

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) PDP Working Group
Wednesday, 09 May 2018 at 17:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <https://audio.icann.org/gnso/gnso-rpm-review-09may18-en.mp3>

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Coordinator: Recording has started.

Julie Bisland: Great. Thank you. Good morning, good afternoon, good evening everyone. Welcome to the Review of All Rights Protection Mechanisms, RPMs, and all gTLD PDP Working Group Call held on Wednesday the 9th of May 2018.

In the interest of time there will be no roll call. Attendance will be taken by the WebEx room. If you're only on the audio bridge, would you please let yourself be known now?

All right.

Man: (Unintelligible)

Julie Bisland: Oh sorry, who was that?

Man: (Unintelligible)

Julie Bisland: Okay. And anyone else? All right. Great.

I'd like to remind all to please state your name before speaking for transcription purposes and 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: Hi all. This is Kathy Kleiman, and my co-chair Phil Corwin is on the line. And let me stop for -- thank you for the roll call, Julie -- to see if there are any updates to statement of interest. Does anybody - has anyone changed jobs, positions, got any huge promotion? Okay. Seeing no hands, it's my pleasure to go on to number two of our gender, the co-chair nomination.

As you know, J. Scott Evans resigned due to conflicts with his position at Adobe and there has been a vacancy for some weeks, and Brian Beckham has been nominated and accepted the nomination to step forward as a third co-chair who, Phil I don't want to speak for you, but we would welcome because there's a lot of work and we would love to share it with a third person.

Brian, are you receptive - first, are you on the line and, second, are you receptive to taking some questions? And first, would you like to give a little bit of an intro?

Brian Beckham: Yes, hi, Kathy. Thanks everyone. This is Brian Beckham. I am on the line. I apologize, I'm having a little trouble getting into the WebEx so I'm only on the phone for a moment. I'm trying to get in but I am not really an expert on this new form just yet. And fingers crossed, we can get Adobe back.

In terms of remarks, I don't really have anything particularly that I wanted to add to what I've already said and what others have already said on the list. I know it's been some time and I apologize for the late hour. It's been quite a hectic day. But I did about 45 minutes ago send an email to the list which I hope answers the questions that were asked over the past couple days by a couple of working group members. And - so maybe what I would like to do is

say to the three individuals who have asked the questions, I hope those are responsive and would happily take any questions that people have. But I feel that those probably do a good job of summarizing the - my understanding of the questions and my responses. Thanks.

Kathy Kleiman: Brian, if I might, this is Kathy, could you review those answers? I've had email problems all day. I don't know if others have. But if it's gone out just recently people may be coming in. Is that something - you know, first it looks like there are people in the queue who want to ask question? Would you like to summarize your email briefly so that we have it or, you know, my guess is it might be asked again if we don't kind of talk about it all right now?

Brian Beckham: Yes, look, I - rather than summarizing, because I did take quite a bit of time and put a lot of thought into my responses, it's - and they're not especially short. I tried to be as succinct as possible. Since I'm still having trouble getting into the WebEx, maybe could I propose this? If there are questions people feel are not answered in the written responses I could try to take those now. I'm happy to read my responses into the record, if you will. I just - I'm mindful that that could take a little while and I'm just trying to be as efficient as possible.

Kathy Kleiman: Okay. Well again, since I haven't been able to see your response, is there any way to post Brian's email -- this is a question to staff -- to post Brian's email into the WebEx so that people can read it if they haven't seen it?

(Ariel): This is (Ariel) from staff. I can post that in WebEx. Just give me one second and it should be on momentarily.

Kathy Kleiman: Terrific. Thank you. And in the meantime, are there - I did see hands raised. It's a little hard in WebEx to figure out what hands are raised. Are there still hands raised?

(Ariel): This is (Ariel). There's no hands right now.

Kathy Kleiman: There's no hands raised. Let me give everyone a change to - okay, George hold on please. Let me give everyone now that the email's posted a chance to read Brian's email and then, George, I'll go ahead and call on you. Let's take just one minute.

George Kirikos: George here. It actually wasn't about the email. It was about something else, the statement of interest.

Kathy Kleiman: Oh okay. Let's let people read the email, Brian's email.

George Kirikos: It's parallel to that.

Kathy Kleiman: Hold on. Hold on just a second. Hold on just a second because I'm reading it too. Okay. (Ariel), it looks like there's a second page that will need to be posted as well. Okay thank you. George, go ahead please.

George Kirikos: George again for the transcript. Yes all I wanted to do was point out that Zak Muscovitch had an updated SOI. I'm not sure if he has the Adobe - sorry, the WebEx access, but we skipped over that part. I think he's now with the ICA and that was just his updated SOI.

Kathy Kleiman: Oh, thank you, George. Zak actually updated that in San Juan but okay, thank you. Let's see, George, if you could take your hand down please. Does anyone have any further questions or has Brian addressed them? And, Brian, thank you for writing the email that addressed the questions that had been posted per co-chairs' request by close of business yesterday. Okay.

Mary, if you would, could you walk us through the procedure for approving a third co-chair?

Mary Wong: Thanks, Kathy. Hi everybody. This is Mary from staff. And Julie and I were just chatting about that prior to this call and if we assume that the custom that

has been adopted for all other working groups, even though this is appointment of a co-chair to replace a co-chair that was initially appointed, would be for the item to be put on the council's consent agenda at its next meeting, and if the group approves Brian's selection. We don't seem to have received any objections.

So what you could do, Kathy, is, you know, ask here on the call and again on the list, maybe announce that in the absence of any objections received by today, Brian will in the opinion of the group be selected as the third co-chair. We would then suggest that Paul McGrady or you and Phil as the current co-chairs send a note to the GNSO Council informing them of the fact and asking that the confirmation of Brian's appointment be put on the council's consent agenda for its next meeting.

Kathy Kleiman: Terrific, Mary. Thank you for mapping that out. George, is that a new hand?

George Kirikos: Yes it is.

Kathy Kleiman: Okay. Go ahead please.

George Kirikos: Yes, I was waiting for Brian's answer to come in before I made an objection, so I just wanted to do that, put forth my objection. It's a symbolic objection because obviously he has the numbers but I did want to go on the record that I didn't support the candidacy based only on his answer. Thanks.

Kathy Kleiman: Okay. Would anyone else like to speak on the issue? We had a number - we've had a robust discussion on the list, which we all appreciate. That's a great way to use the list, with support and with questions. Brian, is there anything else that you would like to say and does anyone else want to comment either way?

Brian Beckham: Yes, Kathy, this is Brian. Thank you. I have to say I really did put a lot of thought into replying to George's email. I think it - my reaction speaks for

itself. Naturally I'm a little disappointed to hear an objection. I'd be curious to understand what underpins that because, like I say, I really did try to put a lot of thought into responding to George's questions. But, look, in any event, I understand that everybody has different views and George is entitled to his so I'm happy to leave it to the working group to collectively decide the way forward here. Thanks.

Kathy Kleiman: Thanks, Brian. Back to you, Mary. In the event of an objection, what would be a good path forward?

Mary Wong: Hi, Kathy and everyone, this is Mary again. Certainly the fact that George has raised it on the call means that it will be documented for the record. Generally speaking, we don't have a lot of procedures for this but, looking at the working group guidelines, even if we were to go forward with an election, the threshold suggested for an election is a simple majority.

So from the staff perspective, with one objection and on the record, if the rest of the working group believes or if at least a majority of the working group does not have any concerns about Brian being put forward, the staff advises that we can still proceed with George's objection on the record and we can certainly note that or the council as well.

