
ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs)
Wednesday, 01 July 2020 at 17:00 UTC

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TERRI AGNEW:

Good morning, good afternoon, and good evening and welcome to the review of All Rights Protection Mechanisms, RPMs, in all gTLDs PDP Working Group call, taking place on Wednesday, the 1st of July, 2020 at 17:00 UTC. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the telephone, could you please identify yourselves now? And Maxim, I do notice in chat, you let us know you'll be on listen mode mostly, as you are driving. Thank you for that.

Hearing no further name, I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. As a reminder, those who take part in ICANN multistakeholder process are to comply with the expected standards of behavior. With this, I'll turn it back over to our co-chair. Brian, Beckham, please begin.

BRIAN BECKHAM:

Thanks so much, Terri, and welcome, everyone. And I see that in the moments we've been speaking, we've had a few people join

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us so that's a good thing. And it looks like a pretty usual representation across the different parts of the community. So, that's good to see. Welcome, everyone.

Before we start are there any thoughts on the agenda or any updates to statements of interest? Okay. Hearing none, I will just ... Just for our benefit, I think we have a reasonably ambitious agenda today. So, we have, you see there, 16, 27, 28, 29, 31, 33, 34, and 36 of the URS individual proposals. And so, just to refresh everybody's memory because—and I frankly did this for my own benefit, as well—was what we're doing here.

So, these are the individual URS proposals. These were proposals that did not make the cut to be put forward in the initial report as a working group recommendation. But we thought they were important enough to hear from the community on them. So, this is what we're doing here. We've received public comments and we'll go over those in the course of our call. These, again, are individual proposals, not working group recommendations.

And so, our task here is to look at the public comments and to see if there's a reason that they have enough support to become a full working group recommendation. And so, what we were working on the basis of ... It could be the proponent of the actual proposal itself or a proponent within the working group on the call here today. If there was a feeling that the public comments were sufficiently ... And I would say we've agreed that that's a reasonably high bar.

If they were sufficiently supportive of the proposal to make it through to the consensus call—I think somebody put it, “to live

another day” on one of the earlier calls—then it would be up to a working group member to put a proposal forward to that effect. And so, that would really require broad support in the public comments and minimal opposition.

And just to recall, on, I believe it was our last full working group call, there was an idea around this where Griffin ... I can't remember the exact proposal. Griffin was the proponent. And so, the idea was there was some sense that with some massaging, the proposal could make it across the finish line for purposes of consensus.

But we agreed that it would really be on the proponent to caucus behind the scenes with the people who were putting comments that were raising questions or having issues with that proposal—to reach out to them behind to the scenes and to come with a revised proposal that they thought could make it across the consensus call finish line. Otherwise, we're really, effectively, retracing the same ground in another call or in another forum.

So, before we start, maybe I can just ask if that is a reasonably accurate reflection of everyone's memories—what we're here to do. And if so, we can bring up individual proposal 16 on the screen.

Okay. So, individual proposal 16 was that that URS should allow for additional remedies, such as a right of first refusal. And so, the question was how feasible would it be to implement this proposal. So, if you see on the donut, as I think we're calling it, there was some support for this as written. There was some support with

some changes. And then, there was a fair amount of opposition to this.

So, that seems relatively obvious that that wouldn't meet the criteria for broad support. But let me open up and see if anyone wants to take the floor, to highlight any particular comments or oppositions, to see if a conversation on this takes us any further. Any requests for the floor? Let me ... I'm not seeing any hands raised. Okay. Not everyone at once.

So, to prepare for this call, I went over, just to refresh my memory on some of the ... I was frankly focused mostly on the opposition because really, if we can't get the people who are opposing these proposals to agree, then that really puts a fine point on the potential for consensus.

So basically, the opposition, which was from a number of different commenters, was that this made a fundamental change to the nature of the URS and that this would change the remedy. And so, there was some question of the interplay between the intent of the URS to be a lighter complement to the UDRP versus the remedy under the UDRP.

So, let me just look again. I don't see anything in chat. I don't see any hands raised. Let me put it this way. Is there anyone who disagrees with the assessment that, based on the level of objection or "do not support" in the public comment, that this one should meet that threshold of living to see another day? My feeling is that it's reasonably obvious this proposal doesn't meet that criteria. But let me ask if anyone feels differently. Any objections to

that understanding? And I'm seeing David McAuley, in the chat, agreeing with that. Phil?

PHILIP CORWIN: Yeah. Can you hear me now?

BRIAN BECKHAM: There you go.

PHILIP CORWIN: Yeah. Brian, I wanted to say I don't disagree with your assessment. It looks to me doubtful that this proposal to allow a right of first refusal and acquisition of the domain could gain consensus. I just wanted to say that when we look at the donut chart, we always need to look a little deeper and see who didn't support ... If you have a lot of individual comments, you might get a high percentage that don't represent a lot.

But on this one, looking on the commenters, there's NCSG, there's some trade groups, other public interest groups. But this would be controversial. And I would say, based on both the response and looking at who filed and other things, it's difficult to conceive of this one getting through the consensus process. Thank you.

BRIAN BECKHAM: Okay. Thanks, Phil.

PHILIP CORWIN: So, I was agreeing with your assessment.

BRIAN BECKHAM: Okay. Good. Thank you. That's appreciated. And it's a good reminder that it is sometimes important to look a little beneath the surface to see who is commenting. Is that a broad cross-section? Is that people with the same view?

Another thing that ... Just for my benefit, when I was looking at these, I looked at both the percentages of the support/not support in raw numbers. But then, also, I find it useful sometimes to lop off the no opinion or no response. And I think that sometimes gives us a more meaningful reflection. So, if you look at the one on the screen, it's actually ... The "do not support," the raw number is 43%. But when compared to the number of people who are actually commenting, that's a slightly different statistic. So, I found that sometimes useful to carve out the "no responses" or "no opinions" for purposes of assessing the support or objection level.

So, with that, and noting the comments in the char, I think we can call this one concluded and move on to number 27, which is ... And I think we touched on this in concept on the last call with a different proposal. I'm not recalling the number off the top of my head. But the proposal here was to revise URS rule six to reflect the following new provision. That would be that each provider shall maintain and public a publicly-available list of examiners and their qualifications, by way of publishing a current CV, updated on a regular basis.

And with this, in contrast to the prior proposal, this looks to have the level of support that might actually meet that criteria of living to see another day, to be put forward to the consensus call. We had a few people that didn't support that. That was the IPC had some comments in opposition to that.

Might I suggest, for purposes of ... I think, if people agree, it seems reasonably obvious that there's a decent level of support, again, especially if we don't look at the "no response" or "no opinion." But perhaps, it would be useful to look at the "support recommendation concept with minor change comments," if only for our benefit here on the call.

So, I'm seeing if ... Thanks, Ariel. If you can scroll down just a teeny bit. One of the comments from the FORUM, one of the providers of the URS, was that ... I think it goes to the effect of the providers should be able to reasonably rely on the panelists to keep those CVs up-to-date. And it sometimes can be difficult to chase people with that. But that seems to be a fairly targeted suggestion.

So, I'm just seeing the comment from Phil in the chat. This needs to be consolidated with the prior proposal on examiner lists and their opinions. Let me see if anyone else has any thought on that because when I was looking at this in preparation for this call, I did wonder if we already covered this. But then, I was reminded that what we actually covered was the proposal to itemize or list, somehow, the decisions from individual panelists. And this, I think, is a slightly narrower proposal to keep a current CV on the website.

