Registration Abuse Policies Working Group
TRANSCRIPTION
Monday 17 May 2010 at 14:00 UTC

Note: The following is the output of transcribing from an audio recording of the   Registration Abuse Policies Working Group meeting on Monday 17 May 2010, at 14:00 UTC. Although the transcription is largely accurate, in some cases it is   incomplete or inaccurate due to inaudible passages or transcription errors. It is   posted as an aid to understanding the proceedings at the meeting, but should not   be treated as an authoritative record. The audio is also available at:
http://audio.icann.org/gnso/gnso-rap-20100517.mp3

On page:
http://gnso.icann.org/calendar/#may

Present for the teleconference:
Greg Aaron - Registry stakeholder group - Working Group Chair
Mike O'Connor – CBUC – Acting as Interim Chair
James Bladel - Godaddy Registrar stakeholder group
Berry Cobb – CBUC
Faisal Shah – MarkMonitor
Fred Felman – MarkMonitor
Wendy Seltzer -NCSG
Philip Corwin – CBUC
Rod Rasmussen – individual
Martin Sutton – CBUC

ICANN Staff
Margie Milam
Gisella Gruber-White
Marika Konings

Apologies:
none

Coordinator: Please go ahead the recordings have begun.

Greg Aaron: Thank you. This is the Registration Abuse Policy Working Group meeting Monday, May 17, 2010. This is the chair Greg Aaron.

Welcome everybody and thanks Mikey and Marika for leading last week's meeting. We have a number of items we're going to try to clean up today. Let's begin by taking the roll call and then I'll walk through the agenda.

Gisella Gruber-White: Good morning, good afternoon to everyone. On today's call we have Greg Aaron, Faisal Shah, Mikey O'Connor, James Bladel, Fred Feldman, Berry Cobb, Rod Rasmussen, Wendy Seltzer, Phil Corwin.

From staff we have Marika Konings, Margie Milam and myself Gisella Gruber-White and no apologies. And if I could please remind everyone to state their names when speaking for transcript purposes. Thank you over to you Greg.

Greg Aaron: Thank you very much. I think almost everyone is on Adobe Connect. If you're not, try to login. And if you're not and you need to raise your hand you'll just have to pipe up.

Okay. What we're going to do today is we're going - we have a few loose items we need to wrap up. Our goal will be to wrap those up if at all possible today. We are moving towards a final draft of the final report.

What I would like to do this week is get to a point where we have all of the recommendations finalize so we can do our last round of polling.

And the items we need to work on are the shakedown or whatever we're going to call it issue, reverse hijacking, cyber-squatting, and let's see what else?

I think the rest of it is going to be edits to the text which is in the report which does needs some more work.

One of the things we do need to wrap up is the conclusion section and adding in some additional material here and there. But I think we're very close.

What I would like to do this week is get to the point where all the recommendations are in a final format and we can pull - by the end of the week I would also love it if we can get to a final version of the paper itself.

That would give us one more meeting on the 24th to talk about any final loose ends, the 24th to talk about results of polling if possible.

And then we need to publish the paper basically by the end of May which is the appropriate number of business days that it needs to be in before Brussels meeting.

So we're looking at targeting May 28 as our deadline to publish the final report. The next Monday is May 31. That's a public holiday in the US and I'm assuming most - a lot of our members will be off that day.

So up on the screen we have material that Berry's been working on and other members have provided some comments on. So Berry would you like to walk us through?

Berry Cobb: Thanks Greg. This is Berry. Basically I just took the - I've worked from draft one. James had sent out some comments or a commented version from draft one. And so I tried to address those comments as best as possible.

And then I changed the names from geez, what did we call it, slamming to alternative TLD shakedown or shakedown for short.

So I didn't really do any major - too much major content changes from the previous draft. I don't think we need to go through each sentence or I need to read this out for you guys but basically just cleaned up the issue and definition section, cleaned up a little bit of the background section.

Mostly I think those were most of the comments that James had had. So I tried to kind of elevated from some of the specifics that I had in there earlier and then lastly just updated the recommendation with our latest proposed text.

And then I'd also - after I'd sent out draft number two James had made a suggestion about changing the word sponsor to, what was the language? I can't remember off the top of my head, but to reduce it from sponsor as opposed to coordinate research with the community. So I updated that as well.

And it sounds like Marika has already included this into the final report also with the inclusion of the latest change to the recommendation language. And I'm happy with that as well as other members that responded on the list. That's all I had for this one so far.

Greg Aaron: Okay any other questions, comments?

Okay I think one of the questions might be what do we call this practice?

I want to be careful of the term alternative TLD because that might catch the eye of some readers than they might think it's some sort of a alternate route or new TLD related thing.

So my question is is this the best title or can we do better? It's a new - it's a solicitation right? It's a deceptive create solicitation (unintelligible).

Wendy Seltzer: Wendy Seltzer with a suggestion, maybe just cross TLD?

Greg Aaron: Cross TLD. And how is it a shakedown? What is a shakedown? Does that have any connotations that are not relevant?

James Bladel: Greg its James.

Greg Aaron: Go ahead.

James Bladel: Yes so shakedown, I'll take the credit or the blame for throwing that word out there. And it was just because the, you know, the similarity that I think that or

the parallel that one could draw from, you know, from the Mafia clichés right, where you would threaten something bad might happen to your string in another TLD if you didn't register it.

