

**Transcription ICANN Helsinki
GNSO Review of All Rights Protection Mechanisms (RPMs) in All gTLDs PDP
Working Group
Thursday, 30 June 2016**

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

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J. Scott Evans: Good morning, everyone. My name is J. Scott Evans. I am Associate General Counsel at Adobe Systems, Incorporated and I am one of the three co-chairs of this working group which is the review of all rights protection mechanisms working group. This is our open meeting in Helsinki on Thursday, June 30, 2016. It is 8:00 in the morning. I don't know if we have others on the phone with us but if you are, welcome for joining up.

Up at the front of the room with me is also Phil Corwin who is another of the co-chairs. Unfortunately, Kathy Kleinman had to fly home early due to a family emergency and she will not be going us today. I hope you all will keep her in your thoughts. Also, up here with me today is Mary Wong who, if you are on the phone calls, is a very intimate driver of everything we do here in preparation of a lot of the materials.

At the end of the table there, on my right hand side of the room is David Cake. He is sitting next to Kurt and he is another ICANN staff member who

has been very helpful in keeping us on track and developing materials that I want to thank them both for all their help and for being with us today. As we get started, the first thing I'd like to do since this is our first face to face meeting that we've had since we started our work about two months ago, I would like to go around the room and we will begin on my left at the very far end and if you would introduce yourself. Tell us what your day job is and then who you are connected to within the ICANN ecosphere. I am a member of the business constituency and former two or three, maybe four time president of the Intellectual Property Constituency years ago and that is my affiliation. So, we will start down at the end of the room.

Ellen Shankman: Ellen Shankman, my affiliations with ICANN have been counselor in the GNSO, officer in IPC. I am privileged to have been an IRT and most recently NomCom.

Jeff Neuman: I am Jeff Neuman. I don't think we have enough time to go through all of my ICANN affiliations but mostly here in my capacity as one of the co-chairs of the subsequent procedures working group, so our work is closely tied. I participate officially along with a company called Cum Laude in Valideus and we're a member of the registrar stakeholder group and participate on behalf of our clients in the registry stakeholder group and IPC.

(Beth Bacon): Good morning everyone. I am (Beth Bacon). I am with public interest registry and through the registry stakeholder group.

(Brian Somalik): Hi, (Brian Somalik), also public interest registry with the registry stakeholder group.

(Christine Durane): (Christine Durane) with Amazon Registry Services with registry stakeholder group.

(Pete Dixson): (Pete Dixson) with Amazon Registrar, the registrar stakeholder group.

- Man: (Unintelligible), electronic (unintelligible) England and non-commercial stakeholder group.
- (Elon Tigram): (Elon Tigram) with the world intellectual property organization.
- (Darcy): (Darcy) (Unintelligible), I am with Endurance International. I do corporate compliance, part of the registrar stakeholder group.
- (Sara Bocke): (Sara Bocke) with Godetti, part of the registrar stakeholder group.
- Brian Beckham: Good morning, I'm Brian Beckham, head of the Internet Dispute Resolution Section at the World Intellectual Property Organization. We are the leading EDRP provider globally.
- (Luke): Hello everyone, my name is (Luke) (Unintelligible), I have a registrar operation in London (unintelligible) associates and (unintelligible) specialized intellectual property online and Italy (unintelligible). My affiliation with ICANN is dating long back. IPC member since a number of years, 2001, my first ICANN, and (unintelligible) registry group member as well.
- Nick Wood: Nick Wood from Valideus, in this environment I represent MARQUES which is a member of the IPC.
- (John Acquaine): I'm (John Acquaine), I'm a lawyer with Nelson Mullins. I'm with the IPC and I am the current chair of the internet committee for the International Trademark Association.
- (Molly Shannon): I am (Molly Shannon), I am the senior director for Internet Policy for the International Trademark Association and a longtime member of the community, most recently with the NCSG and currently treasurer of the IPC.
- Philip Corwin: Phil Corwin, I am one of the three co-chairs of this working group. I am founding principal of Virtual Law which is an IP and internet policy consulting

firm working in Washington. I am coming up on 10 years as counsel of the internet commerce association which I represent within the business constituency. I'm one of the business constituencies to GNSO counselors. I am also co-chairing the working group on Curative Rights Processes for IGO's and I am a proud member of (unintelligible) Internet Committee.

J. Scott Evans: I guess I should also disclose many people in the room know me but just in case I don't want to be hiding anything, I am also former president of the International Trademark Association. I am past president from last year so I don't want anyone to think that I'm stealthily trying to not disclose all of my connections here; if we could just get (Beth) real quick who is stuck (unintelligible).

Beth Allegretti: Hi, I'm Beth Allegretti from Fox Entertainment Group. I manage the global domain portfolio and I'm part of the DC.

Man: (Unintelligible) registry and some registrars, too.

Reg Levy: Reg Levy from Mind Machines, we are a vertical integrated registry registrar and I sit on the executive committee of the registry stakeholder group.

Denise Michel: Denise Michel, with Facebook and the business constituency.

(Yvette): (Yvette) (Unintelligible), I am an Italian Hungarian lawyer and I am the URS case manager of MSFD based in Milan, it's the third URS provider.

Man: (Unintelligible), Milan based lawyer and cofounder of MSSD, the (unintelligible) provider since 2000 for (unintelligible) and the mediation case manager.

Woman: (Unintelligible), with former (unintelligible), the forum for an ICANN credited provider.

- (Alistar Payne): (Alistar Payne), Matison Lawyer's Dublin, (unintelligible) internet law committee and on the IPC.
- (Charlotte): (Charlotte) (Unintelligible), I am (unintelligible) with Adams & Adams in South Africa. I am IPC.
- Susan Payne: (Susan Payne) from Valideus. I am a member of the IPC and I also participate in the registry stakeholder group on behalf of (unintelligible) and I am one of the honorary legal (unintelligible) to the brand registry group.
- (Heather Foust): (Heather Foust), I teach intellectual property at the University of Tasmania. I am a member of the GNSO council for the IPC. I am the council lead for this PDP II council, yeah.
- John Nevett: John Nevett (unintelligible) registry stakeholder group, former chair of the registrar stakeholder group and the new TLD applicant group.
- (Kurt Bert): (Kurt Bert), formerly with ICANN and now a management consultant. I worked with J. Scott and many of you on the implementation recommendation team where we fashioned many of these rights protection mechanisms we are talking about right now (unintelligible), and then worked with the GNSO on implementing them.
- J. Scott Evans: We had one gentleman join us who got ahead of the queue so if you will introduce yourself for us.
- (Nassar Vitori): Thank you very much, good morning. (Nassar Vitori), manager director of Origin. Origin is an alliance of (unintelligible) groups and I am a member of this working group. It's my first time on the committee. Thank you.
- J. Scott Evans: Great. This is an open meeting for anyone who may be on the phone, which means that it's not just populated in the room here in Helsinki with members of the working group. There are also observers here and just for the record

because we are trying to keep an accurate transparent record, I'm going to have the observers introduce themselves as well so we all know. Please understand as an observer as we are discussing issues, you are welcome to make any comment and come to the microphone and speak either if you want to come to the table and grab a microphone, if you want to go to the standing mic that will be here, but we encourage your participation. We want your participation. So Glen if we can start, thank you.

(Daniel Madden): (Daniel Madden) from (unintelligible) in Paris.

Woman: (Unintelligible), from (unintelligible) Paris.

(Soriah Komite): (Soriah Komite), Holding levels, Paris.

(Jacob Williams): (Jacob Williams), Interlink.

(Damon Ashfap): (Damon Ashfap) with Snell and Womer in Phoenix, Arizona and I'm with the IPC.

(Jennifer Scott): (Jennifer Scott), contractual compliance.

(Maggie Surrad): Good morning everyone, (Maggie Surrad), contractual compliance.

Man: Good morning, everyone.

Woman: Good.

(Ally Alvadux): And it's (Ally Alvadux).

(Christine Alanti): (Christine Alanti), trademark express teamwork.

(Joanna Badden): Hi, (Joanna Badden), Gemini Lens, CCPLD (unintelligible).

Man: (Unintelligible), from India, (unintelligible).

(Dana Bran): (Dana Bran), Northcott, Amazon.com.

(Jennifer Bryant): (Jennifer Bryant), (unintelligible) U.K. Limited.

Woman: (Unintelligible).

(Renville Strenusta): (Renville Strenusta).

Man: (Unintelligible) with the Trademark (unintelligible) house.

Woman: (Unintelligible), Trademark (unintelligible) house.

Man: (Unintelligible) house.

(Celia Smith): (Celia Smith) with Fox. I am also in the brand registry group and the B.C.

(Martin Fenton): (Martin Fenton), brand registry group and member of the registry stakeholder group.

(Selmin Franco): (Selmin Franco), in (unintelligible).

(Chuck Gomes): (Chuck Gomes), (unintelligible).

David McAuley: David McAuley, Verisign.

Freida Tallon: Freida Tallon, sky member of the registry stakeholder group.

(Stephen Modala): (Stephen Modala), (unintelligible).

Man: (Unintelligible).

Man: (Unintelligible), JPRS.

Man: (Unintelligible), JPRS.

(Emily Berbas): (Emily Berbas), ICANN staff.

(Steve Chan): (Steve Chan), ICANN staff.

(Brian Scarpelli): (Brian Scarpelli), ACTVF Association.

Man: (Unintelligible).

(Susan Anthon): Thank you, (Susan Anthony), United States Patent and Trademark Office.

(Karen Month): (Karen Month), ICANN staff. I also worked on implementing money of the RPM's in the program.

J. Scott Evans: Mary?

Mary Wong: Thanks, J. Scott. I'm not ready to introduce myself although I am Mary Wong from ICANN staff, hello, and to acknowledge that we do have folks in remote participation in the Adobe Connect Room who are not here and they include a number of members and observers of our working group.

J. Scott Evans: Thank you Mary, very much, if I can just quickly for those in the room, everyone who is actually a member of the working group, would you please raise your hand just so that we can get -- so it's good to see that we have such a good participation and to have so many people live at the meeting, I think that shows how very important and historic the work that we are doing is going to be and I am pleased to have you all here.

