
PRAGUE – Uniform Rapid Suspension (URS)
Wednesday, June 27, 2012 – 12:30 to 14:00
ICANN - Prague, Czech Republic

Jay Scott Evans:

...asked by ICANN to simply moderate this panel. I would like to introduce the members of the panel to the room. We have from ICANN staff Karen Lentz to immediate left. Left of Karen is Stacey King from Richmond who is the member of the Implementation Recommendation Team or the IRT. Next to her is David Turner who is a partner at Hogan Lovells and he is a panelist for Nominet and was also a member of the IRT. Then we have Mary Wong who is a professor of law at the University of New Hampshire and is also a counselor for the Noncommercial User's Constituency on the GNSO council. To my immediate right, we have Kristine Dorrain, and Kristine is legal counsel and director of the National Arbitration Forums UDRP program. And then next Kristine on her immediate right, we have David Roache-Turner who is from WIPO. And next to him Brian Beckham from WIPO, and they're from the Dispute Resolution Center that runs their practice with the UDRP.

And so the way we're going to do today is we're going to start with Karen, who is going to give us a brief overview on where ICANN staff is with the URS. And we're going to go to Stacy who is going to describe to us how the URS was originally conceived by the IRT.

Then we're going to go to Mary who is going to give us sort of a historical view of how changes were made to the original conceived URS by the STI, the Special Trademark Issues group. Then David is going to

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talk to us about a similar system that's used at dot UK, Nominet uses a similar system that has some parallels to the URS as it's been conceived.

And then we're going to talk to the providers to sort of get their perspectives on where we are today. So with that I will turn it to Karen and we are tight, we are going to try to stay on time, and we're trying to get the presentations done in time, so that we have about 30 minutes at the end of the program to take some questions or points from the audience. Thank you all very much.

Karen Lentz:

Thank you Jay Scott. Thank you everyone for joining us. We're here this afternoon to talk about the Uniform Rapid Suspension system or URS. And I'll just give a little bit of an overview of what the URS is and what the objectives and what we want to get out of today's session.

We've introduced the panel, so what is the URS? It stands for Uniform Rapid Suspension. It is a procedure that we are in the process of implementing and it was designed to provide rapid relief to trademark holders for the most clear cut cases of infringement. It was also intended to complement the existing UDRP, which is used for considering infringement complaints, but to offer a lower cost path to that, where the outcome would be suspension of the domain name.

And then finally it's also in the process of developing the URS, there was great interest in making sure that the interests of domain name registrants were protected in that process.

In terms of where we are in developing the URS, this is going to be a required procedure for parties to offer and abide by the new gTLD space, so we're working on developing this procedure to that end.

The implementation work that we have done to date indicates that the cost target which was listed at 300 to 500 US dollars would be very difficult to meet, and you'll hear some about that today.

So the conclusion from that is that additional work and study is needed to attain that fee goal while still providing the safeguards that were built in for registrants. So again the goals were a low cost and the goal along with that is to make sure that do continue to be registrant protections built into the process.

If you look at the session page on the meeting schedule for this session there was a discussion paper posted that poses this set of questions going back to what were the goals of the URS originally, what are some of the cost drivers that indicate that the cost targets may not be able to be met, are there ways that those costs can be reduced without the sacrifice of those goals. Are there more cost effective ways for safeguards for registrants to be achieved? And then importantly we want to leave here today with an understanding of what the rights, process and venue would be for these discussions to happen if changes do need to occur. So I'll leave these questions up here as a food for thought, and I'll turn it over to Jay Scott and the panel.

Jay Scott Evans:

Great, Stacey?

Stacey King:

Thank you. So after the first draft Applicant Guidebook was released there were a number of comments obviously that came out about the guidebook and it was noted that a lot of the comments addressed the fact that the brand community felt there weren't a lot of mechanisms in place to address rights protection. And the IRT was form.

Originally the idea was that we would be giving a report to the Board on some recommendations we were going to make and how to protect rights within the gTLD space. So the IRT met; the first thing we did was we read every single comment, and I know we've heard in the past people don't think we necessarily did, but we read every single comment that was submitted in connection with the draft Applicant Guidebook, we made charts of them. Anything that mentioned rights protection pro or against went into that chart. We sat and we looked at them, and we looked at what were the most common ones. And those are the ones we started to debate in terms of this is what we're going to recommend to the Board, because it was what the majority of the community was saying they wanted to see.

Among those was the need for a rapid, quick and cheap way of dealing with the worst of the worst in terms of violations of trademarks in the domain space. And we came up with the URS. The idea was that it should be fast, it should be cheap and it should be for the obvious things. So if I come to a page and I see someone selling counterfeits, it says counterfeits the domain name incorporates the trademark. It's obvious that that is a misuse of a mark. But if I go to a page and it's for a competitor, it's not necessarily obvious. If it's for a free speech site, if it's for someone commenting about a law, that is not an obvious misuse.

Those types of things should be moved to the UDRP. It shouldn't even be a question. This is for clear cut examples. So then you have to decide what is a clear cut example and how does the process work.

So we came up with the initial rules and I won't go through – we had eight weeks to do this, and after four weeks we came out with our first initial recommendations, it hadn't fully been thought through yet, but we were throwing out to the community. We got comments back. We again read through the comments, we incorporated them in. We talked about whether they could or couldn't be incorporated and how it worked, and then we issued our final report.

What the final report said was right, complainant comes, they're going to initiate and there are two options for initiating, and the other thing to please keep in mind when we're talking about the IRT is that we recommended a tapestry of things that would work together. So in this case we were thinking the Trademark Clearinghouse would be working in conjunction with the URS. So somebody who had gone and registered their marks with the Trademark Clearinghouse would be almost pre-registered because their marks would have been validated, so they could come in and they'd have certain rights over those who had not been pre-validated. They could submit their complaint by email; they could have an electronic signature attached to it. Again, the marks would already be validated and the cost would be lower because of that. If they hadn't pre-registered, then the costs would be higher and there would be the inability to take advantage of some of those things.

So you initiate, you file a complaint. With the complaint you had to provide a pdf of the WHOIS record, the publically available WHOIS record and a pdf of the website showing where the violation occurs. With the complaint you pay a fee, the complainant pays a fee to file it. They make a statement that they're filing it in good faith, so they're not trying to do it for anti-competitive reasons, you're indemnifying the providers in case you're lying basically, and an initial examination is done to make sure that you have fulfilled all the criteria in your initial complaint.

So it's not looking at whether what you're saying is accurate. It's looking at making sure that you filled in all of the forms, that you answered the questions you're supposed to answer, that you provided the documentation.

Once it is implemented, assuming that that is all in there correctly, you're going to go through a notice period. So first a notice has to go to the registry within 24 hours of receipt. The registry has 24 hours to freeze the domain name, it's not to take down, a lot of people say it would then be taking down the website. The website would stay exactly as it is, you just can't transfer that domain name, and you can't change the content.

Within 24 hours, then you notify the registrant, you also notify the registrar of record that this has been implemented. At that point a certified letter is also sent to the registrant of the domain name within five days of the original filing of the complaint. And after seven days a second email is sent to the registrant.

They have 14 days to submit an answer from the date of the initial email, and then answers that relate to 26 or more domain names would have a fee that goes with it, which would be refundable to the registrant if they prevailed. And then again when you file an answer a case manager would review it to make sure that you complied with what was required for the answer.

If you defaulted, and so you failed to answer the complaint within the 14 days, it would be considered default. Notice of the default would go to both parties, and then it would go through to the examiner. The examine would still have to look at the complaint to make sure that not only did you meet the requirements but that you made a claim under the URS, and that you met the standard.

