

**GNSO
Special Trademark Issues : URS
05 November 2009 at 16:00 UTC**

Note: The following is the output of transcribing from an audio recording of the Special Trademark Issues meeting on URS held on 05 November 2009 at 16:00 UTC . 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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Participants on the Call:

David Maher - Chair
Jeff Neuman
Jon Nevett- Registrar
Jeff Eckhaus - Registrar
Mark Partridge - IPC
Paul McGrady - IPC
Zahid Jamil- CBUC
Phil Corwin - CBUC - alternate
Wendy Seltzer -NCSG
Robin Gross- NCSG
Kathy Kleiman - NCSG
Konstantinos Komaitis - NCSG
Alan Greenberg - At Large
Olivier Crépin-Leblond - At Large alternate
Maimouna Diop – GAC Observer

ICANN Staff:

Kurt Pritz
Liz Gasster
Margie Milam
Amy Stathos
GNSO Secretariat

Apologies:

Marika Konings

Coordinator: This conference is now being recorded.

Gisella Gruber-White: Thank you very much, (Louise). David, would you like me to do a quick roll call?

David Maher: Yes please.

Gisella Gruber-White: Good morning, good afternoon to everyone. On today's call we have Maye Diop, Zahid Jamil, Paul McGrady, Amy Sathos, David Maher, Jeffrey Eckhaus, Kathy Kleinman, Alan Greenberg, Mark Partridge, Olivier Crepin-Leblond, Konstantinos Komaitis, John Nevitt, Robin Gross, Philip Corwin, Jeff Neuman. And from staff we have Margie Milam, Liz Gasster and myself, Gisella Gruber-White.

If I could just please remind everyone to state their names when speaking. And also if your line isn't on mute press star six to mute and star six again to un-mute. Thank you.

David Maher: Okay. Thanks. I think we can get started. I asked Margie to put up the common ground chart that starts at box 12 on the URS. And the first issue is the question of whether or not use of the URS is mandatory for applicants. Anyone care to step in on that issue?

There are already a number of yes votes although I'm not sure. I noticed that one of the yes votes appears to be for the registries stakeholder group. I don't believe that the registry group as such has taken a position on this.

Jeff Neuman: Hey David, this is Jeff Neuman. I'm not able...

David Maher: Yes.

Jeff Neuman: To be on Acrobat yet. Yes. That's kind of one of the things I wanted to clear up yesterday. And I think it was cleared up that the people - what it says in the common grounds paper where that says yes, for some of the groups it's not the constituency or the stakeholder groups themselves but really just the representatives from those stakeholder groups. And David, I believe that you and I did say as representatives that we thought it would be okay to be mandatory.

David Maher: Yes. That's true.

Jeff Neuman: But the...

David Maher: I'll...

Jeff Neuman: But you're right. The stakeholder group -- sorry, this is Jeff Neuman -- stakeholder group has not officially come out with that position.

David Maher: Okay. Alan?

Alan Greenberg: Yes. At large it's still a bit divided on that. We're having a number of discussions. I'd like to understand from various people why it should not be mandatory. In other words what is the rationale for a registry not wanting to use it?

David Maher: I - before we go down the list I think one explanation that I've heard is that there is an option to do some other form of protection such as (Sunrise) that would be at least conceivably a stronger protection against cyber-squatting. But that's - Jeff, why don't you go ahead?

Jeffrey Eckhaus: Sure. Thanks. I guess - I mean I guess I'll bring this up. I think - I don't know if it's the elephant in the room but I was just curious how - I mean I think I've said before just not as for the registrar constituency but for myself that I was in favor of it being mandatory.

But now I don't know. My position hasn't changed. But I wanted to know how this fast track UDRP, how that, you know, affects the URS and what people's thoughts are on it.

And I mean I think it should be a topic. I don't know if people would like to discuss it today because I think it might affect some of the URS discussion.

So I wanted to know if that could be discussed at all today. And if that changes it might change people's minds about being mandatory depending on how that comes out or how it's described.

David Maher: I - my inclination -- this is David -- my present inclination is to rule that out of scope on the grounds that an amendment to the UDRP of - is dependent on ICANN accepting the amendment or the added procedure.

And this is a - clearly a long, drawn-out process. I'm not sure that we even have all the details yet of the - what WIPO is proposing. And...

Jeffrey Eckhaus: Well...

David Maher: Ever since - at least one issue here is whether or not there's a sunset period on the URS or review after a term. I think we ought to focus on the URS and not confuse the issue. But...

Jeffrey Eckhaus: It's Jeff again. Sorry. I was just curious. Is it - I mean I know we don't know at this point.

And I'm okay going on without going through it. But if anybody - I don't know if anybody on this call might have some color on it and maybe if there are thoughts on how it might cross over onto the other or - I agree with you that it is out. But I'm saying if somebody on this call might have some color on it or my idea on it then maybe they could share with the group if...

Maye Diop: Jeff, this is (Mi).

David Maher: I'd like to ask people to contribute that offline or by email to the group. We've got a lot to cover today. And I really think it's better to stick to our agenda. Zahid.

Zahid Jamil: Yes. I want to just address the question as why should it not be discussed. The IP clearinghouse, IP claims and (sunsets) are basically pre-launched. It seems that we will have no remedy for post-launch minus the UDRP.

And so there needs to be some (unintelligible). And to my mind the URS is the only remedy that there is really as an (RPS) post-launch.

David Maher: Okay. Jeff Neuman.

Jeff Neuman: Yes. This is kind of bizarre because I don't remember any of the comments saying that it shouldn't be mandatory.

I think this was introduced by ICANN. And it was introduced by ICANN because of the question of whether ICANN had the ability to make it mandatory or whether this was a policy that needed to go through the policy process with the GNSO.

So it's really an ICANN-introduced change as opposed to anything that really there were comments on. From my standpoint as a registry -- and I said this at the trademark session in Seoul -- I don't think it's fair of ICANN to put us in a position to make it not mandatory and make us choose as a registry whether to implement it or not. That's really not fair to do that to us because we're not trademark experts.

You know, just tell us what to do and we'll do it. Either it's in definitively or it's out. But to actually make us the arbiters as to whether to include it or not is unfair and it's ridiculous.

And it puts us at risk of liability because if we don't adopt it and a court determines that it - we should have adopted it and it was a reasonable measure well then we're liable. So we're kind of damned if we do, damned if we don't.

And it's really ridiculous. And ICANN needs to get off the ball and either say it's required or it's not but not have it as optional and give points for it. It's just - obviously it's how I feel about this.

Alan Greenberg: It's Alan. I guess the question I was asking is obviously if you plan to have a gTLD which is targeted at cyber-squatters you'd be better off not having the URS. But is there anything in it for a regular registry to not have? Are there costs associated or any other region from a registry's point of view not to have it?

Jeff Neuman: Well - so from a registry standpoint it's more expensive. It's expensive to implement it. You have to put measures in to actually do these things that are being talked about like having a mechanism to not only - to freeze, which is actually not a current status in EPP. It's actually a mixture of a bunch of them.

And you have to point to a page which is out of process. And there's internal clock changes that need to be made depending on...

Alan Greenberg: Okay.

Jeff Neuman: What happens with timelines and things. So yes, from a registry perspective purely it's more expensive to operate if you're going to have a URS. I'm not saying it's not worth it.

And it's much easier to do it at the outset of a new registry than it would be to implement it in an existing registry. That actually would be much more expensive.

I'm not saying that we wouldn't do it as .biz or whatever. But I'm saying the costs are much greater with an existing registry.

Alan Greenberg: Okay. That's the kind of thing I was trying to understand. Thank you.

Jeff Neuman: Yes.

David Maher: Kathy.

Kathy Kleinman: Yes. Thank you. I thought that - I want - I thought that one of the issues we were talking about in Seoul was registrar/registry choice and that opening up and keeping the choice as open as possible on many different issues including the trademark clearinghouse and how it will be used and how it will be implemented, a choice for the new detailed registries.

