
ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs)
Thursday, 25 June 2020 at 17:00 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the Review of All Rights Protection Mechanisms, an all gTLDs PDP Working Group meeting being held on Thursday, June 25th 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 are only on the audio bridge, could you please let yourselves be known now?

Thank you. Hearing no names, I would like to remind all participants 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 will turn it over to Kathy Kleiman. Please begin.

KATHY KLEIMAN: Thanks so much. And I want to say good morning, good afternoon, good evening, and at this point, I'm not sure what it is since many of us were still in the meeting late last night.

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I hope you had a good virtual policy forum. I thought it was wonderfully well run and that there were some great discussions that took place. Today we resume our regular working group meeting. We're back in our old Zoom room and our traditional format. And today we're continuing our work of late Tuesday night, if you're in the Eastern time, as a full working group and we're going through the individual URS proposals. Phil Corwin led us so well in that on Tuesday, which was great.

Our goal today is to cover a number of URS recommendations, 13, 15, 16, 22, 26, and 27. There are a number of sub-questions so we have our work cut out for us.

I did want to remind... So I did want to note that Phil and Brian are with us, the other two Co-Chairs, and just wanted to lay out what I understand are the ground rules of the discussion. And if anyone has an Sol, just raise your hand and we'll do that as well.

The ground rules that recommendations are based generally on consensus. Ultimately, they'll be based on consensus in the working group so we're looking for unanimity or near unanimity. And here, I'm quoting from my notes that I took when Phil was talking on Tuesday night.

So as we go through these individual URS proposals, we're looking for broad support without substantial opposition. To make it past our review, there should be broad support, broad cross-community support without substantial opposition and a member of the working group will have to bring forward a proposal to take the recommendation to have it live another day, I think was our

phrase, to have it go forward for continuation. But the standard is quite high and so let's proceed into our evaluation for it.

I should ask if there are any updates to Statement of Interest since Tuesday night and seeing none, let us go forward to look at URS Individual Proposal 13. And thank you, Paul. Staff did so much work. I know we're only seeing the tip of the iceberg when we say thank you for them for an enormous amount of work to make things go as smoothly as they did.

Okay. This one, so Individual URS Proposal #13, I'll try to do what Phil did in kind of laying out what we're looking at but please feel free to jump in to add or to otherwise contribute things that you think we should be talking about.

The proposal is the losing respondent cannot re-register the same domain name once it is no longer suspended. And the follow-up question was, and here I'm following from a sub-group co-chair who has combined them and it seems to make a lot of sense in the sub-group. So let's give it a shot here. So Q1, how feasible would it be to enforce this proposal, should it be implemented? We have a no response or no opinion of about 30%. We have support of about 27% and we have do not support of 42%. So I think we should look. We have some support. We have support from the BC, from the Chartered Institute of Trademark Attorneys, from INTA that enforcement challenges can be addressed in implementation. But we have so many non-supporters that staff lumped it all together and it says, "Due to the extent of non-support comments, staff did not attempt to include the individual highlighted comments here due to concerns of duplication. However, staff found that each of these comments contains one or

more of the exhaustive over-reaching themes below. Not a proposal supported by evidence, current remedy sufficient, limit URS remedies to suspension, and others.”

So let’s... Staff, could we go down to Q1 just for a second? And here, how feasible would it be to support this proposal should it be implemented and we’re looking at 23.6\$ saying it would be feasible and 30% saying unfeasible for a variety of reasons that you can see listed in the table and in the comments. So based on that summary, let me open this up to discussion and some either deep dives or initial thoughts on whether, what we should do with this review.

Staff, do you see any hands raised?

JULIE HEDLUND: There is a hand up now from Zak Muscovitch.

KATHY KLEIMAN: Okay. Zak, go ahead, please.

ZAK MUSCOVITCH: I just raised my hand because no one else did, Kathy.

KATHY KLEIMAN: Thank you, Zak.

ZAK MUSCOVITCH: Just to keep the discussion going. But I agree with your general evaluation of the public comments that were submitted. It looks like there's significant interest that support the individual proposal but there also looks like there's significant interest that want proposed changes to it or are opposed to it. So given the initial framework for looking at these and evaluating them, I don't see how a motion would be appropriate because at the end of the day, there won't be agreement within the larger working group. Thank you.

KATHY KLEIMAN: Thank you, Zak, and thank you for keeping the conversation going. I appreciate it. I'm seeing plus one in the chat from Rebecca. Is there anyone who wants to speak differently? Plus one from David McAuley. Thank you. Jay Chapman.

Okay. Unless anyone speaks shortly, I think we can move on to URS Individual Proposal #15. An interesting idea that doesn't have adequate support. Thank you, Paul. I think that's a great summary. Fantastic. Moving right along. I think I'm off mute.

Okay. I don't see a hand up. But oh, Ariel, go ahead please.

ARIEL LIANG: Thanks, Kathy. Because staff is capturing the summary of deliberation on the side, we just want to confirm the working group's decision is to not proceed with this proposal. So basically, it stops here. Is that the conclusion we can capture in our summary notes?

KATHY KLEIMAN: That is my understanding, Ariel. Thank you for confirming. Phil, your hand is up. Go ahead, please. Phil, if you're speaking, you're still on mute.

PHILIP CORWIN: Can you hear me now?

KATHY KLEIMAN: Yes, I can. Good. Thank you.

PHILIP CORWIN: Oh, good. Good. Yeah, you have to do the double unmute here. I typed in comment, but on the procedure, the practice we followed Tuesday evening was that these individual proposals, none of them are working group recommendations, we would need a motion from someone in the meeting to preserve the proposal for consensus call consideration and without someone making that motion and getting significant support and subsequent discussion, these individual proposals have reached the end of the road. So I think that's the situation for number 13.

KATHY KLEIMAN: Great. Thank you, Phil. I agree that that is the system we set, that you wisely set out on Tuesday and that we should be following today.

Okay. Does anyone else want to speak to this? If not, I think we have our answer that this will not proceed and we will proceed onto URS Individual Proposal #15. I would like to ask, and I hate to do it but this is so small, and it's so important that we know the words. I'll take the questions, Q1 through 3, but I'd like to ask someone on staff, Julie, Ariel, could you read this Individual Proposal #15? I think it's important that we know its various, its exact wording and it's too small on the screen for me. So if you could read it, that would be great. Thank you.

ARIEL LIANG:

I guess I can read the proposal and then posting the link to this, the public comment review, too, in the chat and you're welcome to read it on your computer screen as well.

It's Individual Proposal #15. The URS should be amended to include expressed provisions beyond the mention of the patent of conduct in URS procedure paragraph 1.2.6.3b which provides additional penalty for repeat offenders and high volume cyber squatting. The definition of repeat offender should be any domain name registrant who loses two or more separate URS proceedings. The definition of high volume cyber squatting should be any URS proceeding where the complainant prevails against a single respondent in a complaint, involving ten or more domain names.

