ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) PDP Working Group
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Operator: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon, and good evening and welcome to the Review of All Rights Protection Mechanisms RPM and all GTLDs PDP Working Group call held on the 14th of February 2018. In the interest of time, there will 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 yourselves be known now? We already have Brian Beckham noted on audio only. Anyone else?

Claudio DiGangi: This is Claudio.

Terri Agnew: Thank you, Claudio. Noted.

Hearing no further 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, J. Scott Evans. Please begin.

J. Scott Evans: Thank you very much. This is J. Scott Evans for the record. Good morning, good afternoon, and good evening everyone. Our first agenda item as you can see in the top right hand pod or window that is in the Adobe Connect Room is to review the agenda but first, I'd like to ask if there are any updates to any statements of interest.

Okay. Hearing none, we have one agenda item today and that is hopefully to go through the URS topics document. The high level questions that we've identified that we're going to attempt to answer and while going through that, to identify what types of data we may need in order to assist us in answering the questions that we've identified for our answering.

So I'm trying to see - this has been unlocked so if you will note that the documents is unsynced and you may move it yourself with your own machine. You don't need staff to do it for you. So you see here, we have Part 1. We've got - I'm sorry (unintelligible). There we go. Okay.

So we see here that we have this document. Part 1 lists the suggested review topics and we start at what is suggested during our earlier calls that we sort of follow the process through in a logical fashion. So we start with the complaint.

And under the complaint, the things that we decided we needed to consider are the standing to file, the grounds for the complaint, the filing period, administrative review, the notice of complaint, and those received by the registrant, effect on the registry operator. Those are the topics we feel like that we need to explore under the broader topic of the complaint.

Now, looking at that, the question to the group is, is there any suggested data that you all suggest that we need to look at in order to help us evaluate these particular points? Yes, I see Berry Cobb.

Berry Cobb: Thank you, J. Scott. Berry Cobb for the record. For Section A, the complaint itself, and understanding about the standing grounds for filing limited filing period and administrative review, and Section B that you mentioned, the notice itself, I think for the most part, if there are data suggestions from the working group that predominantly any data source for that will likely be from the providers themselves.

With the data that we've acquired thus far from scraping the URS cases from the provider's sites, essentially if a case was filed and ends up on the provider site, obviously it met the criteria for standing to file. Otherwise, in the administrative review it probably would have been declined.

But in general, any of that information would likely be coming from the providers and I don't see a way where staff can provide any data in that regard.

I would note that for the notice and receipt by the registrant, this is likely something also possibly - I can't speak for the providers but just trying to think out loud here is when the complaint is filed and after the administrative review is done, hypothetically there would at least be a copy of that notice that was sent to the registrant and perhaps any SMTP logs that would show that the email did in fact go out or if there were any undeliverable notices and those kinds of things.

I'm not sure if they retain those records or those logs and I know that there has been discussion with regards to whether the registrant actually did in fact receive the notice or not. I don't think we'll ever get to a true complete picture understanding that from end-to-end, but it could be something for this group to deliberate on a little bit further as to a future possible recommendation, for instance, that maybe there is more robust logging on the notice being sent to the registrant. Thank you.

J. Scott Evans: Thanks, Berry. So as you've seen from Berry's comments, he doesn't believe that staff can pull together a lot of this information. So the question is what data do we need and where do we get it. Berry seems to indicate that we would need to start with the providers and ask them some questions.

So just throwing it out there, I could one possible question is since the inception of the URS, how many complaints have you received from respondents claiming they haven't received the complaint. That seems to me a quantifiable question that would let us know something.

But I'm open to others giving some ideas of what they think. I'm sure the providers will be involved. Do we want to make a list of questions that we would send to the providers? I'm open to anyone providing here their thoughts on what kind of data they think we need to obtain and where do they think we can obtain it from. And if you have a suggestion of the type of question or type of solicitation we would make to the person or entity holding the data, what that would be.

Does no one have any thoughts or comments on the complaint and that charge? I see Kathy has raised her hand?

Kathy Kleiman: Can you hear me?

J. Scott Evans: You're very, very faint but I do hear you.

Kathy Kleiman: Okay, if there's any way to (unintelligible).

J. Scott Evans: Now, we lost you, Kathy. If you want to write your stuff into the chat, I'm happy to read it to the group.

Kathy Kleiman: Okay. I'll dial back in. Thanks.

J. Scott Evans: Okay. With that, I'm going to turn to Zak.

Zak Muscovitch: Thank you very much. Zak Muscovitch for the record. So just two things I want to mention about the complaint heading. So first with regards to the service and notification of the complaint, you had asked whether there were any suggestions about data that can be collected. And as I mentioned in the chat, perhaps one simple data point is whether the providers received any bounce back from the notification emails.

Also, under the complaint heading aspect, I wonder if any data can be collected as to what extent the complainants relied and submitted upon the TMCH SMD files to demonstrate use of the mark, and whether the panelists recognized that as proof of use and acknowledged it.

And this is further to the email to the group that Kathy Kleiman just before this call commenced circulating with a case study of certain concerns about the panel's appreciation of the role that the TMCH plays in these proceedings. Thank you.

J. Scott Evans: Okay. Susan Payne? Susan, I think you may be on mute. There you are.

Susan Payne: Sorry. It takes a while to get off mute. There's too many things to press. Yes, I wondered if someone could expand on that comment that Zak just made.

For those of us who haven't had the benefit of reading an email from Kathy in the last I don't know how many minutes I'm not sure what the point is that's being made here and why it's being suggested that we need to establish whether the TMCH data was being used or not.

So that would be very helpful. In terms of data points, I haven't been - I thought we were dealing with, A, the complaint first but a lot of people seem to be dealing with A and B together.

So on that basis, in relation to B, it seems to me that we could usefully look at, in addition to the complaints that you mentioned, J. Scott, about how many complaints providers had received that they hadn't received the complaint, we could also look at appeals - how many appeals were filed, where lack of the receipt of the complaint was being cited as the reason why someone hadn't responded.

J. Scott Evans: All right, thank you very much, Susan. I see now Zak's hand. Is that an old hand or did you re-raise your hand, Zak?

Zak Muscovitch: New hand. Just further to Susan's question, which is well taken, and both my comment previously about the TMCH. So this is news to me as well and I only briefly read the email before the call. But it seems to me from a glance at it, in at least this one particular case that was identified, the examiner received as part of the complaint package from the complainant a .smd file, which is tended as proof of use of the mark.

And that's from the TMCH. And so even though the panelist was provided with this proof of use, the panelist still stated in the decision apparently that no use was proven.

And so that shows that there's a misunderstanding at least on the part of this particular panel as to the role of the SMD files, which relates to another question that was raised in the email sent to the group prior to the call, and how these files are opened, and to what degree the panelists are aware of the role that these files play in demonstrating use in these complaints.

So to look at that data point would require some look at the decisions themselves because it's apparent from at least a brief review of this particular one that there was a misapprehension of the procedure and the approach to proving use. Thank you.

J. Scott Evans: Thank you, Zak. I'm going to call on Berry.

Berry Cobb: Thank you, J. Scott. Just to respond to what's being discussed here, and I think as Lori Schulman had pointed out in the chat, the SMD file is strictly just a proof of use item in terms of registering a name with a registry during the sunrise period. And I unfortunately didn't get to review Kathy's email so I'm flying blind a little bit about the particulars of that particular - of the case.