So here too the URS is a choice as an optional best practice. To the NCUC it made a lot of sense. And my constituency strongly supported the staff recommendation on that.

But I'd like to suggest that in some ways that maybe this issue could be tabled until later because a lot of it will depend on what the URS looks like and how fair and how balanced it is. And then coming back to this question may come up with different answers.

David Maher: That I think is a constructive suggestion. Let's hear from some of the others first. Paul.

Paul McGrady: Yes. I, you know, I know that we want to table things if we can't, you know, reach an immediate consensus on them. But I - and I don't have an opposition to putting this issue at the end.

But I do think that it's fair to say that this is the primary issue. There - if you have a URS that's not mandatory it's going to cause havoc frankly.

It's going to be viewed as something that is not effective. The time involved in trying to ascertain who or who has not adopted the URS is going to slow down the rapid nature of the system which is its point. And more importantly it's going to expose the registries and the

registrars to liability because as Jeff pointed out it puts them in a pickle.

The pickle is if ICANN says this is a best practice and they don't adopt it then when it comes time to decide who's involved in cyber-squatting and who needs to be sued the registries and the registrars will be considered to be not in compliance with ICANN's best practices which certainly could, you know, raise some eyebrows in the various courts.

On the other hand if they do adopt it even though it's just a best practice and not mandatory then we have the problem with the clear language of the ACPA which provides limited statutory immunity for transfers and suspensions in trademark cases when the registry and when the registrar are acting in conformance with a "reasonable policy." And the UDRP has been found to be reasonable in the past by courts I think primarily because it was an ICANN consensus policy that was binding.

And so we have a situation where registries will be dis-incentivized to adopt the URS which basically makes it, you know, essentially it's just lip service. There's no real guts to it. There's no real benefits to the trademark owners. Essentially if it's not mandatory it's essentially the same thing as scratching a line through it but protection is still there.

David Maher: Okay. Thank you.

Paul McGrady: The benefit - I just want to finish one more - last thought David. And I promise not to harp on this.

The benefit to registries and registrars on the other hand is the flip side of this which is the ACPA does provide some limited cover if they are acting in relationship to a reasonable policy. If this is mandatory it will be considered to be a reasonable policy brought up through the GNSO process. And so if I were a registry or a registrar I'd be deeply interested in making this mandatory in order to provide some much-needed cover for suspensions.

David Maher: Okay. Mark, you had your hand up but then took it down.

Mark Partridge: Well I think what I was going to say has really largely been said except for maybe the implied point that if it's not mandatory we create the possibility of safe havens for cyber-squatters and we also create an economic disadvantage for the responsible registries that adopt this so...

David Maher: Okay.

Mark Partridge: It should be mandatory.

David Maher: Thank you. Jeff.

Jeff Neuman: Yes. I just wanted to respond to something Kathy said but ask it in a question to ICANN staff that's on this call because Kathy said it's a matter of choice and she thought that some registries and registrars wanted choice.

Margie, were there any comments received from a registry and registrar that said that they wanted - or specifically a registry or new registry that said they wanted it to be a choice? I'm not aware. And

frankly if there were no comments to that then Kathy, I think from my perspective I don't want the choice.

And I don't see that - I don't see the choice of having a URS being a distinguishing factor between competition in gTLDs. I think it's basically - intellectual property issues are kind of a nit that we have to deal with. We don't necessarily want to but we have to.

And it's not really something that is a matter of choice. So my vote is that if no registry has submitted comments saying it wants the choice then I think that issue is a red herring.

Kathy Kleinman: But comments are due on the 20th, right?

Jeff Neuman: No. I'm talking about comments when - in the initial round when the IRT had suggested it as a - something (unintelligible). I just don't think...

Wendy Seltzer: Wendy just joined the call.

David Maher: Okay. I think we can...

Margie Milam: Yes.

David Maher: Move along. I...

Margie Milam: Hey David, it's Margie. I can respond...

David Maher: Yes.

Margie Milam: ...to Jeff if that's all right. Yes. I'm not aware of any comments that made that specific request to make it a choice.

David Maher: Okay.

Wendy Seltzer: This is...

David Maher: Who's speaking? Oh, no one.

Wendy Seltzer: This is Wendy. I just joined and I'm not able to get into the web interfaces.

Kathy Kleinman: David, can I respond very briefly?

David Maher: Sure. Go ahead.

Kathy Kleinman: Okay. Yes. I think that we should continue this conversation - I'd like to move that we table this and come back to it when we know the details of the URS.

But at least in the NCUC again their deal of - Jeff, you said you don't want choice. That was a concept that we've discussed a lot in the hallways but also that there might be noncommercial, completely noncommercial top-level domains to which these - this process and these costs might not even apply. So that was at least batted around.

So I'd really like to see how the URS develops in its implementation.

David Maher: Yes.

Kathy Kleinman: And then I'll have something to go back and talk to my constituency about.

David Maher: Thanks. I think at this point that's probably the proper course. But we'll move on to the item 13, the purpose which is expressed here as - the purpose is that it's to attack garden-variety cyber-squatting with no genuine (contestable) issue, clear and convincing cases of infringement.

The floor is open. Do I take silence to mean we reached consensus?
That would be nice. Well it sounds as if we have - well Mark, go ahead.

Mark Partridge: Well it looks like there's yeses all across the board. The one thing is I don't understand what class B means. There's at the end of the...

David Maher: Yes.

Mark Partridge: I - so maybe somebody could say what...

Zahid Jamil: Can I? Sorry. That's a drafting error. Speaking - that's a drafting area. That sort of got left behind due to the deletions. Yes.

Mark Partridge: Okay.

Zahid Jamil: And I guess sort of back (unintelligible) across the board, NCSG seems to be quite (unintelligible). You do need a lot of comprising with the NCSG (unintelligible).

David Maher: Is that Zahid? I'm having trouble hearing. I think you're...

Zahid Jamil: Sorry. That's right. That's Zahid.

David Maher: Okay. Well I don't see any other hands up. So let's move on to the - oh Kathy.

Kathy Kleinman: Just NCSG has a number of reservations and, you know, look forward to the details. There - there's - there remains deep concern about the URS. And I won't go into all the reasons because you've heard us explain them.

But I just wanted to say this isn't an unconditional yes. This is a yes that we understand that, you know, this is the definition, this is what we're zeroing in on and we're willing to engage in a constructive manner. We're not signing off on it yet.

David Maher: Okay. Thank you. Well we can move then to an item 14, the de novo appeal and sanctions. Anyone want to speak to that? Mark.

Mark Partridge: Yes. The position shown there for the IPC may need to be modified a little bit.

To a degree we've - we're in favor of the de novo appeal as it was outlined in the IRT report. Overall we favor the IRT standards which involved reconsideration of - the possibility of an appeal that involves reconsideration on the original record by a URS ombudsman on the ground that the decision was arbitrary and capricious or an abuse of discretion or a de novo appeal in court of appropriate jurisdiction.

So it's a little bit different perhaps than what's implied by just the overall de novo review. And the same thing would be the case with decisions that a complaint was abusive.

David Maher: Okay. Konstantinos.

Konstantinos Komaitis: Yes. NCUC is also in favor of the de novo appeal. But we would also like to see another uplift process within it whereby there is a review on the merit of this case.

There is also - we are also questioning the impartiality or abuse of the system by the arbitrators whether it has been an abuse of complaint. Basically would like to see a system that reviews both the substantive and the procedural aspects of the procedure and gives the registrant a right to recourse.

David Maher: Okay. Kathy.

Kathy Kleinman: Following up on what Konstantinos had said this is a quick review process. And there is, you know, deep, deep concern in the noncommercial constituency as that registrant. If this is not done fairly registrants will not be treated fairly.

And so one of the ways to create checks and balances which the UDRP did not do as well and of which there have been, you know, considerable discussions on - since we created the UDRP ten years ago is to help fix it in the appeals process.