Once either of these standards are established, the penalties should include: 1) a requirement that the registrant deposit refunds into an escrow account or provide an equivalent authorization on a credit card with each new domain registration.

Such fund could be dispersed to the prevailing complainants in future domain name disputes against that registrant as part of a loser pays system. And 2) a universal blocking of all domain registrations for a set period for the registrant, i.e. blacklisting the registrant on a temporary basis. There may be other possible enhanced penalties that could be appropriate. Such requirements should be included in updated URS rules made enforceable against registrars via parallel updates to the RAA and domain registration agreements of individual registrars. These obligations would be enforceable by ICANN Compliance.

And there are three questions related to this individual proposal.

KATHY KLEIMAN:

Thank you so much, Ariel. And the three questions are, because I can see those, is the proposed definition of repeat offender in this proposal appropriate? Q2: Is the proposed definition of high volume cyber squatting in this proposal appropriate? And Q3: How feasible would it be to implement this proposal?

So I did some quick calculations. The no response and no opinion rate was fairly low here, 21.8%. We see support of 32.8% and do not support at 45.5%. I thought that, staff, if you could page down to the BC's comment. I thought the BC's comment and the IPC's comment kind of summarized here.

So the BC supports additional penalties for repeat offenders where the definition of repeat offender requires multiple findings of URS examiners that the domain names were registered and used

in bad faith. And then could we go down to the Internet Commerce Association? No, I apologize, to the CPH.

“The notion behind URS Individual Proposal #15 would not be workable absent significant change and may not even then. Among the concerns would be these: lack of definition of high volume cyber squatting and repeat offenders, the idea of universal blocking, and the technical complication/difficulties to do something like that, and the resultant risk to security, stability, and even the feasibility of escrow for registrations without much more detailed insight into how escrow could be designated or applied. Escrow appears unworkable to us.” And then it goes on from there.

So let’s take... And then you can see that there’s a number in that 45.5%, the CPH wasn’t even part of the do not support. They’re significant change required. But under the 45.5% number of, you have the core association registries and registrars as well as the number of civil society and academic groups. In the Internet Commerce Association, there’s the comment, “Losing the URS cases is not necessarily a pattern when it is devoid of any consideration of the timespan or the context of the dispute, e.g. when two disputes relate to the same disputed subject matter.”

So we have a wide variety of comments on this and I see hands are raised. I am going to recommend at some point we probably go into the questions. But go ahead, Griffin. Thank you.

GRIFFIN BARNETT: Yeah, thanks, Kathy. So this is a pretty, in contrast to some of the recommendations or I should say proposals that we've seen, this one is quite detailed and a bit complex and there's a fair amount to unpack here.

Now obviously, I'll mention that I obviously helped to prepare this proposal and I do think that there are ideas here that even if others who have commented might disagree with some of the specifics, I think at a high level, if we can kind of distill this into sort of a high level concept, I think there could be support here. And again, I think we might have further discussions potentially about some of the specific details again.

But this is one where I feel like even though if you're just looking sort of at the donut or whatever, you might have the impression that it's not widely supported. But I think, again, based on actually drilling down into some of the comments, I would suggest that this might be one that we carry forward to some extent for further discussion within the working group because I think, again, there are some concepts here that at least at a high level could potentially warrant broader support. And again, I think we can have the conversations about some of the details.

And again, some of this, I think thinking back to the drafting of the proposal, I think some of this was presented kind of on purpose as a straw man so that we would have, that it would give a starting point for some of those further discussions on some of the kind of more detailed aspects. And again, I think concerns about implementation for example, I think that's often, again, also used as sort of kind of a broad argument as to why somebody might disagree with the substance of a policy recommendation.

But I think we found that in most cases, if an idea is supported broadly enough, I think implementation generally is feasible. So I wouldn't want that kind of in and of itself to be a roadblock to further consideration. But again, I think this is one where I would suggest we consider it further, at least in terms of distilling the high level concept and have a further think about maybe some of the details. Thanks.

KATHY KLEIMAN: Okay. Thank you, Griffin. And I know it's hard to jump back and forth between the sub-groups and the full working group. As Julie has properly noted, this is a full working group meeting. So if there are things to be considered, this is the time to do them. And thank you for that reminder to all of us, Julie, because it is hard to jump back and forth. Rebecca, go ahead please.

REBECCA TUSHNET: Okay. Can you hear me?

KATHY KLEIMAN: Yes, thank you.

REBECCA TUSHNET: So there isn't sufficient support for this. The parts that are workable require a fundamental change in the URS procedure like escrow which actually is not a fundamental change to the URS. It's actually a fundamental change in the registration procedure and the parts where we might get agreement in theory – although,

even there, I have my doubts – are not workable without something like escrow which is not going to happen. So I think the reaction here is pretty clear. I don't think there is a reasonable possibility of achieving consensus so we should let it go. Thank you.

KATHY KLEIMAN:

Thanks, Rebecca. And Susan is next but hold on. I think we should quickly take a look at Q1, Q2, and Q3 to kind of get a sense. Not yet. After Susan talks. If we could stay up at the top. Sorry, that was confusing. After Susan speaks, we'll go down there and see if there is some modifications that appear to change the temperature of the community comment. Susan, go ahead please.

SUSAN PAYNE:

Thanks, Kathy. So actually, I have a correction to the categorization to one of the comments in Q3. So I don't mind when we come to it, we can come to it when we get to Q3 or I can do it now. Whatever you'd rather.

KATHY KLEIMAN:

Can we wait until we've gone down to Q3?

SUSAN PAYNE:

Sure.

KATHY KLEIMAN: Maybe just keep your hand up and I'll note that. Okay. Terrific. Thanks, Susan. So let's go down, just briefly, to Q1 and then to Q2 and then to Q3.

So Q1: Is the proposed definition of a repeat offender in this proposal appropriate? And you can see the numbers there that there is some say yes and there's substantial opposition to that of 56.4%. So we could go farther into the comments, but that's kind of our starting overview point with a lot of various commenters on that, a lot of activity on this question.

Let's go down to Q2. So Q2: Is the proposed definition of high volume cyber squatting in this proposal appropriate? And 27.3% saying yes, but that same kind of, but we're seeing things in the 45s coming, so 45.5% saying no. We could explore further, but that's our starting point there.

And Q3 is how feasible is this to implement? And what we see is a group of commenters saying it's feasible or partially feasible, that escrow payments may be challenging, but a wide variety of commenters also saying unfeasible, some with no additional rationale, some saying it's inconsistent with the limited nature of the URS that it imposes burdens on the registrars of ICANN, that it's unfair to the registrants and other concerns.

SUSAN PAYNE: Kathy, at this point, I want to interject.

KATHY KLEIMAN: I understand. Go ahead, please.