So, I think the first thing I would like to do is sort of report out that I don't know how many people attended the meeting we had on Monday afternoon where

we presented to the community about our work plan and how things were going and how we'd set up things and that we had started with the PDDRP and we had some discussion. We took some responses from the audience of some additional issues and is it possible, David), to put up the .pdf that has -- we extrapolated since Monday the listing of some of the things that came out of that meeting so that we could show them to those of you that may not have been there and David has put it in the .pdf. It was too large to put into our deck.

So real quick, while we are going to concentrate in the second part of this meeting on the actual PDDRP which is the first -- one of the things I wanted to do was I wanted to go through the issues that we discussed and have everyone look those over and see if there is anything that you feel that we need to add to that list, is there something that needs to be subtracted from that list? Are there things that we need to think of differently? So, let's just go through them subject by subject and look at them quickly. We see here we have the trademark clearing house and the questions and comments that we got were you see here does the trademark clearing house provide avenues that are procedurally and substantively fair so effectively balanced the rights of right holders versus normal internet users so we had a lot of comment and discussion about the cost benefit analysis of the trademark clearing house. I think there were some -- I want to say it may have been a registry representative who is just saying, you know, it's expensive for the registries to have to participate and was the benefit really weighed, you know, out at least balanced with the cost to the registry?

Does the trademark clearing house create a tendency to perpetuate the status quo? How acceptable is the trademark clearing house to reviewing accessibility for trademark agents in developing countries? Should the trademark clearing house remain the single provider or should we open to different providers that would have the centralize database? And I think that previous question and this question are sort of connected. I think there was some discussion in the room if I am remembering correctly that perhaps

having a single provider that only operates in English might cause problems for different cultures that they don't have as many people who speak English and if you are forcing them to operate in English not only is expensive but it might not be as useful for those purposes and so that was something they felt we might want to consider.

There was a lot of focus on whether the trademark clearing house should remain a single provider. Are the costs of the trademark clearing house rock holders for ICANN for the community proportionate to the benefits? Again, you see that question coming up. How do you determine what is a good chilling effect and a bad chilling effect in relation of RPM's? I mean, one of the data points we have roughly is that there have been about a million trademark claims notices went out that people didn't then carry through with the registration and I think there is some concern that maybe there were people who were scared off from registering when they could have registered but again I think there was also the point brought up that you don't know for sure, it could be the trademark clearing house actually is working as it was intended and those million people had innocently made a mistake. Not everybody is actually out to infringe on someone's rights and realized that and chose a different name. So we just don't know and the question is we may have to struggle with how to determine that or if that can even be determined. Do you have a comment?

Man: Yeah, well I was just going to -- have we gotten to the end of this?

J. Scott Evans: Any time anyone wants to --

Man: Well I was going to suggest we go through all of these up through the trademark clearing house and take comments on the clearing house before we go onto the next one so I don't think we've quite --

J. Scott Evans: And then we went through -- we were asking the group also, are there any data points that you think we should consider? Because, you know, we had

an opportunity to sit in a room with a majority of people who have not participated on any of our calls so they don't know what we've been talking about considering and we were, you know, just asking is there anything we should look at? And here are some of the ideas that we put forth. It's useful to look at how many cases have helped existing right holders, how many cases have helped internet users that do not own the rights at the time they come to the trademark clearing house.

In relation to questions and procedure, for example, has procedure been followed correctly in all cases? In the cases of deviations, why were the deviations caused? Who were the deviations helping? How many domains were registered to users that were not the registered claim holder that were eventually challenged by the team CH claimholder and whose ownership was then moved from the user that registered the domain to the claimholder, and then it gives us an example.

So those are some of the things that we were asked that they thought we should consider and data points we should look at. The question is if we can find that data if it's available, I'm not sure but now I'd open it up to the floor to ask anyone if they have anything that they see here or is different or if they have any idea where we might find some of this information, I'd just open it up to the room.

Man: Let me jump in with the first quick comment, two quick comments, one, we've heard from quite a number of people about dissatisfaction with the cost, of clearing house rate (unintelligible) and a desire to have multiple providers for both cost and other reasons. We are going to have to, I think, if we can find out what type of contracts ICANN is entered into with (unintelligible) and IBM, the two current providers who share the duties of providing the current clearinghouse. We don't know if that's an exclusive arrangement or what it says on whether it's possible under that contractual arrangement to have other providers if we decide that's a good idea.

Also, on the good versus bad chilling effect, I do know because I asked the folks doing the study when they spoke on it at Marrakesh that the current study that's been undertaken by ICANN in request to, in response to a request that the GAC made several years ago, I asked point blank are you going to be able to -- from what you're doing to be able to tell us when there was a good chilling effect when receipt of a claims notice deterred what would have been an infringing registration versus an undesirable chilling effect where someone who was going to register a generic dictionary word with the intent to use it for a purpose totally unrelated to whatever it was trademarked for was just spooked by the notice and didn't go forward with the registration.

And I think also to add one last, we have to remember that the vast majority of domain registrants, you know, we live in this ICANN bubble and so many of us, or trademark orders, or at least know a lot about trademark where we have to remember that the millions of domain registrants, the vast majority know nothing about intellectual property law and trademark and when they get a notice like that their first thought could be I don't understand this work but it looks like I might get in trouble and I'd have to spend a lot of money to consult with a trademark order to find out whether this registration is a good idea. So, we have to keep the average user in mind and I'll stop there and we welcome other comments and thoughts.

J. Scott Evans: Okay I see two hands. Before we get there, one of the things I want to put out to the room and I'd ask the two people who are going to speak next to maybe give their comment on what I'm about to say, but I'm speaking not as chair. I'm speaking as J. Scott Evans from Adobe and just a person who has been involved. I wonder if our job is necessarily to decide the issue with regards to a single provider. I wonder if our issue is to recognize that that's been brought up and then bring that to the subsequent procedures working group and let that be an issue that they deal with because it seems to me that that's more about implementation of the program rather than the rights protection mechanism itself and it seems it might be slightly beyond our (unintelligible). I

do believe we should note it and say in our report that it was -- we heard it repeatedly but I don't know if we should delve into that issue any broader than making a note and then have our, make sure our liaisons from that group take it back and then ask them to specifically address it. That would be my -- I don't know how controversial I'm being but that would be my thought. I'm seeing Ellen Shankman and then I saw Jeff, do I see any other hands real quick, and (Kirk).

Ellen Shankman: The kind of -- I'd like to make J. Scott I think goes directly to what you are saying and support it which is they are the "what" questions which is what are you trying to achieve, what needs need to be met and then there are the "how" questions and every "how" has its pluses and minuses and I think it would be unfortunate to get bogged down in the best house to fix things even though I think this working group is intended to make better "hows" and to first be asking the questions of -- and then when these mechanisms were first set up there were certain needs identified.

And this was an attempt to address those needs and maybe it was successful and maybe it could be more successful and maybe it wasn't. But, I think it is important to look and see did this address the needs that were there and are there any other needs that have since been identified that need addressing because to otherwise argument about well, this thing could be a little bit tweaked this way, it's more expensive, less expensive, somebody else takes (unintelligible) provider net, I think is to lose the opportunity to see whether or not this is doing what it should be doing and what we thought it should be doing when we wrote these whatever a number of years ago, have those needs been addressed and have new needs come up that should be addressed?

J. Scott Evans: Thanks so much. Just a reminder, please state your name for the transcript record because we do have people participating remotely and if they want to respond to you I'd like them to be able to know who they are responding to, so if you'd just say your name, I'd appreciate it.

Jeff Neuman: Thanks, this is Jeff Neuman. I think (Ellen), you said a lot of what I was going to say, (unintelligible) respond to (Phil), the agreements with the clearing house providers are actually posted. They are online. I could send around a link to where they are. There are some parts that are redacted but I think for the most part there was an exclusivity period. I'm not sure yet if that's expired or if it was based on instead of the time period it might have been based on a number of registrations but I do agree that, you know, you all should look at the concept and the principles and then pass it on either to -- not even necessarily the subsequent procedures but to implementation. Whether that's the subsequent procedures or an IRT on that is a whole other question.

J. Scott Evans: Thanks, Jeff, just real quick, I have a question for the room because Ellen Shankman raised the question of we need to answer the "what," right? How many people have read the original IRT report to know what that group thought they were trying to solve? So, I suggest that everyone on this committee read that report so you understand what they were trying to solve because you are not going to understand the "what" if you don't look at the report and try to understand what they were trying to solve. I know there is so much hyperbole in this community that a lot of it gets distorted and goodly and badly. I'm not -- but you just go to the root of what we are talking about so when we begin to answer that question, you understand what they were trying to answer. So, I would implore all of you to read that report and I believe you can find it on the ICANN website. Mary, I would ask that you put a link to that in an email after this meeting so that everybody can find it easily. And with that, I will turn to (Kirk).

(Kirk): It's sort of getting back to what (Ellen) says but when you talk about a cost and you are worrying about a cost being too high, there are two elements to that and one is the price given to us by the bidder but the more important aspect is what he or she is asked to bid on and I think what -- a good test for this group more than the subsequent procedures group is to look at the scope of the clearing house and because we were being careful then and we

wanted certain aspects of the implementation there and look and see which ones added value and which ones did not and a more effective way to reduce cost is really to reduce scope.

J. Scott Evans: Thanks (Kirk), I think I saw (Susan Payne) raise her hand.

Susan Payne: Yes, I wanted to make a comment on the bullet point #3 on the data to be gathered, just because I'm one of the people who volunteered to work on that stay together and exercise and I don't want us to go down the wrong track slightly. I don't think that specific data is particularly useful for us in this particular context because you don't need a trademark in the trademark clearing house to bring a UDRP and the only complaint that would allow you to recover the domain name is the UDRP. So, that information in terms of successful or unsuccessful UDRP's is definitely relevant when we are reviewing the UDRP but I don't think complaining the two is particularly helpful for us so there may be data that is relevant for us to gather around numbers of claims and what the impacts of those claims were (unintelligible) people but I don't think it's relevant for us to complain that whether a UDRP was successful or not.