I see David McAuley has his hand up. David?

DAVID MCAULEY:

Thank you, Brian. I just had a question, really. And since I saw Renee was on the call, I thought I would ask it of her. It was basically ... And I did look down into the “support recommendation with minor tweaking” on this notion—and I think it’s a good notion—that a provider shouldn’t have to actively go and police this.

But I was wondering if there’s a clear case where a panelist had not updated or fixed their resume issues, if there are any, after a certain period of time—90 days, 120 days, whatever—would it be reasonable to drop them as a panelist? I was just curious. I think this is going forward so it would be implementation guidance at best. But that was my curiosity. Thanks very much.

BRIAN BECKHAM:

Yeah. Thanks, David. I see Renee’s got her up so I’ll call on her. I just wanted to also, because we are not a URS provider ... But for the UDRP, I think that could get into questions of what’s a material change. So, is that someone changes from being an associate to a partner or have they changed law firms? So, that could, again, be for implementation. But let me call on Renee. I’m seeing Renee’s hand went down. So, I wonder if she didn’t—

RENEE FOSSEN:

No. I left. I was having trouble clicking off of the mute. I was unable to unmute myself for a minute there. Yeah. So, I think I

mentioned this when we were discussing this issue in the larger working group as we work through the URS issues. We send out an email every year, at the end of the year, as a housecleaning measure to all of our panelists and examiners and ask them to send any updates. That seems to be a good time of year to do that because that's usually when changes happen at law firms or wherever they may be.

So, if we don't get a response and we haven't heard from them in a while, then we would dig deeper. But if we know that they're around and they just probably don't have any updates, then we're not going to force them to do that. And that's my concern with this proposal, is that we're somehow going to be obligated to keeping track of each and everyone one of the panelists and examiners on our roster, and keeping track of the changes that they make, which would be unworkable from our end. Thanks.

BRIAN BECKHAM:

Thanks, Renee. Let me ask if anyone else ... And I'm seeing David noting, "Fair point," and thanking Renee. So, let me ask if anyone has any comments or thoughts on what kind of materiality or obligation should be on providers. Is this something best left to an implementation team? And let me also ask if people have thoughts on the comment from Phil to combine this proposal with the prior proposal on not only the examiner list ... Sorry. Not only the CVs but the list of decisions.

I don't recall what number that proposal was. I would wonder if that proposal had the same ... This looks to be a really high level of support. And I wonder if the other proposal concerning the list

of decisions that a panelist has undertaken had a reasonably similar level of support, to where it would make sense to bundle those for purposes of the consensus call or whether there was an appreciable difference, to where that might throw a bit of a spanner in the works for consensus call.

Ariel's reminding us that it was maybe 26. Yeah. So, it was individual proposal 26. And that one looked to have roughly the same level of support—a few more “no opinion” or “no responses.” Does anyone have any concerns? I see Phil. That's a new hand? Does anyone have any concerns or thoughts on Phil's suggestion to combine these proposals? Phil?

PHILIP CORWIN:

Yeah, Brian. We could do them separately. It just would seem to me that they're very closely related and that when we discussed 26, we agreed it should go on. It should be a little more flexible. But the key thing here is that we want providers to provide a list of all the examiners they currently have a roster of, a reasonably recent CV—we shouldn't be too prescriptive—and a way to find the cases they've decided, to review their decisions.

So, I think they're very closely related and it might be cleaner to just combine them for the consensus call. But they have very similar levels of support, not a lot of opposition. So, that was why I suggested they be combined. Thank you.

BRIAN BECKHAM:

Okay. Thanks, Phil. Maybe if I can ask you to hold on or others. I was actually going to suggest something similar, as Paul

Tattersfield has put in the chat, which was that we bundle these when we pass them on to the full working group. So, maybe we just note that these have some reasonable similarity and for purposes of the consensus call, that can be undertaken separately but we look at them in sequence. Phil or anyone else, does that sound like a reasonable path forward?

PHILIP CORWIN:

Brian, that's fine with me. And again, I think when we combine them, we make sure that we're not approving something in one that's in some way, in some slightly conflict with the other and create problems for implementation. But it's up to the working group how to handle it. Thank you.

BRIAN BECKHAM:

Okay. Thanks. And I'm seeing a comment from David McAuley in the chat, that joining or bundling in sequence should be workable. So, it sounds like, for purposes of moving forward, because they were individual proposals, we keep them individual but we look at them together in the same call, for purposes of the consensus call.

Okay. Seeing no other chats or hands up, that takes us to proposal number 28, which had to do with the idea of a conflict of interest policy. So, this one is ... There's a little less support for this, versus the first two. So, this one was that there should be a conflict of interest policy developed by the working group. And so, the question was for people to provide input on suggested elements of what could be in such a policy and then, if there were existing conflict of interest policies out there that we could look at.

So, let me see. Ariel, is there a way we can hone in on the comments that went to ... I suppose we probably want to look both at the opposition and also the answers to the questions one and two specifically. I don't know that it matters terribly which order we take those in.

ARIEL LIANG:

Brian, just want to confirm. Would you like me to scroll to the comment section or would you like to focus on the comment highlight, as the table has listed—the support and also the rationale for non-support—at least, the staff summary of that?

BRIAN BECKHAM:

I'm seeing a comment from David McAuley in the chat. He says, "Richard Hill makes a fair point in the opposition." Maybe we look at the opposition before we look at the suggestions for what should be in those policies to see, first, what concerns people had and then if the proposed other conflict of interest policies out there could answer those questions.

So, Richard Hill tells us that, "The FORUM requires each examiner to sign an oath and disclosure of conflict of interest language is included in each URS case email invitation to examiners. As the proposal is worded, a provider is to 'ensure compliance.' This is impossible as a practical matter, as it would require a provider to have actual knowledge of each and every potential conflict of interest a particular examiner may have."

And I would say, certainly, that reflects our experience ... And Ariel's reminding us that Richard's comment reflects that, also, of

the FORUM. But certainly, that mirrors our experience as a UDRP provider. And that also in our conflict of interest rules. For whatever it's worth, they're drawn from the IBA Guidelines. And of course, ultimately, it's the responsibility of the arbitrator or the examiner to flag potential conflicts of interest. As Richard points out, it's quite difficult to have knowledge of who some of the clients of practicing attorneys or arbitrators could be.

So, that seems to be a reasonable hurdle to ensuring compliance with this. Maybe we can see ... Ariel, is there a particular cell where there are answers to questions one and two, to see if there aren't any suggested best practices or existing conflicts policies that might answer this question from Richard?

ARIEL LIANG:

I just have it over to Q2. Some of the commenters provided suggestions of existing conflict of interest policies. And they just provided some links here. I don't see FORUM or Richard Hill have provided suggestions. But there are some others.

BRIAN BECKHAM:

Okay. So, just briefly looking at the comments there in blue—the existing conflict of interest policies—it doesn't look like these go to the type of concern that was raised by Richard Hill or the forum. This goes really to the role of Council versus examiners. So, it doesn't seem that's particularly helpful to answer that concern raised by Richard.