Assuming that that happened, the website would then be taken down. The panelists would be appointed by the provider, we'll talk about it in a moment and they would take a look at whether the domain name was identical or confusingly similar to a mark in which the complainant holds a valid trademark registration issued by a jurisdiction that conducts substantive examination of trademarks, prior registration, does the registrant lack any right or legitimate interest in the domain name, and has the domain name been registered and used in bad faith and by bad faith, we're looking at the same factor with the UDRP.

It had a higher standard as well; it's a clear and convincing standard of no contestable issue. Once a decision is rendered, if it's for the complainant, then the domain name is frozen, the site goes down, and a notice of suspension goes onto the website. So anyone that goes to that website will see that the site has been suspended and the same

with the WHOIS record. The WHOIS record will represent the domain name is frozen, so that someone doesn't try to represent that they can sell it or transfer it.

And the domain name stays frozen for the life of the registration. So under our original report, it was not to be transferred, if you wanted to transfer the domain name, you had to either go through a Court of Law or you had to go to the UDRP. Once the life of the registration is over, it would then be eligible for registration again. It would go back into the pool.

You have a right to appeal. So if a complainant wanted to appeal the outcome they could either go to UDRP or they could go to court. The registrant if they wanted to appeal, they could ask for a reconsideration by a URS ombudsman on the basis that the decision itself was arbitrary and capricious or an abusive discretion by an examiner, or they could also initiate a court action.

The examiner could find the complaint was abusive that it was filed for abusive purposes. The complainant can also request reconsideration that the filing was abusive they go to the ombudsman and again it's arbitrary and capricious or an abusive discretion. The costs for this are borne by the appellant for the ombudsman, but it's refundable if it's found for the appellant. And the idea behind that was it was to prevent this question that maybe panelists will just throw it towards one side or another. So if they're going to have to eat the costs every time they do that, it might defer some of that.

The losing registrant can vacate the take-down by submitting within 30 days to the provider proof an appeal has been filed within a Court of

competent jurisdiction. And for abusive complaints we wanted to put something in place that would try and prevent some of the concerns we had with complainants using it for improper purposes. We found abuse of the system three times would be removal from the ability to file under the URS for one year from the date of the last abusive complaint.

So this is what was in our final report and which we submitted to the community.

Jay Scott Evans:

So after it was presented to the community in June of 2009 in Sydney and around July or August the ICANN Board then sent a letter to the GNSO and said they had concerns with regards to the Trademark Clearinghouse and the URS and weren't sure whether that some sort of policy development and whether the GNSO needed to be involved.

The GNSO received that letter and they constituted this special trademark issues committee or working group and while Mary was not, and I want to be very clear Mary was not a member of that committee, she has graciously accepted because members of her constituency were actively involved to take the laboring with describing to us what happened with regards to the URS in the STI.

Mary Wong:

Thanks Jay Scott and let me just clarify that even though I'm going to be speaking about what happened to the recommendations that were given by the IRT, that then went through the community process known as the STI and then further changes were made. Nothing I'm going to say is actually an official from either the Noncommercial Users

Constituency or the Noncommercial Stakeholder Group, however as Jay Scott says they and other constituencies were represented in the STI team which was the community process through which the Board put the IRT recommendations.

I should also say that I was also a member of the IRT, so in some ways this has been a long process for me and I know many of us.

So rather than take us through exactly what you do if you had a process under the STI and then go through what then now you are supposed to do if you then go through the process as now in the Applicant Guidebook, I thought that what I would do is take Stacey's framework which sets out very clearly what the original plan was, what the timeline looked like, and what the remedies were, and talk a little bit about some similarities that have been retained through the process, as well as some differences. So one of the things that I think is really important for us to remember as we engage in this discussion and whatever exercise comes out of this is something that has been said by almost every panelist on every panel that we've done on this, that is in almost every report, and certainly in the Guidebook and so forth is that this is meant to be fast, cheap, effective and not a replacement for the UDRP. And that's one reason why we're here.

But in conjunction with that, not only is that the starting point, the fact is that there are also some differences within the UDRP that both illustrates the conceptual complementary between the URS and the UDRP, and some very significant differences that I think would be critical to bear in mind again as we engage in this discussion. So we're supposed to have a fast, cheap process for clear cut cases that doesn't

replace the UDRP, that complements the UDRP, and that in many ways defaults the non-clear cut cases into the UDRP, whatever you might think of it.

So alongside that, what very early on emerged at the IRT stage and that was taken into the STI stage, and that was also taken then into the final AGB is a couple of things. One is the standard of proof that's required is the clear and convincing standard, not any lower standard such as a preponderance of the evidence.

The second is the remedy that unlike the UDRP where there's a cancellation or a transfer possible if you're successful in your complaint, the remedy here is a suspension and the mechanism has been described by Stacey. So those are the things that have kind of stayed the same throughout the process, where details have evolved or been changed or added to. But in terms of framework in terms of guiding principles, in terms of major differences between the UDRP and the URS, that hasn't really changed at all.

So did the STI do that I think is pertinent to this discussion? There were a few things that were clarified and there were certain things that had more detail added to them. Certainly I think one of the things that's most obvious to anyone who has been following this process is that the periods within which you submit a response and whether or not you can file an appeal have changed over time from the IRT to the STI to what's in the final AGB.

So in the STI for example it took the IRT recommendation of a 14-day period for a response and said that should be longer, and suggested a 20-day period for a response. That ultimately in the AGP went to a 14

calendar day period. One thing that STI noted then however was that if you don't file a response within the 20-day period that ultimately became the 14 calendar day period, you still could even after the complaint has proceeded to the default stage, and I think that is one of the issues that have to do with cost and have to do with uncertainty. How long do you keep that case live, should you even do that in the first place, but throughout this process there was some contemplation that a respondent ought to be able to file a response, even if not in time, at some point following.

Another thing that the STI did that was also carried over onto the AGB and I don't want to get into the details and the nits or what the differences are is as Stacey said, the appeal and it became very clear through the consensus and the discussion in that team that for an appeal there should be a *de novo* review. It's an opportunity for you to file a response or an appeal, and it goes back to a *de novo* review. Again the time period is a little bit different and as I think many of us know the appeal mechanism was preserved in the AGB, the timing is a little bit different, so basically now, if you look at the whole timeline, when the complaint is filed there is a 14 calendar day period for the respondent to file a response should he or she wish to, although he or she might be able to do that even after the date if they don't respect that period.

Then it goes immediately into default if there is no response, or if there is a response upon the filing of the a response, there is an examination and again this is something they merged quite early on in the process. I mean the STI did not say there had to be an examination from nowhere that was something that evolved the IRT process. And again I highlight this, because this may be pertinent to the cost and review discussion

we're going to have and where the examiner then looks at the complaint, and here we go back to the clear cut case, right, how do you determine if something is a clear cut case. And in the STI, like the IRT, we're looking at substantive grounds that are based on the UDRP for bad faith for example, for legitimate interests. And what the STI did was it right to fill out the other side of that a little bit by talking about what I think the phrase we used was "safe harbors". And enumerated what has been developed over time and some UDRP jurisprudence as fair use type of things that would not be considered bad faith that would not form the basis for a successful complaint.

So again that mechanism was retained, it was clarified. In some ways the details were added, and some of that still stays in the Applicant Guidebook. In terms of some of the details that I wanted to mention, I think one of the things that again going back to the cost issue and I'm trying to phrase my comments along the lines of the issues Karen has presented is that the STI talked about the notice to the respondents, not just that the respondent will have an opportunity after the 14 or 20 day period to file a response but how do you even tell the respondent that there is a case or a complaint that has been brought against him or her and then you had notice by email, you had notice by fax where applicable and notice by postal or certified mail. And it was felt quite strongly by a number of members of the STI that that was necessary to ensure that the respondent got the proper notice and was given every opportunity to respond.