J. Scott Evans: I think Brian, I saw your hand, does anyone else have -- okay.

Brian Beckham: Thank you J. Scott, Brian Beckham for the record, I wanted to just ask the question to follow on (Susan)'s comments if this working group has thought yet about who to canvas for feedback for this, so should we for example reach out to the international trademark association to canvas members the intended beneficiaries? We heard in the earlier session some important feedback from registries and registrars in terms of the cost and the operational pain so I think it would also be equally important to somehow reach out to the intended beneficiaries to trademark owners. I also know that the governmental advisory committee has expressed an interest many years ago to look at the trademark clearing house once it was operational so those

are two avenues maybe the working group wants to look into in terms of outreach going forward.

J. Scott Evans: Thank you. Our data gathering subgroup, I would put to you, perhaps we want to develop some sort of mechanism that we could use at many different (unintelligible) but do the same type questions. We could agree on it, this whole group would agree you all would just develop it and maybe we do it to marks and ECTA and INTA and maybe the registry stakeholder group as well, the registrars, we gather data from everyone so I would say -- I would put that to the group, (Susan), that you are working with to think about that, whether we want to survey those different groups and do, you know, a very similar survey for everyone. I have a hand here and then a -- okay, and then Mary.

Man: Yes, I'm (Unintelligible) for the records. During the working group discussion we had a debate whether we should consider any single mechanism or district resolution in isolation or we should consider them in connection if specifically we do the DRP and actually one of the questions I asked and I'd like maybe to see it reflected in the question is what kind of consequence should we draw from the fact that (unintelligible) indications have been admitted in the trademark clearing house under the item marked, protected on the treaties and statutes. I think this is quite important because once we have -- once you recognize some identity to this legal instrument to be admitted in the clearing house, I think it will be interesting to consider and discuss whether there should be any consequence in terms of allowing GI's also to be a legal titre, to activate a UDRP, I think it's very interesting to discuss it in this framework, I think, this you know, in some instances it might be also a theoretical question in the sense that many geographical indications are protected in some jurisdictions as well as trademark, so practically they could activate any way the UDRP but I think it would be important also to have a debate on that because otherwise it would be a little bit limiting, you know, to accept into the (unintelligible) but not to give the possibility then to solve (unintelligible) registered as second level domains by an entity which is

not relation with -- and let's remember, let's remind you that GI's are intellectual property rights, recognized by the (unintelligible) agreement. Thank you.

J. Scott Evans: A couple of things, first of all the EDOP and the trademark clearing house are not connected in any way. Just so we all understand. They are not connected in any way. You can bring a UDRP and never even consider, know about, have discussed, have anything to do with the trademark clearing house first. Second, I want to give everyone just a brief history.

When we first conceptualized on the IRT, the trademark clearing house, it was not called the trademark clearing house. It was just called the centralized database and the original idea was it would just be a centralized database that would collect rights information and that the registries would determine based on the jurisdiction which they sat in, what rights they wanted to protect under their laws. So for instance, in Germany titles to books are given the same rights as a trademark. They are not in the United States unless they are series of books that show good will, right?

So, in U.S. you couldn't protect a title, in Germany you could, but if I was a German registry and I wanted to protect titles, I could and all the trademark clearing house would do is collect that data in one central place and any German registry that wanted to protect that would ping and get that information. But somehow it got conflated that we were trying to create trademark rights for things that didn't have trademark rights and so they kept narrowing it down and it ended up just being trademarks, not common-law marks, not geographic indications, not other things, because they thought we were trying to create rights that didn't exist and I think that is where it got changed.

But that was not the original concept. The original concept was just to collect data and let a registry choose what they were going to protect and all the database would do is take in the data so that the owner only had to go to one

place to do it rather than 50 different registries to figure out what was going on. So that was the original concept and I think there was some concern that by creating this they were going to create rights outside of different countries that would make people concerned and so that's where some of that came and we can discuss that but there are a lot of people, since you haven't (unintelligible) would say, we really don't want to go back and rehash issues that have already been decided by the community so I just put that out for everyone. I see Nick's hand, then Phil's hand.

Nick Wood: Just a quick addition to that, I think in those early days and we have designed what we are talking about, we referred to it as a cost reduction mechanism for mark owners to participate in an unknown number of sunrises in the future. It wasn't actually referred to by if it's a rights protection mechanism and it became much more complicated when it came out and one of my concerns about the current model is how it would scale if we have 10,000 applications in the next round because certainly most of my clients don't want to get claims from 10,000 registries.

J. Scott Evans: I think, Phil? Say your name for the record.

Philip Corwin: I wanted to raise a question for you and the group -- of the right RPM's, but my question relates to what about infringement, infringing activities that have actually arisen that are not susceptible to any of them, one of, specifically thinking about is every couple of days I review the junk mail folder of my Outlook and it is full of emails from new TLD's. I'm not going to but there seemed to be a certain new TLD that is very attractive to spammers and in the domain name, the domain name is complete nonsense. It looks like a computer generated nonsensical domain name with letters and numbers and so it wouldn't be picked up by the clearing house. It wouldn't be susceptible to UDRP or URS. The infringement is going on in the subject line which refers to a very well-known corporation.

Now, when you look at the actual email, some of them pretty transparently

phony, but some of them, particularly the ones that relate to financial institutions and social media, are very sophisticated and can fool a lot of people into thinking it is from their bank or it is something to do with their social media account and I don't know, I don't think it's within our charter but what should ICANN generally do about that type of infringing phishing activity that has arisen using certain new TLD's that's really not covered by any of the RPMs?

We're not really chartered to think about new RPMs, but I just wanted to raise that question of what about things we've noticed about troubling uses of some new TLDs that aren't covered by any of the RPMs?

J. Scott Evans: Anyone have – my personal belief – this is J. Scott Evans speaking as someone who's been at ICANN and as a – doubly not as trying to persuade anyone – way – one way or the other is those are issues that we should note.

And I think we should probably say that we – well whether we believe or we don't believe they're inside or outside ICANN's ambit, because I think what happens is then the GAC or somebody then needs to understand that that's a problem that we don't think ICANN can fix, but it's a problem that needs to be fixed and then maybe the local jurisdictions or the local governments need to fix it.

And I think we have to identify those if we stumble across them but I don't think we can create new things that are outside of the ambit. And I wonder since we're the domain name administrator if we can start dealing with infringement that happens in a subject line.

Philip Corwin: And I may agree with that. I, you know, certainly you had a – went into a meeting and there's hundreds of exhibitors and there's many, many competitors out there providing very sophisticated tools for trademark owners to – that can pick up that kind of spam activity.

So it may be completely outside ICANN's remit but it, you know, at least it – but it does relate to, you know, unhappy uses of some new TLDs and we should always note it and decide what if anything we should do whether it's just something that the private sector has to deal with.

J. Scott Evans: I think Mary had something from the remote.

Mary Wong: Actually there's couple of remote participants but it relates to an earlier point and goes back to your question J. Scott and Ellen and Jeff's comments earlier about whether some of the questions that have been raised are indeed within the scope of this policy-based working group, or whether it'd be more appropriate to be referred to another policymaking group such as the new gTLD subsequent procedures or even moved to implementation.

The comment is from George Kirikos who disagrees with Ellen and with Jeff because he says that, "If for example that that could mean that other groups could be making the so-called tweaks to the UDRP or the URS, that might more appropriately be done by this group.

And if there are going to be changes they should be very explicit and not leave it to some other PDP or working group." And then there was some subsequent discussions between George and Jeff on this in the Adobe chat.

J. Scott Evans: Jeff did I see your hand go up?

Jeff Neuman: Thanks. This is Jeff Neuman. I actually didn't want to respond to that particular point. I wanted to respond to Phil. I think the issue you're referring to Phil is actually an issue not just with new gTLDs, but I would think it is also a huge issue with gTLDs in general and ccTLDs.

So I would hate to note it when dealing with just new TLDs without a full understanding of the entire problem, but I do think that that's way beyond this group anyway.

I'm not going to say it's beyond ICANN. I don't want to get into that whole mess but it's certainly beyond the remit of this group.

J. Scott Evans: I – we have one gentleman before you (Ellen) and then we will come to you.

(Brian Tamal): Yes (Brian Tamal) with PIR. Just to Phil's point I do think while it might be outside this group's focus I think it – what you're describing sounds a lot like spam or phishing and that would be technical abuse that should be covered under Spec 11.3(b).

It's – I think it's covered under ICANN but not necessarily this group's remit. Ellen?

Ellen Shankman: To address – to respond to those comments I'm not saying what is appropriate for – or do I think this group should spend a lot of time thinking this isn't a remit or not.

I would just encourage people to not put the cart before the horse, which is first focus on what the problems are, figure out what the needs are, figure out what needs are being addressed or not.

If we can address them address them and if we can't at least as you say identify them as needs that are going unaddressed so that people understand that the needs remain.

J. Scott Evans: Okay are – is there anyone else that has a comment on the Trademark Clearinghouse data they think we should gather, who we should gather data from, issues they think we should consider? Anyone?

Okay and Susan what I heard come out of this discussion – the only takeaway I'm hearing is to consider perhaps a data – some sort of survey or

something to gather data from different groups that your group should discuss and consider.

That's the only takeaway. I mean, am I correct in the room? Am I – that's the only takeaway I'm really hearing. Susan.

Susan Payne: Well I – as – I have one more which is, you know, we know there's an independent review of the Trademark Clearinghouse underway and I know they've reached out to various people and asked for various information and say, "I don't want us to be duplicating some work that's already been done." So we clearly need to communicate with them I would say.

J. Scott Evans: I would ask that we set up a call with our data gathering group and this independent review group, and have them have a discussion together that they would then report back to the whole group.

I think if we keep it small they'll get more – it'll be a more robust and fruitful discussion and then they can come back and report back to us what you find out as part of your data gathering.

Susan does that make you more comfortable? I'm seeing – okay I see Lori and then I'm going to move us on after that okay? Lori?

Lori Schulman: Lori Schulman for the record. I want to respond to your two suggestions about surveying institutions generally. INTA has already been asked by the CCT group to do a survey to our members in terms of the costs of defensively living in this space.

So if your group is considering reaching out to indirect or most any of the groups, I think it would be really helpful to those group representatives to maybe work on consolidating the requests, because I think what will happen institutionally – there's some wear and tear on members in terms of survey.