SUSAN PAYNE: Well, look. It's not going to fundamentally change things, but I feel it does need to be corrected and I'm saying this not as a member of [Marks], which I'm not, but I don't think there's anyone on here who is. And so the comment that is categorized as unfair to registrants which is a comment from [Marks], if one reads it, is quite clearly not saying that at all. That should be categorized as somewhere in the feasible or feasible with some amendments camp. It's not correctly categorized.

KATHY KLEIMAN: Could staff speak to this a little? I think [Marks] would have chosen their option here. Wasn't that a button that you push?

SUSAN PAYNE: No. No, it wasn't. That's staff's kind of summary of their assessment of the comment.

KATHY KLEIMAN: Okay. Thank you for that important clarification. Appreciate it. So now, in light of, and we're seeing a lot of red here, a lot of concerns about feasibility. So in light of the fact that the questions, and some of these recommendations, the questions have helped us clarify where there might be middle ground. If anyone thinks that's what's happening here, please let us know. Otherwise, how do we move forward on this – Susan, thank you – what's a good way to move forward on this? What's our next step? Phil, go ahead please.

PHILIP CORWIN:

Yeah, excuse me. And these are personal views, not in my capacity as a Co-Chair. Let me say personally, I have no problem with the concept of some additional sanctions or penalties for a party that engages in repeated acts of cyber squatting, particularly black and white cyber squatting which meet the high procedural evidentiary standard of a URS. That said, I think there's two issues here and I don't have solutions.

One is what would be the standard for establishing such repeated abuse of the registration process? This proposal seems to set two standards. One is that losing two URS cases, which could each be for a single domain, and obviously, two is the minimum number you could, domains you could have for it to show a pattern. You can't show a pattern with a single loss. But then it says, "or losing ten in a single action". Ten black and white infringing registrations certainly would begin to show a pattern. I'm not sure if two is. But you've got this wide gap between two and ten in the proposal.

And the second is if you demonstrate it, what is the penalty? And it proposes one, depositing some type of escrow. My question would be, who is the escrow going to be deposited with? The URS provider's not going to hold the money. Registrations are done by registrars and there's hundreds to choose from and an abusive registrant has their pick of them. And two, blocking further registrations, really bad actors have no problem setting up different shell companies with different names to engage in bad acts or even to presume identities and use stolen or counterfeit credit cards for their activities. So I think the concept is good, but I think this proposal needs substantial work to become anything

that might have a chance of consensus support when we get to that stage. I'm not sure how we get there, but if there's members of the working group who have suggestions on how to address setting the proper level for abusive complaints and an effective penalty that can be practically implemented, I'm all ears. Thank you.

KATHY KLEIMAN:

Great. Thanks, Phil. I'm not going to read all the comments in chat but let me read David McAuley's. "No penalty for repeat offender, but there may be a cost to the practice. Repetitious offending may be used as proof, I think, under the Rule 5.9. I think we can move on this proposal."

And so thank you, Phil, for your ideas. The idea is substantial work on this. If we're going to do it, I guess we do it now and so let me wait and then measure it against some of the concerns raised as well, the detailed concerns raised here as well. Does anyone else want to speak to this? Zak, go ahead please.

ZAK MUSCOVITCH:

Thanks. So I don't have a solution to this, but I'm wondering if we can perhaps try to lessen the complications. So one part of this proposal is the escrow provision. That, to me, seems particularly problematic just in terms of the increased cost and complications for the URS system, the access to justice issues. That seemed to me to be just a mess. I'm wondering if that is such a crucial part of this proposal or whether the people who are in favor of the proposal generally see that as an unnecessary appendage to this

proposal because if it's an unnecessary appendage, perhaps it's worth delving deeper into it. But if it's a crucial part of it, to me, that's like a non-starter because I just see it as so impractical to implement. Thank you.

KATHY KLEIMAN: Great. Thank you, Zak. Important question. Does anyone want to respond to that? Okay. Can Zak repeat his question? Zak, do you want to repeat your question please? Sorry about that.

ZAK MUSCOVITCH: I don't think I can. It was just once you let it go, that's it.

KATHY KLEIMAN: Okay, fair enough.

ZACK MUSCOVITCH: I'll give it a shot. What I was just actually saying in a nutshell for Griffin or anyone who didn't understand what I was saying before, to make it simple is that is escrow such a fundamental part of this proposal or is it an unnecessary appendage? Because if it's an unnecessary appendage, maybe it's worth looking at this proposal further. But if it's a crucial part of this plan, I personally see it as entirely unworkable because it complicates the whole URS system and is a burden on the parties involved and adds cost, etc. So I see that as a non-starter. But if that wasn't part of this, perhaps there's more to discuss. So the question really was for the proponents of this proposal, is that something that is fundamental

to the proposal or are there other aspects to the proposal that make the escrow aspect less important? Thanks.

KATHY KLEIMAN:

Great, Zak. Thanks for the restatement on that and the re-question. Also, I'm going to note I see a debate going on in the chat which is going on quickly. So if people want to bring it onto the audio, I would appreciate it. Otherwise, I'm going to let most of it be read in chat. Susan and then Griffin. Susan, go ahead please.

SUSAN PAYNE:

Yeah, thanks. So this is just an off-the-cuff reaction to Zak's question but I would say I think that the answer to that for this individual proposal, and indeed for many of them, is that yes, when people put in these individual proposals, they were under the impression that there was going to be discussion in the working group and proper debate and the things that went in as a straw person would get toned and tweaked down to something that might be able to gain consensus. And then of course, we decided to ditch all discussion of the individual proposals and then we decided to just put them as-is out for public comment without any possibility to amend them. So yeah, of course, what's in here is one suggestion but it's by no means that all elements have to survive to the end of the process.

I think the hope had always been, and I think you would probably the same about one of the proposals that you put in that we talked about on the previous call, that if we'd actually had a sort of

discussion about it in the working group, it might have ended up being something that could live. But unfortunately, it's died.

KATHY KLEIMAN: Thank you, Susan. Okay. Griffin, go ahead please. And I think that's a fair point too.

GRIFFIN BARNETT: All right, thanks. I'm just reacting to Zak's comment, although I do sort of agree with Susan because I think it's true that a lot of the individual proposals were prepared. I mean, I'll speak to ours. I know the ones that I helped work on, at least, were prepared on the understanding that there would be the opportunity to revise them and refine them based on these comments and other discussions and so on and so forth, and not taking an approach that they're sort of take them or leave them as-is.

But having said that, to react, and I guess kind of segueing from that starting point to respond to Zak's point, I would say and obviously I was only one of the proponents of this particular proposal so I don't want to speak for everyone, but my personal view is that no, the escrow component, and really all of the approaches to the enhanced penalties that this proposal envisages are not, in their current form, fundamental. I would say, again, and I sort of noted this in chat earlier, what is really fundamental about this proposal is the concept that there should be some additional penalties. Those could be decided later.