The final point I'll make and it goes back to the timeline point is that as of now that mechanism [at-large] is generally similar. But timeline wise, if you have the examination on the grounds that are enumerated on the

UDRP and in the AGB, what then happens at the appeal phase? First of all you're looking at the possibility that it might not be a quick and fast or cheap process, I think I agree with that, because what's built into the process is not just that the respondent can respond after default, but that there is a timeline of a six month period during which that can happen with a possibility of a further six month extension.

And the reason I mention that is not just to illustrate that the timeline has changed but to the extent that we are looking at or that we may be looking at ways to tweak the process or the mechanism, I would urge that rather than reopening the whole thing substantively re-examining the framework and the basic assumptions and agreements with which this process began. The clear cut cases at a higher level of proof, there might be some specific ways we can look at that might improve the process for both right holders as well as respondents.

And whether that is looking at the form of notice or the timing, or even something as specific as what language should the notice be in, there has been a couple of different suggestions between the STI and the AGB, the final version, should it simply be a form that is already translated into however many languages, the major UN languages or the language of the country or the main countries with which there are registrations, rather than regenerated every time, or make it very specific to that particular registrant's location. I think that possibilities we can look at within the system without necessarily having to relook at that. So that kind of is a capsuled description of what happened as between the IRTs recommendations going through the STIs refinements, additions and that ultimately changed in the AGB.

Jay Scott Evans:

Thanks Mary, David I'm going to ask that we go through your discussion kind of rapidly so that we can get to the providers and then get to some discussion about possible solutions within the room.

But we also want just for those of you that may be new, or those of you who are starting registries and don't operate in the dot UK to let you know that this was not invented out of whole cloth, there is already a system very similar to this that has been very successful and to sort of frame the discussion, because we know that we're going to hear from these folks, if you've read public comment that some of the complexities making it more expensive; we want to show you that for those of you that may have concerns that there is a system that is in place that isn't working, and we want to give you a few statistics to sort of frame the discussion that may take away some of the bile that rises in peoples' stomachs when they're concerned about abuse.

David Turner:

Thanks so much Jay Scott. So yes, we've been asked just to look at Nominet as a guiding experience and back in the IRT, we also looked at it them and Nominet made a presentation to us. So we didn't invent things out of thin air. The Nominet process has been working since 2008 with a full and a summary decision. So it was something which we thought at the time was certainly worth looking at.

And I think what's interesting as well is we've seen the URS the goal of it to be rapid complement the UDRP and protect registrants, we spent a long time discussing their rapidity in its various stages of its life, it's

faster slower, faster slower, and that's what we did concentrate on. But now we're looking at cost as being one of the key issues which we faced and again that was something which we had identified back on the IRT back in 2009, the costs would be a potential hindrance and a potential problem.

So hence now looking at Nominet as well again and bringing it back onto the table should we say, and simply down the side you've got in cases where there's no response, the complainant can opt for a summary decision, and the cost there is £200 and if there is a response, the big thing is Nominet has a mediation element as well, which we've never considered on the URS, but you then pay £750 for a full reasoned decision.

Also importantly and again an issue we raised back then is that the whole process is funded by Nominet so there is the discussion there whether this whole process should be funded by ICANN, but again that's a separate solution which may be a solution and it may not.

So just looking at the experience of Nominet and back in 2011 there was 706 complaints filed and you've got to remember this over 10 million registered domain names, so again, it's not many complaints we're looking at. 56% response rate and we had 137 summary decisions, so again not that many, and when you then go and look at the appeals because Nominet has an appeal process, there were only three appeals in 2011 and in fact 2008, 2009, 2010 there's only been two or three appeals. So very few appeals full stop and I think of all the summary decisions since 2008, there's only been two of those appealed. So again facts to think about. Next slide if you could.

So the URS in helping getting it right that cost [improvement] then is the issue, we're looking at the existing experience, the key thing I think is suspension when we did the URS, it was uniform rapid suspension, not transfer, so there's no appropriation of the domain name and that was one thing which we thought was a key protection for registrants. So the point there is now with looking at cost, how do we do it, the key element is the cost of the panel. If we take out the panel, we can get the cost down, you could take out the panel is this situation where there's a default as long as you've got the option for the respondent to file an objection to get it back in the root should we say and unsuspended and then simply put one [up] to the UDRP if it happens. So keep it simple.

Jay Scott Evans:

Thank you David and thank you for your brevity, I appreciate that very much. Now we're going to hear from the providers. Now they are not going to go through a huge resuscitation of the things they have put in public comment before. They are just going to highlight a few points so that we can get onto a discussion, because what you all may not know and maybe I didn't do a good job as the moderator early on is this is an opportunity for everyone in this room to discuss a way forward and for solutions and to help the ICANN staff get to a solution. So that's where we're headed with this, and I just want to make sure that everyone should feel free once we open it up, if you have a point of view or a comment we're going to try to get to as many as we can. Kristine?

Kristine Dorrain:

Thanks, I agree we're not going to rehash everything but I think I want to address Karen's first point on her slide which is what are the main cost drivers for the providers? Why can't we offer this process for 300 to 500 dollars, the way it's currently outlined?

And the biggest cost driver is the panel fees, the URS has a really explicit section in there about how the panels are supposed to be highly trained trademark experts, you know top in their field, they're surprised to undergo training from the provider and that's all well and good, but most of those high trained trademark experts are working in law firms, you know billing a lot more than some percentage of 300 to 500 dollars. And then the URS process is asking these highly trained lawyers to take time out of their day to review these complaints and to offer a decision, a written decision within three days.

And so really the problem is in these default cases where the respondent is not responding, one of the problems you end up with is having to pay a panel some very small amount of money to come up with a really, really fast decision, and even though there are a lot of things that has been sort of tried to be built into the system like a form or you know a limited number of words, or a limited number of exhibits, there is still going to take a lot of effort and a lot of time for these evaluators to come and go do these things on a daily basis.

So having to have to panel decision in case of default is going to be really an expensive driver when currently for the UDRP at least for [NAF] about 70% of cases default. So that's one big thing; other sort of slightly smaller cross drivers, but the cumulative effect of every time a case manager has to touch the case; you want an in depth compliance

check? That costs more money because I've got to have more bodies more people to handle all of the cases, you want to have the response deficiency checked, but that's going to cost more money. You want us to mail stuff; you want us to fax stuff. You know every time we have to add more pieces into the process, it costs the provider more to run the process.

Just for a quick second I want to talk about the process that ICM created, we're running the RES for ICM. And that's entire electronic, people come in online, they fill out an online form, they submit it into our system, the coordinator, our case manager spends about a minute and a half, making sure that the forms are filled and that the email addresses for the respondent are all in the case, they talk to the registry, they say hey, can you put a lock on? The registry does within 24 hours. We serve out the case via email, the respondent gets notice because ICM has a verified WHOIS system so the respondent gets notice by the WHOIS information and we have a lot of people they may not respond to the case, but they write back, and say hey, I got your letter, what am I supposed to do.

We say here you can respond with this or not. And then a lot of times they don't, but we get a lot of response rate from them. Within about 48 hours the domain name is actually taken down by a panel. Now that's a little bit different from sort of my recommendation because again I'm paying a panel, and I should say that our fee for RES isn't the same as for UDRP because we're testing this out.