Let me ask this. It seems, if we go back up to the donut, that there's a fair level of objection to this proposal. Obviously, there's

a fair amount of support. There's more support than objection. But let me ask. Do people have thoughts on ... And I see Phil and Zak in the queue with their hands up. But let me ask if people feel that this has the required broad support and minimal opposition. And with that, I turn over to ... I have Phil, Zak, and then Kathy. Phil?

PHILIP CORWIN:

Yeah. Thank you, Brian. And as always on these things, speaking in a personal capacity, I want to observe first that this proposal says the conflict of interest policy should be developed by the working group and applied to all providers. Well, we haven't developed a conflict of interest policy. That could be a daunting task. If we were going to pass along something like this in the final report, we'd have to at least identify, for an implementation team, what elements should be considered.

And I think probably, we could all agree that if a panelist was previously sued by one of parties to the complaint, or represented them, or something like that, it might be a conflict. But then, we have other suggestions that panelists should never be able to represent anybody in URS or UDRP, which probably isn't—we wouldn't get agreement on. We probably couldn't get agreement on enforcement mechanisms.

So, I'm really ... I think probably everyone in the working group, I would think, would agree that there should be some conflict of interest policy and that a provider should have one, and should publish it, and say how they enforce it, and maybe even list where they've applied it. But beyond that, I think getting consensus beyond that would be quite difficult.

And as a practical matter, we simply don't have time to develop a conflict of interest policy in the next two months. And as I just stated, think we'd probably be at odds over what should be in it, how it should be enforced. So, I'm not sure what to do with this one but I think as framed, where we, as a working group, should develop a standard conflict of interest policy, that is not feasible and would not get consensus, as opposed to providers should have some conflict policy on which I would think there'd be rather broad consensus. Thank you.

BRIAN BECKHAM: Thanks, Phil. And I have Zak's hand down. And so, I see Kathy.

KATHY KLEIMAN: Hi, Brian. Let me come off mute and let me go back to my other screen. I'm going back and forth between computer and telephone so you may hear me on the telephone. But I actually am surprised in this case. I am seconding what Phil is saying. I just had it on the screen so let me see if I can find it again. But the idea that every provider should have a conflict of interest policy, I think, is reflected in the answers to the questions from ... Can we scroll down?

There's a group under Q1, in red, that suggests exactly what Phil was suggesting—that every provider have a conflict of interest policy. Right. And it doesn't necessarily have to be the working group that develops it. But let me read under—thanks so much—Global Brand Owner and Consumer Protection Coalition. Second sentence says, "To the extent a provider is not enforcing a conflict

of interest policy ...” And I think that’s what gave rise to this editorial comment, that not the FORUM but other providers might not be. They should be required to implement one in line with the other providers.

And providers should be encouraged to share their own policies and practices with one another to assure appropriate best practices are adopted by all providers. And we might add, make these conflict of interest policies public, as well. But I think if we adopt those sentences, we’ve embraced what Phil was saying and we’ve gotten to the general gist of where we were trying to go with this, which was making sure every provider has a conflict of interest policy. Thanks, Brian. I think that’s a good way forward—personal comment.

BRIAN BECKHAM:

Okay. Thank you, Kathy. And before I call on Zak and then Paul McGrady, I wanted to just mention ... I’ve put in the chat, URS rule 6b actually does require that the examiners be impartial, and independent, and disclose any potential conflicts to the provider. So, Mary was asking whether there was any evidence of a problem with this. Zak?

ZAK MUSCOVITCH:

Thank you. Can you hear me, Brian?

BRIAN BECKHAM:

Loud and clear.

ZAK MUSCOVITCH: Okay. Good. I'm having some audio problems today. So, just letting you know if you can't hear me. But in terms of what Kathy had mentioned, I'm fine with that. I may have been the person that proposed this individual proposal 28, way back when. I would say that I'm still concerned that there's a vulcanization of conflict of interest policies amongst providers, with little, if any, input or oversight by stakeholders.

But setting that aside, I agree that there's significant opposition to this. There's issues with the wording of the proposal in terms of development by the working group. So, I would be content to leave this with another day. But if there's are way to encapsulate the principles that Kathy had elucidated, I would be happy with that as well. Thanks.

BRIAN BECKHAM: Thanks, Zak. Paul McGrady?

PAUL MCGRADY: Thanks. This may get me in trouble but I'm going to put it into chat. Why not just add something simple to rule six that says, "Providers should have," or, "shall have an effective conflict of interest policy that binds panelists," and leave it there? Because they probably all do, anyways, right? But at least, that way it's the working group saying so.

I agree with Phil that we're not going to ... If we try to hash out what the conflict of interest policy should be, that's going to take forever. And I agree with Zak that it's probably best to leave that process for a different day. But maybe we can capture that

concept that Kathy was getting at, which is providers really ought to have an effective conflict of interest policy that binds the panelists. Thanks.

BRIAN BECKHAM:

Thanks, Paul. And I'm seeing Zak agreeing in the chat. So, I think this goes a little bit ... We talked earlier about the accreditation standards of providers. And given that rule six actually does require the examiner to disclose any circumstances, that seems to presuppose that the provider would have a policy against which to judge any potential conflicts that would be raised by an examiner.

So, let me see if I understand the suggestion from Kathy and the support I'm seeing in the chat—is basically that the providers, in keeping with rule six, which requires examiner to disclose any potential conflicts, the examiner should have some way to assess that or some public ... I put in the chat our UDPR Statement of Independence declaration that we require all panelists to submit to.

In my understanding, the idea is basically that this would somehow be turned over for the working group to consider that the role of ICANN in relation to providers should be, in terms of making sure that the providers are actually acting on rule six and addressing any instances of a violation of that that would be raised. Kathy?

KATHY KLEIMAN:

Yeah. Brian, I think you've got it. Paul also put it in the chat. And I know it's hard to follow everything. And this wording, I think is

good. Our takeaway from proposal 28 for the full working group might be, “Providers should have an effective and published conflict of interest policy that binds panelists.” So, this covers both the providers and the public because it will ... It needs to exist. And I recollect there might be some question about its existence for some of the providers. But exists and published so everyone can know what the conflict is. I think Paul’s language may take us forward, depending on what you think. Thanks.

BRIAN BECKHAM:

Thanks, Kathy. Could I impose on Renee? Renee, is that something where the FORUM publishes on its website a declaration that an examiner would have to sign—in other words, is that something that we can point to, say this is already being met? Or is this something where Paul’s proposed language, where we basically ... I think the practical effect would be that the providers would be asked to publish their ... We can call it, here, conflict of interest policy or in our case, The Declaration of Independence and Impartiality. It’s really getting at the same thing. Renee?

RENEE FOSSEN:

Thanks, Brian. We don’t publish it but we did provide it to the working group, when the issue came up initially. So, it’s been out there, what the oath looks like and what the email language looks like. And it does mirror, essentially, what the requirements are in the URS. So, I certainly don’t have a problem with making that public but I think that Paul’s language would also be something that’s palatable, as well.

BRIAN BECKHAM: Okay. Thanks, Renee. And I'm seeing some comments in the chat about the notion of "effective" may be a little nuanced. So, that's something, if we do agree to put this up to the working group, maybe to flag. Lori?