But the fundamental gist of the proposal is that for certain categories of actors or certain categories of behavior, which we've

termed repeat offenders and high volume cyber squatting, there should be additional penalties. And that's really the simplest, I suppose, formulation of what this proposal is getting at. And I think all of the rest are the details that can certainly be revised, refined, totally changed, and again, I think we're presented to try and flesh out from the outset that these types of activities that we're hoping to deter warrant some additional remediation or mitigation measures to achieve that.

And so I think all of the details in terms of what those are, are things that can be worked out and can certainly deviate even to an extreme degree from what's currently in the proposal, which again, was presented really as a starting point, a straw man, whatever you want to call it for these types of further discussions. So hopefully that's helpful. Thanks.

KATHY KLEIMAN:

Okay. I see Zak and Phil in the queue and I will turn it over to them. I note that we are close to the end of the line on these discussions that we have discussed individual URS proposals several times and that one of the questions is how much time does the working group want to spend fleshing these out, debating these at this point towards the very end? How much time do we have? Let me ask. I saw Zak was in the queue. Zak, it looks like you put your hand down, so Zak, you or Phil first.

ZAK MUSCOVITCH:

Please Phil, go ahead. I'll defer to Phil.

KATHY KLEIMAN: Great. Thanks. Phil, go ahead please.

PHILIP CORWIN: Thank you for your deference, Zak. Let me say this. I think based on the discussion, let me say three things, well, four things. One, we're spending an awful lot of time on this. We need to move on. We can't spend the whole 90 minutes on this proposal. Second, it appears to me in my personal view that in its present form, it has little to no chance of getting consensus support in our consensus call. Three, when you look at the CPH comment, even if we have consensus and sent it on, it would face a very difficult time in council with the CPH concerns expressed and I don't think the NCSG expressed an opinion on this, but I don't want to speculate on their view. But they have to be considered too.

But I think there are strong feelings on this one. The issue seems to be less with the concept than with the practicality of how do you define repeated abuse and what can you practically do to penalize it and deter it. So I would suggest that we move on but leave the possibility of proponents of this, and hopefully they would engage in dialogue with opponents, to review all the comments and give them the opportunity if they wish to come back in the consensus call with some significantly revised version of a proposal for penalties for substantial repeat abuse by registrants rising to the level of repeated URS decisions against them.

So I guess boiled down, I'm saying we should move on but leave the door slightly open for proponents to come back and to hopefully engage with dialogue in the interim with opponents and see if we can get something that might get broader support raised

in the consensus call. But I think in its present form, it has no opportunity for consensus support. Thank you.

KATHY KLEIMAN:

Phil, thank you very much and that sounds like a motion to move this recommendation forward under very limited circumstances. Susan, what do you think? And please go ahead.

SUSAN PAYNE:

Hi. I'm [not really] responding to that, but I am responding to Phil. Phil, I'm sure this isn't really what you meant but the way you crafted your comments just then suggested that in the case where, in any case where the contracted party house have expressed objection, opposition, then essentially that carries the day. You're suggesting that the moment it gets to Council, it will be voted against. Now that isn't the role of Council as I know you know well. Council's role, once a report gets to Council, Council's role really, or at least the position for Council in considering that report is was the process followed properly and some other, there are some other assessments. But it's not to kind of like insert their own view on what the outcome should have been for the view of the working group.

And your suggestion would imply that anywhere in any part of this report where the CPH didn't like it, that it can't stand because the CPH have a veto on anything that we're doing here in this working group and that is wrong.

PHILIP CORWIN: May I respond?

KATHY KLEIMAN: Absolutely.

PHILIP CORWIN: Yeah. Susan, well, I think the more important thing right now is that this proposal in its present form has little to no chance of getting consensus within this working group. Perhaps with revision, it can. I would hope that if something could be done in that area, I'd be very happy to see that outcome.

You are correct that generally Council approves recommendations from working group, but not always. We had a recent example in the past year where Council rejected a recommendation coming out of the IGOCRP Working Group, so while you're correct the presumption is that recommendations coming from a working group will be approved by Council, I think we still need to take somewhat greater notice of opinion comments posted by groups within Council on particular proposals. Thank you.

SUSAN PAYNE: Thanks. Can I respond please?

KATHY KLEIMAN: Sure.

SUSAN PAYNE:

Thanks. Phil, I am aware of that IGO position. You are too since you were one of the chairs of that group and indeed, as a chair, you put in a minority statement which was unprecedented. Let's face it. So you and the other Co-Chair both disagreed with the outcome of your own working group. So that whole situation with the IGO, as you well know, was unprecedented and caused something of a constitutional crisis within the GNSO Council. And so my objection is that this is the second time now because you also did it on Tuesday where you have implied that the GNSO Council has a veto, and therefore, that the CPH has a veto on anything come out of a PDP. And it's fine. I know that's not the case. But there are other people in this working group who may not know that's the case and as one of the Co-Chairs, I really think you should be more careful in how you express yourself. Thank you.

KATHY KLEIMAN:

Thanks, Susan. Let me just make a note. I interpret it, personal opinion, not as Co-Chair. I interpreted Phil's comment a little differently and let me, and then Paul, we'll call on you. Let me go back. I think Phil was saying something that came up on Tuesday as well that where you have a number of stakeholder groups that are concerned, that that raises, that goes to our bar. So Phil noted the Contracted Party House of Registries and Registrars and to the question I've been going through the comments, to the question you raised earlier, there's also opposition, Phil, from the Non-commercial Stakeholder Group. So that's about three-quarters of the GNSO – it's just worth noting – in addition to the many commenters from the community.

Paul, where do we go from here? What do you think?

PAUL MCGRADY:

So what I would like for us to do if we can is for those who wanted the concept to survive, not so much the details, and I include myself in that crowd, Phil offered us an opportunity to live another day, to take the concept back, to rework it and reintroduce it to the working group. So I think that those of us who wanted the concept to survive should declare victory, retreat, and work on this together and then try again with introducing something to the working group that might be more acceptable to the working group at-large.

And for now, let's set aside the debate about GNSO Council makeup and things like that and move on to the next [donut]. Thanks.

KATHY KLEIMAN:

And live to fight another day. Great.

PAUL MCGRADY:

That's right.

KATHY KLEIMAN:

Thank you, Paul. Is there anyone who objects? I'm seeing support for that from Griffin in the chat. Is there anyone who objects? More support. Paul Tattersfield saying, "So long as that applies to all other individual proposals." Fair enough.

Okay. Good. Thank you for that avenue, Phil and Paul, and everyone else who supports it, to move forward. Good, 15 will live on. Ariel, go ahead please.