I would just note that I have in reviewing a few cases, it has been mentioned in the examiner documentation or at least the documentation provided by the complainant that their particular mark was loaded into the trademark clearinghouse.

And I'd note that that was kind of - I believe in Rebecca's research that is a planned code or an element that they intend to look at, that if it is mentioned in a particular URS case that they'll flag that as it being denoted there.

The last thing I'll say just from a TMCH perspective is when the working group circles back to the trademark clearinghouse work that has been put to the side while we're doing the URS case review, we are working with IBM to be able to get data from actual claims notices and then we'll be able to map that to the URS cases that we see today.

So as a brief example, let's say there were a hundred notices sent out of the 827 URS cases, we'll be able to recognize those actuals of data up to the end of 2017. Thank you.

J. Scott Evans: Thanks, Berry, very much. Okay, before we get too far off the rails here and start digging down into one particular issue with regards to one particular case, I think I want to keep this at a higher level and decide when we're looking at the things listed under A and B, what data do we think we need to answer to look into these questions.

And so far, it looks like what I've heard so far with regards to at least those under Business that looks like we're going to have reach out to at least the service provider and maybe the registry operators to get some information from them with regards to those two. That's what I see and it looks like - so that's what I think is good data for them. We would need to submit questions to them and ask specific questions.

With regards to A, I think I still haven't heard anyone give me any specific data point, or data groups, or repositories of data, or holders of data, or people we could reach out to, to get this answered. Now, in our chair call the other day, Phil Corwin mentioned that there may be questions here that aren't necessarily tied to data. They're more policy oriented and that is should we change things.

And it's not necessarily something that would be driven by any particular data. It's just a policy decision if based on what the compromises that were made and the URSes that exist and has been, do we see anything that from a policy perspective requires changing. That may not need data to answer those questions.

So sort of with that guidance of let's keep it high. Let's not drill too far down into the weeds, I'm going to go to John McElwaine and then I'm going to go to Kathy Kleiman. John?

John McElwaine: Well, J. Scott, I'm afraid that I'm getting into the weeds, but I just wanted to highlight that what has been put in the chat is correct, that an SMD file is a .txt file. It lists the mark that was registered at the trademark clearinghouse and then a very lengthy set of numbers and letters.

And to your point exactly, just looking at one case that somebody improperly labeled an SMD file a .smd, we shouldn't go chasing all these rabbits.

So anyways, thank you for letting me put that comment in.

J. Scott Evans: Okay. Kathy?

Kathy Kleiman: Kathy Kleiman. Can you hear me now? I'm on a different phone.

J. Scott Evans: Much better.

Kathy Kleiman: Okay, good. So I think the high level question here is the proof of use sufficient in what's being provided. We are getting complaints - I've gotten some that say that the SMD file is difficult to open or impossible to open by the examiner and by the registrant.

We've also heard differently from someone but I got it from John Berryhill who came to us as part of the educational session of the URS.

So that's a question worth nothing, is the proof of use - is the SMD file readable? Another thing in the URS, and this is high level as well, is that the requirement in the URS in 1.2.5 in the complaint is that the specific trademark and service marks upon which the complaint is based and pursuant to which the complainant parties are asserting their rights for which (unintelligible) in connection with what services has to be provided.

And the SMD file doesn't do that particularly in the case of figurative marks, design marks. And so is it - so it seems like a very valid high level question, which is, is the proof of use sufficient for the examiner and for the registrant.

And where we go to get that data is probably looking into the cases themselves or talking with maybe bringing Doug and John back as expert URS counsel and talking to other complainants and respondents in this proceeding.

But it's a really important question, is proof of use sufficient. Thank you.

J. Scott Evans: I'll call on Susan Payne.

Susan Payne: Thanks. Just a really quick comment. I'm not sure who the expert counsel is that we are supposed to be encouraging to come back. It seems to me that we've got any number of people who are quite familiar with the URS in this working group. There are hundreds of people who volunteered to join this working group. I'm not sure that we need to elevate someone who hasn't joined this working group to the status of an expert.

I'm also, to be honest, I'm not really sure that we need to look at - necessarily look at cases on this topic. It seems to me if there's a question about the proof of use, maybe the first place to start would be talk to the providers.

It's come up on a number of calls and we've said a number of times it would be really good for us to take advantage of the fact that we do have representatives from the providers and there's an awful lot of information that they undoubtedly could give us to stop us going down rabbit holes that we don't need to go down.

So I think the idea of collecting a list of questions to ask the providers would be a really good one and that would probably be a very useful first step for us. And we can then ask them about things like what proof of use they get and whether it's good enough, at least initially, before we start thinking about opening up hundreds of cases. Thanks.

J. Scott Evans: Thank you very much. I see Rebecca Tushnet's hand has come up.

Rebecca Tushnet: Thank you. Rebecca Tushnet for the record. So I actually think asking providers these questions is a really good idea. So let me weigh in, in support of that. But I have to say, I'm not quite sure what we think the providers will be doing other than reporting to us what they think they see in the cases. So it is case review. We just don't get to see their underlying data.

That doesn't mean it's not relevant but I don't think saying let's not do case review, let's ask the providers what they're seeing is actually a substitute. Thank you.

J. Scott Evans: Thank you. I see we have Martin - Susan, is that an old hand or a new hand? Old hand. Martin? I'm afraid, Martin, you appear to be on mute. I am not hearing Martin. Is anyone else hearing him or is he - is anyone else there? Are you hearing me?

Terri Agnew: Hi, J. Scott. It's Terri. So Martin is now unmuted. Martin, if you could please check the mute on your side.

J. Scott Evans: Okay, Martin, if you could raise your hand - I'm sorry, place your comments in the chat, perhaps I can read them to the group. I see you've stayed in the chat. You're not sure why it's not working and you've said that you will put your comments in the chat. And I will read them to the group once they've come in.

Okay. So I think I'm hearing - and I want to make sure that I'm not misspeaking here - that there seems to be at least a general agreement that reaching out to providers and asking them a list of questions with regard to numerous not just the complaint but probably a lot of the matters that we see here is a great way to obtain some data for us to review.

So it seems to me that one of the tasks we need to get on, then, is preparing a list of questions for the providers.

Kathy, okay, I'm sorry, Martin Silva Valent says, "I agree with Rebecca. Going into the cases is a must to answer a review question." Okay. And that starting with providers is a good start. Kathy?

Kathy Kleiman: I'm going to object because I don't think the providers will do it. When we went to the providers, IBM and Deloitte, we asked them how they did their process, what they accept into the proceeding.

It's kind of like asking a judge what the content was of the (unintelligible) before him. And in the provider's case, they don't - that's not their job to actually read and ascertain these things, and see what the problems are. Their job is to administer.

And so we'll be looking at them later for administration. These cases all have the names of the complainant, or their attorney, or the registrant and their attorney. There aren't that many cases and I think we do need to go out after some of these. Let me list some of the other problems.

Some of us went out and did some research on this ahead of time that we're hearing about complaints. And I don't think we're going to get the answers from the providers but we can certainly get the answers from people who participate in them.

One is the SMD file and how accessible is. We've seen problems opening it. Another is the online filing, which apparently doesn't allow text formatting or even simple paragraph breaks. So we should find that out. Apparently just submitting things is very, very burdensome.