And then of course the person making the, you know, giving the good Samaritan warning was also the person that was going to carry out the threat if you didn't register it.

And I think that that was where the idea of shakedown came from. I mean it could - really it's more of a cross TLD deceptive solicitation is probably the longest and most descriptive term we could apply here.

Greg Aaron: Okay.

James Bladel: And one of the problems but I was thinking about over the weekend after reading Berry's draft -- and I think the draft is good and I'm not suggesting any language changes -- was the idea that there's a fine line here between a sincere and genuine good Samaritan and a, you know, and a deceptive, you know, scum ball here that's actually going to try and, you know, get some additional money out of someone.

So if I were to start a new business for example -- and I noticed that Berry had a string in .org -- and I were intending to register the.com this might be - knowing that this would be out there what would be - maybe have a chilling effect on whether or not I would reach out to him and asked him if it was okay if he had intentions to use the .com or if it was okay for me to do so.

I mean it's kind of a weird scenario. And I think that, you know, it in some respects, you know, it presumes to know what's going on in a person's mind a little bit.

Greg Aaron: Okay. All right so in the meantime people have been posting up some alternate titles in the Chat box.

We have deceptive TLD solicitation, deceptive substitute TLD solicitation, deceptive registration solicitation. Anybody have any preferences? What amongst those works or doesn't work?

James Bladel: Well the common theme is deceptive.

Berry Cobb: And it's Berry. Shorter the better so I would vote for deceptive TLD solicitation. Of course I guess that means that the TLD is deceptive in itself but...

Greg Aaron: Or would - yes well we don't want to apply that necessarily. How about just - how about deceptive - well and Fred suggested deceptive second level name sales although that might not work at all TLDs because some TLDs offer thirds.

How about deceptive registration solicitation?

Mikey O'Connor: Too broad -- Mikey.

Greg Aaron: A little too broad?

Man: Yes that covers an awful lot of ground.

Rod Rasmussen: This is Rod. I think that we definitely have to get the idea it's a cross TLD thing or something to get the concept in that you already have a name and they're trying to get you to register stuff at alternate TLDs otherwise I can - I get plenty of solicitations to register a domain name at random.

Greg Aaron: Right. Okay, so how about deceptive cross TLD registration solicitation?

Mikey O'Connor: Works for me, Mikey.

Greg Aaron: Okay. So what are our best options here? Let's poll something. I'm going to post this which is deceptive cross TLD registration solicitation. If you can live with that put a checkbox or a check mark. If you have something that you think is better post that in the Chat box.

Wendy Seltzer: Wendy. It works for me. I'm not in a Chat room.

Greg Aaron: Okay. Thanks Wendy.

James Bladel: Hey Greg this is James. I'm away from my keyboard right now but I was going to suggest if we could condense deceptive solicitation into, you know, scams, just say cross TLD scam. I think that that's a little more portable even though it's a little more vague.

Greg Aaron: All right. James suggests a cross TLD scam. Registration I'm suggesting is an important word because we're talking about domain creation as opposed to just something else - transfers, et cetera.

                 And by the way Martin Sutton and Rod Rasmussen are on the call.

                 Okay. So we had some support for deceptive cross TLD registration solicitation or Mikey is now suggesting cross TLD registration scam.

                 Okay. Tell you what, if you can - if you like and can live with s Mikey' recommendation add a checkbox again that's cross TLD registration scam.

                 Okay and I see Berry, Fred, myself, James, Martin, Mikey, Phil, and (Bob). Let's go with that. And that's - I'm not hearing any dissension so let's go with that suggestion, cross TLD registration scam.

Berry Cobb: And Greg this is Berry. Marika will you just update the master document with those or would you like me to send out another version so you can just cut and paste the whole section?

Marika Konings: I can update the report. That's fine.

Berry Cobb: Okay. Thank you.

Greg Aaron: Okay. Okay so Marika will take care of that and post up a new version. Now this - my understanding is this material is now in the report body, is that correct?

Marika Konings: That's correct. The only thing that needs to be updated is the part on GNSO sponsors for the research.

So I think Mikey made a suggestion that was agreed on just before. So I'll change that as well in the updated version.

Greg Aaron: Yes. And Mikey where did we end up on that?

Mikey O'Connor: Mikey was taking a small mental vacation. Sorry about that. What's the question?

Greg Aaron: Oh we were working on that sponsorship language on the list.

Mikey O'Connor: Oh I think Martin came in with something and I'm mostly just said thumbs up. I'd - I was the one who suggested the sponsor and agreed that it was confusing. And James came up with something and then Martin did. And let me see if this is the one.

Berry Cobb: This is Berry. It was coordinate research with the community as opposed to sponsor.

Greg Aaron: Okay. So it would read as follows. The RABWG recommends the GNSO monitor for cross TLD registration scam in the gTLD space and...

Berry Cobb: Coordinate research...

Greg Aaron: Sponsor - coordinate research in the community. To determine the nature and extent of the problem the Working Group believes this issue warrants review but notes there is not enough data at this time to warrant an issues report or PDP.

Okay. So any last words on this? It sounds like this piece is ready to go? Okay. If not thanks Berry for writing the material up.

And we are ready to move to the next thing. We we're going to discuss reverse hijacking. And that was on the follow-up list from last week.

Berry Cobb: Correct. This is Berry, Greg.

Greg Aaron: Yes.

Berry Cobb: I did create a first draft and I sent that out to Faisal and Phil. Faisal came back with some edits. And I'm still waiting for Phil to provide his feedback and then I'll send it out to the group.