ARIEL LIANG:

Thanks, Kathy. If staff may suggest, perhaps we can go to Proposal 22 first before 16 because 22 is referencing some of the terms included in 15 such as the repeated offenders and high volume cyber squatting. So since people's memory is still fresh with 15, perhaps go to 22 will be more efficient if that's feasible.

KATHY KLEIMAN:

Okay, 22 it is. Let's not forget that we're bypassing 16. Okay. So number 22. It's a short proposal with lots of questions. "The URS should incorporate a loser pays model." And then the questions are, "Is a loser pays model appropriate to the URS? Please provide input on the definition of specific criteria mentioned in the proposal, e.g. repeat offender over a defined time period in high volume cyber squatting." I see the overlap that Ariel was telling us about. Q3, please provide input on the specific item or items that should be paid in a loser pays model, e.g. administrative fees and attorney fees. And Q4, please provide input on the enforcement mechanism of the proposed loser pays model.

Here we have some no response and some no opinion, but a lot of people had an opinion and what we see is that 30.9% supported in some way this proposal, and 45.5% did not. And Zak says, "Another easy one." Right.

So let's go down to the questions briefly because these do... So Q1, is the loser pays model appropriate for the URS? And we're seeing 21.8% saying yes, but 45.5% saying no, so kind of this clarifying question has a strong response from the community. Let's go down to Q2. And then you have people trying to provide some specific criteria for repeat offender, and some saying the response is inappropriate, that it's arbitrary without context, unfair to registrants, and some other concerns about this.

And then Q3. Please provide input on the specific items that should be paid in a loser pays model, administrative fees, attorney fees. We have a lot of no response here and it may be because – we can all speculate on why – but it may be because people, commenters thought they had already kind of established their position on this and we see kind of a split between those seeking administrative fees, administrative and legal fees, and some saying this is an appropriate question, that there are no loser pays for the URS and that's kind of the way it is.

So with that very brief overview, let me open this up for questions. Please feel free to fill in additional details that you find in this. But we are starting with, like the last one, great concern across the community on this and we can see it in the [donut]. Go ahead, please, anyone who would like to comment. Griffin, go ahead please.

GRIFFIN BARNETT:

Yeah, thanks Kathy. I was just... I think this is one where kind of in contrast to 15, the concept here is quite simple and it's been stated quite simply. And I think this is one that perhaps would

benefit from a bit of additional detail whereas I think, again, I think in contrast to the last one that perhaps went overboard with detail in terms of setting up sort of the straw man discussion. But I understand there's a lot of opposition to this one.

I think a lot of the comments that I saw talk about ensuring that a loser pays model applies equally to both parties, and obviously, that would be the case. And then the question is how do we define what actually gets paid. And I think that's an area where there's, again, sort of a number of different views. The approach that I personally would be in favor of would be narrowing what actually gets paid specifically to the filing fee and any response fees. And again, I don't know if making that clarification would increase the likelihood of this garnering any level of consensus or not. And again, I think we still have the issue of, again, potentially limiting this to apply only in certain cases. Again, that's where the repeat offender and high volume cyber squatting definitions come in.

I think we avoid those issues if we agree to just a loser pays across the board, so I think that's something also to think about. And again, in terms of the enforcement mechanism, again, I think that's something that maybe is similar issue with 15 in terms of how do we actually recover these costs. But again, there are payment methods on file for all of these domain names and I understand people have concerns about identity theft and all sorts of potential issues. But I think we need to take sort of the Occam's razor approach here which is to say the domain name registration gets paid for and there's really no reason why that same payment methodology couldn't be used to enforce any of these types of

mechanisms, at least taking that as sort of the prima fascia kind of assumption.

So I don't know if that moves the needle at all, but I did want to offer some of those kind of hopefully clarifying comments. Thanks.

KATHY KLEIMAN:

Griffin, don't get off the phone yet. Let me see if I understand the shift, the offer that you're making, which is that the fees be narrowed to filing fees and any response fee. And you wanted to see whether that might reduce or limit some of the fairly substantial opposition that's here. Is that correct?

GRIFFIN BARNETT:

Yeah. So I think the way that this proposal was presented, it left the question open a little bit and that's why we have three here as to what would actually be covered under the proposed loser pays system because I think it can include or exclude certain costs and it really is a matter of to what degree do we want to include certain costs or exclude some. And so...

KATHY KLEIMAN:

Okay, thank you. Thank you. Thanks very much. Okay. Phil, go ahead please.

PHILIP CORWIN:

Thank you, Kathy. Looking at this proposal, the basic proposal is wide open. It just says the URS should incorporate a loser pays model and if you just read that, you would think whoever, if the

registrant loses the URS, they pay. It's not clarified what they pay but they pay. If the complainant loses, they don't pay. But while I know loser pays is going to be a major issue when we reach Phase 2 of this working group and address the UDRP, but the UDRP is somewhat different in that dismissals are rare or never happen. I defer to Brian Beckham on that. Whereas with the URS, the examiner is supposed to determine upfront under the "know it when you see it" approach that on its face, it looks like a black and white case of cyber squatting and it proceeds because if there's any gray area, the examiner is supposed to tell the complainant that it's more suitable for a UDRP or a court case.

So if it would be loser pays, whatever they lose the URS, the registrant would be responsible for paying something in almost every case because it would have passed that initial screen. But then when you get to the questions which refer to repeat offender, high volume cyber squatting, etc., it starts to look like a proposal that's much more closely related to number 15. So I'm not sure, and I don't recall who proposed this or what their intent was when we discussed this proposal. If it's the loser pays in every case, then it's a separate proposal. But if it's a loser pays under certain other circumstances such as repeat offenses or high volume cyber squatting or things like that, then it becomes very closely related to number 15, and perhaps the live another day approach would be more appropriate for this because it would then become very closely related and it would give the proponents of some penalties for repeat abuses an opportunity to come back with a refined proposal and to engage in dialogue with those concerned by these proposals in the interim, the several months between now and our consensus call. Thank you.

KATHY KLEIMAN:

Let me come off mute. Thanks Phil. Okay, so the idea that this might be a payment, a question. Is it loser pays in all cases or loser pays in the case of repeat offending, hence the possible link to our last URS individual proposal.

It might be worth taking a look at some of the concerns that were raised, some of the lack of support. Can we go down to do not support recommendation on the main recommendation, just to see if anyone's referring to this repeat offense, how the community interpreted this when they were reviewing it?

So the CPH and I can read it. I'm not in the CPH. "CPH has significant reservations about the ability to successfully implement this proposal. One, it is impossible to ensure that the infringer pays and to prevent that serial cyber squatters or repeat offenders continue their activities and use other registrants for future registration. And two, the proposal does not set limits on the loser pays principle. And three, an additional insurance or escrow for each registration will further endanger the market for domain name registrations."

And then we see a number of civil society groups, non-commercial stakeholder group, academics, and individuals who are also saying that this is kind of inconsistent with the URS and the UDRP and then the way these systems have been set up. So Griffin, we're looking for a way forward. Again, if you're in the chat, I'm not following that as closely. I apologize. Griffin, do you see a way forward here? Thanks.