The complaints, how often are the complaints about common works versus arbitrary works, again, a question I got from somebody, actually from John Berryhill that there is an issue. So how often are the complaints common words, something we can easily check.

The proof of use, especially when you're dealing with the design of figurative mark. Not something to ask the providers. This is something to ask the attorneys on both sides or the representatives on both sides.

So I want to objective. The providers provide the process. We've got to actually talk with real people, attorneys, registrants, complainants about the substance. Thanks.

J. Scott Evans: Okay. I'm turning to Susan Payne.

Terri Agnew: Susan, this is Terri. We're unable to hear you at this time. I see where you disconnected. Oh, please check your mute button on the telephone?

Susan Payne: Can you hear me now?

Terri Agnew: Yes, but you are low in volume.

Susan Payne: Sorry about that. I actually lost audio from you so I didn't hear you calling on me. I think it's a bit difficult. Kathy raised a lot of issues there. She ranged around quite a lot and I think it might be easier to take them in turn.

But I think the point I was trying to make was that there's been a suggestion raised that there's some difficulty in accessing SMD files. And it seems to me that it was being suggested that panelists were unable to do so. And therefore it seems to me an entirely appropriate question to be putting to the service providers, the URS service providers.

I haven't completely ruled out looking at cases in every single circumstance and there seems to be a suggestion that I'm trying to do that. I was just saying I think that at this stage, we have a number of questions that it may be well the panelists and the service providers who appoint the panelists can answer for us.

And before we start going elsewhere and talking to hundreds of people, which let's face it, we have no budget to do, we should be speaking to the people who are administering this process first.

J. Scott Evans: Thank you, Susan. This is J. Scott and at this point, I'm speaking out of my personal capacity. I think where I'm getting a little bit confused is every time I hear Kathy come up, I feel like she's interjecting new and additional things we need to look into, rather than asking the questions of looking at what we agreed to look into - what's the best place to get data to answer those questions.

I see that she says there are additional issues, additional problems, additional things we need to look into. But it's not answering the question that I put to the group, which when you look at the things we've agreed to, the standing to file, the grounds of the complaint, the administrative review, notice of the complaint - where do we go to get this data and how do we go about collecting it

That's the question I'm trying to get responses from, from everyone. I heard from I would say of the people who spoke, and I would say that's been under ten, but it seemed to me from my ears that a majority of people thought that the providers were a good source to ask to a set of questions to get to answers or to get to data that might inform us in answering these questions and looking into these issues.

And now Kathy has objected to that and says that's not what we should do. So I just need direction from the group as more than just one or two people, but a direction from the group on how they think we should proceed to get data to deal with - we're on A and we've been here for 32 minutes - and we need to start moving through these so that we can then start collecting the data so we can start doing our work.

Kathy.

Kathy Kleiman: I think it's really our first review of the complaint. We haven't had to dive into it. Certainly, proof of use falls under grounds for complaint and so how do we find out whether the grounds for complaint are sufficient for both sides. And

that's not a provider question. So we've used lots of different techniques in the past including opening up a questionnaire.

And since it's probably limited pool of attorneys, and I think we're going to get lots more questions for them as we go through this, attorneys or representatives on both sides, there may be - on both sides of a URS proceeding - we may have a fairly limited pool of people that will be answering questions if we put them out there.

Thanks. But again, a lot of what I was raising goes to grounds for complaint and also an issue that hadn't been (unintelligible) which is just ease of filing these things. Thanks.

J. Scott Evans: Thanks, Kathy. Rebecca?

Rebecca Tushnet: I'm so sorry, that was accidental.

J. Scott Evans: Oh, okay. Phil Corwin?

Phil Corwin: Thanks, J. Scott. Phil for the record. Looking at this first question where we're looking at standing and grounds for filing and limited time period, the question there, regardless of how we get the data, and I think the data is our complainant's providing grounds for filing in accord with the policy.

But the policy question here I got to say I think is not relevant. The policy question next to the criteria we're considering for available data is showed to first element be modified to include names that are abusively registered, but they may not be confusingly similar or identical.

Well, to me, this is a policy issue. It's a policy call regardless of the data and my off the top of my head policy response would be no, the URS is a subset of the UDRP and if we're going to consider going beyond domain names that

are identical or confusingly similar to a trademark, that's a mega question that should be reserved for UDRP review.

It's not something we should be monkeying around with in something that's designed to be a fast subset of UDRP complaint for clearly abusive registrations. And if we're not dealing a domain name that's identical or confusingly similar, I don't see how it could possibly be a black and white case that would fall within the URS.

So I did want to comment on the charter question here, which should inform our search for relevant data. Thank you.

J. Scott Evans: Thank you, Phil. I do want to read into the record a comment from Renee Fossen from the forum. And Renee placed in the comment, "Why not have the providers do a high level overview, like Berryhill and Eisenberg did first? Formulate questions to providers next. Then providers provide answers." And I see that Susan Payne has said she thought that sounded like a good idea with a plus one for Renee.

So I throw that out to the group just in case people aren't on or paying attention to chat. And then I'll got Zak and then John.

Zak Muscovitch: Thank you. Zak Muscovitch. Yes, I'm glad you repeated Renee's point there for the group and from Renee's point, it seems that we can ask the providers questions and they could provide answers. They could provide the overview and that might very well answer a bunch of questions we have.

But it may not necessarily and so why couldn't there be a follow-up discussion on that when we say, okay, these are the answers we have. Are there any questions that haven't been answered or follow from these answers. And I'm just thinking just for example, the policy requires a word mark, have decisions, have panelists consider design marks as well.

And so that's something that the provider probably can't answer and we'd have to take a look at the decisions themselves.

But I don't see any reason why we can't start with questions to the providers and see where that gets us.

J. Scott Evans: Thank you, Zak. John?

John McElwaine: Thanks, J. Scott. John McElwaine for the record. So I think one of the reasons why we're having a hard time coming up with providing you and this working group guidance on what can be studies to answer, for instance, the first question, standing to file, is that it's so high level. And this may be - I like the idea of having the providers come in and provide some of their take on these topics.

And this may be a good example of what kind of came out of the intersessional where we could then take that knowledge and have a smaller group look at whether there is any data to analyze relating to standing to file.

So at a high level, it's hard to I think come up with any suggestions on this call. But if we hear some of the problems, talk it through and then work in a small group, we might be able to come up with some data points and areas to examine. Thanks.

J. Scott Evans: Thanks, John. Any thoughts or comments in regards to John's proposal and Renee's initial proposal? Because if you remember, the methodology was we were going to look at each of these big topics and ask the five questions, right. Has it been used? Why or why not? What is the original purpose? Is it being fulfilled? Bearing in mind the original purpose, have there been any unintended consequences.

I think that's where perhaps the point that Zak raised about if design marks are being considered and specifically prohibited from being considered

because they're not annunciated in the policy that would be an unintended consequence.

I think also if Kathy's points about the difficulty to file, and this is supposed to be cheap, easy, and fast. If it's difficult to file and difficult to file a response then that doesn't seem like that's fulfilling its original purpose. If there are elements of proof that are not working correctly then that is something we need to know.

I did notice that Kathy mentioned in her comment that she thought that there were probably a small group - manageable, I shouldn't say small - group of practitioners that we could probably put some questions too and consider their responses to those questions.