So in order to really help the community in general perhaps it might be a good idea that we all sat down to think about what we might want and include them in surveys that are – might already be planned and get it done sooner rather than later.

J. Scott Evans: Lori could I call upon you to reach out to our data gathering group and sort of let them know who you've already talked to about surveys so that we can do some coordination on that level? Would that be good?

Lori Schulman: That would be wonderful.

J. Scott Evans: Great. With that I'm going to move us on to look at the trademark claims notice. You see here we got two points out of there. For Registrars implementing trademark claims these currently have limited and very low validity period that affect this to prevent some of the marking activities that usually are performed by Registrars.

I'm not sure – completely understand this but I think some people – I think this relates to the issue of people farming the Trademark Clearinghouse information to use that for their own purposes beyond that for which it was designed.

Is - that sort of seem what they're talking about there? I think I've heard some people did things like looked in the Trademark Clearinghouse and then put those on a list and then they charge expensive premium for.

They sort of use the information from – for things it was not designed for and I think that's what that bullet point's trying to get to but I'm not sure. The working group should talk to Registrars and maybe even like track down users who have been – who have seen the notice and ask them their reaction to it.

And I just want to say for the group – Brett if you would repeat what you said to us on Monday up at the dais so that the whole group can know what your experience is and what you've offered for us.

Brett Fausett: Hi Brett Fausett, Registry. I went to Dot Mom back in May and I was telling J. Scott at the session the other day that we had reached out to prominent mom bloggers to see if they would be interested in, you know, registering their name in Dot Mom and helping us promote it.

And we found – I think one of the examples we had was Swoon had stylemom.com and we said, you know, "Would you like style.mom?" And she said, "It's great. That'd be wonderful. That's actually perfect for me."

And then we showed her the claims notice and she freaked out and we – so, you know, told her we couldn't offer legal advice but, you know, this is what the purpose was.

And eventually she took the name but yes that's the kind of – and that was a first hand reaction of someone, you know, sitting with them while they saw that claims notice and they thought it was a – some sort of legal demand.

It had a – for someone who's not a – in the law business it can be a intimidating thing to see. You don't know what it is. It's not something you're – even if you've registered a name before it's not something you typically see.

So I think that we ought to perhaps think about a – maybe a softer way of presenting the information.

J. Scott Evans: I would suggest that that might be something and I would – and when we get to this – covering this issue I had planned to ask Jeff Neuman to give us a presentation on how they had run it in Dot Biz, which is where trademark claims notice originally came from.

So we could talk about it and see how it was originally conceptualized and to see if it's gotten so complicated that it's not really serving the same purpose. But we'll get to that but I think that's a good point and I think that's a good illustration of how sometimes good things can go bad, because I personally think that what happened is we're trying to give them so much good information that it actually has the negative effect but that's my personal opinion. I saw Jeff's hand go up.

Jeff Neuman: Yes I'm – I think the bullet point – sorry Jeff Neuman. The bullet point on the low validity periods is partially related to marketing but it's also partially related to not having Registrars have a default acceptance anytime someone looks up that name.

So I think the main point is I think there are some technical issues with the trademark claims and sunrise and how Registries and Registrars interact with the – with IBM for the database part of the TNCH not the validators, that either this group can break into a technical track or it could be referred to subsequent procedures to break onto a technical track.

But I think there definitely are some issues that were brought up. I can't remember if it was the face-to-face meeting we had or a call where there were some technical issues that were brought up on what it's like to have a centralized provider versus the decentralized solution that was originally proposed and how this encryption and the keys work and all of that.

I definitely think there is a technical track that we should create like I said either in this PDP or in the subsequent procedures that can tackle those types of issues.

J. Scott Evans: Jeff could I call upon you to take that bullet point and sort of turn it into like a little executive summary of some of the technical issues so that when we get to this – when we get to it on our work plan that's one of the first things we can consider?

But I think this sort of assumes a lot of things and has a lot of assumptions built into it. If you'd break it down for us knowing that many of us are not technicians so that we have a better understanding so we go to discuss it we can decide whether we're going to push it, whether we're going to do a technical track or whatever. Can I call upon you to do that for us?

Thank you. I think we have someone online that has a comment and then I see Phil's hand's up.

Mary Wong: We have another comment from George Kirikos in this chat in Adobe and I it relates both to the earlier data gathering point as well as the current discussion on trademark claims.

His comment is that, "It's probably more effective to collect data now rather than later and that it probably is possible. If for example a prospective Registrant decides not to register a domain name due to a trademark notice, the best means to understand that decision is to collect the data at the time such as by the Registrar or some independent party.

We would of course need some cooperative Registrars who would be willing to implement that into their registration path today." So that's George's comment.

And if I may add a comment from the Staff side that J. Scott you mentioned earlier that there was some liaisons between this PDP Working Group and the PDP Working Group on new gTLD subsequent procedures.

...Payne and I see Susan in the room so that's one means that this group is coordinating with other efforts. And on top of that I wanted to mention that internally amongst the Staff we also have a coordination group of sorts and we meet very regularly, and we are being coordinated at the moment by Karen Lentz who is in the room as well.

J. Scott Evans: Thank you. Phil?

Philip Corwin: No actually I'm glad Mary brought that up. I want to – I also had noticed George's comment and wanted to speak to it. I thought it was useful in that, you know, if someone – now if someone has an existing relationship with a Registrar and logs in where they know the customer, you could go to them after the fact if they begin a registration and don't complete it after receiving a claims notice.

But in the vast majority of cases somebody goes to GoDaddy or eNom or some Registrar and does a search for a name they're interested in and sees it's available and starts the registration.

Claims notice pops up and they disengage and there's no way for that Registrar to have any idea who that is so - to go back to them. So if there is a way for Registrars to build into that process some way when someone – to put up a popup that says, "If you decide," you know, to accompany the claims notice saying, "If you're – if you are weary of this we have an information page or would you be willing to answer questions about why you didn't complete the registration?"

That might be useful because for most potential Registrants there's not going to be any way once they leave the Registrar Web site to ever know who they were if they haven't completed the registration.

J. Scott Evans: I – this is J. Scott speaking as a guy who deals with e-commerce platform providers as my client and has to try to get them to put all the legal stuff at the payment page.

And I can tell you that most e-commerce gurus would tell you that is a sticking point they don't want to add to their checkout process, but that would just be – well...

Philip Corwin: Just to counter that though I think if you're a Registrar and if you're losing a completely valid registration because someone misunderstands the notice or is just spooked by the possibility of violation trademark law, it would be in your interest to try to gather that information and try to provide some explanation.

J. Scott Evans: Okay. Then I would say to Susan and the data gathering group if we might reach out to some Registrars to see if they might be willing to participate in some data gathering of that methodology. So that's a takeaway I'm getting from that. I see Beth.

Beth Allegretti: Beth Allegretti. Is it possible to change the wording of the notice and if so who would do that?

J. Scott Evans: We would and that's something...

Beth Allegretti: Okay. Right. We would...

((Crosstalk))

J. Scott Evans: ...that we'll consider when we get there but I think we need to get some data gathered just to ensure. Brett?

Brett Fausett: Yes I think on the data gathering you would want to know the percentage of people who back out of their cart when presented with a claims notice versus the people who back out of their cart just normally, because you need both figures to see if there's a difference.

J. Scott Evans: Okay Susan did you hear that that we need to get - one of the data points is probably the percentage of people who back out of their cart - their shopping cart once they're presented with a notice versus the number of people who just back out of their cart?

Jeff Neuman: And some people do it anyway.

J. Scott Evans: Right. All right. So I'm going to – (Nick).

(Nick): Just a quick point. There are some people I think from the Clearinghouse here. Shall we ask them what data they might be able to give us easily that would be helpful?

J. Scott Evans: I am happy to do that but I don't think I want to do that today. I do want to reach out to them at some point and I think our data gathering group should reach out to them and ask them that question, because I want to move us on so that we can take our coffee break and then come back and delve into the PDDRP.

So Susan if we can just, you know, have the group reach out to the Trademark Clearinghouse providers and find out what type of information they can provide to us.

Susan Payne: Just as a point of clarity I'm not the chair of that group or anything. It's – I'm not actually sure who's on the group but yes I'm sure once we all get together we'll do that.

J. Scott Evans: Okay. I just keep pointing to you because you've done that. I'm not trying to make you chair, but if somehow since you're here when you all do discuss if you would bring these things forward to them. Okay thank you.

Then let's move on to the Uniform Rapid Suspension System. Your consideration should be given to how to convert a URS to a UDRP. I'll put the trademark owner first in line when the suspension is lifted or have some mechanism to get someone the name that they want after they've won the URS.

And for those of you that may have not been there Monday let me put this into context. I think it was a Registry operator who stated that they've had situations where the true owner of a name has been successful in the URS.

But because of the way it's written and the way it is implemented they cannot then give it to the rightful owner and they want to but they can't. They're prevented from doing so and this is a frustration both for the party who filed the URS, and for the Registry who really wants to get it into the hand of the proper owner. So that's that point there. Beth.

Beth Allegretti: Beth Allegretti. I think that's the key point with the URS is getting that name – being sure that you can get that name back. I know that a lot of businesses don't use it just for that reason. I think that's key.

J. Scott Evans: Yes ma'am.

(Annabeth Polovich): (Annabeth Polovich) representing (MSSID) and one of the URS provider and this is one of the question that we receive after the districts are concluded.

So this is the first teammate I received the next day after the determination. What can we do to get the domain name?

J. Scott Evans: Two hands here and then I see a hand there and then I see this one and then I see Brian so we'll go with Denise for...

Denise Michel: Just quickly Denise Michel with Facebook. I just wanted to support and underscore Beth Allegretti's comments. Not being able to get the name back after the URS is a significant impediment for using that service.

J. Scott Evans: Yes sir.

Maxim Alzoba: Yes Maxim Alzoba for the record. Actually there are two things which might be useful to be clarified for the end users of the URS – yes potential users. So nobody reads the frequently asked questions on the URS provider site unfortunately and they do not – most people do not know that you can file more than one name, more than ten names actually the one time.

And they do not read the line in the very bottom. “If you want to keep the name consider UDRP.”