LORI SCHULMAN: Yes. Hi. I was also putting in the chat ... I just wanted to verbalize it for those who might be on the phone. I would support saying "enforceable" or "enforced" versus "effective" because I think "effective" just becomes extremely subjective. So, the idea is they have it and they enforce it. Whether or not it's effective, I think, might be stretch.

BRIAN BECKHAM: Thanks, Lori. Let me ask. I think we're making good progress on here. And it seems like we're ... Paul? I see a new hand up from Paul McGrady.

PAUL MCGRADY: Sure. So, I put it in the chat. Since it's not our job, necessarily, to wordsmith this language now, just to maybe send this on to the working group, saying, "There's something here to talk about." I'm going to put in the chat an option that we can then decide whether or not we want to pass on. And so, perhaps what we send back to the working group is, "Providers should have an—" one option—"effective and published conflict of interest policy." And the other

option is, “Providers should have an enforceable and published conflict of interest policy.”

And so, it’s in the chat, if you guys want to grab that. And if that’s useful to all of us today, terrific. If it’s not, of course, fine. But that way we capture both comments and maybe the working group takes up that issue.

When I use the word “effective,” I just mean that it’s not going to do any good to have a conflict of interest policy that doesn’t actually deal with conflicts of interest. So, the thing should make sense in relationship to the problem that’s trying to be addressed. “Enforceable ...” If you have a weak conflict of interest policy, sure it’s enforceable, but I’m not sure that really solves the problem.

But again, for purposes of today, I don’t think we need to come to an agreement on that. I think we can just send this back up and say, “Hey, guys. Look at this. Can we wordsmith this enough to get consensus at the end of the day?” Thanks.

BRIAN BECKHAM:

Good. Thank you, Paul. And that seems to make sense. And there seems to be support in the chat for that. I think, Lori, that may be an old hand. I see Cyntia.

TERRI AGNEW:

Cyntia, I see you’re unmuted. If you could check on your side.

BRIAN BECKHAM: Okay. Cyntia, it looks like your microphone is on but we're not hearing you. Sorry about that. It seems there's agreement. We can either try to dial you out and come back to this ... I think were winding this one down but I don't want to proceed without—if you have something important to say. So, we'll have Terri try to dial out to Cyntia. If you could all hang tight for a moment, that would be appreciated.

CYNTIA KING: Hi. Hello?

TERRI AGNEW: Hey, Cyntia. Can you please mute your computer speakers?

CYNTIA KING: How's that?

TERRI AGNEW: Much better. Thank you.

CYNTIA KING: Okay. So sorry. I'm sorry. I'll be very, very quick. And thank you for waiting. The fact that we're having this much discussion over the word "effective," and the fact that anyone felt the need to explain what they meant but the word "effective," I think, tells us that that is not a very effective word in this circumstance.

You're right. We don't have to wordsmith it now. But we do have to just codify—if staff could just codify—what it is that we're trying to get at with the word “enforced,” or “effective,” or whatever. I do think this is something that's going to have to be wordsmithed at a later date. Thank you.

BRIAN BECKHAM:

Thank you, Cyntia. And I think the point you're raising is getting to questions one and two, which was what would such a policy entail and how could we judge whether that was being adequately met or not. So, it seems that we've had, notwithstanding the “do not supports” and the concerns that have been raised about providers having to stand in with knowledge of how the examiners' conflicts are assessed, I think that seems to be something that can be addressed in the consensus call.

We seem to have agreement on the call and in the chat to at least allow this one to survive for purposes of the consensus call, obviously with the caveat that it required some massaging that we've been exploring here on the call, potentially, to get it across that ultimate finish line. Does that sound like an accurate state of things? Cyntia, I apologize. I don't know if that's an old or a new hand.

Okay. I'm seeing agreement from Cyntia to that summary in chat. So, I think ... Just to make sure, staff, Ariel, Julie, Mary, does that give us a sufficient basis, notes captured, to proceed on this one? Okay. Thanks, Ariel.

That takes us now to individual proposal number 29. So, this was a proposal that “all URS decisions shall be published in a standardized, machine-readable XML format to complement existing formats of decisions.” And then, the question was, “What are the costs and benefits of implementing the proposal?”

So, here we have a fair amount of “no opinions” or “no responses—” nearly half. And then, we have a good chunk of “support” and then some “supporting with changes,” some “significant changes required,” and some “do not support.” So, of those that commented, it looked like a majority supported that. So, maybe with that, we can look at some of the concerns that were raised and see if any of the proponents in support of this or anyone on the call might be able to help us bridge that gap.

So, if we scroll down just a little bit. Let’s see. The first one I see in the yellow, there, the IPC was raising concerns about burdens on providers, both financially and disruption of workflow and then raises a question about whether ICANN could help offset whatever costs may arise.

There’s a few comments in “do not support,” I think, along the same lines from FORUM and Richard Hill about, it looks to be, the burden of re-encoding existing decisions, as well as creating a framework to encode. I’m not sure if people on the call know fully what it would take to actually implement something like this. It looks MARQUES had raised a similar question to the IPC, as did Com Laude. Renee, I see your hand up.

RENEE FOSSEN: Thanks, Brian. Sorry. Problems with the mute, again. Can you hear me?

BRIAN BECKHAM: Hear you loud and clear.

RENEE FOSSEN: Thank you. I did want to explain FORUM's response a little bit, to try and help people understand what, as a provider we would be facing. In particular—and I know that we talked about this in working group meetings before. But as a provider of the URS, we tried to create an automated system where our staff members didn't have to do a whole lot of work to keep the costs down.

So, everything is based on something that happened before. So, something will happen. It will trigger an email of something else to happen. And so, when we're talking about making these changes, it seems like a simple change. But it's very costly when it comes to having to reprogram those things because it's not just this step at the end. It's reprogramming 10 steps or more before that step so that everything still fits together.

And with a decision, we're pulling data from different areas, as far as the registry identity, the party names, dates of certain things that happened. And that's not something that's cheap to do. In fact, I'm not even quite sure exactly how that process works myself. So, I went to our IT manager, who was around when the URS was implemented and developed that system—our online system. So, he's the one that prepared the numbers for me, that I included in the response. And they are quite high.

And the other issue is we've already paid money for translations for translations of decision templates, which we'd have to pay that money all over again for 20 or more languages that we have translations for. So, it would be quite costly for us. And honestly, any money that we have to throw at this is money that we don't want to throw at this because it's not widely utilized. So, for us, it would come down to a business decision, whether we'd want to even continue doing it or not. I'm not saying that we wouldn't but really, we've got to look at it and figure out if it's worth it. Thanks.

BRIAN BECKHAM:

Yeah. Thanks, Renee. I must admit, I hadn't noticed those particular comments with the cost estimates. And with URS, I think it costs around \$300–400. And that may be a split between the examiner and provider. So, that would require a staggering amount of URS cases to offset those costs, which, of course, we know there's not a tremendous amount of URS filings. So, certainly, that's food for thought. Kathy?

KATHY KLEIMAN:

Yeah. Coming off mute. Thanks, Brian. And what Renee says is important. I did want to note, if my reading is correct, this is one where 45.4% of respondents said yes and the noes were 10.9. So, it does seem to have a huge amount of support.