But I didn't hear anyone pick up on that or see if anyone else thought perhaps that was something worth pursuing as another group. Or is the whole idea that we start with the providers. We see what information we can get from them. We decide if there are any additional questions. We decide then if there are still things that need to be considered and then what groups we could go to.

So far, the only things I've heard of data that we can glean, I've heard three sort of buckets of information. One is from the cases themselves. One is from the providers and then Kathy also made the point of practitioners who often litigate in the URS and deal with the URS.

So are there any other ideas for where we might find information with regards to not just the complaint, but if you look down throughout this list of high level topics, the response, standard of proof, the defenses, the remedies, if there are other groups other than those groups that you think could assist us in identifying data that we could consider an analysis on how to consider these particular topics.

Zak?

Zak Muscovitch: Just from reading the comments and because we're trying to work through questions about where to get the data, I do see that quite a few people appear to do everything possible to avoid looking at the decisions and second guessing panelists. And while I can appreciate that, I do want to point out that looking at these cases is quite easy and also presents some issues that are of utmost concern to trademark owners as well as to registrants.

I've successfully used the URS as a complainant lawyer in a clear and convincing case where the respondent registrant - traded a fishing site using my client's logo, his mark, and a new GTLD - and was getting my client's customers' credit card data and other information. We were able to easily pass the clear and convincing test.

I looked at 58 cases where there was a denial of the complaint and there were problematic cases in there that may very well have demonstrated that the test under the URS isn't being properly interpreted by panelists against complainants. Just for an example, there was Genzyme.xyz, Genzyme.online, decided by two different panelists.

Genzyme is like a multibillion dollar pharmaceutical company. In both cases, there was no use of the domain name at all. It was passive holding and in one case, the one panelist transferred the domain and the other he didn't on exact same facts. And this was apparent from a five minute read of these two cases.

And so that shows me that resistance to actually looking at the cases by parties who are primarily interested in trademark rights may be a mistake in approach. I also saw a case, Netflix.news, where the panelist clearly refused to - sorry - refused to suspend the domain name based on the respondent saying he intended to do a personal site about Netflix.

And so the question becomes are the tests being properly interpreted and this is an issue for trademark attorneys and people concerned about trademarks rights as well.

On the (unintelligible) I saw VCG.ooo and there was no active use of a website, not use at all, and the panelist transferred or suspended the domain name purely on the basis that it corresponded to a trademark of the Boston Consulting Group when there's like a couple hundred BCGs all over the world that have registered trademarks.

So my point is that looking at the actual cases, which isn't that time consuming there's only some eight hundred some of them is of immense benefit when we're judging whether the policy is working or could be improved and what the problems are with it.

So if anyone is compelled by those examples that I gave there's probably more of them out there and it's not that they're helpful for trademarks or registrant side and it's not mutually exclusive.

But these things can be looked at and should be looked at. And so if there's any willingness to look at cases, we might as well look at them all throughout these different headings. Thanks very much.

J. Scott Evans: Thanks, Zak. Susan?

Susan Payne: Thank you. I put my hand up when Zak was talking and that's really interesting, Zak. I don't think any of us are arguing or are arguing the value of looking at the cases because we're trying to protect what we are perceiving as being trademark interests. I think we probably all could imagine that there are cases which have been wrongly decided in a registrant's favor as well as in a trademark owner's favor.

There may well be. The fact is that in order to review these cases, all we have is the decision. We don't have all of the underlying facts and information that the panelist looked at.

So you yourself when you were presenting this to us just now were making all sorts of assumptions based on what you think you can see from the decision. And it's not our job to be basically running a second line appeal if you like, and identifying that some cases have been wrongly decided.

That in fact doesn't help us in an establishment of whether the policy is working or not. What that establishes is potentially that there might have been some problems with some cases. There may be some panelists who have been deciding things wrongly. There might even be a question about whether ICANN and its compliance department is exercising adequate control.

But it's not about whether the policy is adequate and is working. This is outside of our scope and we'll just be guessing because we are basing our guesswork on just the decision.

Zak Muscovitch: If I can just respond to that, I appreciate what you're saying, Susan. I take your point. I would tend to disagree in a couple respectful respects. The first is that for a UDRP proceeding, it's quite clear that to make a comprehensive review of a decision, it would certainly be helpful to have the (unintelligible). But even with UDRP proceedings, it's possible to come to some kind of judgment about the case.

URSes are even simpler because you really only need a couple basic facts. Was there an active website? What was the proof of use required? Was there a response filed? Was there an explanation filed? Did the panelist properly state the test and did the panelist interpret the test properly?

Now, I couldn't care less whether one decision, or a handful, or a couple dozen were wrongfully decided in my subjective view. So I take the point that we don't need to decide whether the panelist was correct or not. But certainly, we are able to determine whether the test is being employed or whether the test should be reframed.

For example, if we have panelists running off in all different directions with an unclear test of clear and convincing, where some inactive website is required and some isn't that's something that we could fix in the URS as part of this review. So I'm not suggesting we make a wholesale review to see which panelists got it right, which got it wrong.

But we can certainly identify if there is a theme that runs through at least a significant portion of decisions that are resulting in outcomes that are inconsistent, not in vision, not protecting registrants, or not protecting trademark owners the way the policy was intended. Thank you.

J. Scott Evans: Thank you, Zak. Kathy?

Kathy Kleiman: Zak raised some really good points. I want to address your question of what to do. So I went back to Renee's comment about why not have the providers do a high level overview like Berryhill. Makes sense but I don't think it gets us all the way. Is I would recommend we do it in parallel. We've got specific questions and as you noted, a manageable group of practitioners.

I would do it in parallel. We've got time issues and time constraints. Let's hear from the providers but some of the evaluation and also some of the commentary isn't a provider issue. It's not a procedural issue. These are legitimate substantive issues and I didn't disagree with Susan. Is the policy adequate, I do think we're a review team, that's one of our questions, and did we get it right. So this is new. This doesn't have the 20 year tenure of the UDRP. The URS is new for clearly abusive slam dunk cases and is it serving

that purpose. That's a key question and by asking both the providers and the practitioners, we'll get a much better idea. Thank you.

J. Scott Evans: Thank you. Cyntia?

Cyntia King: Hi, thank you. This is Cyntia King. So I'm reading through all of the comments in the chat, and listening, and I am again very concerned that we are headed way off mission here and we're getting very far in the weeds.

Let's just say that we do review every single URS case and we're looking at it to find out whether or not standards were applied appropriately. Already in our mailings and in the chats, in the meetings that we've had, reasonable people in this group are disagreeing.

So what will happen? What will happen when we review all of these cases and then there are people who disagree about what any particular - these cases mean? Are we going to sit down and discuss every case and litigate every case in our group to decide whether or not that is suitable for us to make a decision for some kind of a policy that would prevent this particular instance?

We are getting way, way far down into the weeds and I don't think that everyone is taking into consideration what is going to happen once we hit the UDRP portion of our purview.

Because we cannot replicate this level of intense concentration on every case with the UDRP. We need to have a high level discussion about what's going on. And for those folks who want to get down into the cases and determine whether or not they see problems, good luck. Let's go for it. Let's do it. And for Rebecca, if she wants to pull up some standardized data points that we can look at to better inform us, that seems wonderful.