J. Scott Evans: Ellen and then Brian and then Phil and then Mary.

Ellen Shankman: Ellen Shankman. I think more than any of the other rights protection mechanisms the URS is the one that I think would benefit most from meeting what’s the mentor that will identify it at the time, including being that many brand owners did not want to get their – that domain name and wanted a procedure that didn’t have it and what eventually happens with the URS and how it got that through.

I mean, I think that that of all of them had the biggest gap between identifying the needs that needed to be met and how it eventually played out, and I think that that one would be the best to see whether or not the needs that were identified then and the needs that have been identified since then can be met by an approved URS.

J. Scott Evans: Okay I think Brian’s hand and then Phil and then (Mar) and I saw Petter.

Brian Beckham: Thank you. Brian Beckham for the record. Just to dovetail in what Ellen said I think one of the questions - if we’re asking how to quote convert the UDR – the URS into a UDRP in terms of the transfer remedy, one of the questions we ought to be asking is is there a point at which we can be asking too much of the URS?

And going back to Ellen's comment the original intent was that this was a complement to the existing UDRP where a trademark owner can get the - transfer a domain name into a - into its portfolio.

Some brand owners want that. Some would rather not hold defensive registration portfolios. Around the time when the rights protection mechanisms were being first introduced for discussion, WIPO also introduced a proposal for a very unfriendly URS whereby if there was no response, which we see in almost 80% of cases, is there a need to appoint the panel to render a decision or could the domain name simply be suspended like you have in the DMCA context with appropriate safeguards where Registrants maybe haven't received notice because it goes into their spam box or they're on vacation?

So the question really is what is the intended function of the URS? Is it meant to replace the UDRP in which case that opens up a very big discussion, or is it meant to complement the UDRP as a more narrowly tailored rights protection mechanism?

J. Scott Evans: It's funny you read my mind because I was going to throw out to the group not for discussion today but what I think is the elephant in the room. If you had a default judgment - for those not in the United States if you had a judgment that was issued basically by the provider when there's no response filed, they just resolve the case and then resulted in money being returned because there's not a full case done.

Some money would be returned to the complainant. Would there even be a need for a URS? Okay. So I just put that out there for when we get to think about it and we start - because we're doing the URS right before we do the UDRP and there's - a reason for that is because they are the - closely complemented.

But that's what I put out to you to think about over the next year as we get closer to that. If there was a default judgment that acted as an expedited, cheaper way for trademark owners to win in the UDRP would there even be a need for a URS? And then I think it's Phil and Mary and Petter. Yes and then we'll go to the Forum.

Philip Corwin: Thank you. Phil Corwin and I'm speaking now in a personal capacity that's informed by my experience within ICANN and the BC and INTA and also with Council to the Internet Commerce Association who are professional domain investors.

This is worked out. It's Uniform Rapid Suspension, not Uniform Rapid Transfer. It doesn't mean we can't think about transfer again or at least first dibs to purchase at end of registration period.

There's different ways to do this and different consideration - one that I've suggested and that's gain some support within the Business Constituency that if it's not a generic term at issue, one that might be used for infringing or non-infringing purposes but one that's microsoft.com, google.com, there's, you know, it's not - I shouldn't say Dot Com.

It's Microsoft or Google Dot New TLD and there's almost no way you can think that it could be used for any amount - infringing uses except by the trademark owner.

Maybe it should just be taken - shouldn't be available for reregistration, that is the trademark owner doesn't have to require it and pay perpetual defensive registration costs and they're not going to see it registered, you know, and have to bring another URS or UDRP.

And maybe there's a good case to make that if they want to acquire it that they should have first dibs but we have to be - there have to be safeguards because I know from the trademark owner's side there's nothing they hate

more than someone registering a new TLD for \$0 or 5 cents, and then they have to spend \$500 on a URS or \$1500 on a UDRP filing fee plus attorney's costs to stop just blatant infringement.

I know from the domain investor side there's nothing that drives them crazier than having a domain that they're using in a non-infringing way and somebody – and it's registered ten years before a trademark.

And then somebody registers it for a trademark for something else and offers them some money, and it maybe that he think is insufficient and they have no interest in selling a domain and then they're hit with a UDRP, and they have to spend money on attorney's fees fighting a hijacking attempt.

So we don't – I know from the Registrant – professional Registrant side they don't want to see URS turned into a quick and cheap way to attempt domain hijacking.

And we're going to have to keep the balance and keep a fair system for both sides because one question we're going to have to deal with down the road, and I think we have discretion whether we deal with it at the end of Phase 1 or in Phase 2, is whether URS or any of these other RPMs should become consensus policy and applicable to the big legacy TLDs.

So I just wanted to get those thoughts out there. I'm open to anything but we just have to keep reasonable safeguards and a balance between the rights of trademark owners and Registrants as we consider changes. Thank you.

J. Scott Evans: And Mary.

Mary Wong: Thank you J. Scott. This is Mary from the Staff. There are comments from George Kirikos and I'd like to follow them up with a note from Staff as well. So George has a comment on this thread of the conversation.

He disagrees with the transfer of the name because as he's noted that this would then replace the UDRP, and he notes further that the protection for Registrants in a UDRP are not present in the URS.

Further he also notes that due process demands that a review should still be done even when there's no response, because all too often Registrants are not properly served with a URS notice.

And he notes that we should take a look at how often extensions of time are asked at the U.S. PTO or in court. His final comment on this point is how would trademark owners like it if one could cancel their mark for \$100 filing fee of limited evidence?

J. Scott Evans: Okay I think it would...

Mary Wong: Can I follow with a Staff note? Just a very brief note that into – in relation to this suggestion from Monday that you see on your screen, the list of topics for our working group that is in our charter does touch on this, as well as part of a broader question about whether the URS should allow for additional remedies or other remedies such as the transfer or right of first refusal.

J. Scott Evans: Great. Petter?

Petter Rindforth: Petter Rindforth. First of all I think we have to have in mind that it's a Rapid Suspension System. It's – so it's important to keep the UDRP and the URS aside.

They're two different kind of systems which is different kind of objects. And even if the transfer in the URS is not possible also think about when the domain name is suspended.

There is on the Web site - there was connected to that – there's a new site getting up stating that this site is suspended and then there's a short information about the URS system.

So it's not just that you can't find the domain name or the Web site. It's actually informing that this has been a misuse of this domain name in a certain way.

And for some time that's what you see when you search for it. And I think might get – I'd just like a quick – go through the difference between the UDRP and the URS.

I saw the initial questions here but I think also it's important I remind that with a URS the burden of proof is clear and convincing evidence. It's rather a little bit a higher level than for the UDRP.

And when it comes to the UDRP the complaint word limits is 5000 words. With the URS with the clear and convincing evidence it's 500 so that means – well of course for employers it should be a good experience to be more clearer and then put away some of the discussion parts of our evidence.

But it's a little bit contradictive in this way and so I think we should be very clear about the URS system as a whole and also the very – the short time limits to make a decision and us having in mind that panelists for both these kind of dispute resolutions process – we go through the whole case.

We don't just look just because there's no reply from the domain holder. We order a transfer or we order a stop. We go through all the comments and you can also see from the URS cases that most – each one and every one is definitely when it comes to the first phase are decided on behalf of the complainant.

J. Scott Evans: Okay I think Petter Rindforth had a comment.

Petter Rindforth: Yes thank you J. Scott. This is Petter Rindforth from Forum. Related to the same subject we are getting some questions between the URS and UDRP and to how – as they – they're currently written how they interact with each other.

I don't think there is anything in the procedures currently that prevent a UDRP filing after a successful URS suspension. So as a provider we can't really prevent the trademark owners from filing a UDRP, but if they do get a favorable decision in the UDRP while the URS suspension is still in place the interaction between the Registrar, the Registry and the decisions between the URS and UDRP become fairly complicated.

And so the working group could set – shed some light for all of us I think: the providers, Registry and Registrars and – as to how to handle the URS and UDRP in conjunction with each other as they're currently written. Thanks.

J. Scott Evans: I think that's a excellent point because as a member of the IRT I can tell you one of the things we thought was, "Well if you really want the name you could still bring the UDRP."

But then I think when it got to implementation nobody told the Registrars and Registries exactly what they should do in the event that happened. And so I think that's the point you're making is if we decide they can be used conjunctively, we need to help out the Registrars and Registries with some implementation ideas of how to make that work fluidly so that we know what the communities expect. That's what I'm hearing from you. Is that correct?

Petter Rindforth: Exactly and I think recently we are seeing a couple of cases that are currently going through that process. It will be interesting to see how it all pans out.

J. Scott Evans: It would be great if as – when we get to this if those have been resolved if you would share that with us as a case study please.

Petter Rindforth: Yes. Sure. Absolutely. Thanks.

J. Scott Evans: I have Phil's hand and then I saw Jon Nevett's hands.

Philip Corwin: Yes. Two quick comment and - on URS and the administration. The Uniform applies to uniform administration. It means that no matter which dispute resolution provider you pick it should basically be the same result at the end.

It shouldn't – we want folks to pick the provider based on convenience or they're dealing in a language that another one doesn't deal with or something like that.

We don't want forum shopping based on different qualitative treatment. I think we also need as we're gathering data in advance of our URS review to look at if the providers have been sticking to the standard.

The standard is they have to find that there's been bad faith registration and use by clear and convincing evidence. From what I've seen, and I don't look at every URS decision, I think the vast majority of decisions they're sticking to it.

But I also have to say I've seen a few decisions where I wasn't so sure it was a black and white case. It was more kind of shades of gray that maybe should've been sent to the UDRP.

And I've seen one or two where there was no use of a domain and yet there was a decision against the Registrant. So I think we want to look at if it's been, you know, the providers are enforcing the cases as per the prescribed evidentiary standard and if not well what ICANN – I know there's an MOU between ICANN and all the providers but we don't know.

Just like we want to see contractual compliance with Contracted Parties, Registrars and Registrars we want to see some compliance effort if a dispute resolution provider is getting off the reservation on how they enforce an RPM. Thanks.