And I wanted to ask staff to go down to question one and look at the response from Hermes, UNIFAB, CHANEL, and others. I just wanted to read some of this because it's interesting to see the overlap of one, two, and three. And in fact, it's Hermes, UNIFAB,

CHANEL, Novartis, and others that say it the best. Here, we're looking at costs and benefits of implementing this proposal, which, again, has four-to-one support, give or take.

So, as a rationale for publication of the URS decision in a standardized, machine-readable XML format, this is consistent with ICANN's recently-announced open data strategy. It lowers the cost of academic research by making it much easier to access and manipulate the data within decisions. It improves transparency, and thus accountability, of the procedures and makes future evidence-based reviews of the policies easier since the raw data can be accessed at much lower costs than at present. And you won't be surprised. The Non-Commercial Stakeholder Group, as well as the Law School Initiative on Intermediaries and Information, basically say the same thing—not quite as complete.

So, there's really good benefit here. I don't know if it would help the FORUM if we grandfather in the prior decisions. It sounded like—and I could be misinterpreting, Renee—that part of it might be going backwards to rejigger prior decisions. And would it help to make something that goes forward—that once the system's in place, in a reasonable amount of time, that that's going forward that the decisions would be XML-readable. And Renee's saying yes.

So, maybe that could be part of our decision—our recommendation to the working group, not our decision because, of course, we're not making one—that there is overwhelming support for this, and lots of good reasons for it, and that one way

to lower costs for the providers would be to make it going forward.
Thanks, Brian.

BRIAN BECKHAM:

Thanks, Kathy. Yeah. Sure. It's interesting to see that there's different groups commenting in support of this. I have to say, I feel the comments raised from Renee and the FORUM, that seems like no small hurdle to overcome. Let me see. What do people think about where do we go with this?

This does seem to have significant support. At the same time, our criteria was whether there was minimal opposition. And I think here, it's not only the question of is there minimal opposition—I think we can probably have different opinions about whether a certain percent meets that or not—but the type of opposition. And so, what do people think about this comment from the FORUM, in terms of, frankly, the cost-benefit analysis.

I don't know. I guess somebody could do some back-of-the-napkin math. But unless ICANN or somebody else was willing to throw \$400,000 at a provider, that seems to be the type of a thing where it would have to be a staggering amount of URS cases to justify those costs being put in, from a provider perspective. And that may be the type of a thing where a provider might find it's biting off too much to justify continuing.

I know, in some prior conversations, we had heard from providers that the URS was already being run at a loss. The work was taken on board because we understood that there would be some economies of scale. And those didn't play out in practice. So, I

think probably the fact that the systems have been built, historically, allows the providers to continue running those at minimal development costs.

I see a comment from David McAuley in the chat and then I'm seeing a little bit of a queue. So, David is just saying—and this was, frankly, the idea that I was trying to hit on— “If we send forward, we should flag that it would make sense to also consider cost, level of difficulty, level of benefit.” And I think that's a fair point. Support and opposition are fine. We also have to look at practical implications of these proposals.

I'm not sure, Kathy, if that's a new hand. Maybe, if it's okay with you, I'll call on Phil, and then Paul, and then come back to you, if that's a new hand.

KATHY KLEIMAN: Great. It is a new hand. Sure. Thanks.

BRIAN BECKHAM: Phil?

PHILIP CORWIN: Yeah. Thank you, Brian. I don't understand ... Well, maybe someone, in the course of this discussion, could explain why publishing decisions in XML format would make analysis easier for third parties. But I think we ... The real question here, despite support that this would be nice to have, is we've heard from the representative of the leading URS dispute resolution provider that

their analysis is that the costs are quite substantial. And if we adopt this and foist the whole cost on the providers, we could lose them as a provider. And since they did the biggest volume, we might lose all the providers. That would be cutting off our nose to spite our face.

I think there are several comments from private parties, from the IPC, about the Open Data Initiative that ICANN has adopted, and whether this would be applicable to this XML, and whether ICANN could give some support, although I think we were all aware that ICANN, like every business, is facing significant uncertainty because of what's going on with the pandemic and the economies overall.

So, I think this is one where we can't ignore the support. But there are serious questions about practicality of implementation and whether this could sink the whole URS because of the cost. And I think we want to preserve this for further discussion but I think we need to really analyze whether the benefits are that substantial and whether ICANN's Open Data Initiative would be applicable and would provide any offsetting of some, at least, of the financial costs of implementing this and also with Kathy's suggestion, which seems to ameliorate some of the FORUM's concerns that this would be applicable going forward, if we adopt it, and not require them to retroactively convert all past decisions into XML format.

That was a lot. I hope it was helpful. But there's a lot to weigh before we make a final decision on this one.

BRIAN BECKHAM: Yeah. Thanks, Phil. And I see Paul McGrady and then we'll circle back to Kathy. Just, Paul, to your question in the chat, I don't know if Renee or someone from staff could answer the question about is there an ICANN rule against providers raising the URS fees. I remember, in the development ... I don't know if it was the IRT or the STI. There was a suggestion that it should cost in the \$300–500. I don't know that that's binding but for whatever it's worth, by way of background. Paul?

PAUL MCGRADY: Thanks. So, there's really ... I guess there's two options here. One, the providers could say, "Gee whiz. This is going to cost us too much. We're going to exit the URS business." Or they could say, "Okay. Fine. We'll take on the obligation and we'll raise our complaint fee." So, it's not like the options are go out of business or nothing else. So, we should keep that in mind.

And secondly, I'm very sympathetic to what the providers are saying here. But the URS is a mechanism of the new gTLD program, which has cost all kind of people bazillions of dollars fighting new fraud, defensively registering domain names—you name it. So, there are very few economic winners in this program, other than ICANN and the handful of Contracted Parties who've actually figured out what to do with these.

So, just because ... If we have a veto over a policy recommendation because it's going to cost somebody money, it would have been fabulous to know that back in 2008. So, I want to be sympathetic here but "it might cost somebody money," I don't

think, can be the guiding principle because this whole thing's costing everybody a bunch of money. Thanks.

BRIAN BECKHAM: Fair point, Paul. I think that takes us back to Kathy. Phil, if you can just confirm if that's a new hand. And then, I see Cyntia. Kathy?

KATHY KLEIMAN: Thanks, Brian. Very fair point, Paul. Can staff go back to the FORUM's response listing the numbers and the costs? Okay. So, we're looking in blue—line number one under the blue bar. So, \$121,000 for software development, testing, and deployment of the XML formatting functionality. So, that's a slug of money.

But the much larger chunk we were looking at—I know everyone's seen but let's—is the \$274,000 for manually tagging and processing of existing decisions into the XML format. So, that's the moving backwards cost, or looking backwards. So, it's my understanding that we're eliminating that cost, the \$274,000—so, basically going from close to \$400,000 that we're asking to \$121,000. Still significant amount of money but not anywhere near what we were looking at before.

In light of the tremendous support for this and what Paul said, I'd like to recommend this go forward and live to see another day, and that we bring it with all the caveats that we now know, before the full working group. Thanks.

BRIAN BECKHAM: Thanks, Kathy. Cyntia. And then, I think, Phil, that may be still a new hand. So, we'll come back to you. Cyntia? We're not hearing you again, Cyntia. I see the microphone shows as being on mute. Okay. We'll wait for you to type the comment. And I think, Kathy, that's probably on old hand.

KATHY KLEIMAN: It is. Let me take it down.