But we cannot get to the point where we are litigating all of these cases here in this group to determine what standard was used which where and then maybe at some point talk about how to fix that. We have limited time. We have limited budget.

We're already far behind what the GNSO wants for us to do. We really need to move forward. We've been on this call for nearly an hour and I'm not sure that we decided anything. Have we? We really need to proceed. That's my opinion. Thank you.

J. Scott Evans: Thanks, Cyntia. I think Zak, I see your hand and then I see Jason's hand.

Zak Muscovitch: Just a short comment. Thanks very much. My question to the group is do you know whether clear and convincing requires an active website or not ? Because complainants attorneys will certainly want to know that before they waste their client's money and use a URS system when there's no active website. And respondents will want to know the answer to the same question.

And so there needs to be come clarity on that issue because as Kathy pointed out that was the overriding framework for clear cut cases, slam dunk cases. And so we don't know whether these are slam dunk cases because they're being decided both ways.

Passive holding is being interpreted entirely differently. Maybe we could avoid that whole quagmire and problem by changing the policy, rewording it, adding interpretive guidance, or rethinking it.

And so my point is that you can't even know that there's a problem without looking at the cases. And I'm not talking about which way the case is decided. I'm talking about a bigger question of whether there's a clear direction within the policy about how cases are supposed to be decided. Thank you.

J. Scott Evans: Thank you, Zak. Jason?

Jason Schaeffer: I think Zak covered much of it. Not to belabor the point but our position is not to let's be clear, no one wants to re-litigate 800 cases. We certainly don't want that. We're not advocating for that. But to the extent we want to fix or examine a system that may need fixing or improvement, it behooves us to have those data points.

And to the extent that we are looking at if there is a discussion about bringing URS to legacy TLDs in the future, it would be important to have this analysis at our fingertips as well as once you begin to move to legacy TLDs, you are now in danger of suspending more likely active websites, things that could be abused in a way that neither the trademark bar nor others would want.

J. Scott Evans: Thank you. I think John McElwaine is next.

John McElwaine: Thanks. John McElwaine for the record. So I'd like to try to focus people back to some solutions. Rebecca, well, J. Scott, Rebecca, and I have all suggested that we have some providers provide some information, some analysis, and then we set up a small group.

I think that the issue of whether we need to do a review of cases or a sampling review of cases is a little premature until we look at what data points we need to try to get to establish some of these issues such as standing to file grounds for filing, et cetera.

I don't think we all have a very good grasp on what we could study to look at these different issues. And when we have that then I think we'd have a much more informed discussion on how to get that data. So I would table all the current discussion and talk about a path forward to collect data.

As we know, the GNSO Council said our mission is to make - inform data driven decisions, not to do subjective reviews of cases, not that anybody is asking for that right now. But that if we can really focus in on what it is that these - not even questions - these statements are looking to get at - then we can have a better discussion on all this. Thanks.

J. Scott Evans: Thanks, John. George?

Georges Nahitchevansky: So I agree with Cyntia and with John's comments. I think that we are going to get into - if we get into a review of the cases themselves, we're just going to have endless debates and we're never going to move forward and we'll be here for years discussing this.

As to John's points, I agree (unintelligible) what is it that we're trying to - what are the issues that we're trying to look at and fix, instead of saying let's go look at cases and find a bunch of problems and then say, well, maybe there are no problems and then go from there.

So in the first part, I could see some major problems that exist. Like there is only eight hundred and some URS cases. Should we be looking as to why are there only 800 cases filed after all these GTLDs were put out.

As to Zak's comments whether some cases are incorrectly decided or not based on the standard, there's an appeals process. We ought to be looking at are people using the appeals process. Is there some reason they're not using the appeals process and putting those data points together.

But I agree that we need to have very clear sense of what it is that we're looking at, what are the problems that we're looking at that we know exist. Because certainly a lot of people have written a lot about the URS and there's a lot of information out there already.

And then pick the data points and what kind of review we need to do. And I think we might actually be able to move forward if we go down this path, as opposed to having this endless argument over should we look at cases, should we not look at cases.

J. Scott Evans: Thanks, George. Jeff Neuman?

Jeff Neuman: Thanks. Jeff Neuman. I want to change a little direction here and maybe this does relate to either looking or not looking at past cases. And there are some people on here that have been involved in this community for a very long time and involved with UDRP for a very long time and URS.

One of the concepts that was never adopted for either the UDRP or the URS was the whole concept that precedent matters. In fact, although panelists have the right to look at what was done before, there's no concept like you have in most - well, at least in the American court systems - where you look at what was decided before and use that to base your decision in the future.

We could look at all these cases in the past and we can make inferences. But at the end of the day, until we set a policy that precedent matters it doesn't really matter what we come up with from the past unless we want to document it firmly into the policy. So one of the issues we need to consider as a group is whether we want a concept of precedent to matter going forward. Thanks.

J. Scott Evans: Thanks, Jeff. Before I move onto Steve and then Zak, and then Berry, I wonder if we have the providers do an overview, we ask them questions. We can agree on a list of - we can cull that from some objective data - a list of practitioners that seem to be on both sides of the spectrum well versed in URS practice and ask them a series of questions.

If not doing those two things won't identify what are perceived problems, and without having to look at necessarily look at cases, just look at what are

perceived problems and then find solutions for those problems that the people who deal with it down in the trenches every day identify as problems.

Rather than us coming up and saying, well, we reviewed 25 of the 700 cases and we found this, or we found this one case.

If people who are dealing with it every day could come forward and tell us, well, in our opinion, here are the three top issues. And then we can look at those and determine whether those are problems and try to find solutions to solve the unintended consequences of those problems. I just put that out there for the group. I want to go to Steve, then Zak, then Berry, then Jeff.

Steve Levy: Thanks, J. Scott. Steve Levy for the record. I think one of the problems that we have already identified, which has been kind of overlooked in this discussion is the lack of participation by respondents.

Perhaps I mean as a lawyer maybe I come from the advocacy and the adversarial culture where you file a case and somebody defends the case. I'm wondering if anybody is interested or has any information on why so few respondents actually defend their cases.

And I don't think it's purely an issue of notice, although that's certainly worth exploring. I file a ton of these cases and I've actually had email correspondence with registrants where I've attempted to negotiate a resolution before filing a complaint.

If I'm unsuccessful I then file the complaint and then I get a default. So it's not that these folks aren't receiving notice of the dispute. It's not that they're unable to understand the communication.

I wonder if just a lot of these problems that we're identifying here could be resolved or could be better understood if we understood better why so many registrants simply do not participate in this process and defend their cases,

and identify for themselves what they see as the problems or the merits of their case. Thank you.

J. Scott Evans: Thank you, Steve. Zak?

Zak Muscovitch: I had raised my hand before hearing what Steve Levy had to say so I'm not going to respond directly to him, but that's an interesting question as well and just as an aside. This wasn't what I intended to raise my hand about. It's pretty clear that so many of the respondents don't file just because of the nature of the domain name itself. Unless your nickname is Lufthansa, right.

Looking at the nature of the domain names might give us some insight into that and that's I guess the most cursory kind of case analysis but it is a case analysis. But the point I wanted to respond to was about the precedential issue that some members of the group were raising in the chat. And I think there's a misunderstanding about what I had to say about precedent. In fact, I didn't mention precedent at all. And I realize as someone who's practiced in this area since 1999 that cases go in both directions and panels are human. They come to different conclusions.