J. Scott Evans: John.

Jonathan Nevett: Thanks J. Scott. Jon Nevett from Donuts. Just want to respond to Petter. The thinking when we drafted the URS back in the day on the IRT and subsequently in the FTI was that the standard would be exactly the same. You have to prove the same thing between URS and a UDRP, but the burden of proof was different. The burden of proof, as you mentioned, is clear and convincing for a URS.

And the reason for that was we were looking at, and (Alan) always liked using the term slam-dunk cases, we wanted a quick, easy way to take down a case of infringement for a slam-dunk case. So if you can't say it in 500 words, thinking was if you can't say it in 500 words maybe it's not a slam-dunk case, maybe it's not what we intended for the URS. So the thought was, you know, do a quick takedown, cheap, fast, easy for this - at the time (Brian) it was 70% of cases that went un-responded to.

And then if you wanted to follow up, as J. Scott said, if you want to follow up with the UDRP to get the name, that'd be a little longer process. But we wanted to get the takedown process quickly and easily for trademark holders, and that was the thinking back down. And, you know, we can talk about how we did. I just looked at our stats from (Donuts), we've had oh it looks like a little over 200 URSs with a 90% success rate so far. So people - some people are using it.

J. Scott Evans: Okay with that I'm going to call a break and everyone has 15 minutes to check your e-mail if you're not doing that right now, play on your Facebook. Unfortunately we don't have coffee in the room. I'm not responsible for that so

I apologize to everyone, but I do think there's a café downstairs that sells coffee, so. Let's all take a break. We'll meet back here. And when we come back we're going to focus on the PDDRP. Thank you all. And for those on the phone, take a break.

((Crosstalk))

Man: How long are you targeting this working group, or do you have an estimate of that?

J. Scott Evans: Yes we're estimating phase one on the new TLD (unintelligible) finishing all the work about a year from now. We have the final report recommendations (unintelligible).

Man: We haven't even - it's impossible for us to even estimate phase one of our PDP.

J. Scott Evans: No it's a multiyear process. But it's interesting work and it's important and the thing is I told everybody (unintelligible) whatever changes we recommend and ICANN adopts, don't expect that's going to be the rule (unintelligible). Nobody's coming back anytime soon. So whatever tweaks we make, decisions we make, that's it. (Unintelligible) I mean I'll probably be gone off the planet before (unintelligible).

Man: And also it's important work.

((Crosstalk))

J. Scott Evans: Ladies and gentlemen, we're going to start in about five minutes, so if you'll start wrapping up your conversations. I do notice that they brought snacks and things over here in the corner if you'd like to help yourself before we get started.

((Crosstalk))

J. Scott Evans: If everyone could start making their way back to their places we're going to start in a couple minutes, please.

((Crosstalk))

J. Scott Evans: I just want to check administratively, are we still recording or can we start the recording? If someone will give me a thumbs up. There we go. All right. This is J. Scott Evans. I am one of the co-chairs of the Review of All Rights Protections Mechanism Working Group. This is our face-to-face meeting here in Helsinki. It's June 30, 2016.

We've just finished about an hour and 20 minute discussion going through all the rights protection mechanism and some of the issues that were brought forward at our meeting on Monday. I have been - I told everyone we're going to move to the PDDRP discussion, but I did get a request from WIPO that they could respond to Phil's comment about the consistency of decisions and the importance of that. So with that I'm going to turn it to Brian Beckham, and then after that we're going to turn right to the discussion on the PDDRP.

Brian Beckham: Thank you, J. Scott. Again, Brian Beckham for the record. I just wanted to respond briefly to the comment from Phil. With the U in uniform, I'm not entirely clear on the history with the URS but certainly with the UDRP, that's meant to mean uniform across all top level domains. So before the UDRP there were different dispute resolution systems being managed by registries and registrars. The UDRP came in to provide a global disputes resolution mechanism across all top level domains.

And so I think it's just important to be careful about when we talk about uniformity of decisions, this of course is an area of the law, trademark law, particularly where there are differences of opinion. Not every decision is going to be decided exactly the same. There are different sets of facts and

circumstances involved. There are external experts that look at these cases. So there will be differences of opinions in these cases.

And finally in terms of the suggestion about checks on providers where there are differences in the decisions themselves, I know certainly for our part, we have an annual training meeting where we get all of the UDRP panelists together. We also provide a jurisprudential overview that assists the parties and the panelists in their pleadings and in the decision-making process.

And so I think the question is not so much about what is the provider's role, because the providers are neutral adjudicatory bodies, they administer the disputes. The cases are actually outsourced to external experts to render the decisions. So to the extent there might be questions about similarities in decisions and outcomes, maybe one of the areas to look at in the URS is is there a need for training of panelists like we do for the UDRP.

J. Scott Evans: Great. Just for the record I want to correct a little factual information that you just said. Prior to the UDRP there was only one registrar and one registry, so there was - it was uniform but we were getting ready to introduce competition into the registrar level, which is why we wanted something that would apply across everyone.

And before then, there was no dispute mechanism. You had to go to federal court in the United States, no matter where you were from. That was your only remedy. And that's the reason we went with this because it was very expensive both for the registry and the registrar who got pulled into the dispute and for the trademark owner as well. So just a little factual information there.

But I think your point about training is an excellent one and one that we should consider, and that is certainly a recommendation that I think that we could make and I think it's also an obligation that we could put on ICANN. It

certainly has enough funds that educating panelists would be something that would be good for the community, I believe.

All right with that we're going to - Petter Rindforth, I'll let you have one comment and then we're going to move to the PDDRP.

Petter Rindforth: Just one quick comment. First of all, there is for all these new dispute resolutions (unintelligible) educational sites for panelists but then also for the dispute resolution providers that I know about, they have annual meetings with the panelists, going through the cases and updates. And although it may not be as long as the annual WIPO meetings but it is some hours. And if there's a possibility to have a more common yearly further education, that's good. But the panelists are not without any (unintelligible) or competitive education on these cases.

J. Scott Evans: Great. All right with that let's turn to the PDDRP. As - I don't know who was on our last couple of calls or not so I'm just going to sort of let you know where we are, and also for I guess the observers in the room to let you know where we are. We're looking at the PDDRP. What we have done is we had asked the providers who are in an agreement to be providers of the PDDRP to answer some questions for us.

And so we got written responses from the WIPO, we had a live presentation from the forum, and then I think we had a written response from the Asian dispute resolution group well. And those should have been circulated to everyone. You should have seen those.

What we've learned, just for the room, is that no one has used the PDDRP since its inception. We also have learned that there have been questions that the providers have gotten from people who have wanted to know what it is and we I think what I remember surmising was some people were concerned that there was no remedy available, there were only recommendations that

you could get from the panel, not necessarily a remedy. And so that was discouraging to them.

It was expensive and I think there were some burden of proof issues that were pointed out because it's a clear and convincing standard as well. So those are the issues that we've taken in and the information we've gotten from the providers. So is there anyone who has any thoughts on the PDDRP that are on the comments we've received from providers that they would like to bring forward now? Okay. Yes, Jeff?

Jeff Neuman: Thanks. This is Jeff Neuman. And again, just to go back to some of the original work that was done on the PDDRP by the IRT. That's a lot of acronyms there. The reason why there were no remedies provided or why -- let me go back a step -- the reason why ICANN imposes the remedies is so that the registry has some avenue to appeal those decisions. There is a dispute resolution mechanism in contracts between ICANN and the registries. So if it's ICANN imposing the remedy, then the registry then has the jurisdiction to appeal that decision, if you will, in its contract with binding arbitration.

Absent that, there was no way that a registry could appeal a PDDRP decision by a panelist to a court. There's no cause of action. It's not like infringement or anything like that where a court would have jurisdiction. So there were a lot of discussions, and I'd be happy to go into in more detail as to why it was that IRT had not mandated at the time that the panelists or the providers were the ones imposing the remedy.

J. Scott Evans: Thank you, Jeff. I have sort of stayed silent on this from my personal perspective so I'm going to sort of open it up right now from me speaking as a trademark and member of the IRT. I personally think that it hasn't been used but that's not evidence that it's not useful, right? I think also it is way too early to make a decision about whether it's non-use when some of the registries have only been online for about 18 months, whether it needs to be changed

or -- because I'd change a lot of things about it if I had the time. If it needs to be changed or anything.

I think my personal perspective is that it should be left in place as it is and maybe looked at again at another review time, because I just think it's too early and because we have had no cases under it, we can't really point out any flaws other than what we would say are theoretical flaws based on our own theoretical beliefs on what the policy should be doing. That's my perspective personally. I see we have someone at the microphone. I'd like to acknowledge them and then I'll go to Ellen Shankman.

Man: (Unintelligible) from (unintelligible). You know, I made a comment yesterday about the fact that there must be an avenue to remove a TOD operator from power. You know, if it's abusing too much. And I certainly know of cases where that actually should be initiated. Maybe the registry operator could reform or not but there should be an avenue that makes sure that this could be the consequence, you know, if the registry operator did not reform. Under the (unintelligible) right now this is clear to the parties. It's so confused that nobody knows what to do if there is a clear pattern of misuse or you know, condoning misuse by the registry operator for this actually to take place.

If there is no remedy by the panel, does that mean that the ICANN Board can make a decision or who can make a decision in this case if there is no remedy? I haven't understood that. I'm not sure if it is clear at all.

J. Scott Evans: Thank you. I think there's a recommendation that goes from the panel to ICANN. Now, who would then ICANN - I don't think the policy specifies who that is. I would assume -- and here again, this may be an instance as we've pointed out with the URS UDRP situation -- that there's so much ambiguity my assumptions are incorrect, that it would go to contract compliance and they would be the ones that would make a recommendation within ICANN. But there's no stipulation in the policy for how it's handled I do not think. Jeff.

Jeff Neuman: Yes, I would agree with that - this is (Jeff Newman). I think again if we go back to the mindset in 2009, I think (Christine) had said it on the last call that really what everyone was upset about was at the time contract compliance wasn't doing anything. And everybody was trying to get contract compliance to do its job. And so the whole notion of having the PDDRP I remember these discussions clearly. We kept saying it wouldn't even be necessary to have a PDDRP if compliance did its job.

Now we're in a very different environment. Compliance is doing a lot more of them than they did back then, you know, and so it's hard to imagine what it was like back then. But that's what it was. That's why it came into existence as (Christine) said on the last call.