Kathy Kleiman: Makes sense. I'm pausing. Staff, if you see any other hands raised, please let me know. Again, it's hard to see in WebEx, although I don't see any hands raised right now. Let me pause and see if anyone is ready to speak. I see discussion in the chat. So what we could do - again pausing to see if anyone else wants to speak.

So, Mary, it sounds like what we could do is rephrase slightly and saying the absence of any further objections, one having been raised, we'll put this out to - that it appears, and I'm saying this on the working group so you can correct me if I'm wrong, it appears that Brian has been approved by the vast majority of people attending this call and that we can put that out to the list,

again with the notation, you know, in the absence of any further objections, one having been raised we - this working group per this call and then per approval of the list would like to submit Brian Beckham's name through our liaison, Paul McGrady, to the council for approval as the third co-chair of the Rights Protection Mechanism Working Group.

Jeff, go ahead please.

Jeff Neuman: Yes. This is Jeff Neuman. I think rather than listing any objections, if we do that then, you know, it sends a different type of message than we want to send, what we could say is that there was consensus to the selection of Brian, and then if you want to list George as a minority opinion I guess. But to just put in that one person - that there's an objection doesn't really paint the right picture, unless there's more people that object of course. If it's only one person that objects then that's pretty much consensus.

Kathy Kleiman: Terrific. Thanks for your comment, Jeff. Mary, go ahead please.

Mary Wong: Thanks, Kathy. And just to clarify, you know, with the noting that the discussion and what you said to be the summarized next steps forward, one point of clarification from the staff side is that I believe a message had been sent to the working group asking for questions for Brian as well as any objections to be raised by today. And of course we have now noted for the record that George has raised an objection by the time set for such.

So our suggestion would be that in the note to the working group we would say that the one objection's been received but that we will go forward and send Brian's nomination and selection to the council. So I think that's pretty much what Jeff is saying but we just thought that we would note that we had asked for questions and objections by today.

Kathy Kleiman: Exactly. And I'll just read that this was in the letter Friday, number three, if objections are received or questions submitted that warrant a

discussion/response on a call, these will be addresses at the 9 May meeting, at which next steps can also be decided. And so that's what we're working on.

Susan, go ahead please. Susan, I think you may still be on mute. Susan, still not hearing you. Is anybody hearing Susan?

Man: No.

Kathy Kleiman: Okay. Susan, perhaps you can dial back in. Whenever you want to come on, we'll be happy to listen. Okay. Mary, I - is that Susan? Okay. Alas, I wish we could hear Susan. We'll watch for something in the chat room as well. Mary, I think you've laid out a path forward that is consistent with the rules as we know it. Let's follow that.

Okay. Terrific. Well thank you. Can we move back to the agenda? Brian, thank you and thank you for taking the time to pass a lengthy response and thoughtful response on to the group and thank you to the people who raised questions by the time, you know, by the time deadline as we requested. And good, we're looking forward to a third co-chair.

Our next item on the agenda is a presentation of research from Rebecca Tushnet and the work that's been done with her research assistants at Harvard Law School. Rebecca, are you on the line with us? And staff, could you post the URL? I understand that the spreadsheet is far too big to go into WebEx and it's also my understanding that Rebecca's is walking us through kind of an overall sense of the multiple pages of the research as well as what's on the spreadsheet.

So the link has been posted in the chat room and, Rebecca, are you online please? The floor is yours.

Rebecca Tushnet: This is Rebecca Tushnet. Can you all hear me?

Kathy Kleiman: Yes.

Rebecca Tushnet: Great. Just wanted to make sure that I wasn't having Susan's problem. I hope she'll be with us soon. So I have asked my chief RA (Alex) to join us in case there are technical questions that she can answer that I cannot. I sent around the URL of the current version. I hope you were able to download it after last week's meeting. And I'm going to just try and give a short overview so there'll be plenty of time for questions and comments, things we should look at differently.

So the basic results are we have all the information coded. You can see we have lots of different kinds of information, including the TLD, whether there were multiple domain names involved, where the complainant was from, where the respondent was from, at least where that could be determined, whether the...

Kathy Kleiman: Rebecca, may I interrupt? This is Kathy. Which page are you looking at? What's the tab on the bottom?

Rebecca Tushnet: So the master - so the second tab, which says Master Enter Data, and it goes way beyond, you know, what you can see on one page. So you may have to scroll on the right.

But basically we tried to figure out things that would potentially be of interest, including, you know, whether there was a response when it came in, then the time to decision, various things about whether it was - the domain name was identical to, the trademark, whether it was a homophone, whether it incorporated other words, whether the gTLD made a difference to the perception or the likelihood of confusion, whether that was mentioned, if the complaint failed what was the reason, which element turned out to be the problem, and whether we know what happened ultimately, also whether

anyone mentioned issues with receiving notice or whether there were language issues.

And then we tried to find out whether the domain name was active, although our data on that may be a little different, that is we may not always have the best information. We did and try and use the Whois data but it - we are - we can't be confident that we always got it right. And then also we did some coding in terms of what the examiner found, so what the problems were, so which element of bad faith for example was found, if that was mentioned.

We have some high level results in the summary tables, showing basically at the highest level who the providers were, what happened. Then we have some specific breakouts, including cases where there were non-English issues. That's the tab language cases. And you can see it's a relatively small number but it is - it does exist and there are different issues in terms of translation.

Malware and...

Kathy Kleiman: Hold on. This is Kathy. So we switched to the tab Language Cases and there were about 27 cases you said that involved other languages other than English.

Rebecca Tushnet: Yes.

Kathy Kleiman: Okay thank you.

Rebecca Tushnet: And you can see it's broken here - broken down by language and if there's anything that the decision disclosed about what was done as a result. So for example, they found an examiner who's can, you know, speak and read Chinese where the language is Chinese and so on.

Kathy Kleiman: Thank you.

Rebecca Tushnet: The next tab is, since there's been mention of malware and phishing as an important consideration, we coded whether the presence of malware or phishing was mentioned, and we found three of them out of the total. So that doesn't appear to be playing a large factor in URS decisions.

The next tab is complainant analysis and it shows that there are some really frequent files. I draw no conclusions from that. It's just something that is worth knowing. We also have...

Kathy Kleiman: So now we're on the Complaint Analysis tab?

Rebecca Tushnet: Right.

Kathy Kleiman: Okay.

Rebecca Tushnet: (Unintelligible) filed a loss and then, you know, they represent a little over a third of the total. We also have some data on who the examiners are and how many cases they looked at, in case you're interested in that. We do not have biographical data for them but we could - we at least know who they are.

So let me just say a couple of things that are not explicit but are evident from once you, you know, look at the numbers. First of all the - there's a question which I know also arises in the UDRP which is what is the role of passive holding, where you don't appear to be doing anything with the domain. And this appears to be the case with a lot of the defaults, at least where the trademark was famous, that passive holding plus the fame of the mark seems to have been - just - been justifying an inference of that based in about a third of the cases.

Some subset of that third also gives multiple rationales. So not only is there passive holding of a famous mark but perhaps it was offered for sale. In terms of what we are particularly interested in, 105, about 13%, of non-

withdrawn cases had no articulated rationale and the definition here was of whether there was an articulated rationale was basically whether there was kind of a full English sentence saying something like the - we conclude or the registrant was acting in bad faith because it was attempting to sell the domain, or we conclude that the domain was registered in bad faith because the - they weren't doing anything with the domain and the mark was (unintelligible), so something like that.