And the IRT, the fed got this one right that there'd be a novo appeal they said in the case of the default where you can reestablish the

resolution of the domain name. Somebody's on vacation, they come back, resolution of the domain name and have it reviewed de novo.

This section now is expanding into other types of appeals, other types of abuse. The way the URS, this new process that's going through this very expedited process within the GNSO, within the board, it's not a full PDP. It's not having the full and fair and long review.

The way this is - I think we'll get by it is making sure there are checks and balances. And the more comprehensive the appeal the more people will trust the system and know there are ways to catch any unfairness whether it's unfairness - whether it's perjury by the complainant, someone claiming a right, a trademark right they don't really have or whether it's an examiner who always sides for one side or the other.

If we pick this up in the appeals process this is going to be a process people learn to trust. And that would be good.

David Maher: Okay. Alan.

Alan Greenberg: Yes. I'm - what I'm hearing is Mark said he is happy to go back to the IRT proposal of an ombudsman and court appeal. I'm hearing very similar things but not quite the same words from Kathy. But Kathy and Konstantinos have specifically said it should be able to be on grounds of both process and merit of the case.

Kathy Kleinman: Yes.

Alan Greenberg: I'd like to hear back from Mark if he agrees on that because if so we have closure, not on sanctions but on the appeal.

Wendy Seltzer: I'll jump in please. Wendy Seltzer, I'll jump in.

Alan Greenberg: Okay. That's all I had to say.

David Maher: Yes. Okay. So...

Alan Greenberg: But I'd like to hear back from Mark if he agrees on the both process and merits of the case.

David Maher: Okay. Wendy, are you able to get onto the Adobe?

Wendy Seltzer: I'm sorry I'm not. It...

David Maher: Okay.

Wendy Seltzer: Never works in my Linux browser.

David Maher: Okay. Did you have something to say?

Wendy Seltzer: I'm hearing ombudsman appeal and I don't think the NCSG position has been an ombudsman appeal would be satisfactory. An appeal that creates precedence within the URS system to some superior panel of panelists would be an improvement.

But simply appealing these things off to the side in a way that doesn't help to fix what may be a broken system doesn't help. So I wanted to put that on the table.

David Maher: Thank you. Mark.

Mark Partridge: Well going back to what Alan asked about appeals as to procedure and substance I think the IRT report thought through these points. And as Kathy correctly mentioned we've factored in the possibility of a quick appeal of a default. That is if somebody inadvertently defaults and so their site is taken down they could quickly have it put back up. That was a quick appeal of process that would result in a complete, you know, a chance to be heard and have a decision made on a full record.

The other aspects of how the appeal would proceed was laid out in really a - two prongs. You could go to court or you could appeal within the system.

And we don't know whatever specific proposal is on the table. That's where we're at at this point.

David Maher: Okay. Thank you. I think we're able to move on. Item 15, notice to respondent should be clear. My personal view is that that is an area where we might be able to reach consensus very quickly although the question of what is clear and what isn't. Does anyone have anything to say about this? Paul.

Paul McGrady: Yes. We think it should be clear. And I think there have been some offline discussions about what that notice should include. And I'm really optimistic that once some very specific suggestions come back in on the point that this particular issue will reach consensus very, very

quickly because I think everybody's unified on having a very clear and helpful notice.

David Maher: Good. Yes. Thank you. That sounds very reasonable. Well I think then we can move on to item 16, the question of the panelists and dispute resolution providers, should their selection be randomized and the complainant not having a choice to avoid I suppose forum shopping and gaming of the system?

Any comments on this? Yes, Konstantinos.

Konstantinos Komaitis: Yes David. I really think that this is one crucial issue. And it's one where the UDRP has a problem and I unfortunately would have to use the UDRP experience of how the system can be gamed. I mean WIPO is renowned for its forum shopping by trademark owners.

And I think that it's only fair it will provide a great balance. And it will avoid all these issues that we're experiencing under the current system if we have a computer-generated system that assigns centers and panelists according to criteria other than selection by trademark owners.

David Maher: Thanks. Kathy.

Kathy Kleinman: Yes. This was an idea discussed extensively ten years ago. And at the time we didn't know how many forums would come into existence and so we couldn't implement it.

So this is resurrecting something that had a lot of agreement ten years ago. And it will prevent the forum shopping.

And I think again this is - the URS remains controversial, remains deeply divisive within the ICANN community I think and from my perspective. And putting something like this in where it doesn't - we're not talking about the details here but the process and making the process fairer will - I think will help others come around to whatever the consensus is that we work out here.

David Maher: Okay. Alan.

Alan Greenberg: Yes. I can understand randomizing the panelists. But randomizing the providers since it's specified elsewhere that they - each provider sets their own price, I'm not quite sure how one implements that, that you're going to file URS at an unspecified price. I don't understand how that would work in practice.

David Maher: Good question. Mark.

Mark Partridge: Our view is that randomization of the panelists would be acceptable and that if you had randomization of panelists across the board that would solve Konstantinos' concern. The randomization of providers seems problematic in part for the point that Alan raised and for others.

So that's the IPC's view, at least our initial view. This still is under review but - so that would be a modification of the yes that's in that box from our perspective.

David Maher: Okay. Kathy.

Kathy Kleinman: Yes. The - glad to hear that there is some shared views on the randomization of panelists. That's terrific.

But if you have forums that systematically exclude certain types of panelists even though for the most part we might think - we might all agree they could be fair but only takes panelists who come in with one set of experiences then it's the random - then there's a problem.

So it's the randomization of the forums, perhaps taking into account language. That's where I could see where maybe it's the randomization of all the forums that work in French or all the forums that work in English given whatever the nature of the language is involved.

But addressing the issue of costs that Alan raised there is a sense here that the cost of this is going to be very low, that it has to be very low. So I'm not sure there's going to be that much difference in cost.

And I think that for the purpose of checks and balances whatever we make up in terms of the fairness and the buy-in to the process we're - will make up for any slight difference in costs that might exist because I think it's only going to be slight. The idea is to keep the costs on this process very, very low.

Alan Greenberg: Except, I think, ICANN's going to be very wary of anything which implies cost price setting by them.

David Maher: That seems likely. Let's see. Jeff.

Jeffrey Eckhaus: Yes. I just want to agree with the last two -- I guess it was Kathy and Alan -- about the random panelists. I don't think that that works. I think just in the past the forums have been the issue, not saying oh these two specific panelists were bad or these two were really good.

And who knows? One of the providers might only have three panelists. Or it might have five in there. And I don't think that would work.

And I think it might be worth going to talk to staff about how to solve the problem that Alan brought up about the differing costs because nobody wants to be in charge of price controls for these providers. But if there's a way to do this so that one random person doesn't get, you know, \$5000 and the other person is \$300.

I mean I'm just throwing those numbers out there. Don't take those as any placeholders. But if there's a way we can figure that out so - because I think everyone - this should be an easy one. Everyone seems to be in agreement on the randomization. So hopefully we can move this one forward maybe with some staff help.

David Maher: Okay. Mark.

Mark Partridge: I just wanted to add a clarification on my comment. At least my view is as a panelist on these things, I think if you have randomization of the panelists across providers then you don't need to randomize the providers per se.

And the reason, another reason that it's problematic to randomize the providers, at least the way things exist now is they have different systems and operations and some language capabilities so there's a

reason why you might want to pick a certain provider. The concern about fairness is corrected if you randomize panelists across all the providers.

David Maher: Okay. Thank you. Alan.

Alan Greenberg: I understand why that would be good. But that implies that any given panelist can't work - must have contracts or agreements with all of the different providers so that you can in fact implement that. Is that not correct? Is that instrumental?

Mark Partridge: I just answer - I don't have a contract with any provider. But I get asked to do cases for both WIPO and NAF. And each case is simply a - an - I get a request: am I available and interested in being a panelist on such and such a case. And if I'm available and say yes then I'm there for that case.