I'll try to get with Phil after the call today and get that out this afternoon or first thing in the morning.

Greg Aaron: Okay. That'd be great if you guys can wrap it up today and we'll look forward to that on the list.

Okay. Next on the agenda then is cyber-squatting and gripe site language. Let's start with Martin's mark ups regarding gripe sites.

The idea I think was that we needed to work gripe sites into the cyber-squatting section somehow because it dovetails with that issue and UDRP issues. So Martin would you like to walk us through the material?

Martin Sutton: Yes can you hear me all right I'm on a mobile? Yes?

Greg Aaron: It sounds okay.

Man: Yes.

Martin Sutton: But taking a look at that, I mean the main thing I've - all I've done is basically leave the gripe sites in just with a slight tweak on the recommendation just so it cross refers neatly with the UDRP section and inserted an item for just going down the list that it's just been posted.

Oh (unintelligible) and just inserted a comment with regards to the gripe site analysis that had been done, undertaken in the subsequent section rather than try and transfer I suppose gripe sites underneath the cyber-squatting section altogether.

So I (unintelligible) does that work for everyone or do we need to consider a rewrite where the gripe sites gets tucked directly under cyber-squatting?

Greg Aaron: This is Greg. And my suggestion is it would seem to - it would seem very important to list it in the list of UDRP issues that we have in the report although I think...

Martin Sutton: Yes.

Greg Aaron: ...a lot of them are - I'm sorry go ahead.

Martin Sutton: One line for that.

Greg Aaron: Right. And in - and I was talking about the text of the cyber-squatting section of the paper. Our current recommendation says the following.

It suggests an examination of quote, how the UDRP has addressed the problem of cyber-squatting to date and any insufficiencies slash inequalities associated with the process.

And I think both reverse hijacking and gripe sites actually fit within that current language. Their problems or insufficiencies or inequalities and do deal with cyber-squatting.

So I think the language covers it. At this point I don't know if I would be comfortable with changing and adding it into the recommendation itself.

Because one, I think it's pretty much already covered. And I don't know if gripe sites deserves - I mean it's more deserving than any of the other issues that are also listed in the paper itself, so...

Martin Sutton: So Greg you're saying that without having to put an extra line in the recommendation just refer to the gripe sites within the list of issues?

Greg Aaron: Yes. Yes.

Martin Sutton: That's fine. I thought I took away or maybe that's how I interpreted it, the idea of that there should be something within the recommendation that...

Greg Aaron: No.

Martin Sutton: ...I have to work along that line. What does anybody else think?

Berry Cobb: Greg this is Berry if I may.

Greg Aaron: Go ahead Berry.

Berry Cobb: Yes so the way I interpreted what we would do last week was that within the section of cyber-squatting that there would be a bulleted line item that draws out - or spells out specifically the inconsistencies with the UDRP decisions.

And I agree with you Greg, we shouldn't need to modify the cyber-squatting recommendation that incorporates that.

My only suggestion after that is that we certainly keep the - I'm sorry I lost my place. So I - we certainly keep the gripe site section intact and that the way the report currently states it has our - kind of our two recommendations, one View A and View B, that those be deleted and that the recommendation for the gripe site section is that, you know, something to the tune that RAP working group -- blah blah blah they decided that there are inconsistencies within the UDRD - yes, the UDRP and then that any changes in that regard would fall under the cyber-squatting recommendation and be addressed there and then just basically draw it to a close.

Because I think we have pretty much unanimous consent - consensus with the fact that we all agree that there should be some adjustments in how those decisions are made and then that's it, we stop.

Greg Aaron: All right so I think we're all conceptually in the same place. Now Martin did a red line to the gripe site recommendation.

And what he said - and I think what he's doing there is he's saying let's deal with it as part of the cyber-squatting thing.

His red line says what it's - he made a slight change to the existing recommendation. The existing recommendation says the majority of RAPWG members expressed the gripe site and offensive domain names that use trademarks - okay actually that's - actually that's dealing with two things. That's dealing with gripe sites and offensive names. So this is actually about...

Berry Cobb: Correct, correct.

Greg Aaron: Yes. Just a...

Berry Cobb: That's why - this is Berry. That's why I was saying we just need to slim it down and make it simple that we're just, you know, basically refer back to the cyber-squatting recommendation. And that's where it's going to be addressed and be done with it.

Greg Aaron: Okay all right, so it could read as follows. The majority of our AP - I'm working again off of the Martin's red line. But it says the majority of RAPWG members expressed that gripe sites should be addressed in the context of cyber-squatting and the UDRP for purposes of establishing consistent registration abuse policies in this area.

                    Let me post something up into the Chat box so you can see it better. Okay. So I put it up to the Chat box. Is that what we're aiming for?

Mikey O'Connor: This is Mikey. It works for me.

Wendy Seltzer: Would you mind reading it out?

Greg Aaron: Okay. It reads as follows. The - and again, this is the recommendation that would appear in the gripe site section of the paper.

                    Actually it - initially it said there was rough consensus to make no recommendation. And by the way that, I guess that would be stricken. Because what we're really doing now is we're saying this needs to be taken care of in the UDRP and cyber-squatting issue.

                    The recommendation would then read as follows. The majority or maybe all RAPWG members expressed the gripe sites should be addressed in the

context of cyber-squatting and the UDRP for purposes of establishing consistent registration abuse policies in this area and that creating special procedures for special classes of domains such as offensive domain names may present problems, unquote.