So it's possible to be really, really fast and run these things through really quickly. Right now, my case managers can handle about 80 or 90

cases at a time. If they were all using this new system we created, they could handle easily double that, and so it's like one of the things to think about is what things can be automated, what things can be done sort in a process that allows these to kind of roll through but still offering the safeguards to protect the respondent such as the RES process does allow the respondent to come back for three months after the decision and come back and say for free that hey, I want to respond and you know I didn't get a chance or I didn't get the email or whatever it was.

And I think so far we haven't had anybody ask but it is an option available in RES that allows the respondent an extra three months. So those are some of the main cost drivers, but just keeping in mind as we're referring suggestions out there, every time you ask the case manager to do another check, another look, another handling of the case, that's where it adds up because now I have to hire more and more staff to process these cases.

Jay Scott Evans:

All right, and now we're going to let WIPO have their chance at the mic to let us know some of their points.

David Roache-Turner:

Thanks Jay Scott. Back in 2009 when we were doing some thinking about along with many other publics about the sort of model that might work well to deal with this sort of rapid low cost clear cut disputes that everybody is saying to a degree needed to be dealt with more efficiently with appropriate safeguards for registrants in place. The model that we were playing around with at that time was and one which we

memorialized to ICANN in a letter in 2009 was based on the idea that if you would have fundamentally – if you would have a contested dispute, a complaint that was validly filed to which a respondent having had sufficient time to respond responded, that would give the respondent the right in effect to eject themselves from that process and for the dispute and then make its way over into the UDRP.

Of course there would need to be mechanisms that would be appropriate to deal with cases where there might be potential abuse for example, but that was the basic idea. Of course we've had some years of discussion since then and post-DAG4 now and up with the mechanism that we're here discussing today for us I think we would agree with the points that Kristine just made about the panel being the principal cost driver in that process.

But for us it's not solely a question of cost, it's also about having a mechanism that is workable and that is practical and that is able to operate efficiently in an international environment across multiple jurisdictions in which you're going to have a number of different languages that need to be the subject of notifications and that's maybe a significant difference also from the Nominet model that's informed some of the thinking that we've discussed here today as well.

There is a long laundry list of concerns, I suppose in addition to those that we've just discussed and I'm very happy to go into, if people would like me to, but in the interest of brevity, I won't, but I would like to do is just hand over to my colleague Brian to sketch out some contours on some of the thinking that we've been doing more recently on what

possible options for a more efficient mechanism in view of all of the discussions that we've had and continue to be having, so thanks, Brian.

Brian Beckham:

Thanks, David, so just to recap, we all seem to be sort of on the same page that the overarching goals are a fast, cost effective, and fair mechanism. So what we see as the principle design elements of that are in terms of being a UDRP complementary mechanism is that the URS would be lighter both in terms of cost and time, but with importantly appropriate respondent safeguards.

So when we zoom out and look at the current URS design, it becomes clear to us that the pivotal way to achieve those goals is to remove the panel appointment from the process. And so what we have done is sort of brainstormed a very high level overview of some of the key elements of what that design could look like to sort of generate conversation and see if we can take things forward a bit.

So one of the ways that I think everybody would agree could streamline the process would be where the URS was limited to registered marks that were already deposited in a clearinghouse, you see some efficiency gains there. Another one would be an immediate registry level lock on the complaint being filed with immediate notice to the registrant and in contrast to the current UDRP design and I must confess I don't know what the current URS design looks like, we've also thought it would be appropriate to send sort of a chaser or a follow up notice to the registrant during the period during which they can actually submit a response. So sort of a double layer of notice, and what we've envisaged is in the event of a timely response which would be merely a checkbox

type response, we wouldn't envision the respondent actually needing to submit any substantive arguments, although a forum could be made online where they could do if they like, bearing in mind the caveat that anything that was entered could be used or examined by any subsequent UDRP panel.

So the idea is moving onto the next phase is that after some fixed time period, maybe 15 or 20 days which is the current UDRP model the 20 days, again a third notice would be sent to the registrant which would indicate to them that their domain name was being suspended. So they would have the option for then the lifetime of the registration that was then remaining to still trigger a valid response which would be sort of an eject button from the process. So at any point after the domain name was actually taken down, the respondent could come in whether they were on vacation or notice didn't meet them for whatever reason, they could come in and lift the suspension for the lifetime of the registration period. And we think that's an important safety valve in this respondent default based model, where a panel would not be appointed.

And the appeal option if you will, I hesitate to use the term appeal, but the appeal option would be that the complainant would be able to file an UDRP case and just by way of sort of coming full circle on the concept of an appeal, we don't think that it's necessary or even appropriate to think about a registrant appeal because there is no need for a panel to be appointed if the only thing the registrant needs to do to undo the suspension or lift the suspension is to simply raise their hand and ask that that be done.

So I think a couple of issues that might be something to also consider in terms of making sure that there were appropriate safeguards on this type of a system, would be the idea of how to control for a confusing similarity. One way to do that would be to limit the URS model to identical matches of a domain name to a trademark string and experience shows that that would capture less than half or around half of the UDRP cases, another option would be for the URS to be permitted for cases where the domain name was identical to the mark plus a keyword and you could envision some sort of minimally invasive very light cost efficient fee-based mechanism which a provider will conduct a prima facie review to make sure that there was actually confusing similarity there.

And then another thing to just think about is how to control for sort of unreviewed or form complaints, because that's something in terms of bringing a necessary degree of fairness to this system, we think it's important to incorporate. So I think the idea that Stacey mentioned in terms of the IRT process of some sort of ombudsman or some sort of standing appeal panel could be something that we could think about but those are just some broader registrant safeguards that we think are worthy of discussion.

So I think that's it from the high level and maybe back over to Jay Scott?

Jay Scott Evans:

Great so now we want to have a discussion with those in the room about where we are. We're at a critical juncture, the URS needs to be delivered and all the new registries are going to have to have this. And so we need to find a way as a community to get there. Now as we go

through this discussion, I would ask that we not rehash a whole lot of issues that we've already talked about. What we're looking for are forward moving solutions, and I appreciate that there are those who have very serious concerns about this, and any solution is probably going to get a public comment period that can be said. What we're looking for now is for people to give us some ideas or give ICANN staff or the community some ideas of how are we going to deliver this with – can you put the questions back up – how are we going to deliver this? How are we going to answer these questions and get this thing ready for delivery when we get the first group or groups of registries going live?

And so I have Ellen Shenkman and did I see John, did I see your hand go up?

[background conversation]

Jay Scott Evans: Okay and I see that we've got Phil Corwin as well, so those are my first three people in the cue for John and John Nevitt, and so then we'll – perhaps they'll give you things to start with and Mark Partridge, okay.

Ellen Shenkman: Ellen Shenkman with the...

Jay Scott Evans:

Could you please get on the mic, anyone who speaks, there are two mics down here for those you at the back of the room, because we do have remote participation I understand in the room and if someone remotely would like to ask a question, please feel free to chat it, and I think we have a person in the room that could then come to a microphone, identify you and let us know what your question, your concern or your thought is.

Ellen Shenkman:

Okay, I'm Ellen Shenkman and for full transparency I was on the IRT and so yes, I actually think that a lot of the things the IRT did was good, and should go back in that direction so you understand where some of my comment, prejudices are coming from.

I want to thank all the panelists because I thought the presentation was excellent, and I think you're identifying for us a full understanding of where the cost points are allows us to focus more on what the solutions could be, and I think that today, a number of the things that were already discussed including what were raised at the IPC constituency meeting yesterday answer a lot of practical good ideas for your questions number one, and your questions number two including adding [loser pays] and notification adjustments; so real practical solutions.