So I have no interest in second guessing a panel or litigating a panel. But what I do have interest in as someone who is representing both respondents and complainants is knowing what kind of a case has a chance of succeeding. And so if the policy the way it is worded is unclear in terms of the direction that it gives panels, that leads to inconsistent decisions and it doesn't necessarily need to be that way.

If we in 24 point bolded font at the beginning of the policy to say that bad faith and use doesn't require an active website, well, you're going to have panels that more or less follow that guidance. But if we have a URS that says bad faith registration and use is required but doesn't give any idea about what use constitutes potentially then we're going to have decisions all over the place.

And so isn't this something that we can look at to try to improve the URS to make it a more predictable and useful tool for practitioners, registrants, and trademark owners. Thank you.

J. Scott Evans: Thank you very much, Zak. Berry?

Berry Cobb: Thank you, J. Scott. I was hoping to save the intervention for when we were actually going through the document and the different sections around the aspects of what's being discussed here or the different elements within the URS procedures here.

But I think it's time to go ahead and intervene in general. I think throughout our discussions for the last several weeks about what type of URS review or the review of cases needs to be done, first and foremost, there has to be some sort - again this goes back to data driven policy making and evidence based aspects in terms of any recommendations that this working group needs to put forward down the road if there are any.

That said, I think one of the things that staff has been pretty consistent about is this aspect of reviewing all cases versus buckets. And I'm sure some don't like the use of the term buckets but I was hopeful that as we work through this document that there might be some examples by what we actually mean by buckets. And I don't have my chart that I put up in last week's call but that's the very first start, again, of defining buckets.

So for Section C, the response, as an example there are 827 cases. You can subtract out 44 of them that are withdrawn, but ultimately, we get to 263 cases that had some sort of response. And based on the charter questions that are listed here is would it be helpful information to know how many of those responded within the first 14 days or not.

How many of those didn't respond within the 14 days but did ask for an extension up to six months. That is information that we can easily extract by

reviewing the bucket of 263 cases to better understand anything about how the responses occurred in those particular cases.

The second part is the response fee. I don't have any specific datasets about the cost or anything, but as per listed in row two there about cases that involve 15 or more disputed domain names. From the data we have, we can isolate those cases that had 15 or more domain names in them and take a look at it from the vantage point or the lens of should there be any changes to the response fee for cases of 15 or more.

And then I'll stop after this, but the last part is kind of getting into the defenses section and the scope of defenses. And in general, there's in Section 5.7 and 5.8 of the URS procedures is about the refuting of a claim of bad faith registration or non-bad faith use and some of the outcomes from that.

So as an example of another bucket, again looking back at my charts and I believe Zak had mentioned this, there are 57 cases where the claim was denied. On those, 26 of them actually had a response behind them. That's a very good bucket to review cases, again not to second guess the outcome of what the examiner's decision was, but more importantly to at least look at the documentation in a way that to understand on which grounds did the complaint fail or put another way, what did the respondent refute successfully via 5.7 or 5.8, or some other aspect by which they prevailed.

And again that's just another example of where we can slice the data from the cases to get a better understanding. So we don't have to review all 827 and that's not to say that the largest bucket that exists out there where it was a default suspension that there's some statistically significant or some small percentage of those that perhaps need to be reviewed.

But again, the whole point is, especially looking at this chart, is what section of the URS element are we concerned about? Can we identify smaller buckets for lack of a better word there would be some sort of in depth review

of that individual case to extract the relevant data for that particular element. Thank you.

J. Scott Evans: Thank you, Berry, very much. I appreciate that insight and that suggestion. I'm going to go to Zak, and then I have Maxim, Lori, and George Kirikos. So Zak? Oh, Zak must have been an old hand so he no longer has his hand up. Maxim?

Maxim Alzoba: Maxim Alzoba for the record. Actually I think it would be useful to group some of those numbers by registrant because for example, in case of our TLDs, we have few cases where this person (unintelligible) the domains around grants and actually didn't bother to answer to URS because obviously, it wasn't done in good faith basing on his previous actions in local GTLD for example.

So it would be interesting to understand how many registrants for those who didn't respond were actually the same registrant. In our case, it was four cases, one person and different cases because parties decided to do it on themselves, for example, to file URS cases. Thanks.

J. Scott Evans: Lori?

Lori Schulman: Yes, hi. Can you hear me?

J. Scott Evans: Yes.

Lori Schulman: Good. Thank you. I have a few observations and a suggestion because I do feel like, again, we're kind of going on to the wide tracks instead of the narrow tracks in terms of the review. I want to make a comment about the WIPO overview.

I saw that Mr. Levine had mentioned it in the chat and we're all aware that WIPO has a very detailed and they just released the most current version of

an analysis of UDRP case law and this is used to direct panelists, help panelists when they're stuck on hard cases or not sure what to do.

And there's no such thing to my knowledge that exists to the URS. And at some point, perhaps, the working group might in fact recommend that this is exactly what the URS needs. But I'd like to remind the group that when the UDRP was introduced almost 20 years ago, or 20 years ago, the initial cases were decided sort of every which way.

People weren't exactly sure. They would base their decisions on what they knew from their own national laws. They would base their decisions on individual interpretations of what free expression or criticism might look like and how it should be decided.

And I think by way of example, a great analogy is the (SUX), whatever (SUX). Those cases in the past may be decided one way but through an evolution of decisions, they're not typically decided anther way. However that was an organic growth based on a need and an evolution of an entirely new process.

And I feel like that's where we are in the URS. So in terms of an overview of substance, it might be good to note in whatever report that we do that this type of evolution is at the beginning and that we need to understand that it will continue along a certain line over a course of time, right, as opposed to trying to impose something now that I think most in the community would agree at least on the complainant side that this evolution of law over course of time or evolution of decisions has really held and moved the entire dispute resolution process forward in terms of the UDRP.

I would offer we're just not there yet with the URS. There's a different standard of proof. There's a lower number of cases. It hasn't been around very long.

So I do think that, again, and I had said this last week and I'm sticking to this that when look at - if we decide we are going to look at these cases in any manner and that it would be useful to the community to do so - that we look from process perspective. Are rules being followed, instructions being followed, are the instructions clear, are the cases being timely decided.

In terms of substantive decisions, I agree. Let the academics figure that out and let us as engaged members look at these reports when they come along and inform us in our practice. And perhaps even inform us in our review if the reports are done timely as independent data points.

However, I take what Zak said to heart and if there's a decision here to get that type of information, he just gave us an enormous amount of war stories. We have said over 100 people engaged in this workgroup. If everybody were to commit to submitting ten examples of issues they run into in the URS and we compile those examples don't we have our data, without getting more complicated than that. Thank you.

J. Scott Evans: Thank you, Lori. I think those are some great points. I'm going to now go to George Kirikos who I think his hand was next.

George Kirikos: George Kirikos for the transcript. I just wanted to note that this is the first time I'm speaking today. Earlier you referred to George and it was Georges Nahitchevansky was speaking for whoever is compiling this transcript. Two points I wanted to make. First just to respond to Lori, if the URS is still stabilizing in terms of its cases that would be one reason to not adopt it for the UDRP. However, some of the people in this working group do want it to be imposed on legacy TLDs. And so without that review, I don't see how those people would ever be able to justify it being expanded to .com, .net, .org if we take your statement that there's a high variability of the decisions and so it's not stable enough for wider adoption.

