form self-reviews, including the WIPO advanced workshop on domain name dispute resolution, May 2015 in which inconsistencies of decisions, including in the free speech freedom of expression area, were candidly discussed and contemplated.

Second bullet. Are the process being adopted by providers of URS services fair and reasonable? With a note that this question also included TMCH and UDRP providers. Third bullet. Are the providers' procedures fair and equitable for all stakeholders and participants?

The fourth bullet. Are the providers consulting with all stakeholders and participants in the evaluation, adoption and review of these new procedures? And final bullet, what changes need to be made to ensure the procedures adopted by providers are consistent with the ICANN policies and are fair and balanced. Thank you.

Kathy Kleiman: Terrific. Thank you. With a note that I think the set of questions continues on the next page. We'll pause here and take a look. Again, as a set of questions that again at least appears to be on glancing at it for the second

time now, that the questions that are trying to stick with kind of existing policies. Are the providers doing their jobs?

And we know that there is a limited set of providers for the URS that does not include the World Intellectual Property Organization. And so looking at these questions, you know, does anyone want to offer any comments? George, go ahead please.

George Kirikos: George Kirikos again. Yes. I think the much more broader question is, you know, under what conditions should providers be terminated or decertified or whatever the appropriate language is, as we've seen in the case of the National Arbitration Forum of, there were complaints by the Minnesota attorney general that forced them to leave commercial credit arbitration for consumers.

And so it's very disturbing that on the one hand, you have that scenario. But on the other hand, you know, they're still doing disputes and disputes for the UDRP and URS. So there seems to be a disconnect. But they've been under investigation in one context. But under the UDRP, URS, they've never been both faced with the same kind of review. Thank you.

Kathy Kleiman: Thank you, George. And that might apply to some of the data gathering that would be involved with some of these questions perhaps, Brian, go ahead please.

Brian Beckham: Thanks, Kathy. Brian Beckham for the record. For this slide, this is a question on slide four out of five. The second, third question they ask about process adopted by providers, procedures being fair and equitable. This goes to kind of my more overarching comment in the beginning of the call was that, you know, on their own, these could be a fair questions.

But it would be useful to understand, were these directed at a particular provision, a supplemental rule, a practice of a provider? So it's difficult to

answer the question without understanding a little bit more what was the intent behind the question itself.

And then in terms of the final two questions and I wouldn't want to put her on the spot, but I'm sure Kristine would have some views on this as well, Kristine Dorrain. You know, it's an interesting question, but ultimately I think there needs to be some degree of recognition that when it comes to a provider managing its internal operations, that some degree of deference is warranted.

You know, there's a fine balance to strike in terms of providing through URS or UDRP policy and rules and supplemental rules, providing a framework under which providers are meant to operate, and the legal framework which parties are meant to address the issues before them. And kind of micro legislating in a way that hinders the ability of a provider to efficiently provide its services. Thanks.

Kathy Kleiman: Wait. Brian, before you leave, is there a difference between looking broadly at how - I mean since we're the first ones through, the URS is a new process. Is there a difference between looking broadly at how a URS provider is providing its services, versus kind of the micro-managing?

Is then - let me ask you, isn't our job as a review team to do - I mean if no one - you know, is there anyone else looking at the providers? Isn't that part of our job? And, you know, I like asking this to you because I'm not asking it to you since you're not providing URS services.

So again, is there a difference between looking at kind of broadly at the providers and how they're implementing to see if anybody is way off base for example versus the micro-managing? If Brian is still there, I'll let him come back on. Otherwise, we'll go to Susan. Susan, go ahead please.

Susan Payne: Thanks, Kathy. I actually put my hand up before you asked that question. And it was to kind of answer that question in a way. It's to give my thoughts

on it. I'm not sure that this is our job to be reviewing the US providers. I mean we're tasked with reviewing the RPMs.

And I think, you know, and, you know, whether the RPMs are serving their purpose and so on. The US providers are following a set of rules or the US providers are given a set of rules by ICANN that they're meant to be following.

And unless we've got some evidence that one or all of the providers, some evidence that's come to light already and is very clear that they're not doing what the policy, you know, what the rules in the policy says they should be doing. I'm not really sure that it's our place to be kind of the compliance team for US providers. Surely that is the job of ICANN and ICANN compliance, you know.

So our job is to look at, you know, whether the RPMs are working. It's not - I don't think it's really our job to be going, you know, is the - you know, is it appropriate that the forum has been selected or, you know, has the forum done something wrong? But I'd love to know what other people think.

Kathy Kleiman: I would certainly love to know what other people think as well. Jeff and Phil, I don't know if you want to comment on this or something else. But Jeff, go ahead please.

Jeff Neuman: Yes. Thanks. I was just going to raise the issue I kind of raised on the list and which was that I think the original GNSO recommendation, I'm trying to find it. I've been going through the reports, did call for providers to be under formal contract with ICANN. And if …

Kathy Kleiman: That's my memory as well, Jeff.