About 13% of non-withdrawn cases don't have even that, which is something we might want to draw our attention to in the review. In terms of claims that are denied, there's something of I would say a trend where the claims are denied a little more earlier in the process and the rate of claim denial decreases. And again, there are lots of reasons why this might be true, so I don't really draw any conclusions from that.

It does appear that earlier in the process, the (Niece) classifications were of the registrant or the complainant's mark were more important to the examiners who, although denials of claims are still unlikely, they were more likely when the (Niece) classification of the complainant's mark had nothing to do with the gTLD.

Kathy Kleiman: Rebecca, just a question. This is Kathy. And it may be an old question. Which tab are we on?

Rebecca Tushnet: I'm sorry. So this is really the big master table, sort of what you can get from looking at - to listing cases in the big master table.

Kathy Kleiman: Okay. Apologies for interrupting. Go ahead.

Rebecca Tushnet: No, no. Yes. So in terms of examiner level data, the issue of not writing anything may actually vary by examiner. So there are a few who never write anything and, again, that may be something where we might want to focus our recommendations.

Descriptive data just of interest, it appears that the registrants come mostly from the US and China. The US seems to be more dominant by a number of cases while China is more dominant by number of domains. And, again, I draw no prescriptive conclusions from that. That's just sort of what we're seeing.

So I think with that I would like to go to any questions, clarifications, anything people want to add.

Kathy Kleiman: Great. Rebecca, thank you for this overview. And before I call on Berry and George and whoever else is in the queue, I'm getting emails publicly and privately that people are looking at this for the first time, and Rebecca I wanted to share that with you. And that's exactly what we were thinking. I mean there's a lot of stuff going on in the ICANN world, as well as in our professional lives and our personal lives.

Part of what we're doing here, and Rebecca please correct me if I'm wrong, is you were providing an overview -- we may be taking the next few weeks off -- so an overview and introduction to the data to the various sheets. And I'm not - this isn't a formal invitation but were people to have further questions, would you be willing to come back and join us and discuss this further?

Rebecca Tushnet: Of course.

Kathy Kleiman: After they have a chance to look at the data.

Rebecca Tushnet: Of course.

Kathy Kleiman: Great. Thank you. Appreciate it. Berry, let me go on to you. I know there's some issues about the Whois data and you're going to tell us which column that's in, and that's data you provided to Rebecca. Go ahead, Berry.

Berry Cobb: Thank you, Kathy. Berry Cobb for the record. Yes I just wanted to further elaborate on what Rebecca had mentioned, referring to the master tab of the spreadsheet. On Column Alpha O, or Alpha Oscar, AO, through Alpha Romeo are, especially those two columns. So basically those are data coding that was automated based off a fetch of Whois records for each of the domain names across all of the cases.

For those that have reviewed the 14 appeals from I think that was presented prior week, there was one component to that review of appeals that talked about the final domain disposition, and the idea was to get an understanding of where today that domain, you know, what the status of that domain was. For example, was it still resolving to the suspension servers, is it available for registration, had - did the brand owner pick it up through either themselves or through their brand protection company or whatever the other outcomes were.

Because we're dealing with 1,800 cases here, it's - it would be a monumental task to try to do that manually, and so Rebecca and her team automated that. And, as Maxim pointed out, the very last tab of this spreadsheet is that raw data and where some of that coding exercise occurred.

So I just want to point out that if the working group does choose to use any part of this data that we - that you hold off on this purple section, again Column Alpha Oscar, because it's not fully accurate, or its accuracy is only as good as the Whois data that was provided. Specifically when I went to go fetch that data, I didn't get a fresh query. Instead I got the last known historical record that had been captured and, thus, does not properly reflect that final domain disposition as of today. And if there are any other questions, I can answer that if need be. Thank you.

Kathy Kleiman: Sure. Berry, I have a question. This is Kathy. Stay on the line please. Thank you for the description. You're talking about Column AO under result and final disposition. Great. Thank you for identifying that. You said something about

1,800 cases. Let me just double check. I think we're in the 800 case range but it's 1,800 domain names, is that right, because multiple domain names can be reviewed in a single URS case? Just wanted to check.

Berry Cobb: Yes, that's correct. Apologies if I misspoke. That's 1,800 domain names across 750 cases. I forgot what our final number is.

Kathy Kleiman: Terrific. Thank you. Does - let me pause. I guess it's hard to do with a queue, but if people have questions for Berry of course, you know, please ask. George, go ahead please.

George Kirikos: George Kirikos for the transcript. Thanks for doing this research and for highlighting the non-use passive holding stuff, as well as the cases that didn't have any articulated rationale for their decisions. My broader question is usually when this kind of academic research is done there's a line in the last paragraph that says something like, you know, the need for additional research is evident.

So I was wondering from - in terms of going forward, how can we, you know, being this PDP and ICANN, help in terms of data in the future? What kind of data would you - do you wish you had when you did this research? Like you had to go with what was actually available but what kind of data did you wish you had available? Thank you.

Rebecca Tushnet: This is Rebecca Tushnet. Thank you. I guess, so one thing obviously is coming out of a tradition which prioritizes reasons for decisions, you know, I wish that the examiners had all given reasons for their decisions, and I conclude that this is a recommendation that I would like the working group to pursue, that there be at least basic statements of reason for a decision, you know, for example, the element of bad faith that was found in a case where there was bad faith found or in the case where the complaint fails, you know, identification of which prong failed. And it turns out that not all the claims denied actually do that.

So for, you know, both sides it would seem to be useful to require something, you know, and not necessarily very much but, you know, based on the evidence presented, bad faith was found in the form of, you know, X. And then the other thing which is also true of any study of decisions is that a study of decisions is itself inherently limited to a special subset of people, sort of those who decide to fight over it.

So in one sense it, you know, the best data would cover all the domain names that are registered in new gTLDs and do some sort of analysis of them, including the ones that maybe are infringing but aren't found, and we might want to know, you know, how many consumers filed them. That would require a lot of resources and I don't know anyone will ever be able to do that.

The other aspect here that I think is important is, you know, the effect of the TMCH and the claims notice on sort of what gets to this point at all. So we do know that lots of people drop out and we don't know what percentage of those would have ended up, you know, losing these cases had they been brought versus the percentage who would have ended with something that actually was perfectly legitimate. And so that's kind of the people who don't litigate or the people who don't arbitrate are kind of the key missing data here, and you'd have to do a completely different kind of research to find them. Thank you.

Kathy Kleiman: Terrific. Thank you, Rebecca. Thanks for the question, George. The queue is Maxim, Susan, and we have a question from David McAuley that just came in in the chat room. Maxim, go ahead please.

Maxim Alzoba: Maxim Alzoba for the record. I suggest that this particular file is recommended to remove personal data of subjects because it's not going to be safe in two weeks. And for example, the person names someone is like Person 1 and if he's male or he's Male 1, and also the same for the phones and faxes. That's it. It's my suggestion.

It will not change anything because it will be able - yes the same address. You will be able to know the country, maybe that it's the same person, so it's basically the same person did registrations of all those domains for example. But in my opinion, it will not remove any useful beats but it will make it usable for us in - yes, after GDPR comes into forth. Thanks.

Kathy Kleiman: Good point, Maxim. Thank you. And I assume you'll be - let me ask, would you be able to answer questions if Rebecca has offline, because I know you're doing a lot of work on the GDPR, Maxim? So is that something you could take offline and help her with the columns that should be redacted?

Maxim Alzoba: Yes, I will help. My email is basically I will answer the questions and I will help if it's needed. Thanks.