Wendy Seltzer: So when - (do) you put a suggestion that we insert before cyber-squatting with the review of cyber-squatting in the UDRP? Because as it reads right now it suggests that or - that - or could be read to suggest that gripe sites are cyber-squatting. And I think it sounds as though the reason we might have consensus is to clarify whether they are or not.

Greg Aaron: This - yes actually that's true. What we're - and what we've had discussions about in the past is some gripe sites are, you know, completely they're okay. They're not cyber-squatting.

What we're trying to do is we're looking for perhaps a little more consistency in the decisions and handling, right? So...

Martin Sutton: Greg it's Martin here. Berry's posted a good option there instead which is a bit more clear and targeted at the gripe sites.

Greg Aaron: Okay.

Martin Sutton: Do you want me to read it out?

Greg Aaron: Please.

Martin Sutton: The RAP Working Group members understand the gripe sites should be addressed in the context of cyber-squatting and the UDRP for the purpose of establishing consistent decisions on gripe sites. That's more targeted and focused.

Wendy Seltzer: So Wendy. I'd still like to see should be addressed in the context of review of cyber-squatting and UDRP.

Mikey O'Connor: This is Mikey. I agree with that.

Greg Aaron: I - this is Greg. I think that's useful because again, our recommendations need to tell the council what we're recommending and be very clear about that. I think this could be a useful clarification.

Mikey O'Connor: Okay. So it would - let me put up a slightly revised version in the chat. Okay I posted that up and Wendy it reads as follows.

                  The RAPWG members understand that gripe sites should be addressed in the review of cyber-squatting and the UDRP for the purpose of establishing consistent decisions on gripe sites. Oh consistent, yes.

                  Does - so we're again, we're going to point back to the review of the UDRP. Does that work for you?

Wendy Seltzer: Yes, yes.

Greg Aaron: Okay. So anyone else have additional comments on the language we have up there? Okay I'd like to take a straw poll. Oh I'm sorry, Faisal I see your hand up.

Faisal Shah: Yes hey I just wanted to clarify because I'm trying to go back now to look at the recommendations here. So basically this recommendation, this particular statement and only this statement which is the RAPWG members ban the gripe sites blah, blah, blah actually substitutes for make no recommendation on recommendation number one. But they're still the alternative - alternate view right? And that stays in place.

Greg Aaron: Let's go find that material in the paper.

Faisal Shah: Yes I'm just confused.

Berry Cobb: This is Berry. I can read off the alternative view if you'd like?

Greg Aaron: Let's also find what page of the report that's on?

Berry Cobb: That's Page 37 and it stays the following. The UDRP should be revisited to determine what substantiative policy changes if any would be necessary to address any inconsistencies relating to decisions on gripe names and to provide a fast track substantiative - and procedural mechanisms in the event of the registration of deceptive domain names that mislead adults or children to objectionable sites.

Greg Aaron: Right. So that recommendation is - the previous recommendations tie together two issues. One was gripe sites. The other was offensive names.

                  I think what we're doing now is one of the things we're doing is we're teasing those apart. What we're saying is gripe sites should be taken care of as part of the UDRP discussion.

                  What maybe we're left with is deceptive domain names that mislead adults or children. Or another way of calling those is objectionable domain names.

                  So do we need - do we still need a second recommendation about a fast track mechanism to deal with objectionable sites?

                  I see Phil's hand and then Faisal.

Man: I don't want (unintelligible).

Phil Corwin: Yes this is Phil speaking. On these I certainly support teasing them apart. In my mind they're two very different things.

You know, a gripe site, you know, X Corporation sucks.com, you know, is a free-speech matter. There's no deception. It's just using the name of a business usually in the context of a Web site that criticizes it which would certainly at least in the US falls under acceptable free speech.

On the other one on offensive domain names, well I - it's separate from the gripe sites. But also the word deceptive I guess I have two problems. One what's objectionable can be pretty subjective. And two sometimes there's no deception involved.

You know, there's a famous case of legoporn.com. There was nothing deceptive about it. It was pornographic models created out of Legos but the problem was that children went to the site.

So it was I guess offensive to the parents of the children who went to that site and saw things they didn't want them to see. That probably were not appropriate for minors but there was no deception involved.

So I think that one needs considerably more work because you're getting at something where there may be no deception and what's objectionable depends on who's viewing it. And it's more than just the adult child dichotomy.

Greg Aaron: Okay. I was wondering if Fred wanted to comment? He had posted a note in the Chat.

Frederick Feldman: Yes I mean bringing up the fact that sometimes they're offensive and offensive terms and domain names doesn't actually affect - I mean the recommendation is for us to review this right, and to look at it including that issue. And it actually I don't think is a problem.

We're just pointing out that actually you should be sensitive to the fact that offensive terms are often used in this context.

And you do very often see an offensive term combined with a trademarked name or with a gripe site. It's part of the issue. They're intertwined and that's where a lot of them actually appear. And that was my only remark.

Greg Aaron: Okay. Any other comments? Mikey?

Mikey O'Connor: I've been - this is Mikey. I've been frantically reading back up into the report. And I think that this section addresses both. I mean, you know, this Section 5.3 is gripe sites deceptive and/or offensive domain names.

We've got one recommendation about gripe sites that we seem to be pretty much in agreement on. But that recommendation doesn't really talk about deceptive or offensive domain names. And it seems like the second one does.