Jeff Neuman: Yes. And so I want to find the exact provisions. For whatever reason, ICANN didn't implement that. They did some modified MOU. I want to find

out the rationale, not that there's been any necessarily any issues. But I do
you think that because the previous policy had specifically called for an
agreement, that we should either ratify what's going on now, which is, you
know, an MOU is okay. Or we should, you know, basically find out, you
know, why ICANN did what it did, figure out if there's any evidence of a
problem and if so, then address those problems.

But we do need something because right now the policy says one thing and
ICANN implemented something else. I'm not trying to put any judgment on
that, saying whether that was good or bad. I'm just trying to say that we need
to put the policy recommendations in line. Or I should say, put what's going
on in line with the policy recommendations and vice versa. Thanks.

Kathy Kleiman: Thanks, Jeff. I'm just going to agree with you, not as chair but as an
individual and also note that we did talk extensively on similar issues, kind of
what the policy was versus the implementation with Deloitte when we were
looking at Sunrise period. Phil, go ahead please.

Philip Corwin: Yes. Thank you, Kathy. I'm going to disagree somewhat with what - a
statement made by Susan a couple of minutes ago. I don't have any
evidence that the US URS providers are not complying with the applicable
requirements for administering the URS.

And those requirements can be found in the rules contained in the applicant
guide book, the procedures for implementing those rules that were
subsequently issued by ICANN and in the MOU, which is kind of a
rudimentary contract, maybe not as far as some people would have wanted
ICANN to go. But it is more than they have with UDRP providers. They've
actually entered into separate agreements with each URS provider.

You know, for the Trademark Clearinghouse, we reviewed the rules for what
could be registered there and even without overwhelming evidence that
Deloitte or IBM were acting in non-compliance, where we reviewed that to

make sure they were only allowing marks that should be registered to be in the database.

And I think there's some - we don't have to do a full compliance review, but I think we have some responsibility as a working group to familiarize ourselves with the basic requirements for the provider set forth in the guide book, the rules and the MOU and ascertain it.

In many cases, it's not a heavy lift to ascertain whether they are in compliance. It can be done fairly quickly, but to make sure that it's actually being administered in a way that's consistent with the framework that's been set forth by the community.

And finally, while it's not before us in this question, there was a major overarching question of whether at the end of this phase one, this working group is going to recommend any of the new TLD RPMs to become consensus policy.

And the one that's most clearly would be applicable to legacy TLDs is the URS. Many of the others only apply to the initiation phase of new TLDs. They wouldn't - there'd be no way to make them applicable. But I think if we're going to deal with that big question of whether something like the URS should be extended to over 100 million legacy domains, I think it's incumbent that we take some look to assure ourselves that the - this RPM is being administered in a manner that's consistent with the rules created by the community. Thank you very much.

Kathy Kleiman: Okay. For context - thank you, Phil. I'm going to note that there was so much interest in the charter question that we have a second page of questions on providers. So I'm hoping everyone is looking at page five of five as we're listening to comments. And quick comments please so that we can get to the end of the slides. George, go ahead please.

George Kirikos: George Kirikos again. Two related questions to add to this section. Namely, to what extent is there forum shopping for URS providers? And that exists because the - it's the complainant who picks the provider, not the respondent, the domain name owner.

And to put that in context, we know from the UDRP due to some good research, economic research by Professor Michael Geist, that there were very serious concerns about forum shopping under the UDRP. And so we should examine that with regards to the URS.

And the second related question is whether the current practice of the complainant choosing the UDRP provider is appropriate, or whether it should be the respondent i.e. the domain name owner who should be the one to select the provider in order to obviously reduce the effect of that forum shopping. Thank you.

Kathy Kleiman: George, before you leave, I think you meant URS provider in this case, right? Not UDRP provider.

George Kirikos: Right. URS provider.

Kathy Kleiman: Okay. So kind of a question you might have. Let me see if I can help you with phrasing might be, you know, is there a problem with forum shopping? I don't know. Actually let me put it into a - I'll let you phrase it. But based on, you know, the Jeff Neuman model, is there a problem under the existing rules that can be established? And if so, what might be the solution, might be a good way to phrase it when you go into the list. Paul, Susan and then let's see if we can wrap up the charter questions. Go ahead please, Paul.

Paul McGrady: Thanks. Paul McGrady here. I just want to throw my voice behind in support of those who are concerned that we are going outside of the scope of what we need to do here. We're here to evaluate policy. We're not here as the compliance wing of ICANN. We're not a compliance review team.

If there are specific about providers, then I think those can be referred to ICANN, but we are here to review the policies, to see if they're working or not working. And so we have resisted going out and looking at other things that were outside of the scope of what we should be doing. And this is squarely outside of what we need to be up to.

Secondly, even if we do go down this path, we shouldn't, but if we do, these questions, a lot of them are just essentially written with an obvious bias. So for example, take a look at the last bullet point on slide seven. Why changes need to be made to ensure the procedure is adopted by providers or consistent with the ICANN policies and they're fair and balanced.