J. Scott Evans: Ellen?

Ellen Shankman: Ellen Shankman. Then going back to why we did it was also we thought we wanted to have some (unintelligible) protection mechanisms going into the system and we wanted to have something that was going to be a catchall at the end, so that we had hoped the rights protection could filter out the abuse from the front end, but if it didn't then we wanted to have at least a catchall that would allow it to do it at the back end.

And I agree with you that both why we had recommendations and that it may be too soon to do it. The hesitations that I've been hearing conversations about is that it's been described as a "nuclear option" and that nobody wants to do it because it's taking down (unintelligible) and people are afraid of doing nuclear options. I don't know if that's a correct label, but even if it is then I think the questions might be do you want to think about mechanisms for identifying steps that are shorter than the nuclear option that may lower people's resistance to trying to address the problem.

J. Scott Evans: Thank you. Mr. Corwin?

Philip Corwin: Phil Corwin. And I want to thanks, Ellen, for that great segue into what I was going to say and am about to say, which is if it's (unintelligible) as a nuclear option one, the best use of nuclear weapons is to deter their use, of their ever needing to be used and if this is having a deterrent effect against really bad practices by registries and this is the only RPM that's directed against registries, rather than registrants.

That's good when you survey the feedback from the providers on one hand who say the burden of proof is so high -- and we want a high burden of proof here if it's a nuclear option -- and the fact that the end result is just recommendations because then you get into a contract where you're really talking about shutting down a registry where they put a lot of money in establishing that registry and people have established domains there and you're really wiping the whole thing out. End result you want a high burden.

On the other hand, I think maybe what's mitigated the need for better use has been better vetting of the applicants to make sure there were no obvious infringing registries up front and better compliance effort. So all of that is good, but I think back when I first got involved with ICANN, there was a collapse of a registrar called Register Fly.

Man: Register Fly.

Philip Corwin: Which was engaged in really criminal practices, where the executives were stealing - they were putting a lot of domains in privacy protection then registering them in their own name and taking the money and it was really terrible and we found out that at that time, ICANN had a nuclear option for registrars, which meant that it was rarely used because the only remedy was shutting them down completely and the REA was changed to provide you know, a number of different steps of enforcement with that being the last option.

So one thing we might look at here is whether there's some intermediate options to discipline a registry that's kind of questionable without going completely nuclear. Kind of a tactical option rather than a nuclear option. I'm not saying we should do it, but we should look at whether that might be advisable. And I do agree that it's way too early. If it's have a deterrence effect and that's mitigated against needing to actually use it, that's good and I think it's far too early in the new TLD program to think about eliminating this completely. That's a personal opinion.

J. Scott Evans: Okay, I see several hands. I have a question first. Maybe I am incorrect, but I didn't think the only remedy or recommendation that could come from the PDDRP was the nuclear option. I think that is like the last thing that can happen and there are all these steps filled in. So the fact that people keep talking about the only recommendation you can receive is pull your - cancel your registry agreement, I don't think that's correct and I want to get that on the record that I don't think that's correct. And I'm going to come to you, (Jeff), and you can let us know. But I think first I had (Paul) and then I had (Christine) and then I have (Jeff), okay? (Paul.)

Paul McGrady: Paul McGrady. I'd like to build on what both (Ellen) and (Phil) have mentioned and again, without addressing the issue about is nuclear the only, all that. I agree with you that without any data to know whether or not this thing is working the right way, the only data we have is that there haven't been any so again, that may be deterrence - that may be cost prohibitive. We don't know why there are no complaints under it yet and there's no way to sort of guess that.

But I do think what might be helpful and what might help to ford deterrence of complaints under this - frankly that's never used and maybe it's the best policy ever right? Is what (Ellen) and (Phil) are talking about, which is some sort of intermediate step. (Phil) said discipline. I would even change the rhetoric a little bit and just talk about bringing a registry in the conversation by somebody who has a concern about something that's going on in that space.

And so some sort of active mediation method that we could tack onto this, rather than changing this. If we could tack on a mediation step where we bring registries and parties who feel aggrieved and maybe ICANN into the mix to talk about the problem prior to action. I think that would be a great thing. And the reason why I think that would be a great thing is because if an aggrieved party really has a problem that is irreparable and superb bad they go to court, right? So is there any mechanism to handle the immediate problem that is irreparable injury if something terrible is going down.

So I think a mediation step is consistent with the ICANN model of talking out your problems instead of the nuclear option, or even leading with a complaint against somebody. And so I'd like for us to consider that. And I also would like to agree with something that (Jeff) said earlier on, which was when this was built we were in a very different environment and ICANN Compliance is a very, very different portion of the organization now than it was. It is much more active and responsive and we've seen a big improvement in that space in the last four or five years. I mean it's just unbelievable.

And so again, I think maybe the environment has changed so much here that we should be thinking more about dialoging with each other, rather than leading with something that is sort of automatically puts people into defensive positions. Thanks.

J. Scott Evans: (Christine), (Jeff), and then (Denise).

(Christine): (Christine) (Unintelligible) with (unintelligible) services speaking in my capacity as former director of the firm and not in any advocacy position, to tie exactly into what (Paul) was saying. When the PDDRP was drafted, one of the big things ICANN Compliance would always call people who contacted them was the only option rather than nuclear option. And this isn't worth cancelling the registrar's agreement or registry's agreement. And so that was one of the big complaints. So when this was drafted they actually did draft

graduated sanctions into the PDDRP and I pasted the provision into the (unintelligible) that shows the graduated sanctions all the way from a simple conversation through just a temporary prohibition on registering domain names to a long-term suspension to eventual and the exact words are "in extraordinary circumstances cancellation of a registry's contract."

So to be really clear, one of the, you know, we (unintelligible) that ICANN Compliance is significant when they address this problem but the intended purpose was to obviously create a list of graduated sanctions.

J. Scott Evans: Thank you, (Christine). (Jeff)?

Jeff Neuman: Yes thanks. So this is (Jeff Newman). Just to first go to (Paul)'s suggestion. Actually, the first step is sort of a medication that's built in there. I wanted to. I remember when I was on the IRT to build in a mediation but I think it was kind of shot down. And (Kurt) was on the side of ICANN so I don't know if he remembers those discussions, too. I wanted to bring ICANN more directly involved but that was not - ICANN didn't want to do that at the time and maybe they will.

But the first step is that the parties have tried to work it out already and then they couldn't, so you have to have the complainant make a statement that says you've already notified the respondent and you've tried to work it out. It's been 30 days and you haven't been able to work it out. So that's already built in and we could actually emphasize that as a group.

The second thing is I really want to make it clear, this is only for one very specific type of "bad behavior" and that is a registry essentially profiting off of trademark infringement that's going on within the registry. It's not meant to address any other bad behavior. It's not meant to address, for example, you know, trademark owners are not happy with the prices that our registry charges for Sunrise. It's not meant to address that. If we want to address that, that's fine -- we can do that some other way. But the PDDRP is not for

registries as bad actors. It's registries that are bad actors that are also profiting off the infringement that's going on - trademark infringement that's going on. Not copyright infringement, not anything else.

So it's very, very, very narrow.

J. Scott Evans: I just want to make a couple of points. One, I think you're correct. But two, I disagree. I think this group can make it whatever it wants to make it. Okay.

I'm going to go to (Paul) because he wants to respond to (Jeff). Wait, wait, wait. (Paul) to (Jeff), then I'll let (Phil), then (Denise).

Man: So (Jeff) what's baked in now is negotiation. And in 30 days - I'm talking about mediation where there's a neutral, right? And then ICANN participates to the extent it's comfortable and the two parties, then we have a retired judge running back and forth trying to make the problem go away. So something a little more formal. Thanks.

J. Scott Evans: (Phil).

Man: Yes, a question for (Jeff). (Jeff), is it for any kind of trademark infringement and my understanding is that it has to be kind of intentional. You have to show that the registry intends to profit from infringement. It can't just be willful. One is that there's infringement going on and they're turning a blind eye to it but aren't encouraging it.

Man 4: Correct. That's why I said when I said the registry profiting off of it, that was my shorthand way of saying yes, that it's intentional and it's not willful blindness.

Man: But is it any kind of trade? Would it cover a kind of spam situation I talked about before or just infringing domain names?

Man 4: It's infringing domain names.

Man: Okay so it's a pretty narrow type of trademark infringement.

Man 4: Right now it's very narrow.

Man: Okay. And my one other thought was that I don't know - we can ask GDD. One reason it may not be used is if it's expensive and time consuming, and the most likely immediate result is just to start a conversation, is there another way for a concerned party to think there is a registry that's you know, encouraging some bad practices to get GDD to start a conversation, or is this the only way to do so? So more data we need to gather to understand what's going on and whether we should fix it.

And the last thing I want to say is that we're having this conversation now but at some point for this RPM and all the others, we're going to be asking participants in the working group and other parties to come to us with your specific suggestions for how you'd like to change each of these RPMs and we'll consider all of them. But there will be a time for each of them when there will be an opportunity to suggest this or that tweak or this change, narrow it, add this possibility and so start thinking about what you want to suggest to the whole group for as we approach that stage for this one.

J. Scott Evans: (Denise), and then I'm going to the microphone.

Denise Michel: Thanks. (Denise Michelle) with Facebook. Originally I was in the queue to clarify that there is a graduated sanctions involved in the PDDRP. Other options of course are (pick) DRP. But since I have the mic I just wanted to reinforce that I think it's important for this group to reach out especially to trademark holders and understand why these mechanisms are not being used.

We certainly know that there are registries that are profiting off of deliberate trademark infringement. I think the important question is the market is speaking and the market is not using these mechanisms. So I think it's really important to understand why.

Man: Back to the mic. (Unintelligible) again from core (unintelligible). I think what's difficult to understand for people who look at this from the outside -- I mean from users -- is why limited to trademark if there is many other kinds of abuse that you know, quite, quite dangerous - quite problematic. And you know, being engaged in.

And the other thing is of course in any registry there is not just bad users. So termination of the contract is kind of an option that had a lot of collateral damage. But people who were not concerned. Whereas redelegation would be the responsible way to address it. You know, so redelegation would be an appropriate avenue to make sure that registries are removed from a bad registry operator and put into the hands of a good one.