So we might want to hammer on that one a bit to get it closer to our liking. But I think it's appropriate for this part of the report to talk about the kind of thing because that's what this section of the report's about.

Greg Aaron: Yes I think -- this is Greg -- it's clear that we still need something to deal with the offensive names.

I guess my first question is as far as the gripe sites issue it seems to me that we have a pretty high level of consensus if not a unanimous consensus that we want that gripes issue to be taken care of in the UDRP section. Is that fair to say, we have a very good level of consensus?

Okay. So we need to craft a recommendation on offensive names which is separate. Now one question is what would that say? Would anyone like to propose some language?

Faisal Shah: I can do that. This is Faisal.

Greg Aaron: Good. Do you want to take a couple minutes to work on it?

Faisal Shah: Yes.

Greg Aaron: And we can circle back. Okay we'll revisit that in a little bit then. And Faisal
                 just let us know when you have something.

                 In the meantime let's move on to the other cyber-squatting bit. Oh I'm sorry
                 go ahead James.

James Bladel: Just real quickly. I mean if we're going to roll this into UDRP, doesn't that
                 assume that the offensive name slash Web site contains the trademark in
                 the domain name correct?

Greg Aaron: Well I think we're - first I think we're tackling it is a separate (issue). Offensive
                 names we haven't really figured out whether it's going to be incorporated into
                 the UDRP discussion or recommendation or not.

James Bladel: Okay.

Greg Aaron: Second I recall that there were that some opinion in the group that offensive
                 names could contain trademarked names but also might not.

James Bladel: So it could be generically offensive and still...

Greg Aaron: Right, right. I remember some discussion about that like there was a
                 discussion of the seven dirty words...

James Bladel: Yes, yes.

Greg Aaron: ...and how those were an issue. So we'll have to discuss those issues.

James Bladel: Okay. And then, you know, while we're just kind of putting a push pin in this idea and setting it aside I wanted to also just make a note that we should also discuss whether using something in a manner that's deemed offensive to the holder of the mark is sufficient to demonstrate bad faith.

                  And that's a - probably a longer discussion. But if we're folding into the UDRP we should probably make mention of that.

Greg Aaron: Okay. And we'll have to discuss those issues here in a little bit.

                  Okay now one of the other cyber-squatting things we were talking about was the definition of cyber-squatting. And Marika if you can scroll the material.

                  One of - the central issue is this. And again this was an issue that was brought up during the public comments at Nairobi.

                  We had a definition of cyber-squatting, well actually we kind of had two definitions of cyber-squatting. We had a definition that said it was the registration of domains that infringed upon trademarks basically for the purpose of profiting, typically through pay-per-click advertising.

                  Now I'm paraphrasing here because I don't have the language right in front of me at the moment.

                  The point was made that profit through pay per click or whatever means is not the only motivation or qualification of bad faith.

                  We had also consensus in the group that the measures in the UDRP were a good definition of cyber-squatting. And those mentioned several displays of bad faith. And profit is one of them but also just trying to keep the name away from somebody is another one causing confusion, et cetera.

So what we're trying to do is just reconcile the two. I'd - and one of the issues that came up was the whole does the domain name have to be used thing.

What I'd like to mention is right now the use issue is one of the things we've listed in the cyber-squatting section of the paper.

And what we've said is the language of the UDRP currently requires bad faith and use. However there have been a lot of decisions over the years where use was ignored basically.

There was no use of the domain name but the domain was still the subject of the case and there were decisions on that.

So what we're pointing to is that a review of the UDRP is - should probably deal with that issue and examine it.

What we have to do is simply come up with a definition of cyber-squatting which is internally consistent.

So up on the screen here is the issue slash definition. Let me read it.

And what we're going to try to do today is come up with something which is consistent which gets us past that comment. And I think it's going to be very possible. But let me read the definition as it sits at the moment.

Cyber-squatting is the deliberate and bad faith registration or use of a name that is a registered brand or mark of an unrelated entity for the purpose of profiting typically though not exclusively through pay-per-click advertisements.

Cyber-squatting is recognized as registration of abuse in the ICANN community and the UDRP was originally created to address this abuse.

There was consensus in the RAPWG that provisions 4A and 4B of the UDRP are a solid definition of cyber-squatting. So that's what we have in the draft at the moment.

What I'd like to do is first open up the floor and I'd like to hear if anyone has any tweaks to this language or sees any problems in this new language we have here.

Wendy Seltzer: Wendy here.

Greg Aaron: Okay go ahead.

Wendy Seltzer: I'm going to urge strongly that we keep the registration and use of the UDRP. And by use of the domain name it could be used as a pawn in demand letters without any site being up at the name.

But what I think the UDRP purposely states clearer is that the mere registration of the domain name with nothing further can't be presumed to be cyber-squatting. And I think that's what the and in the UDRP's definition does.

Greg Aaron: Okay. Thank you. By the way maybe we should draw some context around what we're doing here I forgot to mention.

The definition that we state here, you know, it's talking about the - what we discussed and the current state of things and what we think it is.

What we're recommending the council do is start an issues report in a PDP on cyber-squatting and how to look at the UDRP.

That group is going to look at these issues all over again. What we're doing here is not setting policy. And of course the definition's really important but what we're not arguing about right now is policy.

Whatever we state here as the definition is not going to change what people do as subsequent group and subsequent council decisions might. But we're not making policy here through a definition. Is that fair to say? Fred?