I think I'd like to go a little bit to your question three which is what are the proper processes and venues to identify the changes and this one goes to my concern about what was an answer to a question raised yesterday that I think throws that question into some serious concern for me which is when asked whether or not – it's very clear that we all

agreed this has to be done, it has to get done right and we need to make time to make it happen, because it is a condition for the new contracts and the roll out.

When the specific question though was asked about will the delegation and (inaudible) all be held up until the URS was resolved in these issues concern, the answer was well we'll cross that bridge if we come to it, and I think it's that concern and that understanding of are we giving ourselves the right time to get this right, so that we know what do this is going to somewhat influence what's the proper process and what's the proper venue to identify those changes.

Jay Scott Evans:

I think next was John.

John Nevett:

Yes, I just wanted to talk briefly about the cost drivers and when – and I forget who it was, someone was going through the various cost points saying well there's you have to wait six months for a late response and as if somehow doing nothing for six months costs money. Time periods don't generate money. People doing things for time periods generate money and obviously my practice has gone off the rails because when you're talking about trademark lawyers who charge between 300 and 500 dollars an hour, you have to remember the type of cases we're looking at are ones that don't require anyone to do anything for an hour. And I looked at the pending case list at WIPO today.

ValiumUK.com, SanofiAdventis.com, SvoroskyOutletStores.com, MarlboroCigarettes.com, okay I think everyone in this room can decide

every single one of those disputes without spending \$1,500 and waiting three months, or even seeing a complaint but you know looking at a complaint, looking at a web page, looking to see if maybe the respondent has some remarkable unexpected story is not going to prevent anyone from deciding what to do about MarlboroCigarettes.com in under five minutes and I think the rule for panelist should be if you're spending more than five minutes, it's not a clear cut case. So there goes that \$500 an hour, you stack them up, get them out.

Now I have and again it may be something is wrong with me. I have clients, as you all know, with tens of thousands, hundreds of thousands of domain names. I read C&D letters all morning long and as many of you know, make those decisions all morning long. And I don't think that I have a skillset that's remarkable different from any other well-paid trademark attorney that is capable of calling those types of clear balls and strikes very quickly.

And I think that there's a lot that can be achieved in terms of automation as Kristine mentioned with the RES that was designed to be automated, it was designed to be form driven, because quite frankly again, if it's a clear cut case, show me your trademark, say a few words about it, tell me something about your market, let's take a look at the webpage, and if this is something that you know it's not a dictionary word, I mean we all know the things that make domain dispute cases interesting cases as opposed to the crap that rolls into WIPO every day that people are over paying for and they're taking too much time to decide. Thank you.

Jay Scott Evans: Okay I think Phil was next.

Philip Corwin: Yes, thank you Scott and Philip Corwin speaking here in my capacity as counsel to the Internet Commerce Association which represents domain investors and developers at both top and second level. I'm not here to question the URS, that's a settled issue and I'm not here to argue for anything that makes it more expensive than it needs to be, but I think I am here to ask some basic questions which I think need to be answered if we're going to understand how we got here and how we move forward, if we're going to move forward.

To put this in context at the meeting between the GNSO and the Board on Sunday, the GNSO told the Board that the way the URS has been handled for the past year since the approval of the Guidebook represents a complete breakdown in the multi-stakeholder process, which is a statement with which I would agree.

And both the fact that there's been no open implementation as there has been with the Trademark Clearinghouse without any problem of letting anyone who wants to participate in that move forward; and that's way ahead of the URS because of that. And the fact that the only way we found out there was a proposal for \$175,000 for undefined summit process for undefined reconfiguration was to find it buried in the draft fiscal 13 budget. It was not the way things should have been done. This is a very important issue.

It's required if potential registrants feel that it doesn't preserve adequate right, it's going to suppress registrations and new TLDs and depress their chances of being successful. It could lead to the question Ellen raised if it becomes gridlocked what the way forward is or reaching a conclusion could delay the entire rollout of new TLDs and people are burning a lot of money waiting to go to delegation, and of course at some point in the future we're going to be looking at this and deciding whether or not URS should be imposed on incumbent TLDs. So it's important in that area.

And also we hear we're going to eliminate complexities but preserve safeguards but in some instances the complexities may be the safeguards, not in every instance, but in some instances.

So I have four very simple questions, mostly for ICANN staff, I invite comment from anyone on the panel. The first question is why unlike the Trademark Clearinghouse was the past year not an open and transparent implementation process according to the staff, email to the GNSO about a month ago, the only groups consulted were WIPO and the Intellectual Property constituency when there are many other parties who have a very strong interest.

Jay Scott Evans:

Okay one correction. I don't know where you got, I'm in the IPC leadership, we were never consulted about implementation of the URS. The information we've received is the same information you got here, we got it on Saturday morning.

Philip Corwin:

Well, that's good to know, I was only citing, and there is a post I did at the Internet Commerce website citing, quoting an email that Kurt has sent to the GNSO about a month ago. So I'm just quoting from his email. That's my only information.

Second it was useful to hear from the panelist providers today some of their analysis but why hasn't the community since staff has reached a conclusion that the current model can't be implemented at the desired price point, where's the written data and analysis justifying that conclusion everyone in the community should have that. I filed a document disclosure request 30 days ago for that information; I still haven't gotten any response to that request. If we get it, we will share it with the entire community. I think everyone should know how that conclusion was reached.

Third, the summit process whatever it is, will it be open to anyone who wants to participate or will it be hand-picked experts like the IRT which of course was one of the controversies that lead to the need for the STI.

And fourth since from both a discussion here and from the staff discussion with the GNSO on the weekend, it's clear that significant policy issues are involved in any reconfiguration so I would think that the GNSO has to be involved because they are the ultimate arbitrator of policy changes for gTLDs, but it's not clear that the way forward contemplates GNSO involvement.

So I think those questions should be answered. Some are about what has happened, some relate to what will happen. Our viewpoint on process is that any reconfiguration process needs to be open to anyone who wants to participate, not just hand-picked people on some

subgroup and that the GNSO needs to be involved because it does involve reopening of critical policy issues. Thank you.

Jay Scott Evans:

Does the ICANN staff want to respond at this time to any of the questions? I don't think they were directed to the panel.

Kurt Pritz:

Well, Phil you're participating and that's the point of this process. So I'm going to take up some of our valuable time away from the substantive discussion to give you some of the answers you're looking for.

ICANN does a budget every year around – this will be very interesting to those interested in the knowledge of ICANN [archaenia], it's kind of a cute story. So ICANN does a budget every year. About that time we started getting feedback from potential providers that the URS was not going to hit its cost target. I sat down and said we are going to need some sort of community discussion to change that, because there are policy issues and we need to involve the whole community. So I dashed a note to our finance team, said we need to put a placeholder in the budget to fund some of this work. I wrote down URS summit, blah, blah, blah, blah, so much money, you remember how much, I don't remember how much and sent it off to finance.

We then sat down and decided how we're going to involve the whole community in this. In the meantime, the budget got published. So the budget got published before we gave a note to the GNSO, but then at our first opportunity at the GNSO, we gave a briefing to the GNSO

leadership, and then with the GNSO on it. This exercise has always been intended to include the whole community. It never would not, that would just slow the whole thing down, we have to have a sense of urgency here, we have information and you can decide not to believe me, but we have information that clearly indicates that we're not going to hit the cost targets to the URS, we as a community built the URS. ICANN, the big ICANN here to a certain extent stakes part of its reputation on delivering URS, as part of the protections to make the whole new gTLD program safer for trademark holders, registrants and users, and so I want us all to work together towards a solution and this is the first part of this.