Alan Greenberg: Okay.

David Maher: Thank you. Jeff.

Jeffrey Eckhaus: Sorry. Just one more follow-up question, I guess, for Mark. I guess maybe I'm confused. I understand your concept there. But how is that different or how does that change from random providers versus random panelists?

If the panelists could be from any - to any of the providers - if you choose XYZ as your provider and the panelist can come from ABC how is that different from choosing - from being randomly given ABC over XYZ? I just - if you can clarify that for me.

Mark Partridge: Yes. I could add some comments about its - we don't know what the back office operations and so forth will be like. But for people filing cases there are just efficiency reasons to pick one over the other having nothing to do with substance.

But they operate differently. NAF operates in a different way than WIPO in terms of the information it has available to participants in terms of the efficiencies of the case management process.

And so we might - you might decide that provider A is the most effective and efficient in the case management process so you would want to use that - basically that back office to manage the case. Does that make sense?

Jeffrey Eckhaus: I think so. Yes. But I sort of - maybe I have, you know, I sort of have a market philosophy that everybody - if it's a different provider then there's competition and you could choose and everyone would sort of fall into line.

And somebody who was taking, you know, a certain - especially we have certain time limits here that everyone would fall into the same line. Considering we were pulling from the same pool there wouldn't be much differentiation but...

Mark Partridge: Yes. But I think...

Jeffrey Eckhaus: Economic theory there.

Mark Partridge: I agree with your point. But if it were randomized then there wouldn't be the incentive to compete because you'd file and you wouldn't know which provider you'd get so you could have X's rules and Y's rules the next day. And they'd be - could be very different.

David Maher: Okay. Thanks. Zahid.

Zahid Jamil: Yes. Thank you. I understand the difficulty with randomizing providers. However what I think is - maybe we're getting into too much of the detail. And maybe this isn't the right comment.

But what I'm thinking is if we all can agree that in principle there should be randomization of panelists at least and cater the purposes toward gaming and let the staff work out the details that may be one way to go, just a thought.

David Maher: Thanks. Kathy.

Kathy Kleinman: I'm still thinking about Mark's idea of randomization of panelists across the providers. Have to say that wasn't - I had thought about randomization of the forums or providers, randomization of panelists within a provider but not randomization of panelists across providers. And I'd like to offer to take this offline with Mark and flesh it out.

David Maher: Sounds like a good idea. Alan.

Alan Greenberg: Yes. I can live with that way. It sounds like we have closure that we want a set of rules which will not allow claimants to game the system by selecting favorable providers and leave the details out of this discussion. But I do think we have closure on that.

We haven't talked about sanctions in this...

Man: I'm sorry.

Alan Greenberg: But we do have closure I believe.

David Maher: I think so. Kathy, did you want to say more about that?

Kathy Kleinman: No. I'm sorry. I just didn't take my hand down.

David Maher: Okay. Okay. Then I think we can move to number 17.

Kathy Kleinman: Wait. Does Mark take up my invitation?

Mark Partridge: Sure Kathy, glad to.

Kathy Kleinman: Great. Thanks Mark.

David Maher: Okay, number 17, the notice time and being question of increasing it from 14 to 20 days and some variations on that. Comments? Kathy.

Kathy Kleinman: Yes. Thanks. This is an absolutely, absolutely critical issue for the NCUC.

As registrants, the response time on the UDRP is already very, very, very tight. And I know because I've fought for every day of it that we have already.

And often as a registrant attorney I get called in on the last 24 hours, the last 48 hours because it's taken someone that long to kind of figure out what's going on with the UDRP, find - figure out that their attorney up the street, their corporate attorney has no clue what's going on and then find someone who's expert enough to help them respond.

So here going down to 14 days and my constituency's extremely worried about this. This is almost non-negotiable from our point of view. Fourteen days is too short.

And so bringing it up to the response time of the UDRP at least puts it on equal footing. And then if you have the rapid review on top of it I think that the trademark owners will find, the complainants will find that actually it becomes a rapid review process.

And from their perspective decisions are made much, much more quickly than they would be under the URS than they would be under the UDRP. So I don't think a few, you know, adding - upping the notice is going to be that big a deal from a complainant's perspective. But from a registrant's perspective, from the respondent's perspective it's absolutely enormous.

David Maher: Okay. Thanks. Zahid.

Zahid Jamil: (Unintelligible) and there is the philosophy that we definitely accept the (unintelligible) 20 days. One of the reasons is that it would, as some of my members have been saying that, you know, if you shorten the time people are going to come back and say they didn't have enough notice. So maybe we give them that much time, 20 days and say well they got the notice and now they don't have an excuse.

And if that is the case and if we declare to the UDRP challenge then they can come back and renew the issue. And if that is the case then one of the things we don't want to see is the right of registration for defaulted - in case of default for the website to be put up because now it's, you know, exactly the same time as the UDRP.

They've had exactly the same time. They got the notice. (Unintelligible) and also (unintelligible) electronic mail, fax as well as told so that there's no excuse of having received it.

So I think we accept this because I think that I remember the saying that then there's no right of restoration of the website coming back up because then somebody can try to (unintelligible). So the solution that we're sort of looking for is (unintelligible) through the appeals process that - and if the appeals (unintelligible).

David Maher: Thanks. Mark.

Mark Partridge: From the IPC's point of view we don't favor increasing the time. We think the IRT report had a balanced way of dealing with it, in particular because we recognized that there's a huge amount of cyber-squatting that's going on where parties just put up a site and leave it there as long as possible. They'll default in the case.

There's no reason for these sites to be up. They should be brought down very quickly. To safeguard the good-faith operator the staff proposed a seven-day extension. I think the IPC would find that was reasonable.

But the main IRT protection was that if there was an inadvertent default for a good-faith operator they could get the site back up and have the case heard. So we think that balance is the best way to deal with the problem.

David Maher: Okay. Alan.

Alan Greenberg: Maybe I've missed something. But we've been talking about the time - the response time for the respondent. But I haven't heard any discussion on time limits for how quickly a decision is made - is reached. And I would have thought that's the more critical place that you need the time limit since in the current UDRP it can take a long time.

We think these are simpler cases. But we're not specifying anything. So we're starting off with 14 or 20 days depending on which number you take and then adding an indeterminate amount onto it. And I would have thought that indeterminate amount is - should be more the subject of discussion.

David Maher: Zahid.

Zahid Jamil: I'm sorry. That was from last time. Sorry David.

David Maher: Okay. Anything further on this? If not we can move on to the next issue which is the modes of notice: email, fax, hard copy. Mark?

Mark Partridge: I'm going to go just step back to answer the last...

David Maher: Oh.

Mark Partridge: Last question.

David Maher: Oh.

Mark Partridge: I would...

David Maher: Okay.

Mark Partridge: I would suspect that across the board we could agree that the panelists should be deciding this as quickly as possible. And from my point of view as an existing panelist if we get what's foreseen by the IRT report where there's basically a simple one or two-page form complaint and a one or two-page form answer that's something that an experienced panelist could decide very quickly.

So a 14-day window to my - mine personally would be reasonable in contrast to the UDRP. I've got a UDRP complaint on my desk that just came in that's six inches thick. That's going to take a while to go through.

So it's, you know, the whole package is important to reducing that. And - but I don't think there's probably a lot of controversy about the idea that we would like it to be - everybody would like it to be decided as quickly as reasonable.

Alan Greenberg: Yes. I guess the question is if we agree on the 14-day one is the - for the - getting the response, getting the result, the decision, does that put less import on whether it's 14 or 20 days for the respondent to reply?

Mark Partridge: For my part I would answer that it doesn't take away with the importance of getting these bad after-sites down as quickly as possible and that the balance of protections within the process in the event of a default for a good actor they could get it put back up, that there's sufficient protections there, the balance works out okay.