GRIFFIN BARNETT: Thanks, Kathy. Well, potentially but I put my hand up to react a little bit to, since you highlighted the CPH comment here in particular. I mean, it's not impossible to ensure that the infringer pays and also they're presupposing that the respondent is going to lose, which is sometimes the case but obviously not always. And again, that's, that would seem to be an admission that they... Let me put it this way. I don't think it's impossible to ensure that a losing party pays if we agree that this system should be put in place because, again as I mentioned, complainants have already paid the fee upfront and in the case of a respondent, there may be the response fee in certain cases. And even if there isn't, again as I mentioned, in order to have maintained the registration, there would have to have been a payment method on file. So I don't want to get into that debate again. But I think stating that it's impossible is really overstating it.

And it says the proposal does not set limits on the loser pays principle. I don't really know what that means. I mean, the limits, there are a number of possible limits as we've discussed so we pose the questions about whether loser pays should apply across the board as a baseline principle in all cases. We also ask the question about whether, in lieu of that across the board approach, it's something that could perhaps garner broader support if it were limited only if certain categories of activity were found in the decision. And again, that's where the repeat offender, high volume cyber squatting items would come in.

And again, we've also posed the question about what would the extent of what gets paid under this system actually be. And again,

I noted that one possibility would be limiting it just to those, the filing and response fees. Obviously, it could be broader than that and it could be things like attorney's fees and things like that. Again, that was put out for the question. So to say categorically that it doesn't set limits on a loser pays principle, I think that's not accurate and I think even if it was an across the board solution, as long as we identify which specific things get paid, again, I think that is an appropriate boundary.

And again, they talk about insurance or escrow. Again, I don't know necessarily that that would need to enter into it, again, based on my earlier comments about the payment on file. But so I wanted to react to that since you highlighted the CPH comments, just to kind of take each [inaudible] turn.

And I guess if I had to put forward a path forward, I think a lot of these comments are talking about the practicality of this proposal. And again, I think I've already responded to that. I think it would be possible and actually not as burdensome to enforce this as people seem to suggest. I could be proven wrong, but I think just to put all of the argument on that it's not practical to implement is missing the point. So...

KATHY KLEIMAN:

And obviously, the comments that we're talking about – thank you, Griffin – didn't deal with the details that we're now discussing, which I understand to be loser pays, loser pays in all cases, loser pays under repeat offender cases. That would limit what is lost to filing fees and response fees. So a lot of different variables here .Griffin, did you want to say anything more? I just wanted to

summarize the balls that appear to be up in the air on this proposal.

GRIFFIN BARNETT:

Yeah. So I think... Thanks and I was going to go on to say just that I think given the different, if we think about this sort of like a decision tree, we've obviously stated the initial proposition very broadly and then it could be refined and kind of narrowed depending on which path we take in terms of, again, the sort of across the board approach or only loser pays if there's repeat offenders and/or only if there's [inaudible] cyber squatting found, again, leaving aside whether we agree or disagree on the specific definitions of those categories. And then again, as sort of a fork in the road in terms of whether only the filing fee gets covered and the response fee or if there are other fees that we think should get covered.

So my suggestion is perhaps we can create sort of a group that kind of outlines each of the possible options here as sort of a collection and maybe that's something that we can either pair with our further discussion of Proposal 15 because, again, there are some, I think, overlaps there or we can perhaps consider them separately. But I think maybe if we've laid out the different options more explicitly, we could find some common ground for maybe one of those options that might be adequate in terms of having broader support.

KATHY KLEIMAN:

Great. Thank you, Griffin, for laying it out. I would be very interested and I think we should be very interested as a working group in responses to that path that Griffin lays out. Is it possible to kind of overcome the concerns that have been raised? We don't get to go out to the community again on this, but Griffin has laid out various paths forward. What do people think? David, what do you think?

DAVID MCAULEY:

Thank you, Kathy. I'd like to just reply a little bit to Griffin whose comments I always find very thoughtful and appreciate them a great deal. But when the Contracted Party House said there are no limits... Let me back up just a second. I was engaged in the process of developing comments in the Registry Stakeholder Group that are part of the CPH comments but I was not involved in the comment on this particular proposal. But in any event, when the CPH says there's no limits, I think it's a fair comment and the reason I say that is repeat offenders, attorney's fees, etc., those are given as examples. But even among, even within one of those, within loser pays, there's no limit on attorney's fees. And so would a \$20, \$30, \$40 registration lead to the payment of tens of thousands of dollars in attorney's fees?

And so anyway, I think, while I think I oftentimes agree with Griffin, I don't in this case. My personal thought is this one doesn't have the support. We ought to move on. But if we work on it, I think it's up to us to come up with a solution, not the Implementation Team. It has to be crisp and allow this group to consider whatever is put on the plate so that we can stay on our target deadline. Thank you.

KATHY KLEIMAN:

Great. Thank you, David. My sense is that you're telling us to move on based on where we are, but that wasn't a complete absolute. What do other people think? We've heard a lot from a few people. Does anyone else want to comment? Does this stay? Does this go? Does this move on? Does it live to see another day? That is not a decision I can make as the Co-Chair. Zak, go ahead please.

ZAK MUSCOVITCH:

Thank you. You know, when I see that there's such significant interest in formulating a satisfactory loser pays model as Griffin referenced, I'm encouraged and would like to see that happen. But I'm also concerned that this is such a late stage in our entire working group procedure and it's perhaps regrettable there wasn't a better opportunity earlier on to flesh these things out and find more common ground. So I'm concerned about doing it at this point because at this point, the URS Individual Proposals were ones that were expressly not working group proposals by definition but yet they were put out to public comment just on the if/come that the public comment might raise them up to a level that could find consensus. But it just doesn't seem to be the case right now.

The loser pays is a general concept, might even find a widespread agreement but the devil's really in the details. How that is implemented is not a minor thing at all. It's the substance of the, effective substance of the whole proposal. So what I'm saying is somewhat equivocal. I'd like to see a way forward to find common

ground on this, but my concern is that it's late in the day to do that.
Thank you.

KATHY KLEIMAN:

Thanks, Zak. I'm looking for other hands. And just noting, again, that there's a reason we linked these two proposals together, Proposal 22, and a reminder on Proposal 15 which is living to see another day, there is a question about additional penalties for repeat offenders and high volume cyber squatting. Is it possible that some of the pieces of 22 can be kind of brought in under the umbrella of 15? Griffin, go ahead please briefly. We do have to move on, on this.