Philip Corwin:

I'll be very brief in responding because and we want to be very constructive in our participation going forward. All I would say in response to what you just said Kurt, is that the viewpoint from the providers that this could not be delivered at the 300 to 500 dollar target was known almost a year ago. In fact I asked you about it in Dakar and you admitted to that, and I've asked at the last two meetings when open participatory implementation would begin, like for the Trademark Clearinghouse and at both of the last two meetings you said in about a month. So the discussion we're starting today could have been started almost a year ago and everyone would be much further down the road. Thank you.

Jay Scott Evans: I'm going to jump cue and allow the young lady with the public comment to come forward, because she's been standing for quite some time, and then we'll go to John and Mark.

Michele Jourdan: Thank you, my Michele Jourdan, I'm reading on behalf of the remote participants. This is from Rubens Kuhl. His question is if ICANN pays a fixed based fee for the URS provider like USD 100,000 a year, wouldn't that make the URS cost target be achievable?

Jay Scott Evans: Okay, I think that's one of the ideas. That looks as if it's some sort of subsidized format that we would have to look into, but that is certainly something that we have heard that Nominet does is that they are subsidized, and so they hit a price target based on a subsidy.

John Nevett: Yes, I was going to say something very similar. Essentially – this is John Nevett I'm from Donuts but I spent probably four years working on the URS as a member of the IRT and a Vice Chair of the STI and other ideas have been coming through the process. Literally I think it's been three plus years, maybe close to four years.

I think it'd be a cluster to reopen this at this point and get what we see the give and take, these were highly negotiated, highly discussed, every idea that we're hearing again has been discussed and they came up with a solution that seemed to be okay with the community everyone didn't get what they wanted but everyone got enough. So all we have right

now is a cost issue. Right. So all we need to do in my opinion and this is just like what the public commenter just mentioned is subsidize this for a limited time where we can do a review after two years let's say and after the two-year review then we could look at these ideas in real practice to say do we really need a panelist to do that? Maybe the people who are really pushing for a panelist might not want it anymore thinking that oh, we really didn't need it or some of the other protections that might be costly that aren't really needed in real life practice.

So let's look at the cost. So let's say the cost of a URS is in the \$1,200 range or \$1,000 range and we wanted to get it down to the \$400 or \$500 range, so what's that delta and how many of these are we going to actually see. In 2011, we saw, according to WIPO stats, so I'm not sure about NAF or the Czech folks but there was one UDRP, one, in 2011 for dot name, one for dot travel, one for dot Asia, and one for dot pro. What are we worrying about? Pay the difference, how much is it going to cost?

So let's in all of UDRPs for 2011, there were what, 5,000, 6,000 UDRPs total on 115 million domain names? How many do you think we'll have in the first two years of new TLDs with fees roll outs? So let's say there are 2,000, I think I'm being pretty generous, you're talking a million dollars. ICANN's new TLD budget has nine million dollars targeted for geographic panel review. So on 66 TLDs nine million dollar for someone to look if they see if they have the letter from the jurisdiction, nine million dollars.

Take a million dollars of that budget stick it in the URS, and let's go home, thank you.

[Applause]

Jay Scott Evans:

Just a comment, I think John makes a good point, it's one that's come up, it's one about subsidizing the system. I would also say to you that every one of those that you mentioned, one the registry takes on a huge up front commitment to make sure there are no problems and that's the reason the numbers are so low. And I'm not so sure that business model is shared by all the applicants that are applying so I think that delta may be a bit higher, but Mark?

Mark Partridge:

Yes, I'm Mark Partridge; I represent the American Intellectual Property Law Association and the IPC. I was on the IRT and the STI and I've also been a WIPO UDRP panelist since the start of the process.

The problem that we went into with the URS was that with the UDRP too much time and money was spent on defaults in cases of obvious abuse. So that's what we were trying to solve, as Kristine mentioned 70% of cases are defaults, the cost drivers that we've heard and just to summarize the paper flow if you will creates cost. Multiple decision options along the way and panelist reviews. So I think we would focus on those things for solutions.

I've got five thoughts on reducing cost that I think fit or most of these fit within the existing framework, the first one and some of these have already been suggested but the first one is to use a web interface for filing, a short form complaint in pdf, cut out the paper that goes with all of that, keep it very short and simple. Connect to the clearinghouse to identify to verify rights.

Third point; consider using staff attorneys to review the defaults if we need to have an attorney do a review.

Fourth, refer the disputed cases to panelists in batches rather than one at a time. John and I disagree on a lot of things, but there is a surprising number of things we do agree on and one of those is that the obvious cases of abuse can be decided very quickly. In my mind, in my experience as a panelist when you see an obvious case of abuse, you can decide that in less than 15 minutes from the paperwork. The thing that makes it difficult is that sometimes the file is that thick with attachments and so forth, sometimes the complaints go on and on and on and the answers too. But that's not the cases we're talking about here.

In the obvious instances of abuse with a short file, it would be quick; so my suggestion would be provide case review through a web interface, it should be possible for an experienced panelist to review four of these obvious cases in an hour and as John suggested if you go through it in 15 minutes, and you say I can't really decide this one, that one should leave the process, and go over to it's no longer an obvious case of abuse that fits under the URS in my opinion.

If it's not obvious it can go out as has been suggested to the UDRP. But if you think about that, if four cases in an hour and what the fee available for that would be, you could afford to pay the rate of experienced attorneys to do that review. So manage that through a web interface and I think you could reduce a lot of the costs.

I'm a great fan of NAF and WIPO, as I've mentioned I've been a panelist, and a user of those systems and I think they do a great job with the UDRP. But we don't want to recreate the UDRP here; we want to have a little new thinking I think about automating, reducing the paper flow, and minimizing and streamlining what the panelists need to do so that they can get that job done in a very short time. So those are my suggestions for how to fit within the policy and try to get the costs in line.

Jay Scott Evans:

Kristine.

Kristine Dorrain:

I'm torn because as much as I would like to support John's suggestion I can just see what will happen in social media land for a trademark attorney to endorse subsidization of the URS, so I'm not going to say that.

I completely agree with everything that Mark said, I think it gives you a much wider RFP. The other aspect and I can say this as somebody who has used the NAF, RES for dot xxx, it is very fast. In fact the hardest thing about it was actually setting out the three elements in the 300 [words or less]. So I think as long as we keep that short process, I think

it's possible to do it. I would actually also add one suggestion to what Mark said, and make very sure that whatever decision, whatever the output is, it's very much a formulaic I don't want to say check the box, I think that might be taking it too far, but I do think that the less time the panel or whoever it is that has to communicate the decision, has to actually spend writing it out, the less the panelist is going to have to be paid, and the cheaper the cost is going to have to be.

The one note that I would say is that I'm very pleased that at this point it seems as if we've all focused on yes, these are the cost representations that the IRT recommended, these are the cost representations that ICANN has endorsed, both within this community and externally including the testimony to Congress. So I think I would very much want to make sure that we are in fact staying within that price point as opposed to saying okay, well if it's going to cost \$1,500 for trademark owners, it's going to cost \$1,500. Because if it does then they're not going to use it. And this much touted new RPM will be dead on arrival.

Jay Scott Evans:

Okay, I have Stacey and then I have Elisa.

Stacey King:

The only thing I wanted to add to what Mark was saying is one of the things that we also discussed and just to make sure it's clear is it's not just the complaint that would be a web interface, it should be the response as well, we should be taking away potential cost from people

who do want to respond to these and make it as easy as possible so they're not having to hire counsel, that's all.