David Maher: Okay.

Woman: David...

David Maher: John.

Woman: Can I?

John Nevitt: Yes. Hi.

David Maher: John Nevitt.

John Nevitt: Thanks David. Sorry.

David Maher: Go ahead John.

John Nevitt: Okay. Thanks. I'd like to support the staff proposal because I think it strikes the right balance between the two.

It's - the staff proposal is a 14-day answer period which is what we recommended in the IRT but an automatic right to a seven-day increase if you - essentially if you raise your hand and say I'm - that's my name, I'm the respondent and I, you know, I just learned about it. I

was on vacation. And give me another week to do it. And you get an automatic extension.

I think that's good because it addresses the IP holder's worry about the serial cyber-squatters that are just going to use the extra week on a 20-day answer period versus a 14-day answer period to maximize, you know, the cyber-squatting.

And if you're looking at a 70% default rate in answering these things it's not really the mom and pop shop that's raising their hand. And they have the opportunity to raise their hands and get an extension. And the defaulters typically won't. They won't raise their hand and say hey, I'm the one who's responsible for this cyber-squatted name.

So you get the benefit of the 14 days for just - the shorter answer period for the cyber-squatters and the longer answer period for the ones who are actually willing to raise their hands and say that's my name and I need more time to respond.

David Maher: Okay. Konstantinos.

Konstantinos Komaitis: Yes. I would just like to add a little bit to what Mark said. And I am a panelist as well.

But I think that what we are depending on some arbitrary criteria here. We're depending on the fact that first of all everybody knows what clear cut or abusive or cyber-squatting is and also that the panelists are all experienced.

And not all panelists are very experienced. And not all panelists will be able to see a case and say okay this is a case that should be put down.

So I really think that we need to think of also the other side where the respondent is not able within 14 days to submit a response for various reasons, for the reason that the respondent simply has no time, is away, does not - is not online all the time or has a very good trademark lawyer that can write up the response very quickly and send it to be reviewed by the panel.

David Maher: Okay. Thank you. Alan.

Alan Greenberg: I wonder if there's a compromise in that could the seven-day extension be requested retroactively, that is 20 - or not - 17 days into the process can that seven-day extension be requested?

John Nevitt: Yes. If I could answer that Alan. That's an easy one because in the IRT report we put in the de novo review if there's a case of default. So it's more than retroactive.

And it's more than seven days. If you came in within 30 days and said hey I was away for a month on safari and, you know, my name is - was subject of a URS, I want to file an answer we - then you have an automatic right to do that. I think the, you know, IRT probably got this one right.

David Maher: Okay.

Kathy Kleinman: David...

David Maher: Thanks.

Kathy Kleinman: This is Kathy.

David Maher: Kathy, yes, go ahead.

Kathy Kleinman: I just wanted to share with the group again that this is considered an absolutely critical issue by the NCUC and by the NCSG that a certified letter is not going to reach Cambodia before a 14-day process is finished, that SPAM filters are going to pick up a lot of the notice, that people - that these, as Konstantinos said, that registrants, noncommercial registrants, good-faith registrants are not going to be able to find an attorney within a short period of time.

And so - and there is a level of expertise required in this response. And you want people to be able to respond and say there's no contestable issue. But even that concept is a sophisticated concept.

So I think here the 14 days runs to gaming of the system by the trademark attorneys. And I'm sorry guys. I've just seen way too much of this in a dozen years which is these things will be filed on Christmas Eve en masse. And 20 days is the minimum.

Again you can have a rapid review. Let's work on how not to allow this process to go on for evaluation by the examiner, by the panelist for weeks on end.

As I understand it talking with people in the hallways this is either an up or down. It's either abusive, it's not abusive. It's clear cut. It's not

clear cut. It should be a five-minute decision. If it's more than a five minute decision it's supposed to be a rejection of the URS and then go onto the UDRP.

So if all of that is true then give the registrant the time to respond. Give them the chance to find an attorney. Don't allow this to be gamed during August, during December.

This is - I don't know how to share with you but let me go back to share the - we've talked with staff. We talked to the IRT. This is an absolutely critical issue.

David Maher: Okay. Thank you. John, did you still have your hand up?

John Nevitt: No. That's not intentional. Sorry.

David Maher: Okay. Well I think we've covered this pretty well. Shall we go to number 18, the modes of notice: email, fax, hard copy? Comments on this?

Kathy Kleinman: Kathy. I'll comment.

David Maher: Okay.

Kathy Kleinman: Just we heard a lot about fax not even from NCUC but from commercial registrants. I think we should reach out in as many ways as possible to let the registrant know about the URS proceeding taking place so following the UDRP forms of notice and as many other forms of notice as possible.

David Maher: Okay. Mark, Mark Partridge.

Mark Partridge: I'm sorry. I was on mute inadvertently there. The IPC's point on this one is that fax is fine. If we live with the 14-day period it would help justify the 14 days.

And again with the points I made and that John made about the balance struck in the process for protecting the good-faith actor, we think that package is going to give them what they need.

David Maher: Anyone else? If not, move to number 19. If there is a successful decision by a complainant should there be an option to transfer the domain name for a fee? Comments on that? There are...

Jeff Neuman: This is Jeff Neuman. Can I get some background on that from whoever put that in there?

David Maher: Okay. Let - Zahid, you had your hand up.

Zahid Jamil: Yes. It should be - the idea is that there would be a - there would be two positions will be coming out in a day or so that - this option of basically getting a transfer of the domain name (unintelligible) the URS after a certain period of time wasn't there in the IRT report.

And the (BC)'s position is that they would like to see this possibility where a complainant, if they're successful in the URS should definitely get the right to be able to transfer for a fee the domain name.

David Maher: Okay. John.

John Nevitt: Yes. Thanks. You know, the - we spent a long time in the IRT URS committee talking about this. And this was a very important factor.

And we wanted to make sure that there was a distinction between the UDRP and the URS on this point. And that if you want the name as a trademark holder you got to go to the UDRP.

The fast track, URS, rapid suspension is just that. It's for rapid suspension, the takedown and not a way to get the name.

And at, you know, if we go towards this recommendation we're blurring the lines between the URS and the UDRP even that much more. And that was something that certainly on the IRT we didn't want to do and wanted to show a clear delineation between the two.

David Maher: Okay. Thank you. Mark.

Mark Partridge: Yes. I'll echo what John said. From the IRT point of view that's exactly how the balance was struck there and the concerns that were discussed.

From the IPC's point of view since the IRT report has come out we've heard from much of the community that there also needs to be the remedy of transfer. And so the IPC would be in favor of adding that remedy.

David Maher: Thank you. Konstantinos.

Konstantinos Komaitis: Yes. Speaking on behalf of NCSG I really think that this is a no - should be a no situation. I mean we need to have thick process before we decide a transfer of a domain name or not.

I - we need to have due process. And due process is not served with that because even if there is a successful decision by the complainant that doesn't mean anything.

And the UDRP is a testament to that. There have been many cases whereby they have been overturned by courts. So at least we need to have some process that will be able to determine whether the domain name should be transferred.

And I would like to echo what John said that we're also blurring the very vulnerable line that exists already between the UDRP and the URS.

David Maher: Jeff Neuman.

Jeff Neuman: Yes. I guess this is a question. I mean I agree with what Mark and John said about the IRT.

As a registry my question is: I had heard a proposal last time from Zahid about a 90-day time period where that option would exist. Is this the same recommendation or is this something different? That's the question.

But my comment regardless of the answer is that if there is a transfer it would need to happen, you know, pretty much right away or after some period to appeal like the UDRP because extending time out 90 days or

anything kind of messes around with the internal registry clocks and requires tremendous amount of changes and then also interacts with grace periods and other things that are involved in the whole registration process.

David Maher: Thanks. Jeffrey Eckhaus.