Kathy Kleiman: Terrific. Thank you. I'm looking at the queue. It's hard to tell, apologies ahead of time guys, it's hard to tell order. Adobe was much better on the order. So I'm going to stick with the original order and then add Cynthia and Paul Keating. Susan, go ahead please.

Susan Payne: Hi. Can you hear me?

Kathy Kleiman: Yes.

Susan Payne: Yes. Good. Thank you. Okay. Thanks very much. Rebecca, I just had a couple of questions. I was trying to understand which of the tabs was the one that deals with the rationale or lack thereof, and I wonder if you can help me. Because I was looking at the one called complainant analysis and that does have a heading in kind of Row 3 that says examiner comment analysis, did examiner explain evidence/rationale.

But the rest of the tab I don't really understand in that context and I'm not sure if maybe that's a rogue heading or is that table - are all of those cases cases where there's no rationale? I may be misunderstanding, so apologies.

Rebecca Tushnet: Susan, this is Rebecca Tushnet. If you scroll past case analysis, which in my version shows up as a set of orange topped columns, look past result and final disposition, which in my version is purple. As you go further to calculated field, you should see a lot more detailed classification of the different things that are discussed in the decision. And you can see they're coded as true or false. So I believe that's what you're looking for. Please let me know if that is insufficient. Thank you.

Susan Payne: Okay. So back to my question then, so the data for that it's on this master enter data tab then? Is that - I'm assuming that that's the one you're referring to, rather than the tab that's called complainant analysis?

Kathy Kleiman: Master data columns -- this is Kathy -- AU, AV, AW.

Susan Payne: Okay. And then could I just ask then a question about the actual lack or a rationale?

Kathy Kleiman: Sure. Go ahead.

Susan Payne: Is what you're saying, Rebecca, that essentially there's nothing, there's just a decision that goes, you know, like I kind of find for the complainant or is it, you know, I'm satisfied that the domain was registered in bad faith but there's nothing to explain why I, the examiner, am satisfied? You may well have explained this but would you mind just explaining it again so I kind of understand the level of lack of rationale?

Rebecca Tushnet: Sorry. This is Rebecca Tushnet. So some examiners never write anything and there's - what we coded as lack of rationale - well let me ask (Alex).

(Alex), if you're on, maybe you could step in and give a couple of examples of where you drew the line, just so I don't misstate anything. Are you on, (Alex)?

(Alex Noonan): Yes. Sure thing. Hi. My name is (Alex Noonan). I'm Rebecca's research assistant and I did a lot of the work on this file. If you go to the very first tab, it's called fields and methodology, I wrote a little something about the types of cases that we coded as a yes for when the examiner to articulate on an evidentiary basis.

So like if you go to that very first tab, it's called fields and methodology, and you scroll down to the orange section, and it's the very first row in that orange section, so I wrote we reserved no for these cases for cut-and-paste copying, so if the examiner literally just pasted the three prongs of the URS, like, you know, in bad faith, A, B, C, D, they just pasted it but they made no determination that they did not even bother to say this is a passive use case, they just pasted it, we said they failed to articulate a basis.

And occasionally, they will just flat copy and paste it and they will sometimes articulate a bad faith prong but only in the sense of like bolding the prong that they think was bad faith or they'll just write 1.2.6.3a but they don't explain anything else. These cases also have no - often have no summary of even the facts of the case.

So I couldn't even figure out kind of what had happened with the domain. But we were fairly conservative with these. So if you even bothered to write at the bottom I'm convinced based on the behavior of the respondent that this is a case of bad faith, we marked that as having provided some detail. It was a pretty conservative column.

And if you - I think the original tab that you're referring to where it talks about the I think I called it examiner analysis, you can see that most of the folks who kind of decline to provide any detail, it's like a couple of repeat offenders. Like there are some people who just provide no details. We were fairly

conservative with this column. So I hope that helps. I'm happy to answer any other questions about it but that was kind of our method.

Kathy Kleiman: Great. Thank you, (Alex), and thank you for being on this call today. This is Kathy of course. And to Phil's note in the chat of just something to think about since is - we do seem to have a number of people who have their hands raised, so the question of balancing. I promised to read David McAuley's question and he said, "Rebecca" - whoops, somebody just posted and so I lost it. Apologies.

"Rebecca, just curious if you know did examiners stick to one URS provider or did they provide examiner services through more than one provider? I'd be interested for example if an examiner gave reasons for one provider but not for another?"

Rebecca Tushnet: Actually I don't think we did that analysis. I think it would be possible to do. I can ask (Alex) to do that because she knows how to manipulate the cells and see if there's any difference. (Alex), do you know offhand?

(Alex Noonan): I don't know offhand but I - that's pretty easy to do. I can do it right after the call in about ten or 15 minutes.

Kathy Kleiman: Cynthia, you were in the queue. Are you still interested in asking a question? I don't see your hand raised. It looks like no. Okay. Then we've got Paul Keating and George Kirikos, and I'd urge you to be brief so that we can move on to the URS proposal and we have - we note that Rebecca is - will be willing to return and talk about the data further. Paul, go ahead please.

Paul Keating: Yes this is Paul Keating for the record. I just want to respond to the comment about the GDPR. I don't see this as a problem, Rebecca. All of the respondents are registrants of a domain name. They have by contract agreed to this process and the rules are hyperlinked to the registration agreement.

So any appearance of their personal information in the URS or UDRP decision is by consent. Thank you.

Kathy Kleiman: Terrific. Thank you, Paul. George, briefly please.

George Kirikos: Yes. Long ago I proposed that UDRP or URS decisions be available in XML format, like a machine-readable format, for the ease of academic research. I was wondering if you could talk a little bit about how much this kind of research costs you in terms of time and money and manual entry of data, et cetera and how much time and money you would have saved had the decisions, et cetera been available through machine-readable format? Thank you.

Kathy Kleiman: And Rebecca, briefly too if you could.

Rebecca Tushnet: I'm going to let (Alex) - yes. I'm going to - because she is - so it is her work and her labor that is at issue here and so, (Alex), do you have any thoughts?

(Alex Noonan): So XML would have been incredible. Berry did a great job pulling a lot of these fields for us so some of them were easily scrapeable, but there are some that are important that weren't. So it took a lot of time to paste in the representative information. The country information, that kind of stuff is interesting. Like I would have expected a lot of these to be coming from China but as a matter of fact a lot of them were coming from the United States. That kind of stuff was valuable but really hard to get.

On average it took me approximately six minutes to code each one of these and because the decisions are so short, a good bit of that was copying and pasting of stuff. That actually wasn't academic work. So I think in the end it was like - it was a substantive effort but XML would have been incredible and made it so much easier.

Kathy Kleiman: Great. Thank you, (Alex). And, George, Paul if you could put your hands down please. You would do that by tapping the hand again. Great thanks to Rebecca and to (Alex) for coming on the call, for walking us through this data and for the comprehensive data that every case has been analyzed. Rebecca, could you tell us briefly to what date every case has been analyzed?

Rebecca Tushnet: This is Rebecca Tushnet. I believe it was - ooh, was December 17, December some time. I'm sorry I don't have the data.

Kathy Kleiman: Okay. Just wondering. Thank you. I'm putting you on the spot on that. Thank you very much. Thank you for your time, thank you for the data, thank you for the discussion today.

Now moving, I'm going to close item number three and move on to item number four, which I know a number of people want to talk about, the discussion of URS phase II proposal. I note that we have 40 minutes for this discussion and this is a proposal John McElwaine submitted to the working group.

And I am actually call first on Phil Corwin, my co-chair, to talk a little bit about the research that staff and co-chairs have been doing on the charter, on what goes into phase one and phase two, and some of the flexibility that we have in terms of going forward. Phil, would that be appropriate? Would you like the floor?