GRIFFIN BARNETT:

Yeah, sorry. Sorry. I heard from... I'm just reacting to what Zak said. And maybe I'm misunderstanding his comments, but what I heard is that he is suggesting that we're too late in the day to have these kinds of discussions and consider potential refinements to the individual proposals and I was under the impression that that's exactly what we're supposed to be using this time for and that we had agreed we would use the time after the public comment period to do. So maybe I misunderstood or misheard Zak but if that is what Zak was saying, I would say that doesn't make a lot of sense to me. So apology if I misunderstood, Zak, but just reacting to that. Thanks.

KATHY KLEIMAN:

Okay. Zak, you're more than welcome to respond on that. I didn't quite hear that that way. I thought Zak was talking about kind of

the threshold that we have for individual URS proposals not being working group proposals. Zak, I'm pausing to see if you raise your hand to respond. Otherwise, I'll move to Phil. Zak, go ahead please.

ZAK MUSCOVITCH: Yeah, I think that's the second time, Griffin, that you haven't understood quite what I'm saying today. So let me make it clear. I said that I'm equivocal about this because I see on one hand I'd like to find common ground, but on the other hand, we're far down the process and the individual proposals haven't. This particular individual proposal hasn't gotten widespread support or a different degree of support. But in any event, I'd like to hear from Phil what his views on what the parameters are for this particular discussion and from the other co-chairs perhaps as well because my impression was not that we were trying to relitigate or dig deeper or find solutions that could have been raised earlier on, but merely to review the public comments, to see if these URS individual proposals could be reclassified as working group proposals. But I'm happy either way, whatever the working group decides. Thanks.

KATHY KLEIMAN: Thank you. You've really framed it well. Phil, over to you. What do you think?

PHILIP CORWIN: Yeah. I'm speaking in my Co-Chair capacity now on procedural matters. First, I'd remind everyone that we did have working group

discussion on each and every one of these individual proposals. Originally, we decided to put them all out in the initial report and then there came a point in time where the co-chairs among ourselves felt that was not a responsible way to proceed and we came back to the working group and said we really believe that these proposals need some additional vetting, that it's not right to put them all out before the community with no discussion at all within the working group. And we did that and we eliminated quite a number. And in that process, every member of the working group participating in those discussions had the opportunity to move that an individual proposal become a working group recommendation if they believed it could meet the bar of wide support and minimal opposition. And such motion was not made for any of the individual proposals that survived the vetting process.

My view is that now these individual proposals, we have the benefit of the community comment which gives us two things. One, it gives us information about which individuals and entities within the ICANN community support these individual proposals or oppose them and on what grounds they do so and it also provides us with information which can point to possible ways in which the proposals can be modified to make it through the consensus call which is a somewhat higher bar than the bar we had for working group recommendations in the initial report.

What I would say – now I'm going to switch to individual opinion, taking off my administrative hat and then I'm going to jump back to administration – this proposal, thinking about it more, is related to but somewhat different than number 15. Number 15 is strictly

penalties for repeat abusers of registration process, repeat cyber squatters. This one holds out the possibility of a respondent paying a penalty, I would guess if they bring a totally non-supportable case but that would have to be fleshed out. So they're related but different in that aspect.

But I would think again, and I said this earlier in the discussion of this, I think they're close enough that the proponents of both penalties for repeat offenders or high volume cyber squatters who also are pretty much the same folks who support this one, could come, would have the opportunity to come back when we get to the consensus call and hopefully having engaged with dialogue with other members of the working group who have concerns to put something on the table that they think might get support at the consensus level.

I would express, and now I'm wrapping up and putting back my administrative hat, I was a bit concerned about one thing that Griffin said which, if I understand him correctly, he said we can come back and give the working group a bunch of different options to choose from in shaping this further. I have to say I think administratively, we're past that point. I think the point for working group discussions, trying to shape a proposal, was what happened before the initial report and now we're at a different stage and we don't have, not only am I concerned about that process being appropriate, but it would be very time consuming.

So what I'm suggesting at the end of all of that is that proponents of both the penalties for repeat offenders and/or high volume cyber squatters who are generally the same parties who support loser pays, have the opportunity to, with this discussion and the

information provided by other members of the working group in the discussion we just had, should have the [operator] come back with a revised proposal, whether you call it repeat offenders or loser pays or some combination thereof, for consideration by the working group when we get to the consensus call. But it should be a fully baked proposal.

I don't think it'd be appropriate or that we have the time for giving the working group multiple options and having a long debate on which, if any, might get support. I hope that wasn't too confusing. Thank you.

KATHY KLEIMAN:

Brian... I think you provided some good guidance here that if something comes back and needs to be – and I do see Brian's hand in the queue – crisp and clean, clear and fully baked.

When I said I agreed with Zak, I wanted to clarify that I agreed regarding the relitigation, that that was not what I understood this process to be doing as well, that we're not relitigating. We're looking at public comment and concerns, and on this one, they're high. But Brian, do you agree with Phil's way forward? And then let's see if we can wrap this up. Brian, go ahead please.

BRIAN BECKHAM:

Yeah, thanks Kathy, and thanks also for chairing today. I wanted to just build on what Kathy and Phil said and kind of mindful of Zak and Griffin's comments. So I think basically the burden is on Griffin and the proponents of this proposal to do their homework, reach out to the people who put comments in that weren't

supportive of this and see if they can't bridge that gap and come back to us with something that can be considered by the working group. But this... I agree with Zak. I think unfortunately, the moment's passed for a more robust debate. The time is to come with something that's really been workshopped behind the scenes and if we can get it across the finish line, great. If not, then so be it. Thanks.

KATHY KLEIMAN: Great. Thank you, Brian. And thank you for your comments. Griffin, very briefly, what do you think of what's been shared by the co-chairs as a path forward?

GRIFFIN BARNETT: Yeah. Thanks, Kathy. I just want to say, and I put this into chat to an extent as well but I think the points that have been raised by Phil and Brian and others are fair and I would agree to basically take on board the comments and discussion that we've had here on Proposal 22. And my suggestion would be to take that and kind of integrate it into the opportunity to come back with a refined proposal concerning 15 because I think as we've talked about, there are natural kind of synergies there and to maybe combine them into kind of a single unitary refined proposal relating to this potential option as a penalty and the limited cases as defined in 15. So again, I'm happy to take that on board and try and revert to something to the group in the coming weeks.

KATHY KLEIMAN:

Thank you, Griffin. And let me just, something really struck me about what Brian said in addition to just the carefulness of all his words, is bridging the gap, reaching out not only to those who support it but those who don't and seeing if you can come forward with a proposal that can achieve consensus. It looks like this lives on in kind of a modified form. Good.

As long as we are skipping and because we only have ten minutes, I am going to urge staff to continue to skip 16 and go to 26. Let's do something fun.

Okay. This is something fun. URS Proposal #26, "Revise paragraph seven of the URS policy to reflect the following additional provisions: 7.4 Each provider shall publish their roster of examiners who are retained to preside over URS cases specifically and identify how often each one has been appointed with a link to their respective decisions." 40% support this as written with an additional 9% with a minor change, and as you can see, do not support is quite small, 3.6%. And we can go into the details but we've got the comment highlight here.