Jay Scott Evans: Okay, I have Elisa then I have David Turner and then Mike Rodenbaugh.

Elisa Cooper: Well first of all – Elisa Cooper, I'm with the BC but I'm representing my personal capacity, and let me start off by saying I apologize if I'm going to state the obvious, but I just like to make a brief comment and provide my support for allowing the providers themselves to assist in defining what they can actually do for \$300 to \$500. That way there is no question about whether or not there is a workable solution, allow the providers to state what they can do, and then we decide well this makes sense or not we cannot work with this, and we need to look at another solution.

Jay Scott Evans: Well that, just to take the moderator's advantage and speak out of turn that maybe the first step into what Phil's looking for isn't it, is to have the providers provide back to the community knowing what the touch points, the hot points are, and give us a system that may not be identical but covers those touch points, such as I heard Brian say that a dissatisfied respondent could eject themselves from the system at any time, that might have the same thing.

Well you don't need to have 17 different types of notice and you don't need to have this because there's just a one push eject that throws you

into a UDRP and I mean I'm just saying I think that might be something we want to think about today is maybe that's a way forward; is to have the providers sort of give us what they can do and then taking some of the comments they've heard from Kristine and Mark and from John and then provide that back to the community and then spend some time much like the openness, Phil, that you talked about for the Trademark Clearinghouse is to have the same type of process.

But then there's an open for anybody who wants to participate to discuss that particular modality and realize that we're beyond a lot of the IRT and some of this was all theoretical because we were dealing in things that had never happened but we've seen things mature as we've gone forward, and maybe we're a mature enough point that we can have some course correction here and have a discussion seriously, so I throw that out, but I have to recognize David and then I think it was...

David Roache-Turner:

Thanks Jay Scott. I wanted to agree first with John's point and the whole objective obviously that the URS has to deal with clear cut cases and whether it's John, whether it's myself, whether it's Mark, when we get a case, you look at it, and you're pretty sure of the decision within the first 10 minutes of reading.

The problem is you do have to wade through a heck of a lot of information because you never know if there's something in there somewhere that might change your mind, but generally I have my decision over my cup of coffee and then I have to figure out how to write it. The writing of the decision can take the rest of the day, but I've got my decision.

I think even respondents would probably agree and would not wish to be put to the cost of fighting such a case, which is why we see so many defaults. And speaking about experience of Nominet because that has the summary decision, and I remember the experts we got together when it was first set up, when we said good grief, the cost is only £250, that's all we're going to get paid for this decision. And we imagined reading and writing and having to do things, but then we looked at the actual table or the form we had to fill in as a panelist or expert, and it was very easy. You decide a case in the first 10 minutes and it takes 5 minutes to do it. It's all online, that works beautifully and if we can have it, we've got the result which we all want.

Jay Scott Evans:

Okay I notice we have Mike and then I think we have the young lady here after Mike.

Mike Rodenbaugh:

It's Mike Rodenbaugh; I'm a panelist for WIPO, several WIPO cases and a standing panelist for the Czech Arbitration Court. And I just want to point out that a lot of the things you're talking about, Mark Partridge especially you know the web interface, the making it easy for panelists to execute their decisions by a series of check boxes and things, this is already built by the Czech Arbitration Court. It's an awesome system and with all respect to WIPO and NAF, that they're behind. They're offering us the same service at a much higher price than you can get from the CAC and I just talked to my friend from the CAC and she tells me that ICANN has never even talked to them about this URS. So there seems to be a disconnect there which we see with ICANN over and over

again wanting to go to the leading, most famous and therefore most expensive providers. In this instance where we're trying to find lower cost, the system's already been built by an existing provider, so we need to close the loop there and take a look at it.

Other than that I just want to echo my support for I thought the excellent idea of just subsidizing this thing rather than trying to change the rules now after years of tortured debate, the cost seems real low, so let's just do it and move on.

Jay Scott Evans:

Thank you Mike, Caroline and then we have Mary.

Caroline Perriard:

Hi, my name is Caroline Perriard from Nestlé. I'm really surprised we're still discussing the details of the URS after so many years. For me and I think for many brand owners it was one of the requirements of these save and environment that ICANN was building within new gTLDs. And now we're still discussing about the detail, it's quite incredible.

I was really hoping to see a very easy and fast system for the brand owners, you really have to figure out those brand owners, they will have to monitor the sites and monitor the domains it's like thousands of extensions that are coming up and then decide when do I take action or not? So we need a really simple system.

I like the proposal when we don't have a respondent, it's pretty forward: then there is no decision and the domain is suspended with

maybe like two month possibility to come back, this is easy. Still it gives some opportunity for the registrant to come back.

And I would not really see the subsidize thing, I don't think it's real again, because at the end of the day we want something really simple. We don't want to have like a second UDRP and you know the money is back up by ICANN. So I really hope and then you come back together and you propose something that is suitable for the brand owners, thank you.

Jay Scott Evans:

I'm going have Mary and I see Dave, did I see your hand? Okay. Am I missing anyone, or do we have anyone remotely while I've got my mic on? Okay.

Mary Wong:

So I wanted to just pick up on some of the comments that a few people have made and it's a really interesting discussion. I guess if you go back and look at the IRT report, there was envisioning that there would be one single provider, I don't think, at least that certainly wasn't my assumption, I don't think that was my colleague's assumption. So there could be several providers. And we've heard certainly from the two of the best known and the largest. And I'm interested to hear what Mike just said because it might well be that there are providers out there existing or possibly new, that might be able to do this in a web-based system for the price point, or close to the thing that we're talking about. So with that in mind, there is an obligation on the GNSO that council passed its own resolution a couple of months ago, and I don't know

what hat I'm wearing now, so I'm just a little confused, but essentially within the 18-month period from the launch, the counsel committed the GNSO to re-looking all the right protection mechanisms. So there is a time at which point some of and all of these things are going to be looked at, so I wonder whether trying to reopen this to do something other than very minor process tweaks is at all advisable.

And finally to pick up on John Nevett's point and without using the word subsidy or subsidization, if you look at the STI recommendations, it did talk about training because the idea and I think the wish is to have highly experienced well-trained legal minds do this, I think the assumption there was that it would be ICANN who would provide or facilitate the training or perhaps fund it. So I think that our way as Mark said within the system that we can try to do this knowing that at some point very soon that we will have to review it anyway.

Jay Scott Evans:

David.

David Roache-Turner:

Thanks Jay Scott. I just wanted to provide a little bit of feedback to some of the questions about how the providers are doing their costing at the moment, from WIPO's perspective we are in this game as a nonprofit provider and when we did the estimate that we did on the costs that we currently charge for the UDRP which we calculated back in 2000 and which haven't changed since then and more recently when we've been looking again at the URS, we've internally done some tracking on the amount of time that the lawyers that we employ as case

managers invest into each of the disputes that they administer. And we have broken that up into an estimate of hours per case on the average and we've costed that and we make back about half of what we invest in our domain name operations at WIPO at the moment, and part of that is because we also spend a significant amount of our human resources in maintaining the infrastructure that helps to keep that mechanism functional, the jurisprudential overview, the legal indexes, much of the public information and resources and tools that help filing parties and academics and stakeholders in the system to continue to use and to be able to use it responsibly there because we invest the time and the money in it. And when we're looking at the URS, we see a system now currently that needs to be administered. That implies an investment of time at every stage in the process. There are more moving parts in the URS than there are in the UDRP. Each of those procedural steps including the steps pertaining to panel appointment take time and that implies an investment of money and resources in making that system work and for us it's about making it work responsibly, it's not about making it work profitably, it's not just about getting into a price point that works, it's also about getting it to a model that's workable and that complements the UDRP, and when we look at the system as it exists now, the main difference for us as Brian mentioned is that one is a system that implies the appointment of a panel for substantive review of a case that is contested or is not contested that implies not just the appointment of the panel to look at the substance but also to oversee that procedural administration of the case to make sure that the administration is efficacious and all of the other aspects of the case, a refilling request for example, an abuse of process, an [RDNH] funding – all of these things take time; you can't do

it in a couple of seconds responsibly in all cases. Sometimes it's the cases that seem to be the simplest are sometimes the most difficult to resolve. So I think we have to be mindful of this as well. Also I think – well, maybe I'll just leave it there, but thanks for that.