Phil Corwin: Yes. Thank you very much, Kathy. And I wonder if staff could temporarily take away John's original proposal and put up the text of the email that was sent out to all working group members the other day regarding the analysis of the charter language conducted by the co-chairs and staff. Is that available?

(Ariel): This is (Ariel) from staff. I'm going to post that momentarily.

Phil Corwin: Thank you. And as soon as that's up, I'll be very brief in hitting the high points and then I know that John McElwaine's on the call and is probably going to want to speak to this, and then we can open it up to further discussion. Just waiting for the document. I'm going to...

Kathy Kleiman: It was just posted.

Phil Corwin: What's that?

Kathy Kleiman: It was just posted.

Phil Corwin: Oh okay. Okay. We're not going to go through all of this. Basically, you know, when you think you know what something says and then you actually take a close look with a lawyer's eye edit, it's more revelatory. And so the quick analysis of what the charter actually says and what we would need to do to fulfill its requirements in regard to URS and what flexibility it permits us in regard to URS.

The charter is quite clear that phase one needs to focus on a review of all the RPMs, develop a new TLD program. Of course URS is one of those new RPMs, and the requirement is that we focus. Well certainly I think with the work of the sub teams to develop practitioner and provider questions and whatever discussion we have when we get those answers back in the next four to six weeks and will probably satisfy the focus requirement.

Then it says there's a minimum in each phase. That's phase one and two. We have to assess the effectiveness of the relevant RPM, so we need to include in the initial report at least some evaluation, some assessment of the effectiveness of URS and whether it's meeting its intended purpose in a proper way.

Then there's some additional language highlighted about that it has to contain any preliminary recommendations. It doesn't say we have to put all

preliminary recommendations, although I would say personally that given their importance to a second - a subsequent round of TLDs, if we're going to recommend any changes in the other non-URS RPMs we should get those out before another round launches.

Also the initial report has to highlight any issues or recommendations that the group thinks should be considered by the subsequent procedure group or that the working group considers relevant to its work in phase two. And then it also says that in phase two we're also expected to review the first initial report and consider feedback, et cetera. So we can return to phase one issues in phase two under that language.

So the bottom line here is that if we don't change the charter, we need to focus on URS in phase one and, given the work we've already done and the follow-up review of the questions we put out, we certainly have focused on URS. We have to include an assessment of its effectiveness and we probably would want to include some recommendations where I personally would favor if we find administrative problems, providers not following the rules, rules and procedures that don't make sense, that there's a consensus they don't make sense and ought to be changed, those should be in phase one.

But on other policy issues, I would say if we have ready consensus, we can include them, but if we decide that a policy issue should be deferred and looked at again in phase two because of unknown effects of GDPR enforcement or because we believe it's intimately involved with our consideration of the UDRP, or simply because we can't yet reach consensus, we have flexibility under this charter to defer making a recommendation or failing to make one and simply put those URS issues over to phase two.

That's the general reading of the charter. So it does have certain requirements we have to meet. It does give us some flexibility on collectively deciding which, if any, issues we want to defer to phase two and come back to, and if we decide to act in that way and kind of manage this ourselves and

not further - give further consideration to whether or not we should make a formal request of GNSO Council for a charter change, we avoid probably the necessity to poll this full working group because the opinions were fairly well divided last week.

Then we avoid the debate on what level of support versus what level of opposition is required to request a charter change and then we avoid the debate on what if we agree that there's sufficient support to forward a request to council, we'd have to get into well what exactly should that request say. So we can do a little more URS work, decide how much more we want to do and avoid all of that and manage this ourselves hopefully in a respectful and constructive way that gets done what we can do in phase one and defers what should be deferred to phase two under the current charter.

So I'm going to stop there. That's the general reading of the co-chairs and the staff when we review and parse the exact language of the charter. And now we're going to open it up to further discussion where you're free to advocate taking that route or to advocate for a charter change or against a formal charter change. And I don't know if John McElwaine wanted to speak because it was his original proposal that has gotten us into this discussion. And so let's see if he wants to speak and any other working group member wants to speak.

Kathy Kleiman: Thank you, Phil.

John McElwaine: So this is John McElwaine for the record. I will just make a few statements there. I think that it is a good idea to have some discussion on today's call about being able to handle a decision on the URS being moved to phase two or having certain parts of it deferred without going to necessarily having to do a charter, sort of having that relooked at by the GNSO Council.

But I would point out that there's really two components to the proposal. One was that we didn't want to spend a lot of time on the URS when many of its

issues were either very applicable to the UDRP or there would be a big question mark because of GDPR. If I'm hearing that we can defer certain portions of that to a phase two then I think that solves the issue that I identified.

And really I don't think anybody had spoken up in that we were wrong. I think everybody was in agreement that GDPR is going to impact the URS and the UDRP and that the URS and the UDRP have certain elements and procedures that are similar and would benefit having looked at together.

But the other part to the proposal was to say how can we make some improvements to the working group. So, you know, in order to really holistically discuss this idea of sending the working group charter back to the council, we need to tackle that other issue. And I think we could also do that within this working group.

But I guess in order for me to feel comfortable that the proposal wasn't being dismantled, we need to hear some support whether we could, within this working group, look at how can we improve and how can we scope out our work and how can we develop processes that allow us to work towards a common goal of finishing the goals and objectives of the working group. So with that, I'll be quiet and let other folks have the floor. Thank you.

Phil Corwin: Kathy, if I could just jump right back in and very quickly...

Kathy Kleiman: Okay. Co-chair's prerogative. Go ahead, Phil.

Phil Corwin: Yes, well just to segue from what John just said, he and I had the opportunity for some interaction yesterday to discuss this analysis. And one thing we had discussed, which I hope working group members would further discuss once I stop talking, is that because the second half of this year will be extremely important for this working group where we really go from the analysis phase to the decision-making phase.

And we're aiming to get an initial report out late this year or in the first quarter of 2019 that in the spirit of what full council did in San Juan we might devote one of the three 90-minute sessions in Panama to a full and frank discussion of how we can operate in the most constructive and productive manner possible in the second half of 2018 to get as much constructive work done in this working group as we can.

So I'd like to tee that up both - what I heard John say was that he'd be comfortable with withdrawing his request for a consideration of a charter change request and work - rely on the maturity of this working group to manage URS issue itself as we go forward if he can get some assurance that we'll also in some way tackle the need to have a discussion of how to work constructively in the end phase of section - the end of phase one. So I'm going to stop there and step back and look forward to further discussion by the working group. Thank you.

Kathy Kleiman: Okay. In the interest of fairness, John, do you want to -- this is Kathy of course -- do you want to respond? And then we'll go into the queue. I mean do you want to comment, respond?

John McElwaine: Hi, Kathy. John McElwaine. No, I think that sums it up quite well. You know, the proposal was to again address those two issues, moving at least some aspects of the URS to phase two and to address scoping of our working group charter. It can be - I don't care how that's done. If we can do it within this group, that's fantastic, but if we don't have support then I think, you know, the original proposal would stand. Thanks.

Kathy Kleiman: Okay. And so then revisiting the thought that we would spend one of our, you know, valuable and important 90-minute sessions going through a full and frank discussion of the issues of process and procedure that John raised has been offered and is supported by staff and co-chairs. A quick note, hold Thursday of the Panama City meeting. It looks like most of our sessions, well

at least two out of three, will be on the Thursday, I don't have the date in front of me, the Thursday of that meeting, the last day. So please stay all the way through the meeting.