Well, okay. So if this presupposes that they're not consistent and they're not fair and balanced because it says why changes are necessary. So again, this question presupposes an answer to a question that's not bene asked yet. So hopefully we don't go down this path, but if we do decide to go down this path and, you know, exceed the four corners of what the GNSO council asked us to do, at a minimum we need to take a really good look at these questions because these questions are loaded and presuppose things have not already been essentially found out to be true or false. Thanks.

Kathy Kleiman: Before we get to Susan, Julie, can we just go - because we're going to go into time, can we just go to URS charter questions five of five. And can you just read these last four questions sent to us by the GNSO council please?

Julie Hedlund: Thank you, Kathy. This is Julie Hedlund. So reading the questions on five of five. Are providers exceeding the scope of their authority in any of the procedures they are adopting? What remedies exist or should exist to allow questions about new policies by the providers offering URS services? And how can they be expeditiously and fairly created? Noting that this question also included PMCH and UDRP providers.

Are the providers training both the complainants and the respondents and their communities and representatives fairly and equally in these new procedures? And is ICANN reaching out properly and sufficiently to the multi-stakeholder community when such procedures are being evaluated by ICANN at the providers' request? Is this an open and transparent process? Thank you.

Kathy Kleiman: Terrific. Thank you, Julie. And let me note again as we go into the close of the hour, that there were also, as there have been in every other charter question grouping that we've looked at, if you go on to slide number nine, there are general questions that come out of the charter that might or might not be a applicable to this area, to the URS area as well. Susan, thank you for your patience. Go ahead please.

Susan Payne: Thanks. Yes. I had my hand up obviously when we had the previous slide up. It's not particularly relevant which slide was up. But it would have been more helpful to be able to say it at the crime rather than have that break. I was going to say something very similar to the lines of what Paul said. So I won't repeat that again.

I would like to specifically refer to George and respectfully ask him, could you stick to the URS. We've already established we're talking about the URS, not the UDRP. So if he's got examples of supposedly problematic issues and areas that are relating to the UDRP, this is not the time for them and we don't need …

Kathy Kleiman: Susan, George already corrected himself on that.

Susan Payne: He did not. You corrected him, and he was still making an example based on the UDRP. He wasn't making an example based on the URS, and I'd like him to stop.

Kathy Kleiman: Okay. Any further comments, Susan? Apologies for interrupting you.

Susan Payne: No. I'm good. Thanks.

Kathy Kleiman: Okay. George, go ahead please.

George Kirikos: George Kirikos. I just want to respond to that. It's a perfectly legitimate question to ask and the data gathering part of this review will obviously address that concern of Susan's. So to say that it's not a legitimate question is entirely inappropriate Thank you.

Kathy Kleiman: Okay. And also - okay. So we're talking about URS. So let's go briefly to slide number nine, general questions about the PDP - general questions from the PDP charter. And these are questions related generally, and you'll see the word RPM is in almost all of them. So as we go through, these will be added I guess to the table and then we'll see which ones we go through.

Do we have time? Julie, can you just read - because I don't think we've even touched these other relevant or potentially relevant charter questions? Julie, do you want to read slide nine and slide 10? Just so everyone has these in their mind, because if they are applicable for the URS, we need to be thinking about it and that should take our last two minutes. Julie, go ahead please.

Julie Hedlund: Thank you, Kathy. I'll be speedy. So slide nine. Do the RPMs work for registrants and trademark holders in other scripts/languages and should any of them be further internationalized such as in terms of service providers languages served?

Do the RPMs adequately address issues of registrant protection such as freedom of expression and fair use? Have there been abuses of the RPMs that can be documented and how can these be addressed? Whether and if so, to what extent changes to one RPM will need to be off that by competent changes to the others?

Do the RPMs collectively fulfill the objectives for their creation? In other words, have all the RPMS in the aggregate been sufficient to meet their objectives, or do new or additional mechanisms or changes to existing RPMs need to be developed?

Final bullet. Should any of the new gTLD program RPMs, such as the URS, like the UDRP, be consensus policies applicable to all gTLDs? And if so, what are the transitional issues that would have to be dealt with as a consequence?

Moving to slide two of two. First bullet. Do the RPMs work for registrants and trademark holders in other scripts/languages and should any of them be further internationalized such as terms of service providers languages served? Are the recent and strong ICANN work - are recent and strong ICANN work seeking to understand and incorporate human rights into the policy considerations of ICANN relevant to the UDRP or any of the RPMs?

Are there any barriers that can prevent an end user to access any or all RPMs? And finally, how could be lowered so end users can easily access RPMs?

Kathy Kleiman: Terrific. Thanks, Julie. Clearly some of those actually explicitly reference the URS and others make reference in general to the RPMs that might be relevant. So something to think about. We're at time now. Let me pause to see if anyone wants to make a last comment. I see other comments being put into the chat. Please put other comments into the list so that the staff can help create the table.

Thank you so much for the hour and a half today. And again, thank you to everyone who participated in Abu Dhabi in person and remotely. Take care everyone. Goodbye.

Terri Agnew: Thank you. Once again, the meeting has been adjourned. Thank you very much for joining. As a reminder, please disconnect all remaining lines. Operator Johnny, if you could stop all recordings. Have a wonderful rest of your day.

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