Frederick Feldman: Yes I agree with that absolutely Greg. And I agree with, you know, part of what Wendy said is that absolutely registration, you know, can't be presumed as an abuse and cyber-squatting.

But I think there are many instances where registration or abuse applies. So I guess I agree a little bit with Wendy and I agree, you know, wholeheartedly with what you've just stated.

Greg Aaron: Okay anybody else? Thanks Fred. Mikey next?

Mikey O'Connor: Thanks Greg. This is Mikey. I just posted a little tweak to the language sort of to try and get us through this.

And what I say is cyber-squatting is currently defined as the deliberate and bad faith registration and use and then the rest of the sentence carries on.

Because I think part of what we're working on here just to amplify your policy comment is that all we're trying to do with this paragraph is described the situation as it exists today and recommending that a policy process be undertaken to figure out whether that's still the right definition. So I just threw that up as a possible tweak to the paragraph to make it consistent.

Greg Aaron: Okay. And then Fred has posted a couple of notes in the Chat box saying that many ccTLDs use or in the definition of cyber-squatting and using the term and/or might be a good substitution.

I mean it's what Fred's talking about is broader practice. Various TLDs outside of ICANN has - have varying versions of the dispute resolution mechanisms. So Fred's talking about broader industry practice.

Now what Mikey has suggested is interesting to me in that it's setting some context which is it's currently defined which leaves open of course the possibility which - that it needs examination and potentially some change. What do you think of that Fred?

Frederick Feldman: I mean that's accurate it - within the current definition of the UDRP. But it's not accurate in all jurisdictions.

Greg Aaron: So again you're referring to the ccTLDs?

Frederick Feldman: Yes and also I mean US law.

Wendy Seltzer: Yes, since we're commissioned by the GNSO for gTLD policy...

Frederick Feldman: But US law defines it differently.

Wendy Seltzer: ...it's reasonable to look at...

Greg Aaron: Well it...

Wendy Seltzer: ...UDRP's current definition.

Greg Aaron: Yes I remember we had it, in a subgroup we had it we had a long discussion about the US definition. And I remember several folks were in that group.

There was not agreement in the group that we could use that definition. And one of the reasons was UDRP binds all gTLD registrants. That's a contractual thing. And varying laws across various jurisdictions are broader or narrower.

But what we're really focusing on right now is the UDRP itself as used in gTLDs isn't it?

Mikey?

Mikey O'Connor: I just posted another version up to the Chat to refine it just a little bit more. Cyber-squatting is currently defined in gTLDs as the deliberate and bad faith registration and use.

Greg Aaron: Okay thoughts on that?

Phil Corwin: Yes...

Greg Aaron: Phil?

Phil Corwin: ...Phil here. I think what we should be trying to get at with this at 5.1.1 which is issue definition is aiming for a factual background and of what's - what the issue is.

And I think - you know, I can see merit to everything that's been said so far. I think we need to expand this to basically say look, it's currently defined as requiring the conjunctive finding of both bad faith registration and use under the UDRP for gTLDs. But the fact is that some ccTLDs require one or the other, not both.

Some national laws require just one or the other. And in actual practice certain UDRP decisions have found, you know, violations without actual use.

So and I think we should aim for a fashionable description of the state of play on what goes on with cyber-squatting with - in terms of defining it and then launch into a discussion of the various issues and which all leads to some, you know, recommendation for taking all these disparate views into account

and kind of urging ICANN to rationalize it and again, get things back to some kind of consensus.

My problem with this opening paragraph right now is that it says two things that don't jibe with each other.

One is that it says - it opens by saying it's deliberate bad faith registration or use. And then it ends by saying there's a consensus that provisions 4A and B of the UDRP are sound definition.

And of course that sound definition requires registration and use. So you just got that conflict within the paragraph right now. I think it would be better to just expand it and have a factual description of what goes on.

What's a definition, now what the actual practice is in UDRP arbitration and pointing out that it's a different in some ccTLDs and it's different in some national laws. And that brings you to the point of saying - making a good case for trying to bring back some uniformity between those different takes on it.

Greg Aaron: Okay. Thank you. By the way Fred maybe one thing that we haven't done in the paper so far is say this is what it is in the gTLDs. But there are other practices in the ccTLDs. For example they have (just be) resolution variations of the UDRP which vary as you pointed out.

What - perhaps what we could do is we need to mention that in the body of the paper to draw out that issue. And that links with the use issue which is already mentioned.

And then state the current state of things which is it's currently defined this way. And then in the body say there may be issues with the current definition or it needs to be examined. How about that?

Okay and then Fred posted a note saying - adding the background would be helpful.

Now what specific reforms to UDRP we might be recommending? We're not recommending any specific reforms to the UDRP.

We're recommending that the GNSO has a PDP to figure out what those should be. And we're listing a whole bunch of ideas and issues for them to think about.

But it's not - we're not making specific recommendations for UDRP change. Okay. So let me post up a revised version of the cyber-squatting issues section just - if you can give me just a second.

So just be patient and give me a second. I'm going to work something up for you.

Okay I've put some material in the Chat box and it reads as follows. What's new is a little bit at the end that I'll call out. But this is mostly otherwise from what we have in the paper at the moment.

It says as follows. Cyber-squatting is currently defined, as per Mikey's language, currently defined in gTLDs as the deliberate and bad faith registration and use of the name that is a registered brand or mark of an unrelated entity.