BRIAN BECKHAM: Let me see if there are any other thoughts on the proposal by Kathy to keep this proposal alive, with the caveats raised about the costs and the potential ripple effect that that had. Kathy is asking if we can look at the donut again.

So, let me ask it this way. And I note that there were some comments earlier in the chat about the relevance of a cost-benefit analysis. Does anyone object to the idea of brining this to the full working group, with the ... And, of course, we can capture appropriately the notes here, that there have been concerns raised on our call here and in the public comments about both, let's say, the raw costs and also the cost-benefit analysis. Is there any objection to that?

Yeah. Sorry, Marie. What I mean by "full working group" is for purposed of the consensus call. So, that would be later on when we're driving towards the final report. And so, although it's true we are in the full working group meeting here, this was really a first pass, if you recall, to see if there was any point in getting some of these proposals in front of the full working group again for

purposes of the consensus call. And I think Cyntia may be unmuted. Cyntia?

CYNTIA KING:

Hi. Apologies for the technical problems today. So, it seems like this has a high level of support and it looks like cost is going to be a determining factor. Obviously, we want to keep as many URS providers as we can. But this is something that folks would find to be beneficial. I see no reason why we can't put this before the working group and then give it over to ICANN, saying that if ICANN is able to find a method to provide the funding, then this should go forward.

And I'm specifically looking at a potential corporate-private partnership with ICANN because it appears that the folks that would find this most beneficial are going to be the trademark owners. In other words, they'll be able to more easily search decisions when they're trying to protect their brands if we are able to do this. So, there's no reason why we can't ask that constituency if they would be willing to put their money where their mouth is, so to speak, and perhaps find a way to assist the providers with making this happen. I think that's something that we should look at.

Another thing that I have previously recommended is that I think that ICANN should have a standing group partnership committee with emerging tech. I think that it's possible that there is tech out there—AI tech—that would make this easier to do. So, I think that ICANN has a couple of opportunities on ways that they could approach this.

Obviously, it's beyond our purview. At this point, this goes toward implementation and the cost-benefit analysis we discussed. But I think it's possible and I think that this is the kind of thing where enough people want it that we could say, "Okay. Well, if this you want, how are we going to pay for it?" Thank you.

BRIAN BECKHAM:

Okay. Thanks, Cyntia. I think that squares with the summary earlier, that although there were some pretty substantial concerns raised about the—I don't know if implementation is the right word but the cost, and the cost-benefit analysis, who would pay for it, and that umbrella. But there was support for the proposal as such. Mary Wong, I see your hand up. Mary?

MARY WONG:

Thanks, Brian. Hi, everybody. Again, staff is not taking sides on a proposal or any views. In terms of the cost question, just to the extent that, if and when this moves forward, if the working group believes that it's beneficial and necessary for ICANN Org to provide some resources, then our recommendation to you at this stage is to maybe engage in that discussion with ICANN Org sooner rather than later.

What we might want to avoid is having something like this, or any other recommendation, in fact, that might involve specific resources, either on Org, or trademark owners, or providers, making it into a final consensus recommendation and going to the Board, and then, at that stage, or at implementation stage finding out that either the resources aren't available or that they have to

be prioritized in some other way. So, that's what I raised my hand to say. Sorry if I've complicated the situation.

BRIAN BECKHAM:

No. Thank you, Mary. I think it's a very fair point because certainly, we've heard, both in the context of our request for additional time in this working group ... We've seen it in EPDP. I think we're all aware of some Council conversations around costs in that particular arena—in the policy development process. But certainly, it wouldn't do us very well to make these decisions in the blind, if they're going to land with some concerns on the ICANN implementation side.

So, I think that's a fair point. And certainly, we can capture that in the notes for consideration for consensus call purposes. But I think, unless there's any strong objection, we've covered this one sufficiently. And although there was some concerns raised, there was sufficient support to let this one live to see another day for purposes of the consensus call.

So, not seeing any objections, I think we can probably move on to number 31. And I'll just note, briefly, that we're approaching roughly 20 minutes to go on the call. Sorry. Lori Schulman, I see your hand up before I move on. Lori? Lori, if you're talking, you may be on mute.

LORI SCHULMAN:

Sorry about that. Yes. We certainly want to be ... So, INTA's position on this ... We're trying to thread a needle here, where we want to be sensitive to the positions of the providers, to make sure

that we're not pushing anybody out of the field. Particularly, as Renee notes, there are few providers. And while there are some brand owners that find the URS particularly helpful, we're not seeing the volume that we thought we might see. That's the reality based on data. We can't argue with that.

But then, I hear that Mary is saying maybe we should talk to the Org, if we think we need more resources. So, I'm a little confused by that statement and I'd like to some clarification, to the extent that the committee itself, if it were to recommend funding for this type of innovation reporting the results. And it's a cost that would need some sort of supplemental assistance from ICANN or some other way of funding it besides pulling out what we know is already an extremely low profit margin.

Isn't the report talking to the Org? Or is there another mechanism here, where we start negotiating now because, again, we've got two very real competing interests here. If this is not a profitable endeavor—if you can't make at least what you're putting in—then we're not going to have any URS providers to implement a policy that's a problem. At the same time, if this is a convenient and necessary innovation in order to move forward with analyzing data in the future, and it's to community benefit, I don't necessarily see why the Org wouldn't necessarily want to support it in some way. So, I'm confused about talking to the Org now. What does that mean, outside the parameters of the report?

BRIAN BECKHAM:

Mary, I see your hand is up to respond to that.

LORI SCHULMAN: Yeah. Thank you, Mary.

MARY WONG: No worries. Thank you, Lori. Thank you, Brian. And if might just take another minute of the group's time because I think this response might apply to any other recommendations that could come up—this PDP or any other PDP—that entails cost. Every implementation does entail cost and some would be quite significant.

So, I just want be clear on a couple of things. One is that I'm certainly not suggesting that any group start a negotiation with ICANN Org, whether the resources or anything else, at any stage in the process. So, if I gave that impression, I apologize. What I was getting at, really, is simply, first of all, that if a PDP working group anticipates that a substantial amount of resources might required in implementation, it's always a good idea to flag that to the Org.

I think the most obvious, if somewhat extreme, example is probably the SubPro PDP, where we know there's going to be a significant amount of implementation work and cost. Ours may be quite different, in this case. That's more of a general introductory point.

More specifically ... And I was following up on, I believe, Cyntia's idea about some kind of partnership, either with ICANN Org and providers, or with the trademark owners, if willing, and the providers, or some combination thereof. If, as a result of that, a

working group recommendation essentially says ... And I'm going to make this up. If it says, "X shall be done and x shall be funded by ICANN," or, "ICANN Org shall subsidize the cost of developing x," then that's a very specific recommendation, which, of course, ICANN will support if it's adopted.

What I'm concerned about is that as a consensus recommendation, if it's approved by the Council and it moves forward to the Board, if and when the Board adopts it, ICANN Org is obliged to implement whatever is approved and adopted. So, my point only was that before we get to that phase, if the intent really is that ICANN Org is to subsidize a very specific undertaking—as in this case, for example, a very specific type of technology—then that's the sort of discussion that may be helpful to your decision making, if you at least had an initial discussion with Org as to a likely cost estimate and feasibility. Thanks, Brian.

LORI SCHULMAN: Can I respond, Brian?