The queue that I have is Susan, George, Paul. Go ahead please, Susan.

Susan Payne: Yes thanks, Kathy. I think, you know, I've been relatively supportive of the idea of seeking this charter amendment but I mean I would sort of agree with John that I don't think anyone wants the charter amendment for the sake of a charter amendment. It was the belief that it was necessary to seek a charter amendment.

So I mean, you know, if we feel that we can adequately do our work within the scope of the charter as it currently exists and address the URS properly, you know, within phase one and/or phase two, then I'd be perfectly happy with that. I guess I'm just - at the moment I'm a little uncertain of how we can do that in the sense that the phase one part talks about it at a minimum each phase the work group's expected to assess the effectiveness of the relevant RPMs.

And so that means clearly we need to in phase one assess the effectiveness of the URS. But it seems to me that in order to have done that we effectively have to have done a full review of the URS and, you know, we - as we've been talking about, you know, there are some issues, including the significant potential impact of the GDPR that surely means that we can't do that assessment because there's a kind of moving target happening.

So I'm not raising an objection, I guess I'm asking for some guidance on how we can do that if in fact we can't complete our work, how can we do a, you know, an assessment of the effectiveness.

Kathy Kleiman: Good question. Thank you, Susan, and inviting responses to that. I have Paul Keating next. Go ahead, Paul.

Paul Keating: Hi. This is Paul Keating. First the way I see this charter and its text, I don't see there's necessarily an issue for us in terms of how we want to - what order we want to take specific issues, granted that there is this language at a minimum in each phase we'll assess the effectiveness of the relevant RPMs. So I guess as I originally saw John's email, it seemed like there were two issues there. One was let's not deal with issues in the URS that we're going to deal with in the UDRP because it would be duplicative. And the other one was an issue about how many chairs we have.

The issue of duplication, I mean I don't see - if there's an issue that's truly duplicative, you know, and the URS is duplicative of exactly what the problem is or what the issue being considered is in the UDRP, then the UDRP in phase two we can rely on what we concluded and what we investigated relative to the URS, we don't have to repeat that work.

So whether we do it now or whether we do it later, we're still going to have to do a similar amount of work. The assessment of the effectiveness of the URS as an RPM, I'm not certain I see how just addressing that issue or that investigation necessarily impacts on the UDRP. Okay?

And lastly, I don't for the life of me understand the concern about the GDPR and its application to the process. The only relevant issue is the access by panelists to Whois records for the purposes of understanding who the respondent is. The rest of the issues are practitioner issues in terms of investigation, et cetera, et cetera leading up to the URS.

But in terms of the personal identifiable information that might be contained in any particular URS decision, which is the only thing that is published, I just can't see the issue at all because it's consented to because we all have to agree to this dispute mechanism, and without your information we can't - that part of the contract cannot be complied with. So if someone would please

explain to me what we're talking about in terms of the GDPR, I would greatly appreciate it and align my comments there. Thank you.

Kathy Kleiman: Great. Thank you, Paul. And I noticed that John, who I'm not calling on yet, is in the queue and may be in a position to do that. I believe the queue is -- I tried to watch hands as they're going up -- George, David, John, Maxim. George, go ahead please, somewhat briefly if everyone could. Thank you. Because we, you know, we've got about 20 minutes left on the call and important things to discuss. George, go ahead please.

George Kirikos: Yes. George Kirikos for the transcript. Oh yes, I oppose both elements of this proposal. The structure of the chairs I don't think needs to be changed, also the timeline of the work. We agreed on a timeline early on and the main part of our work involves data collection and then analysis, and we've already done - or we're in the process of doing the data collection for the URS. You know, also the TMCH the data should be coming in at some point soon.

So none of this is going to change with the GDPR. In fact if we actually justified using GDPR then you'd want to delay even further because you'll say well we want to have two or three years of experience with the GDPR to figure out what the impact of the changes is - are and that'll delay the work even more. So I think we should stick to the plan now because it could also be other countries doing legislation, if the world is always changing. So we have to do the analysis with what we've got at the time of the analysis of the work.

Furthermore, I'm a little bit concerned about how this topic, which is basically a whole process change, came to the top of the agenda because folks like me come to this PDP week after week and we ask for things like what are the top TMCH 500 terms from the prior research, like I've been asking for that...

Kathy Kleiman: George, with respect I think we're moving off topic.

George Kirikos: But my point is that this came to the top of the agenda and used staff resources and co-chairs' resources, whereas the other requests from folks like me who want the data to actually do the work are being delayed indefinitely it seems and this, you know, is relatively procedural work - thing, whereas we're actually looking for the data to do the actual work. So I don't know how staff resources are being allocated to this (unintelligible)...

Kathy Kleiman: Understood. A lot of TMCH data is being collected now but let's go back and see if your (unintelligible)...

George Kirikos: The top 500 terms I'm talking about from the analysis group.

Kathy Kleiman: That's TMCH. Okay. We don't even know if they have those, but different issue. We're talking about URS. So thank you. Any more comments on the URS or can we move to the - appreciate your thoughts. Can we move on to the queue? Okay. David McAuley please.

David McAuley: Kathy, thanks. David McAuley speaking. Hello everyone. And when this came up I expressed some personal reservations on seeking the charter change, et cetera that were on the list and I think I've mentioned here on the phone before. But now we've had some fairly rigorous analysis and review by the co-chairs and staff, for which I'm very grateful, thank you, and so I think I would like to say that I tend to agree with where I think the co-chairs and staff are going on this.

And to some degree I may disagree a little bit with Susan, and I think that this is possibly divisible on analyzing the effectiveness of URS. And I think it's along the lines the lines that Phil may have mentioned about looking at operational administrative matters in phase one, and there may be an issue like a policy issue such as whether URS should be subject to consensus policy that would be more - perhaps more easily done in phase two.

So that's where I stand on things right now. I think we're - it almost falls along the line that John Nevett suggested when John made his original proposal and then some people opposed it, and John made a compromise position why don't we do the administrative kind of things in phase one and the others in phase two. I think it is divisible. It could be. We could scope it out in Panama, and so that's what I wanted to express now. Thanks very much.

Kathy Kleiman: Thank you, David. Not indivisible but divisible. Thank you. John, I believe you're next and, David, thanks for, you know, mapping out a route. And I did try to - personal, I did try to - I did ask John Nevett if he would be on the call today and unfortunately he has a conflict. John go - John McElwaine, go ahead please.

John McElwaine: Hi. Well John McElwaine for the record. And I hope to be able to at least take one thing off of everybody's plates. It's really important for people to remember that my proposal has nothing to do with the structure of the co-chairs. There's an email that I sent to Paul Tattersfield on April 13 at 1:34 pm. Paul, sorry for not responding sooner. It's important to note that my last comment is, A, unrelated to the proposal; and, B, primarily to point out the structural issues that I personally perceived in the current set up of the working group.

So what I - I probably never should have included that at the end but what I wanted our fine co-chairs to know is that I think that the current set up is not idea and I didn't - I was going to personally work towards a change in that regard and I didn't want them to think that it was any sort of backstab. That's the only reason why I put that in the original proposal. It's been brought up every call. People are apparently not reading emails, or my emails, but it is certainly not part of the proposal.

The second thing is, just again reference to emails, we set forth in a number of emails all the different ways that GDPR is going to impact the procedure

and the substance of a URS or a UDRP proceeding. So, Kathy, thank you very much.

Kathy Kleiman: John, thank you. Thanks everyone for putting your hands down. Maxim, you are next please.