It needs to say typically or often for the purpose of profiting. That's my omission, typically though not exclusively through pay-per-click advertisements.

Cyber-squatting is recognized as registration abuse in the ICANN community. And the UDRP was originally created to address this abuse.

There was consensus in the RAPWG that provisions 4A and 4B of the UDRP are a sound definition of cyber-squatting.

And here's an addition. Over the years a number of issues have been raised regarding the UDRP policy and practices. These bring up issues of how cyber-squatting is defined and addressed.

And the purpose of that last sentence is to say that we have an issue. We have a current definition that's currently used in ICANN.

We have issues that have been raised about whether that definition is good - well not good or bad but issues have been raised about the definition and the practices. So that's what I'm aiming for.

So does this work for you? All comments welcome. Mikey?

Mikey O'Connor: I think - this is Mikey. I think this is a good start. But I actually am kind of drawn to the language that Fred and Phil threw out, Fred in the Chat and Phil on the call that basically would create another sentence after that first sentence that we've worked on that would highlight all the different rules of the road in different places, ccTLDs, countries, et cetera.

Because I think that's a good way to frame this is to say look there are a lot of different definitions of cyber-squatting. It really depends on where you are and where you sit.

And to - I think you're getting at it in this. I just think it's a little bit too subtle for a person who hasn't been through all these phone calls with us and that we might want to stick those in.

Greg Aaron: Oh there would be additional material in addition to this. And what I'm suggesting is it belongs in the background section where it can be expanded upon. I didn't want to try to jam it into the shorter issues section that's all.

Mikey O'Connor: I'm - this is Mikey again. I'm kind of taken with the idea of at least acknowledging it in paragraph 5.1.1. Because that's where, you know, that's where we're defining the issue and the definition.

So, you know, I will defer to Phil and Fred on this. But if I had my druthers I would want to see another sentence in here. That's it for me.

Greg Aaron: And what would that sentence say Mikey?

Mikey O'Connor: I would probably have to go back to the MP3 and the Chat and sort of meld together Fred's posted chat plus Phil's - but Phil sort of rattles off a list of examples that I thought was pretty good that I think jibed pretty well with what Fred was talking about.

So, you know, it would touch on ccTLD's inconsistencies between US and other countries law, the inconsistent use of, you know, sometimes it's and, sometimes it's or, sometimes it's one or the other, et cetera, et cetera and kind of flush all that out.

I don't think it has to be a great big long soliloquy. But I do think it's helpful to set the context. And this paragraph seems like the right place to do that. But I, you know, I - in order to actually draft that I'd have to go back and listen to the MP3.

Phil Corwin: Yes Phil here. I think we could probably do it with one more sentence somewhere at the end there which just says that something along the lines that cyber-squatting however has been defined more broadly in certain ccTLDs, in national laws, and in actual UDRP arbitration practice. I mean that kind of covers the differences I can think of.

Greg Aaron: Okay let's do this then since time is drawing down. Let me send out the language we have so far to the list. And we need Phil and Mikey and Fred to do two things I think.

One is maybe work on that additional sentence that would go into the definition section. The second thing is we need a - maybe more of a paragraph that would also go down in the background section and that would talk about ccTLD practice and those kinds of things we've been discussing.

Can you guys deliver - if I post that up today can you guys deliver edits tomorrow?

Man: Should work for me.

Mikey O'Connor: This is Mikey. I'm banging away on a sentence here. Let me just post it again because I posted a sentence fragment.

But what if we inserted a sentence, I just posted it to the chat that says however cyber-squatting has been defined differently in different ccTLDs, national law, and arbitration practices.

Does - I mean that's a pretty frantic effort so I'm open to changes. But it would be nice to just nail this down. And I agree with Phil that, you know, it doesn't have to be a big sentence it just needs to acknowledge the situation.

Greg Aaron: What I'll do Mikey is I'll take the bit that you just posted and add that to the text that - I have it here on my notepad. Let me post that up to the list. And then people can edit that.

And then in addition we still need another paragraph to go in the body of the background section to mention ccTLD practice and the "and/or" and other things we've been discussing. I think we have to post it up to the list either way. So let me do that with your bit. Okay thank you.

Mikey O'Connor: This is Mikey. You know, take note of Phil's last little refinement to the Chat as well. I think he's a lot better guy to be writing this kind of stuff than me.

Greg Aaron: Okay got it. All right, all right we'll take this off-line but our goal is to get this - comments on this language and an additional paragraph written in the next day. So thanks in advance for working on that material.

And I think we're much closer now to where we need to be. This has been a good collaborative effort. And I appreciate everybody's attempts to iron out the material, so good effort. Thank you for that.

Okay. The next item is the conclusion section which has been blank obviously for most of the time.

Marika has in her new draft posted up the beginnings of that conclusion section. I personally have not had a chance to read it but it's there. We just need to bolster that.

I mean obviously in the conclusion and next steps the next step is for the council to read the report and take up the recommendations.

They are still needs to be a little material about the issue that's come up about malicious use which is the extent of policymaking. That needs to be mentioned there and we'll take care of that.

Berry Cobb: Greg, it's Berry. And I still have that action item due. And I hope to have that sent out tomorrow. I'm just trying to clean up a little bit of research.

But my action item from last week's call was to put together text that would offer up the recommendation to for the GNSO to carry that forward.

Greg Aaron: Okay. We really need that material Berry. Now when you say
                 recommendation are you making another recommendation or just - or what
                 exactly are you doing?