Jeffrey Eckhaus: Okay. I'll - first I want to just - a few things. One is I want to agree with Jeff there because from a registrar point of view the changes of the registry clocks and the registrar and the thinking becomes a huge, huge issue.

Besides that I do - I want to agree with Mark and John about the separation of the two. And I had a question. Well it's actually two quick questions was one: how is this - if everyone - if the IRT did not recommend this then how did this become an issue?

And I guess what Mark had said was - he said much of the community had asked. I was just curious what community. Or is that just the IPC had asked for this?

Mark Partridge: Well I can respond to that. We heard it from the floor at the session in Seoul on Wednesday. We heard it through the IRT process from comments that were submitted to us.

So the IRT as we've said all along wasn't a trademark owner's wish list. It was a group of people with different points of view who came up to what it felt was a balanced solution to a set of problems. But it wasn't everything that everybody wanted.

Jeffrey Eckhaus: Right, so it was not an IRT recommendation? It was just a group within the IRT that had wanted this?

Mark Partridge: I'm not saying within the IRT. It was discussed within the IRT. But we received comments from the outside community, trademark owners, business constituency, etcetera during the process and up through Seoul.

Jeffrey Eckhaus: Okay. Thank you.

David Maher: Thanks. Alan.

Alan Greenberg: Yes. I'd - a clarification and then possibly a comment. The URS procedure says that if successful the domain is on hold. I'm not sure if that's the right word. But it's frozen. It's taken down and cannot be transferred for the duration of the registration.

What is the meaning of the duration of the registration? Is that till the end of the current period that it's registered?

Man: Yes.

David Maher: Yes. I think that's pretty clear.

Alan Greenberg: So that could be anywhere from a day to ten years roughly?

David Maher: That's correct.

Alan Greenberg: Okay.

David Maher: Yes. That subject was brought up a number of times.

Alan Greenberg: All right. Would it be satisfactory to the various parties - I'm assuming if the business constituency or IPC would like to see it transferred it's not to use as one of their active domain names but, you know, just to be held so no one else can get it.

Would it be suitable -- and I don't know if it's implementable -- to say at the end of the registration period the claimant has an opportunity to take it over at that point? I don't know if that's easier to implement. But it certainly gives more time to - for people to appeal and whatever.

David Maher: Zahid.

Zahid Jamil: Thank you. That's exactly what the alternative would be. Either we can have the option (unintelligible) so we'd have the option to transfer it or it's - it is going to be suspended until the end of the current registration time then it's indefinitely flagged or in a sense it doesn't go back into the pool and become a revolving door. And, you know, it'll come up and you'll have to file another URS.

The (UD) - the complainant would have the opportunity then at the end of the registration period to be able to transfer that for themselves and have first right of refusal effectively.

David Maher: Kathy.

Kathy Kleinman: Just continuing to throw in the NCSG's support for where the staff report left us which is that the domain name stays on hold and cannot be transferred for the life of the registration. This also - by putting it into

this kind of limbo also leaves sufficient time for appeals and review. This can take quite a long time in local court so transferring kind of removes those rights of appeal from, you know, an outside and other forums like courts. So the NCSG supports the - keeping it on hold.

Alan Greenberg: Okay. Alan. One further question. It - under the plan that's there today of the staff proposal would the original registrant have the opportunity to renew? Or does it - what happens at the end of that period is - for a domain that's on hold like that?

David Maher: My understanding is that it goes back in a pool that's...

Alan Greenberg: Or under current procedures it doesn't go back into the pool and the registrar can auction it off.

David Maher: Yes. Any - okay we have quite a long list. I think John Nevitt was next.

John Nevitt: No. I pass. Thanks.

David Maher: Mark.

Mark Partridge: Yes.

David Maher: Mark.

Mark Partridge: I'd like to share an observation on the length of the registration and the effect of that. It was pointed out by WIPO at the, you know, in Seoul that, you know, we could be setting ourselves up in a system where's there's only a matter of days or weeks left on the registration record.

And that has a potential for becoming a real problem going forward. I recognize the desire to not have the transfer take place until the registrant has had an opportunity to exhaust appeals.

One of the things that happened previously during the UDRP process, if a domain name was coming up for termination and it was - and the process, it would be in - during the process, the complainant could pay the fee to renew it so it still stayed part of the case rather than lapsing and being able to be snapped up by a new cybersquatter. That's...

Kathy Kleinman: Or a new registrant.

Mark Partridge: Or a new registrant until the case was resolved. And that seems to be, you know, it's not transferring anything. It's just letting the complainant extend the term of the registration so there can be a fair hearing of the issues.

And I suggest we consider that if we're sticking with the possibility that the suspension just lasts the life of the registration.

David Maher: Okay thank you. Jeff Eckhaus.

Jeffrey Eckhaus: Yes, I just had a quick question. I don't know, maybe this is - I've been thinking about this. I don't know if Jeff Neuman could help on - think about on a process of giving somebody - I know - I think somebody else has brought this up versus - and then instead of a transfer giving somebody a right of first refusal.

Or - and I think actually Mark that's not, I got to think about it some more but it's not a bad idea. It's similar to UDRP where - well actually

in the UDRP the complainant gets - well yes, he gets to extend it but you're saying then there'd be no refund if that person lost on the URS.

I'm just thinking of the different possibilities instead of the transfer and I think these might be, too, hopefully somewhat feasible ones.

David Maher: Jeff Neuman.

Jeff Neuman: Yes, I mean, so thanks Jeff. These are nightmare - all of these suggestions are nightmare implementation issues because once you - from a technical standpoint once you put a domain name on hold, as opposed to just freezing - as opposed to just locking which is done in current UDRPs, when you put a name on hold it's not just taking the name out of the zone so that you can't put a Web site up, it's taking the name out so you can't change any statuses, meaning you can't renew, you can't even delete. You can't do anything with it.

Jeffrey Eckhaus: Oh yes, we have the same issue here when we do that. Yes.

Jeff Neuman: Right, so there are - and this whole concept of a right of first refusal, I mean, the heat - I appreciate you bringing this up but you know we had long discussions in the IRT about this - very long ones.

And I'm a little disappointed that you're now bringing this up knowing all of the discussions we have in the IRT and not passing those discussions on to the BC is kind of bringing up the fight again, which I'm not thrilled about.

But I could - I'd be happy to go into an hour-long session as to the life span of a domain name registration if anyone wants that tutorial. But

essentially any of those suggestions either extending a registration, having a right of first refusal or doing any of those options as proposed by WIPO, even WIPO was in the room when we went through this.

It's a nightmare from an implementation standpoint and a registry and requires re-engineering and also requires changes to EPP to the current version of EPP, which again would have to go through the standards process with the IATF.

So there are nightmare situations that we need to talk about. From my perspective as a registry which may differ from the IRT is look, if you want to transfer right away I'm happy. Make it a transfer. It's much easier from a registry perspective.

But don't try to go around the rules because we're trying to make it different than the UDRP. Either you transfer it or you delete it but let's not try to create complex rules around this. It's just - it's getting to be horrible from a registry implementation.

Alan Greenberg: Jeff it's Alan. In Zahid's defense he used the word right of first refusal. I brought up the concept and I wasn't in the IRT.

Jeff Neuman: No, no, I know, but Zahid lost a step last week again on his own and anyway...

Alan Greenberg: I just wanted to make it clear.

Jeff Neuman: But as you know there these are nightmare situations for a registry.

David Maher: Zahid.

Zahid Jamil: Thank you and thanks Alan for that. Actually I appreciate the fact that I, you know, I wasn't a member of the IRT, et cetera, but this is one issue that was hotly debated within the BC and Jeff you know who it is who basically has initiated that concept.

I've discussed it but basically, you know, it's a BC position and there was complete consensus in the BC that this is something that they wanted. Now going a step further here there may be a possibility because they were trying to address the issue.

The issue is that they don't want this to become a revolving door, but basically you do a URS, the registration period ends and the domain goes back into the pool.