BRIAN BECKHAM: Of course!

LORI SCHULMAN: So, Mary, okay. I get that. That makes complete sense to me. If the working group were to decide to do that, is the proper path through you as the vice president for policy or is the path somewhere else? Is it to Finance? I'm also trying to understand

the communication path, if we were to decide to go down this road.

MARY WONG: Just to respond really quickly, it can be through any member of the staff that supports any PDP working group. So, in this case, whether it's Julie, me, or Ariel, or me specifically, the message will always get through if you make a request through a member of the policy staff. In this case, it can be me.

LORI SCHULMAN: All right. Thank you, Mary. I really appreciate that.

BRIAN BECKHAM: Okay. Thanks, everyone. I think it's good that we've covered all of these bases because, of course, as I mentioned earlier, to actually see good on the implementation on any policies we recommend, it's useful to consider not only the policy in the abstract but the implementation and cost, etc. details. So, certainly these are points well worth raising in advance.

So, I think that probably ... And I'm guess, Lori, that's still an old hand. But please interrupt me if not. I'm guessing that lands us still in the same place, which is there seems to be sufficient support to have this proposal "live to see another day," for consensus call purposes, with the caveat that there were a number of concerns raised, both in terms of cost and cost-benefit analysis and also potential ICANN resources and implementation issues. Does that sound like an accurate summary and allow us to move on to

proposal number 31? Okay. I'm not seeing any other comments or hands raised so I think we probably have sufficiently covered this one.

That takes us to proposal 31, which is ... Let's see. So, this is possibly not an easy one. I think this came from David McAuley. This was, "For the sole purpose of assuring that this subject is included in the initial report," which we have done, "for the solicitation of public comment, I am proposing that the working group put out for public comment whether the URS should become an ICANN consensus policy."

So, you'll there, there's about a quarter of the comments in favor of the URS. I'm guess the ellipsis there mean "URS should become consensus policy." A few commenters flagging some concerns. And then, a fairly substantial number of comments that the URS should not be consensus policy.

So, I guess first, let me say that certainly we've accomplished the first goal of the proposal, to ensure that this was included in the initial report for the purposes of soliciting public comment. So, we can tick that box.

With respect to the comments that it should not become a consensus policy and the concerns ... I'm noting that there are some questions from the Contracted Parties House, which go to treatment of RPMs across legacy and new gTLDs. And then, there are a number of comments from individual commenters and organizations, which effectively, if I can summarize this, call into question whether the URS was designed for just new gTLDs or all

TLDs, what is relation to the UDRP and what its relation to pre-existing registrations, etc. would be.

It seems reasonably obvious, notwithstanding the fair level of support that the URS should be a consensus policy ... And again, first, we've met the goal of the proposal by seeking public comment. And then, the natural follow-on. And David's raising in the chat that the implementation would be a non-trivial endeavor. So, this takes us into the territory of the question we were just asking, with respect to question number 29, about costs, and cost-benefit, and implementation ripple effects, etc.—certainly, not something to overlook.

But it seems that there's not sufficient broad support, as we've been calling it, or minimal opposition—in other words, there's the opposite of what criteria we're looking for to actually move the URS to a consensus policy, which would mean that it's applicable to all TLDs, and notably, .com.

Are there any comments, or questions, or concerns with that summary of the comments here? Zak Muscovitch, please.

ZAK MUSCOVITCH:

Hi, Brian. Just wondering if you can explain the interplay between this and ... Is there subsequent consideration of an overall charter question?

BRIAN BECKHAM: Yeah. So, did you have a particular charter question in mind? Was that one of the five overarching questions that we were looking at that you're referring to?

ZAK MUSCOVITCH: Yeah. I recall that it is.

BRIAN BECKHAM: I'm sorry. I don't have those in front of me. Did you have a particular one in mind? I think one of them was whether the RPMs are fit for purpose—things along these lines. Sorry. Maybe I'm misunderstanding. I'm seeing Mary's comment in the chat. Zak, is the question whether this proposal is actually part of the charter?

ZAK MUSCOVITCH: I guess my question is, is this the opportunity to discuss whether a URS becomes consensus policy in the context of this individual proposal? Or is there another subsequent opportunity to discuss it in the context of the charter questions?

BRIAN BECKHAM: Yeah. Thanks, Zak. It's a fair question. And I had a similar question myself, which was why I was leading us to the fact that by asking this question, we've accomplished one side of that. But then, of course, it leaves the question do we actually agree that it should be consensus policy?

I must confess, I'm a little out of my depth whether this would be the moment or whether there would be an opportunity, when we

actually look at the bigger charter questions. I see that Phil put in the chat he can speak to that. And then, Paul McGrady has his hand up as well. So, Phil?

PHILIP CORWIN: Okay. Can you hear me?

BRIAN BECKHAM: Yes.

PHILIP CORWIN: Okay. Yeah. I'm going to give a hopefully not confusing multi-part answer to this. The first thing I want to say is that ... And this is in concert with the statement I made earlier in the call, that we need to dig deeper than the donut.

When you look at the comments—not just the percentage but who made the comments ... And let me be very careful here because I mentioned something along these lines in the last meeting and I was accused of implying that some group within GSNO Council had veto over a proposal or could put a proposal over the line. That's not what I meant to say.

What I was alluding to is that PDP working groups are supposed to be broadly representative of the GNSO community that makes policy. And sometimes, the makeup of a PDP is not the same ratios as within Council. And my point was just we should take comments from stakeholder groups and constituencies seriously

because they are the primary spokespeople for the groups that make up the GNSO.

So, when we look at the source of the comments, the Contracted Parties House, which would be most affected if this became a consensus policy, although not that much because many legacy TLDs have adopted URS by contract—by revised registration agreement ... They said, “it could be done. We’re not objecting. But there’s got to be a phase-in period. It’s not trivial to implement. It can’t be done on day one.” The BC and IPC were supportive. The Non-Commercial Stakeholder Group was opposed. When you look at the opposition, a lot of it was from individuals.

Now, having said that, if anyone thinks I’m teeing up the opinion that this could get through consensus and get consensus, I’m doubtful. I think that even when you do that analysis, there’s more support than the donut would indicate but there’s still substantial opposition. So, whether it could clear the high bar in a consensus call, of unanimity or near unanimity, I have to say, personally, I’m doubtful. We haven’t reached that stage yet.

To speak to Zak’s question, if we decide, in the course of this meeting—the in remaining eight minutes—that we shouldn’t pass this on to the full working group for the consensus call, I believe, in my capacity as a co-chair—and I have not discussed this with the other two co-chairs. My view would be that we have an overarching chatter question, whether any of the RPMs should become consensus policy. That’s really a question about whether the PDDRP, which has never been used, should become consensus policy and whether URS should become consensus

because the other RPMs apply to the beginning—the opening of a TLD—which is obviously not a legacy TLD situation.

And so, I think we're obligated to take up the overarching charter question when we get to the consensus call, although I would not expect the answer to that question, as it applies to URS, to be different than whatever decision we make on this specific question/proposal in the next few minutes.

So, I hope I carefully laid out my position and that it was helpful. Thank you.

BRIAN BECKHAM:

Thank you, Phil. Paul McGrady and then Kathy. And I'll just note we're winding down. I can stay myself a little longer. But Paul McGrady.