Maxim Alzoba: Maxim Alzoba. Just short notice. So the PDP members can understand why everybody talking about the GDPR. Basically in two weeks most registries and registrars will probably show no personal information. It means no emails, no names, no registrant IDs, no address, maybe country, maybe city. That's it.

So all procedures which require anything from this list basically we will have issues with them. For example with a simple transfer of domains is going to be an issue. Thanks.

Kathy Kleiman: Maxim, before you leave the call though, do you think the data will be provided by registrars say to dispute resolution providers for the purpose of contacting the registrant and providing them notice about a URS proceeding?

Maxim Alzoba: I am not sure. I think this question should be addressed to Contracted Party House because I cannot speak for all of registrars and all of registries. That's it.

Kathy Kleiman: Okay.

Maxim Alzoba: I just wanted to say that yes it's relevant to our discussion. Thanks.

Kathy Kleiman: Okay. Before I call on Paul, with my co-chair's hat on, this is Kathy of course, it looks like we're moving towards agreement I believe. I don't want to push it to consensus yet but agreement that there are issues of the URS we can look at today, especially with the data being collected from the practitioners and the documents in the provide sub teams, as well as the data Rebecca has

shared and - but also policy issues that may be intertwined, more closely intertwined with the UDRP that can be postponed later and that could be a decision we make as we go into the summer, which isn't very far away, and have the materials in front of us. That's my sense of the conversation. Paul, go ahead please.

Paul Keating: Thank you. Well - and I understand that I had a long absence from this work group because I had a very serious injury but I'm now back. My apologies have been made before. I did keep up with emails and I'm trying - I'm struggling with the reasons for why we're going out of order, an order that we all agreed to in the beginning.

Again, if there's duplicative work I don't see what the reason is for kicking the can down the road instead of dealing it with now and relying on our work that we've already done once we get to phase two. So far the only reason that I've heard enunciated in the email from John and during this work group is GDPR, okay?

And, again, I work with lots of registrars and registries and registrants on GDPR issues and the issue from a URS point of view is notification to the respondent. If the email is not published because the person opts out or the registrar opts out of providing that data in Whois, they will still maintain a process of connecting and contacting the respondent and the registrant.

So the registrant will receive notice and respond or not respond, okay? So I'm failing to understand how GDPR, which is the rule of law in Europe which has been on the books for over four years in essence and we all had notice of, and this version of GDPR really doesn't change much other than making it more clear, I don't see why this is suddenly brought up as a reason to wait because lo and behold something is going to change. Right?

I don't see how that - I mean even if it were subject to change, we can deal with that in the context of the report. So I don't see why this - I don't see how

this is a rationale for kicking this can down the road instead of tying it into it and actually doing the work that we need to do to complete the URS as phase one. Thank you.

Kathy Kleiman: Okay. Thank you, Paul. Understood. So let's see. Phil has posted in the chat: "The default position is that if we can't agree on an issue" -- I assume we're talking about a URS issues -- "then we likely lack consensus and there will be no recommendation in the initial report. And it will be or probably may be deferred for resolution in phase two."

That seems to - specific issues aside, including the GDPR, which have - can someone mute please. Specific issues aside, including the GDPR, that seems to be where we are on the URS issues overall. And with ten minutes left on the call, I just wanted to see - it looks like there's general agreement on that, that we continue the work that we're doing and also schedule for Panama City with an absolute commitment that we work on the procedural issues that John has raised and that we hold a full session on that in Panama City, a face-to-face session.

Are there - does anyone else want to comment on this? Terrific. Have I missed anything in the chat room that anyone would like to raise, you know, speak on the phone? Terrific. Then I think, you know, with thanks to John for raising issues, I think we're ready to move on. What I'm hearing, and of course we'll put it out on the list, is that we're ready to move on with our existing work and later decide what issues might be moved to - what policy issues might be moved to phase two for consideration with the UDRP.

Okay. In that case, staff, our next agenda item is I think talking about not holding meetings for the next two weeks, given the upcoming GDD in Vancouver and the INTA meeting in Seattle. But let me call on Julie or Mary to tell us a little bit more about that. And I think we're supposed to poll people about the status of meetings for May 16 and 23. But let me hand it over to you, and you have more than a minute. Thank you.

Julie Hedlund: Yes thank you. This is Julie Hedlund from staff. And so we've noted in our - sending around the agenda for this meeting today we did ask for availability for the next couple of weeks because we do have, as you noted Kathy, quite a few various conflicts. And let me just remind you all of them again. And of course now I can't get my email to come up.

So - yes, so the two meetings in question are next Wednesday, which is the 16th, and the 23rd, which is then the 23rd. And so we've got a couple of different -- pardon me -- conflicts for the next few weeks. We have not only the GDD Summit, we also have the Rights Con and we - in addition we have INTA.

So GDD Summit and Rights Con conflict with the working group meeting on the 16th and the INTA meeting conflicts with the working group meeting on the 23rd. And we did not get a response to our request along with the agenda if working group members could indicate their availability for those dates, but we do expect that quite a few working group members will be, you know, conflicted on those dates because of those meetings.

So the suggestion was that we would not consider, the working group would consider not holding meetings on those two dates. So I think that's where we stood, Kathy, but let me know if staff has missed anything.

Kathy Kleiman: Right. And, John, I now you put your hand up. Is it to talk about the meetings on the 16th and the 23rd?

John McElwaine: No, Kathy. Sorry, I couldn't get my hand up earlier on the...

Kathy Kleiman: Okay. Could you hold on a second then?

John McElwaine: Yes, absolutely.

Kathy Kleiman: Let's finish this item and then - okay. Does anybody have any objection to not holding meetings for the next two weeks? There will be a group at the GDD Summit and an even larger group I think at the INTA meeting, which I will be attending for the first time.

Julie Hedlund: Kathy, this is Julie from staff. Just to note that there's a question from Susan in the chat asking the timing of the meeting on the 23rd. So the timing of that meeting would be the same time as this meeting, so that would be 17:00 UTC. And just so that everybody knows, the final meeting at the end of the month is always at the APAC time, which is 12:00 UTC on that. For some people that would fall then on the Thursday actually I think, or no. Still also on the 30th but 12:00 UTC, so the earlier time.

Kathy Kleiman: But, Julie, let me - this is Kathy. I think we're not having a meeting on the 23rd so it wouldn't be at the regular time. It would be cancelled because so many people will be in Seattle from the working group. And so you're saying the 30th meeting will be at our new - let me check, will be at our new Asia-friendly time, which is -- sorry guys, I don't convert well to UTC -- but it's 8 am Eastern Time.

Julie Hedlund: That's correct, Kathy.

Kathy Kleiman: Okay. Terrific. George, did you want to speak to that or did you want to speak to something else?

George Kirikos: George. Yes I'd like to speak to this.

Kathy Kleiman: Okay.

George Kirikos: I think it would be better if we actually do go ahead with the meetings, even if they're going to have lighter attendance. But we've dealt with lighter attendance in the context of the APAC meetings already and we do get work done on the list. Like my fear is we keep delaying the work because we skip

meetings, for example before and after ICANN events, and so we kind of lose hours here and there and the efficiency of the work in terms of number of meetings versus the number of weeks gets really bad.

So here's my suggestion. If a lot of people are going to be a certain time zone, why don't you just pick a time that doesn't conflict with events in that time zone, so let's say if it's in Seattle, you know, you schedule it for 9 pm in Seattle and people that want to attend, you know, it doesn't conflict with their work, it might conflict with their entertainment but they can all attend if they, you know, prioritize this working group. And the people that aren't in - attending those meetings can still continue on with the PDP's work. Thank you.