And if that can be avoided by something that I just heard you say, was just that once you lock this domain name and the URS is successful you can't even renew it and the registration period, I'm assuming from that point of view then, and it should not go back into the pool.

As long as we can avoid it from going back into the pool my members would have no problem with that. Is that a possibility? And so that's a direct question.

Jeff Neuman: So if I can respond to it, from a technical standpoint sure, you can keep it out forever. That's not a technical issue. I'm sure others on this call would have a policy issue with preventing any name from ever going back into the pool. But from a registry technical perspective sure it can be done.

David Maher: Okay thanks. Kathy.

Kathy Kleinman: Sounds like we'd have a huge policy issue with keeping generic words and highly descriptive words and dictionary words and last names out of the pool forever.

But I wanted to go back to - Jeff Eckhaus was asking some really good questions. Jeff Neuman, are you still supporting the IRT position that this goes on hold for the lifetime - for whatever the remaining term is?

And I seem to recall that WIPO told us that for people like serial cyber squatters the lifetime's fairly short. So it will drop back in to be picked up perhaps by good faith registrants in a short period of time.

Is that - but Jeff I just wanted to see if you're still supporting the IRT and Staff proposal which I think are the same on this.

Jeff Neuman: Yes, I mean, again it's easy for us to do a check. We could build a command that would automatically delete a registration upon the expiration of the term and put it back into the pool.

So that's something that's - that yes, that can be done. But introducing other complexities as to who can have the first right to it or all that stuff just gets too messy. So yes, we could still implement what's in the IRT proposal.

Kathy Kleinman: And the staff proposal. Thank you.

David Maher: Alan.

Alan Greenberg: No, I think it's already been covered.

David Maher: Okay, if there's no further discussion on that question we can move to - Zahid, did you put your hand up?

Zahid Jamil: Yes that's right. Just one quick one. Very technically it is possible to say that if an option was given after a successful UDRP of 90 days or 180 days, whatever, if the option is given to the complainant to actually transfer the domain name that is technically feasible. So I just wanted to know if it's technically feasible to do that.

Jeff Neuman: Only if - sorry, to answer that question, only if there are 90 or 120 days left in the actual registration period. But if you're within 120 or 90 days from the expiration then that wreaks havoc with the clocks of the registries and the registrars and actually with grace periods and everything else and redemption grace period.

So if there are 120 days or 90 days left in a registration then yes, we could do a manual one-off in theory but not if it conflicts with the grace periods.

David Maher: Alan.

Alan Greenberg: But if we have a process similar to the UDRP where the complainant has the option of paying for the one - paying for a one-year extension then that addresses that.

It doesn't - that doesn't transfer the name to them when they pay, they just extend the life of the domain to make sure that there's an opportunity for them to transfer.

Jeff Neuman: Sort of.

Alan Greenberg: That would address Jeff's need.

Jeff Neuman: Yes, I think in the UDRP though the name doesn't go on hold so when you actually put a name on hold in that status, in addition to the others I'm not sure about the ability of a claimant to actually renew.

I have to double-check on that because I think once you put it on hold you can't allow anyone to make any changes, including a renewal. So I have to check and see if that's feasible.

Alan Greenberg: But presumably you could take it off hold and renew and I know it's worked - it's - you have to implement it but that's a feasible sequence.

Jeff Neuman: I have to check on that.

David Maher: Let's take that offline.

Jeff Neuman: Yes.

David Maher: Jeff do you have something...?

Jeffrey Eckhaus: I was actually going to respond to that but I - we could just - I can answer that in an email. No problem. Let's move on.

David Maher: Okay, thank you. Let's move then to Number 20, the complainant answer should be limited, as formulaic as possible, limited complaint

with Web site attachment, limited response to Web site attachments.
The floor is open.

Jeff Neuman: This is Jeff Neuman. Is there a reason it's highlighted? Zahid is there...?

David Maher: I don't know.

Zahid Jamil: No, this is Zahid. No, that was highlighted by Kathy. Kathy, would you like to sort of say anything?

Kathy Kleinman: Yes, this is about basic fairness and something that again was talked about a lot in the hallways, which is it's - if this is going to be a rapid review process and it really is a quick up or down, then limit the complaint. Don't - you can't have hundreds of pages of a complaint and hundreds of pages of attachments.

Make it quick, make it simple. And similarly with the answer don't - the boxes that the IRT proposed are too limited. Just as, I mean, both sides need an opportunity to have a quick, clear response.

And if there really is an answer it may not fit within one of the check boxes. It just says whenever we've gone to people and said, "Well what's egregious conduct? What's a clear-cut case? Give me five examples. Put a box around it."

And the answer is, "Well there's always one that's an outlier." Similarly with the answer there's always one, there's some things that's going to be an outlier, a defense that we can't envision now. But that's

completely appropriate and consistent with fair use and freedom of expression in non-commercial use or legitimate commercial use.

So just - so what we're suggesting here and I guess why it's highlighted is because I think it's important that the complainant answer be similarly limited.

We may want to have check boxes and some amount of formulaic but you also want the respondent to be able to have some text to say why they don't think it's abusive.

And remember in a clear-cut case just by responding almost they're saying, "Hey, I think I'm a legitimate user." But also you want them to be able to attach a Web site and say, "My Web site was highjacked. That's what you're seeing."

You know, but the complainant - they've attached a highjacked Web site, you know, what happened when it was highjacked. "Here's how I'm really using it or maybe I'm not even using it for a Web site. Maybe I'm using it for a list serve. Maybe I'm managing multiple list serves or file serves or email off of it. Here's my PDF, here's my attachment that shows my legitimate use."

So again keep it fair, keep a balance, keep it equal, keep it fast with the goal of this URS in mind that it's a very rapid review.

David Maher: Okay thank you. Mark.

Mark Partridge: Yes, the IRT's view and the IPC's view is that, you know, these should be very simple forms. The forms contemplated by the IRT would allow for the things that Kathy's saying.

There were boxes to check but there's also places to fill in information and, you know, the attachment of a PDF of a Web site would be perfectly consistent with that.

The goal is to have something that's very straightforward, very easy for somebody to fill out without using a lawyer and to present their good faith that a panelist could look at as a couple of two pages. So we seem to be as Alan has just said in violent agreement.

David Maher: Sounds good.

Kathy Kleinman: Wait, wait, wait. Except - David, may I?

David Maher: Sure.

Kathy Kleinman: Except there's not exactly violent agreement on the IRT forms as provided. I think there is deep concern about them with NCSG and we'd like to reopen that for general discussion. But it's a detail issue, it's an implementation issue. But limiting on both - can somebody revisit for me what the limits were on the complaint in the URS?

David Maher: Mark can you answer that?

Mark Partridge: I'm not sure I understand the question. The complaint was designed to be a form that required the complainant to identify the elements of a

UDRP claim, to state their - briefly their reasons under each of those points and to submit a PDF - to submit documentation of their rights.

And that would be an important aspect of this that they - that could be - those rights could be pre-registered and finally to submit PDFs of the offending Web site to show how it's actually being used.

Kathy Kleinman: How long can a complaint be?

Mark Partridge: Well I don't know that there was anything specifically addressed as to the length. It was intended to be a form that would be filled out with just a few sentences, very definitely not something that would be multiple pages or - at all.

Jeff Neuman: But presumably with attachments which could add a number of pages to it.

Mark Partridge: The only attachment we - that was foreseen would be the offending Web site and if there isn't a pre-registration of rights process - the support for the claimant rights.

Jeff Neuman: But the Web site could be "n" pages, indeterminate.

Mark Partridge: It - I guess in theory it could be. What - I think if somebody did submit that it would be - if there was multiple pages it would demonstrate probably good faith use rather than bad faith use.

David Maher: Okay, Kathy did you want to respond to that or...?

Kathy Kleinman: Yes. I think this should absolutely be balanced. We're talking about something that's supposed to be a very rapid review so let's see if we can fix the lens, make some of it formulaic, some of it not formulaic.