PAUL MCGRADY:

Thanks. I have a really basic question, which is when we say that this should be consensus policy, is that code for "it should be retroactive and applied backwards to not-new gTLDs?" Or are we saying it should be a consensus policy for the 2012 round forward? I think that matters. Thanks.

BRIAN BECKHAM:

Thanks, Paul. My understanding has been that that means it looks "backwards." So, it would, by contract, as it has become applicable to a couple of existing TLDs during the contract re-negotiations that it would be applicable to .com, for example.

Maybe staff or someone else can confirm that for me. I see Kathy has her hand up. Kathy?

KATHY KLEIMAN:

Yeah. I'm not sure we're going to wrap this up before the end of the half hour, Brian. But I would agree with your interpretation. Can staff stay where we were, looking at the WIPO comment—thanks—that by making it consensus policy, we are applying it to all gTLDs. That is including the legacies that do not yet have it, like .com. That's my understanding as well.

And I wanted to refer to something that the World Intellectual Property Organization says in their comment, that this does speak to the relationship of the URS and the UDRP. And that relationship was—and here, I'm in the middle of the yellow—was to some extent—actually, I would argue to great extent—considered in the initial design of the URS, as many, many of the commenters say in the red below. And here, I'm speaking in my personal capacity but also as someone who was on the team that designed this, that the URS was not designed to be a UDRP.

It was intended, as Paul just referenced, truly to be for new gTLDs—so, the 2012 round going forward. It was designed as part of the group of rights protection mechanisms that were to protect, in case of the chaos that was anticipated. So, it's part of the Trademark Clearinghouse. It's part of the sunrise and trademark notice. And so, it's part of that whole panoply of special rights created for massive rollouts of new gTLDs at the same time. It was never intended for legacy gTLDs, and particularly not .com, and .net, and probably .org.

So, I think ... Staff has told us, and it looks like we're going to come by this issue again. So, here, there is substantial opposition. And I wonder if that's what we should report out as the reflection of what we're seeing here, is opposition. And then, we'll meet this issue again as a charter question later on in our evaluation. But, personally, I'm not sure we have the support to move this forward now. But back to you, Brian. Thanks.

BRIAN BECKHAM:

Yeah. Thanks, Kathy. I was going to, I think, propose something similar which was first, we've accomplished the goal of asking the question, per the proposal. But certainly, given the fact that this relates to one of the overarching charter questions, it seems that this is probably not the phone call to discuss the actual idea of whether the URS should be a consensus policy applicable to all top-level domains. And Phil's noting this is the full working group. But what I mean to say is for purposes of the consensus call, the question of whether it should be applicable to all top-level domains.

And I would just add that it could also be that one of the things that we recommend is that when the charter for Phase 2 is examined, that this question be considered in any effort to re-charter the work for Phase 2 before we undertake that work. How does that strike everyone for a path forward here?

So, mainly Rebecca ... And I'll try to outline that again, Kathy. To be candid, part if it is that we're one minute from the scheduled end of our call. This is a very meaty topic and I think it would be too ambitious to try to actually, completely answer this question

here. Obviously, it's a topic on which people have firmly-held views on different sides. So, it does strike me as more appropriate for purposes of the consensus call.

And certainly, Rebecca, if it's the will of the working group to continue talking about this proposal on the next call, we can do that. Maybe what we can do is I can ask for a final round of comments or questions now, on the question of whether we come back to this in the beginning of our next call or we flag it up for purposes of the consensus call. And I'll ask people to be relatively brief. I see Cyntia, Zak, and Phil.

CYNTIA KING:

Hi. Are you able to hear me? Good. Okay. So, to clarify, I think that this isn't something that we can make a decision on in the final moments of today. I think that this is something that we probably ... I always expected that this conversation would be a lengthy conversation about how this might work, if it could work, and how everyone feels.

So, I hear Kathy is saying, that's there was an overwhelming number of people or entities that didn't support. There was no support for this or a lot of folks that did not support. But as I go through and read the comments, when I read them, there's large groups of people that do support—large organizations. And then, here's a lot of organizations, but a lot of individuals, that are not supporting.

So, I'm not sure that we can say, "Oh, look. There's 20 people that don't support. There's 20 organizations or individuals that don't

support and 10 that do,” when there’s a very large number of folks that do support, as part of groups and entities, and then a lot of individuals, many of whom I know, that are saying that they would oppose making this consensus.

I think that this is a much bigger discussion than we can have today. And it might be something that we have to spend some time on because the URS was envisioned ... I understand how it came about and how this was something that was negotiated out. And it hasn’t been overly used but I think it is a good tool for the limited purpose that it serves—the very limited purpose—which is to prevent having to do a lengthy UDRP and a very large action in just the most egregious cases. And I think that if we had a discussion around that, I think that there is a possibility that we could come to consensus on how this could work for all of the TLDs in a very limited way. Thank you.

BRIAN BECKHAM:

Thanks, Cyntia. Let me ask because I know we’re out of time. And Rebecca, I think may have had to leave us. And we’ve noted her view to continue with this the next time. Could I ask for Zak, Phil, and Jay to briefly answer whether they would prefer to take this up on the next call or in a later moment during the consensus call. Zak?

ZAK MUSCOVITCH:

Thanks. I was just going to point out that one possible way of resolving this issue, for the purposes of this call, is just to take a closer look at the individual proposal itself because it specifies that

it's for the sole purpose of assuring that the subject is included in the initial report. So, the proposal was that the working group put out for public comment to solicit public comments on it and that's what happened.

So, I don't think that this is necessarily equivalent to the overarching question. And we could, perhaps, put it to bed as the individual proposal's mission accomplished.

BRIAN BECKHAM: Yeah. Thanks, Zak. I tend to share that. And certainly, doing that won't mean that don't discuss it later. Phil?

PHILIP CORWIN: Yeah. I'm glad Zak said that and I agree. When you look ... While this is couched as a proposal, the proposal was to ask a question. We've asked the question. We've gotten a lot of answers. And I think all we are obligated to do, at this stage, is to pass on the overall composition of the answers and their specifics to the full working group.

As I stated before, I think, whether the answer is yes or no, we are obligated by our charter to answer the question whether any of the new gTLD RPMs should become consensus policy. We can't ignore it. We wouldn't be fulfilling our charter obligations. The answer may well be no. We don't have a consensus to recommend that but we're obligated to answer it.

So, I think we can wrap up this discussion and just pass along the information to ourselves, as the full working group, that we may

have more participants when we get to consensus call. And we'll make a decision at that time. But I don't think there's anything more to debate on this one, at this stage. Thank you.

BRIAN BECKHAM:

Got it. Thanks, Phil. And I'm seeing Kathy, David, and Roger agreeing in the chat. So, it looks like we can consider number 31 closed. Of course, we'll come back to the overarching charter question. But I think we're already five minutes over time. So, I think Zak, Phil those are old hands. So, we'll consider that a wrap on this call. Thanks so much, everyone. And we'll see you, if not on the sub-teams Thursday and Tuesday, we'll see you next week for the full working group call. Thanks, everyone. Thanks, staff. Terri, we can end the recording.

TERRI AGNEW:

Thanks, all. Once again, the meeting has been adjourned. Please remember to disconnect all remaining lines and stay well.

[END OF TRANSCRIPTION]