J. Scott Evans: As chair I'm going to address specifically that I think broadening this policy beyond IP is way beyond our remit, okay? And I would say to the gentleman who has brought it up several times, if you believe there needs to be an avenue to address bad actor registries, then I think you need to be talking to the subsequent procedures group or another group that if they want to develop some sort of policy and it subsumed the PDDRP is one of the things you could complain about, I don't think any of us would have a problem with it being a broad policy where IP is just one of the tick boxes in a broader policy.

But I think it's way beyond the scope of this group to even suggest that this PDDRP be some sort of general abuse policy because the name in our charter is very specific. And it's rights protection mechanisms and that's what we have to focus on. (Greg) had his hand up.

Jay Chapman: Thanks. Jay Chapman for the record. First, to point out that there are in fact three post delegation defeat resolution procedures. The one that we're talking about which its full name is the Trademark Postdelegation Defeat Resolution Procedure. And then there is also the RRDRP which is a Registration Restriction Defeat Resolution Procedure where registry goes beyond what its stated registration restrictions are outlined in its registry agreement. And the (PFDRP) is also another form of post-delegation dispute resolution procedure.

So there is a panoply and I agree only the trademark DRP falls under our ambit in this group. I was part of the group that formed this PDDRP and while all ICANN output comes from compromise, I felt that this was more compromised than most and that we ended up with something which was nuclear option not because of its outcome -- there are graduated outcomes -- but a nuclear option because it's applied to such a narrow set of facts and because it's fairly difficult to initiate and you really need to fit into it.

And also I think there's a disconnect in terms of potential complainants. This is about pervasive and affirmative registry conduct essentially being a ringleader almost of a trademark infringement gang and if you're only one trademark owner, unless you have many, many domains or many, many trademarks that are being infringed, there's really no incentive to be the one to go out there and start this. You know, maybe there should be a class action type of operation although without any monetary remedies, why it's a class action - but at least some way to combine the complaints into one.

The alternative is to try to build coalitions or take advantage of existing coalitions to bring these cases, but I think that the bottom line is that looking for something that fits all of the descriptions of the standards of what meets potential trademark PDDRP problem leaves you with a very narrow window of types of behavior. Thanks.

J. Scott Evans: Okay. We've only got about 15 minutes left and so what I would suggest is what I've heard from (Denise) is we need to have some way to go and ask the market why this isn't an attractive option. We've asked the providers what they have heard. I think we should think about that and if anybody has any ideas. One of the things that comes to mind -- I just throw this out as an idea - - is maybe have a panel discussion. We come up with a facts scenario and we present it to an outside counsel, an inside counsel from a couple of jurisdictions and have them talk through it, why they would or wouldn't do it, just for this group to understand the thought process. So can understand why they would or wouldn't use it. I just throw that out there as a possible idea.

I see (Brett) and then (Jeff) and then I'm going to give you my next assignment.

Man: I'd just like to quickly offer another response. Perhaps one of the reasons that this has not been used to date is because there have been no circumstances that would have required it. So perhaps it has been a deterrent to registries that we hoped it would be and that the behavior hasn't risen to the level where anyone needs it.

J. Scott Evans: (Jeff).

Jeff Neuman: Yes, thanks. This is (Jeff Newman), too. And I want to take issue with something that (Denise) had said. (Denise) said that there are examples out there of where it could have been used. And I actually disagree with that completely. There have been plenty of examples of bad behavior, don't get me wrong. There are plenty of registries I would love to do something with. But in this case you have to look - it's infringement. It is a registry with trademark infringement.

So if you are upset at a registry that's charging exorbitant fees to trademark owners for registrations, unfortunately that doesn't fall under this because they're selling it to the trademark owner itself. They're not selling it to an

infringer necessarily. So I agree with (Brett) and I've been monitoring this because this is a policy near and dear to my heart. I have actually been monitoring and there are bad behavior registries that I would love to have some remedy against but unfortunately I agree with (Brett) in this case, that these specific circumstances I do not believe have occurred.

J. Scott Evans: (Denise).

Denise Michel: Thank you. (Denise Michelle) of Facebook. (Jeff), you misstated what I said. I did not say that there are registries who are profiting off of infringing trademarks and that can't be used for these mechanisms or these mechanisms weren't used for that. I simply said that clearly there is behavior of registries profiting off of infringing on trademarks. Period.

Clearly the market is not using these remedies and we should talk to trademark owners and attorneys and people in this field who potentially could use these remedies but are not. So the market is not using these remedies and I'd like this group to have a clear understanding of why that is.

J. Scott Evans: Okay. Here - please, go ahead. You with your microphone on. That's why - you right there.

(Dennis Chi): Ok, thank you. My name is (Dennis Chi) and I'm now working with New GGO Registry but my former capacity is the secretary general of the ADNDLC. So I echo what my former colleague who responded to the question why are possible reason for the PDDRP not have been used.

But in addition I would like to compliment the awareness of this PDDRP in Asian area is not high. So my gut feeling is it might be too early to say that it is why there has not been used or is there any defect and we need to fix. And another reason is not all the GDRD has been rolling out and operation not new GDRD operators, just at the beginning. So my feeling is might be too

early but of course, if we can pick up some pitfalls that we need to include then it would be a good thing.

But at this moment I don't think there is a mistake or something wrong within the TM PDDRP mechanism. My only comment - my major comment is like what have been manager and my former colleagues the remedies may not be useful and I should say that it should not be - it is lack of certainty because even though you get a remedy from an excellent panel and a peer panel, it is not certain that it could be implemented by ICANN. So the lack of certainty might be a factor for consideration why we need to initiate a TM PDDRP procedure.

If I am a trademark owner, I would like to recover the second level of domain. (Unintelligible) UDRP. If I was just likely suspended I go for URS. So that would be much more straightforward and less burden for trademark owner to tackle this infringement matter.

If there is a very large-scale infringement concerning the operation of new GGRD registry, that might trigger the use of the TM PDDRP to try to try to seek remedies to terminate the registry agreement and (unintelligible) off the registry but that's possible and there is a lot of uncertainty and whether the decision will be appealed or whether there is any subsequent procedures being filed in a competent court. So it's a very lengthy procedure. So is possible ICANN community or the working group may consider making a recommendation perhaps in the future TM PDDRP may consider including final and binding decision from the panel that would be more powerful or that would be to enhance the certainty of the outcome. So that's my very brief comment on this TM PDDRP.

J. Scott Evans: Thank you.

((Crosstalk))

Man: (Brent) from RPIR. Just to echo (Brett), I think there's a pretty good chance that this procedure has never been used because the standards have never been met. It's not just a registry profiting from infringing trademarks. It's a substantive pattern or practice of specific bad faith intent to profit from the sales infringing needs. So that's a distinction with a difference.

J. Scott Evans: Okay I'm going to let (Paul) be the last word on this and then I'm giving everyone an assignment.

Man: So two things. One, I don't know how we would ask trademark owners that question. I don't know what the mechanism - what that would be like. But secondly, the GDRP may be releasing this theme that would build up such that a business model challenge isn't necessary or at least not viewed as necessary. The national pastime of North America is baseball. In Europe it appears to be football. For trademark people the national pastime is Wackamole. And so it may be, you know, there are other mechanisms that release steam enough.

And I don't know how we would get an answer to the question. It's a great question. I just don't know how we would ask it.

J. Scott Evans: All right. With that I'm going to ask two things. If there's anyone that believes there's behaviors in the market now that are occurring that this would address and it's not being used would you please send that to the staff so that we can put it on a list to discuss on our next call, which is in two weeks by the way. It's not next week because we all get I Was At ICANN off. Because half of you are actually going on vacation. I'm not going to tell your employers that.

Next thing I'd like to see is from everyone that's here and everyone on the committee so this will go in the record -- I'd like four points of things that you think should be adjusted or changed within the PDDRP so that we can then put that on a list and then we'll work our way through that list in our call. So that's what your homework is. You've got two weeks to do this. It's give me

four things. And I don't want 30 right? So you can give me two - you can give me four - you can give me five. But don't go over five things that you would change if you were given the pen so that we can put that on our list and we can work through those issues. Because that's the only way we're going to address things is that we have it and we go.

I'm giving everyone an opportunity to put in their thoughts. So I would appreciate it. If you don't have thoughts, that's fine. You can have an opinion about the thoughts. You know, that's okay too. But those of you that believe there should be changes, this is your opportunity to let us know what those are so we can put them before the whole group. We have a robust discussion about those and then we can move forward.

I see another hand over here and then I'm going to let (Phil) and then we're going to close out.

Woman: Thanks. Risking the ire of everyone at the table, can I add to the homework assignment a little bit?

J. Scott Evans: Yes ma'am.

Woman: In addition to things that you might want to see changed, I think it's also important that maybe you include one or two points that are big equities for you. Something that you would not want to see changed. I think that's an important counterpoint to that discussion.

J. Scott Evans: I think that's great. I think we have (Phil) wanted to make a comment.

Man: Yes, just as we close out this meeting I wanted to thank (Jay Scott) for doing a great job of chairing this meeting. I wanted to thank everyone who's here in the room for an 8:00 a.m. meeting on the last day of this ICANN First ever meeting be - particularly those of you who stayed up to sunrise.

And the last thought I want to share with you -- which may be obvious to many but just I think emphasizes the importance of this working group. Yes, we have a long timeline. We're not going to - Phase I - we project delivering a report recommendations on what if any changes should be made to existing RPMs developed for new TLDs at the end of 2017 and then counsel will have to consider whether they wish to adopt them. And then if they adopt them, the board will have to consider whether they will take the last step.

And then the same thing for the UDRP and we haven't even tried to project yet how long that phase will take. It could well take longer than the first phase. But the thought I want to leave you with is that well that's a long time. Once we're done and once whatever changes we're recommended are adopted, there will probably not be another working group to review these RPMs for the UDRP for another decade or two. So whatever changes are made are going to be very long lasting.

So this is your shot if you think changes need to be made to get them. Don't expect that if you miss this train there will be another one along for anytime soon. Thank you very much.

J. Scott Evans: And with that, we're adjourned.

END