It seems to be an idea of guiding both the complainant and the respondent through the process, but we need to revisit the forms because NCSG has expressed many concerns about the registrant response sections.

And so, you know, if anyone again wants to take this offline there's a group of us in NCSG who would be happy to sit down and work through these forms with you.

Mark Partridge: The IRT, you know, spent a lot of time thinking through the forms and it sounds like we've got the same goals in mind. So if you've got specific recommendations I'm sure the members of the IRT would be happy to hear what those are.

Kathy Kleinman: Well for one thing the complaint is not limited so let's - so yes, we'll - so again here we have something here that both sides should be as limited and as formulaic as possible so let's balance it. And so that's what we'd like to see.

David Maher: Yes, I think there's a good practical suggestion there to take that offline and get more specific Kathy if you can. Zahid.

Zahid Jamil: Yes, sorry. I know it's being taken offline. I just wanted to add one point that I think my understanding of the difference between what the IPC and NCSG sort of are discussing but, you know, NCSG doesn't want a form for the complaint to be like six pages and for the answer to be

limited to one. And I think that basically sort of boils down to something like that so we don't have enough recanted and the complaint is very lengthy.

My understanding from the IRT working - and the way they're working this on with, that that is not - that was not going to be the case. I think that's something that if it's verified I think it may allay fears of the NCSG that this is not supposed to be a form of the complainant which can go on for more than a page and a half, et cetera.

It really is when you look at the actual substance at Items 11 and 12, it's just a checklist, maybe a couple of lines of comments, one copy of the Web site and that is it. So it's really isn't supposed to go beyond that.

David Maher: Okay thank you. Alan.

Alan Greenberg: Two comments, one on the process, one on substance. On the process I have to object to something that Mark just said of if someone has a comment the IRT would be happy to consider it.

I think it's this group that's doing the work right now with whoever's backing us up, not the IRT as such. That group is being disbanded and what they did and the rationale behind it is important to us but it's not a review body for what we're suggesting.

In terms of process I understand what Kathy's saying with balance. I'm a little bit worried about someone who submits a one-page complaint and the person defending it is not allowed to submit five pages to show

why the complaint is garbage. So I understand balance in one direction. I'm not sure it's always desirable.

David Maher: Kathy is your hand still up?

Kathy Kleinman: No, sorry. I should have taken it down but I think Alan just made some great points.

Mark Partridge: Yes I'll - this is Mark and I'll accept Alan's chastisement of me for suggesting that the IRT would decide that. I didn't mean to imply that, I just meant to suggest that the IRT has to..

Alan Greenberg: I understood what you meant with the word...

Mark Partridge: ...able and we welcome further discussion about it, whatever the specifics might be.

Alan Greenberg: Yes, just for the record I supported having IRT people available to discuss what happened but we don't need to inflame the emotions on anything.

David Maher: Yes. Okay, thank you. Let's move along. Number 21, a separate issue about the transfer which I don't think we really covered in the prior discussion, although I'm not sure. What...?

Zahid Jamil: I think it's - this is Zahid. Can I just say I think that's a repetition.

Alan Greenberg: It is. It's the exact same words. And you can take the yes off of registrar in that if you don't mind.

Jeff Neuman: And registries.

David Maher: Okay. We're rapidly approaching 90 minutes and I think again we ought to cut this off at the 90-minute mark when fortunately we have just one more item, the question of review of the URS at regular intervals.

The non-commercial group has made a suggestion. Well Konstantinos why don't you go ahead and...

Konstantinos Komaitis: Yes, just a little bit to elaborate on that. For us it's very important that there is a review of - these numbers are random, we can always agree on the numbers.

But the whole idea is to go through the process and review whether the system is serving its needs, whether we are able to tackle all this as clear-cut cases or these egregious situations, whether we have in place a system that is procedurally fair where the substantive issues are addressed.

And also during our face-to-face meeting in Seoul the NCSG's proposition was that in the meantime we open up the gates to a UDRP review. We sunset this process, we review to see whether it works and in the meantime we go into the UDRP and do a substantive review, take its case law and basically learn from the experience of the UDRP.

So for the NCSG position it is critical to say that the URS first of all is serving its intended purpose and that can be done through the reviews, and also that in the meantime and as long as the URS is placed on the sunset period, we proceed to an interim of the UDRP.

David Maher: Okay thank you. Mark.

Mark Partridge: The IPC's view on this one is that yes, in the ordinary course of ICANN review processes this could be reviewed. I'm a little bit concerned about the addition of the idea that there's a sunset on URS.

That's new to me and I haven't heard any discussion about that before. I don't think that we should favor a sunset on the URS. I take a sunset to mean it lasts for a certain amount of time and then it expires.

David Maher: Okay Kathy.

Kathy Kleinman: In the ordinary course of ICANN review processes, nothing gets reviewed often and that's the case of the UDRP. So the idea of a sunset would not be that one day it exists and one day it doesn't, one day the URS exists and one day it doesn't, although that's what could happen.

The idea of the sunset is to say, "We really must review this and we really must correct any imbalances." Because this is still a very new concept for much of the community and it's still very controversial. We don't even know what clear-cut abuse is. We don't have a clear definition.

So a sunset is really about setting a line in the sand that says, "We will review this." And it's about setting a date certain by which the review must be completed. The GNSO Council knows how to deal with reviews and it's - the consensus - it's saying that by this group that it's reasonable that this type of new expedited process that didn't go

through a full PDP should have a date certain by when it's reviewed. And so the sunset's just about pushing people into the action that we want them to take.

David Maher: Okay, Jeff Eckhaus.

Jeffrey Eckhaus: Yes, I just wanted to say that I don't think I - hopefully no one is against having a regular review of the URS. I think hopefully everyone is in agreement on that, and what I'd like to do to try and keep it simple is just to have it without conditions but to make it a mandatory review at predetermined intervals.

And then I think that would take away - because I don't want to bring in the sunset into this or other things but I think that if we just put as a mandatory review of the URS at predetermined or regular intervals, then hopefully we can come to agreement on this because it seems like everybody does want the reviews to happen.

David Maher: Thank you. We're now at the 90-minute point. I'd like to give Alan and Konstantinos an opportunity for quick comments.

Alan Greenberg: Yes, just very quick. I think in a number of recent PDPs the GNSO has put regular reviews in it and I think that's reasonable. Of course we need to specify what it is we're reviewing to be able to recognize whether it's working or not.

Sunset I'm not sure about but I believe that if there's any interest at all the GNSO will initiate a policy development process on both URS and the clearinghouse.

Both of the Staff proposals made it very clear. These were interim pending some sort of review or pending some sort of formal policy development process. To set a time limit on how quickly that PDP goes I think is impractical.

David Maher: Thanks. Kathy you can have the last word.

Kathy Kleinman: I actually think that's a - I think Alan said it well and I think Alan said it well.

David Maher: Okay well...

Kathy Kleinman: But that the Staff intended this to be interim and I think the sunset actually put the bullet point in that, a period in that and makes it definite that it's interim and not something that goes on forever, unintentionally or inadvertently.

Konstantinos Komaitis: And David, very quickly. The only - this is Konstantinos. What I want to say about the sunset is that we need to accept the reality that the URS might not work. It might not work the way the STI - we construct it or we have it in mind it might be abused.

We need to be able and come to a conclusion, after the review if we say this is not working we need to be able and put a stop to it. Otherwise if we don't put the sunset we will continue to have a system that is simply not working.

David Maher: Yes, well I think that's the understanding of what a review is. Okay we've come to the end of our time. Thank you all. I believe there will be

a Doodle shortly for teleconferences next week. And thank you all for participating.

Zahid Jamil: Thank you.

Kathy Kleinman: Thanks David.

Konstantinos Komaitis: Good-bye.

Coordinator: Thank you for participating in today's conference call. You may now disconnect.

END