In some ways, here the numbers may speak for themselves on this. Brian, your hand is still raise but I think it might be an old hand. And I was wondering if anyone wants to speak to this proposal. We can, of course, dive more deeply into the comments. Brian, go ahead please.

BRIAN BECKHAM:

Sorry, old hand.

KATHY KLEIMAN:

Okay. Does anyone want to speak to this? Let's see if... I'm now off the page and looking at my own spreadsheet and the BC says the BC supports publication of panelists for the purpose of establishing transparency and impartiality in each individual case. A Yale Law School initiative on intermediaries and information says the system would benefit from greater transparency and understanding of who the examiners are and how they are rotated and similar comments, and also just general support. So Griffin, go ahead please.

GRIFFIN BARNETT:

Yeah, thanks. I know I've been doing a lot of talking on this call. So I wanted to speak to the [Internet] IPC comment a little bit but noting that I'm not speaking, obviously, on behalf of those organizations but was involved in those comments. And I think this is sort of a matter of unpacking a little bit of what's in the proposal because I think, and as I think the level of support here is indicative of, I don't think we have any objection to the idea of publishing the roster of the examiners. In fact, I think most providers are already doing this. And I think the potential concern here was more on the kind of second parts of this proposal talking about identifying how often each examiner has been appointed with a link to their respective decisions. And again, I don't think it was necessarily a substantive concern but I think it was more about a potential burden that having to do this would put on dispute resolution providers and I think, again, reading the comments in more detail, just noting that all of these decisions are published and I think most, if not all, of the providers provide

searchable databases of their decisions which can be used to identify who, all of the decisions by a particular examiner.

Now I see Paul's comment in chat about asking whether [WIPO] [inaudible] supported this. I think that's a good question because I think a lot of the concerns that some of these non-supportive comments raised could be assuaged if we hear from providers that this is something either they're already doing or that wouldn't be a problem. So I see Renee's hand up. So I would obviously defer to her thoughts. But I did want to just clarify a little bit the categorization of some of these comments as non-support is a little bit too simplistic. Thanks.

KATHY KLEIMAN:

Okay. Thanks, Griffin. I note that Zak put in the comments the current text of the URS that each provider about publicly [doubles] examiners and qualifications. Here the issue of rotation which is a URS kind of wrinkle on things is also an issue and we may look at support on that, support and opposition based on kind of that special requirement in the URS. Renee, go ahead please.

RENEE FOSSEN:

Hello. Forum supported this generally. I did bring it up several times when it's come up in our discussions earlier on in the process that we do it. We aren't specific as to the rotation, but you're able to figure that out from the data that's on our website and I think Zak was the one that proposed this and he didn't have any issues, I think, with the way that we were doing it.

We've talked about rotation issues before and with the URS, it's just very difficult because of the quick turnaround time. Not all of

the URS providers are able to, or the examiners are able to take cases when we want them to take cases, so it's going to skip a little bit. And I think the data that we have in our website is sufficient but I agree with Griffin that anything more specific than what we're doing is potentially an issue. Thanks.

KATHY KLEIMAN: Since Zak's name has been invoked as the possible author, let me go briefly to you, Zak, if you want to comment and then to Phil. Zak, go ahead please. Phil, I hope you don't mind.

ZAK MUSCOVITCH: Thanks, I'll be brief. Thanks, Kathy. So yeah, this proposal was born out of two concerns. One was that if URS providers are not publicly identifying how many examiners get how many cases, it's difficult for the public and stakeholders to know whether rotation appears to be occurring to some extent or another. And the second part of it was the aspect of maintaining current CVs. The concern regarding that is that just having CVs up that are 15 years old isn't great for practitioners on either side because when you're unable to determine whether there is an apparent conflict, notwithstanding the examiner's certification otherwise, and it also relates to UDRP which is not the force, of course. But having up to date CVs is crucial when selecting panelists to know what their background are. And in fact, I've seen it at one particular outfit that there was no information about a panelist and I had to resort to Google just to find out if the person, or what the person's background was. So those are the two concerns.

In terms of what Renee said, yes, she has a search function on the forum that allows you to search by examiner and so that arguably qualifies. I would prefer an actual number next to each examiner or something like that, but arguably, that functionality qualifies. Thanks.

KATHY KLEIMAN:

Great. Thank you, Zak. I know we're at time. I thought this was going to be quick and fast. Phil, go ahead and it looks like we might be continuing this briefly in our next [inaudible] working group session. Phil, go ahead please.

PHILIP CORWIN:

Yeah, thank you. Let me say a number of things. Number one, I think based on the support this received, while not dismissing the concerns expressed by INTA and the IPC, this one looks to me like one that goes on to consensus call. It doesn't mean it's going to be in the final report, but I think it's gotten enough support from the community to move forward.

Second, the largest provider of URS dispute DRP services does not oppose it but expresses, wants more flexibility in how to satisfy the aim of this proposal.

Third, those who opposed it were concerned about administrative burdens. So I think the way to deal with all of this is to move it forward but hope that when we take it up in consensus call, I think the aim could be easily satisfied by what the forum, at least, is doing now, is that you can, you look at one case and examiner James Smith decided it. You want to see the other opinions

written, URS opinions written by James Smith, and you can do a search of the database and see how many decisions she made and read each and every one of them. So I think that's probably not an unreasonable administrative burden and I think we just rework the language that you publish your roster of examiners and provide a way to review the cases they've issued decisions on would ameliorate the concerns and satisfy the object of the proposal. So I think it moves on and we can make some tweaks and get it over the line at the consensus call with some modification.

I would note that what Zak just spoke to, which is up to date CVs, that's in number 27 and we haven't reached that one yet. But I think on this one, there's a way forward where it can be tweaked for the consensus call and ameliorate the concerns and satisfy the principle aim of it. Thank you.

KATHY KLEIMAN:

Okay. I was wondering if any – and I know we're over time and I apologize – I was wondering, I'm looking at, I'm listening to what Phil said, I'm looking at Paul McGrady. Can we just bless this one with a smiley face? Griffin, agree. I think clearly sufficient support here to move it forward. Zak, is that a new hand or do we move forward? Does anyone object? Let me just ask. Does anyone object to these comments? David says agree.

Hearing no objection, with thanks, I think we close URS Individual Proposal #26 by moving it forward. Paul says, "Yay" and I say, "Yay," and I wish everyone a good rest after an incredible week. Thank you so much. Any final thoughts? I don't think so because

we're at time. Thank you for a wonderful discussion today. Take care, everyone. See you next week.

JULIE HEDLUND: Thank you. This concludes today's conference. Please remember to disconnect all lines and have a wonderful rest of your day.

[END OF TRANSCRIPTION]