

I will also be unable to join the upcoming call since I am based in the UK where it is scheduled for 4am. I would therefore like to add my agreement and comments to those of Brian below.

I agree with Brian that the 4 co-chair questions (the four bullets in the penultimate paragraph) relate to topics which are already identified in Part One and Part Two of the URS working document and that as such, to the extent that the WG considers that they need to be considered and are not already adequately covered, then they should be incorporated into the Topics/Questions, not sit as a separate statement.

I would like to reiterate the concerns I raised previously about bullet 3 since there was no opportunity available to discuss them on the last call. Bullet 3, in the form it is expressed in the co-chairs statement, proposes that we investigate the application of the clear and convincing evidence standard and that in doing so “This will require a qualitative review of a statistically significant percentage of URS decisions”. This appears to propose that the WG members should re-open a number of URS decisions and effectively seek to apply our own judgment in place of that of the appointed panellist. Our role in this PDP WG is to review the effectiveness of the RPMs and whether they collectively fulfil the purpose for which they were created, not to effectively take on the role of an appeals body in cases which have not been appealed, or that of ICANN Compliance. It also raises significant practical concerns, in that we would presumably be attempting this “qualitative review” without the benefit of the underlying information that was available to the panellist, including the Complaint and Response, which are not published. Any such review is pretty worthless.

As I previously suggested, a reasonable and proportionate approach, which would be consistent with our approach on the TMCH, would be to consider the URS providers’ practices, in terms of what instructions and/or training are provided to panellists about the URS and its evidence standard. A consideration of the extent to which decisions have been overturned on appeal on the basis of the application of the incorrect standard would also be something we could consider. I would like to repeat my suggestion that bullet 3 be amended, including the deletion of the Co-Chairs Note, to read:

- How have the URS providers ensured that the “clear and convincing evidence” standard has been applied.

I would also like to support Brian’s procedural concerns. Whilst I am sure this was done with the best of intentions, a statement such as this coming from one or more of co-chairs risks being perceived as having an authoritative status, which it is not afforded under the GNSO Working Group Guidelines (particularly for those WG members who are not so familiar with the Guidelines and the roles and responsibilities of working group participants). As a working group we have spent some weeks now talking about the topics and questions for consideration on the URS – the questions raised in the co-chairs statement should have been submitted into that process in the same way that other working group members have done so.

Thanks

Susan

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