And the second point I wanted to make was with regards to this idea of reviewing subsets of the data, and the term used was buckets, in order to presumably lessen the work.

I think we would create major statistical problems if that was done because the example is already small enough that it's at the edges of where you're going to get 5% statistical significance with about 800 cases in terms of variance of actual observations.

So if you sample - well, you don't sample, but if you review all (unintelligible) sampling you're actually looking at the entire population of cases. If you only sampled say 30 of them or 40 of them you have the same kinds of problems that occurred in the INTA study where there are just too few observations to get tight error margins in terms of the statistics.

And so some of these buckets are going to be very, very small. And so you would have major questions about reliability of the data. But by reviewing the entire dataset or population, we're actually not going to have those problems. And it's a sample that's small enough that you actually could review all the data.

Because if you - even in the worst case - assigned ten minutes per case you're talking about 800 divided by six, which is just over 120, 130 hours of work. And divided over multiple people that's a couple of weeks' worth of work. And I thought ten minutes per case is probably a long time because a lot of these cases could be reviewed in a couple of minutes.

And so we had posted previously the Survey Monkey tools in terms of how many observations you would need given a certain dataset to have a certain number of statistical significance. And so if you had say 800 as the universe, you might need buckets of 300 or 400 in order to get tight error margins.

And so if you did that you'd have all kinds of debates whether there was statistical representativeness through the creation of the buckets. And so it's a way to avoid that problem entirely simply by reviewing them all and the incremental extra effort isn't that great in my opinion. Thank you.

J. Scott Evans: Thank you, George. Now, Zak, I think I see your hand again.

Zak Muscovitch: Yes, thank you. So I'm wondering - there were some suggestions from the speakers and from in the chat that - and John made the point that not all data necessarily needs to be statistical. Is there any consensus amongst the group for falling along the lines of something of Lori's suggestion of looking at cases voluntarily by members of this group to see if there's any issues that are spotted? Thank you.

J. Scott Evans: Thank you, Zak. George, is your hand back up?

George Kirikos: Yes, George Kirikos again. If I could just expand on the prior point slightly.

J. Scott Evans: Sure.

George Kirikos: If you think of the dataset as equivalent to the size of the number of students in the typical high school, like a typical high school might have 800 people, some of these buckets would be down to, say, 30 people which is the size of an individual classroom.

And if you think of some measurement of average height or some other metric, average weight, you could imagine that the results of sampling just a single classroom might be significantly different than what would be the case if you instead sampled the entire high school, whether it's IQ, or athletic ability, whatever the metric is under study.

So that could perhaps help people to visualize that there could be big physical problems if the sample sizes were too small. Thank you.

J. Scott Evans: Thanks very much, George. I put out to you I don't understand why we just can't - would it not be just as efficient or even more efficient to - Berry's point was with regard, I believe, to some of the questions like defenses, you have to look at the cases where a response was filed.

You can't - the 500 and something cases where there was a default, there is no defense. So you don't need to look at those cases presumably. I mean you would assume there's no defense since there was no response filed. So the one where there could possibly be a defense asserted would be in the two hundred and something in which there was that.

But I think one of the things I had suggested and I haven't heard much comment on is what about if we went to practitioners. We agree on a group of practitioners and we ask them to identify issues and problems that they have and then we work on fixing those rather than going through an entire look of all the cases and trying to identify those trends. Don't you think that there are people out there who already sort of have a perspective on this that we could reach out to, that we could ask a series of questions for them to identify problems and then we could work on solutions to correct those problems.

I think that that - we start with it. We can ask the same thing of the providers. Have them give an overview. Then we can ask them questions about where they've seen the highest sticking points, problems, concerns, where there have been issues.

And then we can just do - pick a group of practitioners that we can identify and ask them questions about where they have seen problems, trends, concerns. And we can reach out to this group and ask, in your dealings with the URS, where have you seen concerns, problems? I think Zak came up with two today where we talked about where we had won cases.

There is that kind of information out there that could identify problems that we then try to resolve. I look to Rebecca and then I think it's George Kirikos again. Rebecca?

Rebecca Tushnet: J. Scott, I think that's a great idea. I think we should definitely do it. I think though that we also need to be able to collect data and look at other cases because there are significant selection problems.

Self-selection is a big deal. That doesn't mean it's not really important qualitative data but it means that we need to be able to do a reality check to be able to see - and maybe it will turn out that there will be two things that there's a consensus on. That would be great.

But what I just want to emphasize is that we need to be able to ensure that it isn't just self-selection. Thank you.

J. Scott Evans: Rebecca, can you clarify for me when you're talking about self-selection what exactly you're referring to? I apologize.

Of course. So even if we assume that the small group of repeat players, who probably do more about the URS than other people, even if we assume that their cases are representative of cases - the cases that different lawyers encounter - we don't know the base against which they're bringing problems to our attention.

So if there is a problem, and there may well be with sort of incoherence on whether a website has to be in use, we don't necessarily know whether that's five cases that they bring to us or in fact 100, or somewhere in between. Whether it's in any sense representative of what's going on, on the ground, as opposed to what the specific disputes that they see.

So if we can compare then we can see these are in some sense representative or they're weird outliers that no system will be able to ever get rid of. Thank you.

J. Scott Evans: Thank you. George?

George Kirikos: Rebecca is making the same point that I wanted to make, namely that - and I've talked about it in the chat room - we don't want to go back into having anecdotes of selected participants. We want to have a robust review of all the data and what Rebecca was speaking about was 100% correct.

You're not going to have representativeness of the data correctly if you're only relying on certain experts who might be in dispute with regards to only their observations.

And so the only proper way to give weight to the observations is to actually look at all the data. Otherwise, you don't know whether the issue is actually overweighted or underweighted.

We shouldn't be giving certain issues greater weight because they have a better public relations team, for lack of a better term. And so by actually looking at all the data, we'll be able to identify the issues that are perhaps lesser known. Thank you.

J. Scott Evans: Thank you, George. Susan?

Susan Payne: I've just noticed the time and we're really close to the end of this call so I just thought it would be really helpful if we could wrap up to where we've got to. Not that we've got tremendously far. I think we've had a really robust discussion about different ways of working and that's been great.

I'm personally a little disappointed that we didn't manage to get through some more of the actual topics and highlight - identify amongst ourselves data

sources - but we ended up doing really most of this call arguing again about the extent to which we open up decisions in particular cases or the whole 800 cases.

So I think it would be really nice if we could have a wrap up of what we have managed to agree on this call and perhaps we either in the next call or maybe we do it by email in the run up to the next call, we could actually go through the topics and identify the data - the sources of data.

Because not every single source of data is going to involve opening up a case. I think in many cases, there is other information or the information - the examples that Berry gave earlier when he came on about would it be helpful to know the number of cases where the response is filed after 14 days, the number of cases where the response was filed later, and someone utilized that late extended response period.

That's all really useful and I think we do want staff to do that but we haven't managed to cover that on this call and I think that's a bit disappointing. I'm not in any way blaming you for that but I think it would be really nice if as a group we could try to move the discussion forward rather than having the same discussion on every phone call.