Kathy Kleiman: Okay. Thanks. John, I think your hand's up for something else. Julie, is your hand up?

Julie Hedlund: It is, Kathy. And this is Julie Hedlund from staff. So just one thing for the working group to consider, and I know you probably were going to mention this too, Kathy, but so we have, you know, some work that is happening right now that actually doesn't require meeting, and that is that the sub teams had prepared and the working group had agreed to the questions to the providers and to the practitioners.

And those are, you know, in the works and out there and, you know, in data gathering mode, but there's nothing for the working group to do while those, you know, those inquiries are underway until the data starts coming back. And none of that data will come back for the 16th or the 23rd. So just to point that out. I don't think there was anything, any action items at this time on the working group to proceed with that might be missed if we cancelled those meetings. But I'll defer to the co-chairs on that.

Kathy Kleiman: Thank you, Julie, for that background. And good point. Now that we've pushed so hard to get these surveys out, and a lot of people did a lot of work

on Fridays, late at night, to try to finalize those questions on the sub teams, which we appreciate, that they're out there and we're waiting for that data to come back.

So, John, again, happy to - I'm going to call on you in just a second. Does anyone else object to not holding meetings on the 16th and 23rd to kind of allow people to attend their meetings in peace, or travel back because - travel back on say that Wednesday from Seattle? Okay, looking for hands, looking for comments.

Okay. John, go ahead please. I think you're taking us back to item number four, is that right?

John McElwaine: Yes I am. So I just wanted to -- and John McElwaine for the record -- I want to just put an offer out there on the table in that I would be happy to sort of put together a revised proposal along the lines we've discussed today. I think it would be best to work on that with staff because I think they helped draft that aspect as to what's permissible under the charter. And I would send that to the co-chair leadership. Is - would that be a nice to-do list over the next week or two with respect to my proposal?

Kathy Kleiman: Let me - there are people in the queue. Let me ask - let me also read - Phil Corwin says, "Thanks to all for agreeing to a constructive approach on URS that negates the needs to ask council for a charter change and leave self-management decisions to the working group." And he looks forward to the discussion.

So, John, what you're talking about is kind of a write-up of what happened on the discussion today?

John McElwaine: Essentially just taking what Phil has stated and adding a little bit of detail to that so that for instance we can satisfy some of Susan's concerns and some of Paul's concerns and get - that were raised, so kind of picking both sides

here, that would - for people to take a look at and discuss at one of the next meetings, whenever that's held.

Kathy Kleiman: Let me - it looks like Paul and Julie are in the queue. Paul, then Julie. Paul Keating please. Paul, if you're talking we can't hear you. Julie, your hand is down now? Susan Payne, go ahead please.

Susan Payne: Thanks, Kathy. It was something I was going to raise at the end but actually John's comment sort of touched on it. I wondered if it's possible to get an update on what the status is on the data gathering on the claims and sunrise and so on, because obviously we know that there was an RFP issued but I haven't heard if anyone's been appointed yet. And obviously I raised some concerns about what I think is the need for some further work and discussion with whoever is appointed that I think that we need to take forward. So I just wondered what the status was, if someone could let me know, or let us know rather.

Kathy Kleiman: Good question. This is - guys this is the Trademark Clearinghouse Data Sub Team which worked for a number of months on defining questions on the TMCH related issues. Mary, do you want to provide us with an update? Everybody, I apologize for going on time, and I note we are over time. Mary, go ahead please.

(Ariel): This is (Ariel) from staff. I think I can give an update on behalf of the staff team. We are at the final stage of contracting with a selected vendor and going - right now the contract is being reviewed by Legal and we do need their advice and be able to look through everything before we send it over to the vendor to sign the contract.

And at the same time, the vendor is filling out other forms to provide the other (unintelligible) and other documents. So we're at the very final stretch of getting this vendor contracted. And hopefully by next week, we should be

able to announce the vendor's name but we cannot do that until everything is finalized. That's the update for now.

Kathy Kleiman: Thank you, (Ariel). And I'll note that the co-chairs are - through the process the co-chairs have no additional information. We have no idea who the finalists are or who ICANN is considering hiring for this important work. Let's see. Okay it looks like Paul has posted. Paul, I'll read it in - I'm going to call on you but you may have posted because you can't be heard right now.

Paul Keating: Can you hear me?

Kathy Kleiman: Yes I can. Briefly, please.

Paul Keating: I don't know what happened in two seconds or so. Sorry about that. This is Paul Keating for the record. As I put into the chat, you know, thank you for the compromise but the only request I have is that, as I noted, after working on it with staff that you share it with the working group as a whole instead of having an added layer of co-chairs only and then just leaves the questions for everybody else if it ever gets to see the light of day or if it doesn't, or revisions, et cetera. I'd rather be more transparent with it.

That's my request. And also that you identify specific issues that you feel should be punted to phase two and, more importantly, why. I noted Phil's comment earlier that if we fail to achieve consensus (unintelligible) sent into the final report after phase two, but that's the condition for any issue that requires consensus. So that in and of itself to me is not a reason itself to punt. Okay? So if you could take those into consideration, I welcome your offer to do the work.

Kathy Kleiman: And, Phil, I note that your hand is not raised but as co-chair I was wondering if you have any comments you like to make.

Phil Corwin: Kathy, I pretty much put my comments in the chat. If you or someone else had a specific question, but I think the bottom line is that, you know, we'll get the answers back from the providers and practitioners and we can kind of frame up what we think the administrative and operational versus policy issues are for URS and then decide which ones we think are appropriate, collectively which ones we think are appropriate for resolution in phase one and which ones we collectively agree should be deferred to phase two, or, as a practical matter, if we don't have consensus for a decision one way or the other, they're by default deferred to phase two.

So it's, you know, it's a bit of an escape valve that lets us get done what we can in phase one and put off other issues to phase two. That's my personal view of it. I don't want to be dictating to the working group, but I think it's much better if we manage it among ourselves than ask for direction from the council, because we're a lot more familiar with these issues than they are.

Kathy Kleiman: And I think we're there. I think we're there. And now the question is kind of what the process is in the working group and whether we determine the issues, if I understood John correctly, whether we determine the issues now that might be postponed versus after we've collected the data and after we've looked at it in the URS proceeding.

I have to say I don't think we're going to be...

Phil Corwin: Kathy, on that I think it would be much less divisive and much more informed and just a natural flow to make those decisions as we come to issues rather than starting to debate things now before we get any results back from providers and practitioners.

Kathy Kleiman: Thank you for your comments on that, Phil. And I think this is something we'll have to take the list, what the next steps are. As a co-chair I haven't thought through next steps, John, but personally I think that idea that we'll have more information later and can decide what to postpone and what not to what really

belongs in UDRP/URS seems like it will be then kind of in this initial URS review seems to be a decision that we might have more data with later. But that's an off-the-top-of-my-head personal thought.

I think we'll be continuing this on the list. We have covered a lot of things today. Congratulations to Brian Beckham and thanks for coming on and joining us in what will be many meetings both with co-chairs and staff and with the full working groups. Thank you to Rebecca Tushnet and (Alex) for -- I apologize, (Alex), I don't know your last name -- for joining us and giving us an overview of research. And thanks to John for guiding us through the discussion and where we might go and the compromise that we appear to have reached.

So thank you everyone. Safe travels wherever you're heading in the next two weeks. Appreciate the call and we'll continue online. Take care.

Julie Bisland: Thanks, Kathy. Thanks everyone for joining today. The meeting has been adjourned.

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