Jay Scott Evans: Thanks. Kristine?

Kristine Dorrain: I will not disagree with anything that David just said, except for we clearly do not have the resources as a for profit company to do all the extras that WIPO provides for the community.

I just wanted to comment on Mike's comment and the point of a couple other people that we have in fact created an entirely online process with the RES, the form complaints, the form responses and the form decision. The arbitrators do not spend much time thinking through the decision but they do have the option to fully write out and upload a decision if that is their choice. And a few people still do, they still want to do it.

So I do want to say that I think that we are moving in that direction towards having that fully online check box system and it is in place and we found it to be very, very successful, and people really, really like it.

David Roache-Turner: I just want to add to that we also have a fully-automated online system that our panelists use to render their decisions, so we already have that efficiency built into the system.

Jay Scott Evans:

So where do we go from here? I've heard a call from Phil that there be some sort of movement where there is full community input and I did not hear an objection from ICANN that that was outrageous. We've had several ideas here today. I would put forward that perhaps what we need to do is we need to have a group that anyone can participate in that looks at the Czech Arbitration System, that looks at the idea of subsidizing, that looks to the providers we have here today to keeping the high level concepts of telling us what is implementable at the price point and then we have to make a choice as a community. And I would like to know from the people in this room, how many people think that that's the way forward, I mean we need to move forward.

And I hear from staff is overwhelmed and they've got a lot of implementation details to deal with and they're not the experts in this. The experts in this are sitting in this room, the registries, the registrars who understand how it affects their business, the brand owners who know how it affects their budgets and their businesses and the providers and the investors. So yes, is it Bret?

Bret Fausett:

It's Bret. One more action item. Perhaps I head someone suggest that we put this out to bid, at least have an RFP for people who think that they can provide these URS services to actually say I could do it, and I could do it for X price. And it may be the case that some of the providers come in at different prices, and that's okay too. And then the people who are filing them can file them with whoever they want and if

they want to go with someone who is higher they may choose to do that too.

Jay Scott Evans: Ellen.

Ellen Shenkman: I just I think would like clarification, I highly support all of what you just said, but I think it will only work and really move forward faster if there is some commitment that it's not going to roll out until this is done, because otherwise it's going to be very easy for there to be a silo track of something going forward this way and then this sort of thing we'll see how it works out and maybe it will come, maybe it will come, I think this is too important for us to understand without a commitment from ICANN that this really is going to be resolved, and resolved well.

Bret Fausett: Well I am not speaking in my personal capacity any more but speaking on behalf of the Uni registry. And I don't know how many other TLD applicants did this, but there is a provision in the right protection mechanisms of the Uni registries TLD applications that if ICANN cannot bring in a URS at the target price range Uni registry will independently contract with someone who will do that.

Jay Scott Evans: Phil.

Philip Corwin:

Yes, I just want to say I think there's has been a very useful and constructive discussion; I do wish it could have started one or two ICANN meetings ago. I think there's probably a way forward which may involve subsidization which was John's suggestion, if it take more than 10 or 15 minutes, it needs to be kicked out. Where if we can get the panelist analysis of where the cost points are we can look at them very quickly decide well that's a key protection, we need to keep it, that's not so important, we can think about maybe streamlining things in some combination with automation.

I think there's a way forward if we all, I think everyone wants to work in very good faith, constructively to find a solution that keeps the key protections and comes in with the lower price point, and then get a broad RFP out and see what the bids are from qualified providers. And there is a quite a number in the world. So I hope today is the start of a very constructive and quick process wherever we go with it. Thank you.

Jay Scott Evans:

And right there.

Amy Mushahwar:

Hi, my name is Amy Mushahwar with the Association National Advertisers in Credo. Especially if we're going to go down the road to examining subsidies, I think one thing we cannot underestimate is the fact that there are still so many small and midsized brands that have no idea how they can protect themselves in this environment. And if we could build publicity costs and reaching out to the brand community and educating them about how they go about protecting themselves, if

we are going to consider a subsidy, I think that will be very well received by the brand community.

Jay Scott Evans: Do we have a comment online?

Michele Jourdan: It's from Michael R. Gramm, suggestion. Create a working group and establish a public comment period at the same time working group puts out RFP on behalf of working group for service provider to propose.

Jay Scott Evans: Well, I certainly think that that could be one of the things we can do. I leave it to staff; they've heard the ideas that have been put out here today to come up with how they think we should go forward. I think everyone agrees that there's more work to be done and how that work is done. You know I would suggest that something similar to the Trademark Clearinghouse group that worked on implementation issues and that some of the things they may consider is if we put out an RFP now and see if we can get that in, also look at the providers who say they can't do it and have them give us touch points that they think that they could bring it in.

And we look at all that information at the same time and then we make whatever adjustments need to be made based on the ecosystem we find ourselves in. That certainly would be my suggestion it needs to be done sooner, rather than later and the reason is because I think whatever comes out of this needs to be done, so that by the time we

meet in Toronto, there could be a face to face to wrap it up, sign it, stamp it and move.

And I think that's the – that would be my suggestion to staff as a timeline is by the time we meet in Toronto we need to have whatever group does it ready to sign it, seal it and deliver it wherever it needs to be delivered. A comment, we're getting interested people.

Jean-Pierre Maeder:

My name is Jean-Pierre Maeder from Nestlé. So as my colleague said before I think the overall scene from a brand owner perspective should be kiss with a "c" - "keep it simple, short and cheap".

Jay Scott Evans:

Paul McGrady.

Paul McGrady:

Paul McGrady, a member of the STI. I would just like to say that this is one of the most productive consequential ICANN meetings that I have been in in a long time, no one's integrity was besmirched, nobody's motives were questioned, everybody came forward with thoughtful ideas, and it is refreshing. Thank you everyone.

[Applause]

Jay Scott Evans: We have Rudy Gaines from Marksman, and with that I am going to close the cue and I think we can then circle back.

Rudy Gaines: Hi, Rudy Gaines with Marksman, what about the idea of subsidizing the volunteerism, instead of money? You spread all these easy cases out, a rolling series of volunteers, experts who take a look you spend four hours a year, you commit your time and you clear them all out way.

Jay Scott Evans: That's certainly another thing to be considered. So I would like thank everyone on the panel for their time, they've all been hard pressed. I would also like to thank staff for making sure that we had this opportunity with the room and with all the resources to have this discussion. I appreciate that you're all very busy and I think that allowing us as time shows that you're taking it seriously and we appreciate that very much. So Karen, Kurt and Amy, thank you so much for being here. Thank you to everyone for their comments today, and for those of you that didn't comment, we appreciate very much your attendance today.

[Applause]

Karen Lentz: And I just want to thank the panelists who have also spent their time helping frame the discussion. It's been really, really helpful. Thank you.

[Applause]

[End of Transcript]