J. Scott Evans: All right. Thank you, Susan. I mean so far what I have gleaned, and I look to the group to let me know if they've gleaned the same thing, and you can use the - if you are on the Adobe Connect you can use the green check mark to agree - the only agreement that I've heard so far is to bring the providers in, have them give us a high level overview and then we will prepare questions to ask them after that time.

That's the only agreement. Now, I do agree with you that Berry's suggestion that the information that he can provide with regards to how long, how many were filed in a certain time and all of those would be valuable information.

But I haven't heard a groundswell of people saying that that's what they agree with.

So that's the agreement I've heard so far today. I've heard a lot of disagreement about what we do with case review. But I haven't - so I see Kathy has got her hand up so I'll look to her to see if we get her perspective.

Kathy Kleiman: (Unintelligible) but I think (unintelligible) question. J. Scott, I think (unintelligible) support for kind of across stakeholder groups as well as in the chat for reaching out to a manageable group of practitioners and also reaching out to the people in the working group, many of whom are experts, to find out more about what's bothering them in the proceeding. So I think there was a lot of support on that.

And I think the questions that kind of route to the providers and questions that route to the practitioners both in our working group and outside.

So there was a lot of support for that. Thanks.

J. Scott Evans: Okay. So that's another group of people that we could reach out to. So what I would suggest is perhaps, because I think this came out of the intersessional meeting, is perhaps we want to assign a small group to look at this and have maybe several couple of different small groups working in tandem.

One that works with identifying a group of practitioners and a list of questions that would go to the practitioners. One that perhaps looks at this document before us and makes suggestions about the data that we would consider with regards to what data sources we would go to answer the questions and present at the group similar to what we've done - that we did with the TMCH sunrise registrations teams, claims notice.

And then maybe a third group that would be empaneled to look at follow-up questions and things we would ask the providers after we got their presentation. That's sort of a way forward that I think - and if there were three different groups that could use this time slot during the week perhaps for those groups and have the three groups meet at the same time but just on different numbers working on different aspects and then coming back together.

That would be one possible work plan so that we're moving forward with several different things at the same time, hoping that we cannot delay by taking them consecutively but doing them at the same time.

So does that sound like a plan? Kathy? Kathy's hand is down. Lori Schulman?

Lori Schulman: Yes, J. Scott, I would strongly support that plan. I think working in parallel will save a lot of time. Maybe we do it like we do three weeks of a group working in parallel and then the fourth week everybody comes back together.

J. Scott Evans: Okay. So I think that's what we should do. So I would think one of the first things we need to do is have a call for volunteers that would work on looking at these overview questions and coming up with suggestions for data that we would consider.

Then we have another group that will work on - call for volunteers for a group that will work on assembling a list of practitioners that we can reach out to, to ask a list of questions not only assembling in that list, but putting together a list of questions.

And when I say that, I would hope that not everyone on that list would be in this group. I have some great understanding that some people would be in this group but I would hope we could get people outside the working group as members of the practitioner's group and ask them questions.

And then I think we need to set up a call with the providers and we need to present to us and then we need to have a call for volunteers for people who will take on the task of following up with the providers and providing a list of questions on issues we may have identified with the providers. That doesn't necessarily need to take place in tandem since we need to set up that call and really couldn't happen until after that call.

Unless there is feeling that perhaps that group should get together and come up with some preliminary questions that they would like to see answered by the providers and they put that together. And I see there's a question what would the main group be doing while these sub-teams work.

My suggestion was that the main group would not do anything, that each of these sub-teams would work. They would work in parallel with one another during the same time. Lori made the suggestion, George, that we do this for three weeks and we circle back to the main group with everyone's output.

So does that seem like a plan that we can get behind? George?

George Kirikos: Not to want to be doing extra work, but it seems it would be a very long delay if we just ascended the work of the main group. But isn't there anything else that we could be working on, like some of the TMCH stuff or some of the other stuff while those sub-teams work on that? Because in terms of productivity it brings the momentum of the group to a halt. Thanks.

J. Scott Evans: Susan Payne?

Susan Payne: I completely disagree that it brings the momentum of the group to a hold. We may not have a plenary call for every single person to talk about every single topic, but a selection of people from this working group will be progressing three different themes and we'll probably actually make more progress than during the whole of this call.

I don't think that the only way of working is for all however many of us want to come on the call every week to just come on the call and argue rather than progressing stuff. So I completely disagree with George that that puts our timeline back. I think it actually is a really practical way of progressing things.

J. Scott Evans: Yes, I think Kathy has made a point there will be three groups working in parallel, approximately 12 people per group. I'm fine with that. So I think that that's - if I could see - I see Martin has given me a green. If I could let people know, if people could let me know if that's something that they are comfortable with, I think that's a way to go.

So the first thing we're going to do is call for volunteers for these three groups and then for the next three weeks, these groups will meet at this timeslot and handle their - and Kathy and Phil and I can rotate, either rotate, or we can be assigned to one particular group to be an ex-officio member of that group. But if we could do that I think that would be a great help.

And it sort of falls in line with what I understand came out of the intersessional is that using smaller groups to deep dive into things and then is presented back to the larger group seems to be something that's being encouraged by the GNSO as a more efficient process or working. And I'd like to be able to do that.

What I'm seeing here when I see anything is I see people agreeing that this is the way we should go. So that is the work plan that I think we have come to for this and I think Phil makes a great point. We'll bring it back together in San Juan when we're all together in San Juan. Because the week before San Juan, which is - we don't have a call.

So that's what I suggest we do. I think it's a way to move things forward. I think it's the way to get people focused on certain things and we can then bring it back.

And of course, everything decided in the sub-group would come back to the group and then it would be adopted by the group as the way forward or adjusted if there were some concerns or anything like that. Your voice will not be ignored just because you're not in a sub-team working group. You will get a chance to weigh in on the output of any sub-team.

I see Julie Hedlund has her hand up. We are now 11 minutes over so I'm going to let her let us know when our next call is as well and then we're going to draw this call to a conclusion.

Julie Hedlund: Thanks, J. Scott. So just confirming the action items that staff will take. We're going to do the call for volunteers for three groups. The three groups are going to meet at this time for the next two weeks. My understanding is there will not be a meeting the week before ICANN 61 because that is the 7th and people are likely to be traveling.

And we'll get the call for volunteers out I think tomorrow we should be able to. Is that correct?

J. Scott Evans: That is correct unless I see someone raise an objection. I see both of the co-chairs are typing but it's not coming through for me. So maybe they're talking to one another. Okay.

Julie Hedlund: I see that Kathy is saying in this case there might be a meeting the week before ICANN meeting. My understanding is there is not because I do know that people will be traveling on the 7th. So it's quite likely - and including staff will be traveling. I can say that as well. So I don't think we're going to be able to manage a meeting on the 7th.

J. Scott Evans: Okay.

Julie Hedlund: Then thank you all and thank you very much, J. Scott for chairing. Sorry everybody that we went over and you will soon see a call for volunteers from us. Thank you very much.

J. Scott Evans: Thank you all very much. I appreciate everyone's time this evening, this morning, this afternoon.

Julie Hedlund: Bye everyone.

Terri Agnew: Thank you. Operator, Harvey if you could please stop all recordings. To everyone else, please remember to disconnect all remaining lines and have a wonderful rest of your day.

END