Berry Cobb: Well as I understand it from our previous calls we're all in agreement that
                 we're not going to solve it here and that we all further agree that it needs to
                 be kicked up to the council for them to deliberate and perhaps even above
                 them.

                 So my action item from last week's call was to create a paragraph or two,
                 most likely just one paragraph that basically states the recommendation or
                 formulates a recommendation like we have for the other abuses that says,
                 you know, the RAPWG was unable to reach consensus about this issue of
                 use abuse versus registration abuse and that the GNSO do X. And I'm still
                 working on that text.

Greg Aaron: So my understanding was slightly different. We weren't writing a formal
                 recommendation that we're going to measure consensus on.

                 We were saying this is an issue that - of policymaking. We were bringing it to
                 the council's attention. But I did not understand that we were making any
                 formal recommendation on this. That would be appropriate to do in the other
                 section of the paper. Marika I see your hand raised?

Marika Konings: Yes this is Marika. Just to point out indeed, you know, what I've done now is
                 just a very short paragraph summarizing that, you know, the
                 recommendations capture the discussions of the Working Group, the public
                 comment periods that were reviewed.

                 And, you know, these are the recommendations, the - that the group is
                 putting forward to the council and basically let the rest go blank because
                 we're still working in different recommendations.

But looking at, you know, other reports that have come out recently this is normally a chapter that just lists the different recommendations that the Working Group would like GNSO to consider or adopt basically.

So it should probably include indeed all the recommendation we take consensus on and any other items that, you know, the council is expected to pay attention to or maybe work further on like, you know, the issue that Berry is working on whether that's, you know, for formal consensus taking recommendation or whether it's just an issue that the group would like the GNSO council to focus on.

Greg Aaron: Okay. My understanding was from the discussions that this is an FYI kind of a thing up to the council.

We're saying this is a area where the contours of policy - we - this group had differences of opinions about what the contours of policymaking are. And this is also kind of an issue of ICANN mission, et cetera, et cetera.

But we weren't making a recommendation that they take a next step on this necessarily. If we were recommending a next step it would have been a recommendation in the malicious use section wouldn't it?

Okay. All right, anyway we'll work that out as we see some conclusions text.

All right. If we can get through the recommendations for the TLD scam and so forth in the next couple of days we will be ready to do another round of - the final round of polling.

Now the - we also need to have a deadline for our red lines for the body of the paper. And I'm going to set that deadline at this Friday which is the 21st because the paper needs to be in on the 28th and we have to - and we have to discuss any last red lines in our meeting next week on the 24th.

So that's the deadline for redlines 21st. If you have any additions or changes those need to be posted up to the list this week.

Please do not post them over the weekend because that won't give people a chance to read them before the meeting on the 24th.

Okay there's one last issue which is we wanted - we need - we want to do polling because we've changed the language and some of the recommendations and so forth.

And Wendy had asked if she could weigh in on those as part of the polling? There were some objections to that.

And the decision was I was going to go talk to Chuck Gomes, the chair of the GNSO to talk about presidents and these procedural issues. And I did so.

And here's what Chuck wanted to emphasize. The first thing is that it is important for all the constituencies to have a voice in the process.

The process working groups and so forth is to allow constituencies to have a voice and weigh in. And it's certainly preferable that that happen earlier in the process rather than later. But it should be done the caveat being that new members do need to be up to speed.

And I don't think there's an issue there. Wendy got up to speed early. I gave her a briefing just tell us - her about previous discussions in the group.

And of course Wendy is a very experienced member of the community as a GNSO council member and as a former board member.

So we - the issue hasn't been about restarting discussions from scratch. And there hasn't been a disruption of the process because we have had a new member.

The other thing that Chuck said is he reminds us that there's a - been a process for GNSO improvements. And those recommendations have been drafted and are out there.

And the idea is in general when a working group is doing its work it's trying to reach consensus as much is as possible.

And the ideal is when a group is trying to come to recommendations that everyone can buy into and support.

Now in - I think most cases our group has been very successful in doing so. We have a lot of recommendations that are unanimous. And certainly everybody's been doing a lot of very good faith work and we've gotten there in a lot of cases.

Now in a few recommendations we've had a lot of discussion and there's just - there are differences of opinions.

And I think it's probably fair to say that at this point we've had good discussions of all the background. We've looked at the various angles and people have just ended up in different places. That happens sometimes.

But Chuck said we kind of want to avoid an emphasis on voting. Again you try to reach consensus whenever possible. There may be abuse cases where people are in different spots.

Participation, you know, I think, you know, it does count. He says he's, you know, certainly sympathizes with those people that have been putting in the work over the time.

But an undue emphasis on voting would be to, you know, haul in people who have not been participating since forever and that kind of thing.

And certainly the council will need to examine all the recommendations carefully. They want to hear what we have to say. And then they're going to look at everything very carefully.

And of course we are going to be recording all the thoughts how people feel. So what we're going to be doing is the following. We will have another round of polling with our finalized recommendations.

Wendy will be invited to participate in that polling. Members who polled the last time will also be invited to poll again.

We will not be polling members who did not participate in the last round. In other words we're not going to be pulling an extra people who are on the list to do voting. That's the way we're going to have participation count.

So that's what we're going to be doing. I think in most cases, you know, we've worked very hard to have recommendations that a lot of people can buy into.

And then the council's going to take a look at our paper and they're going to have their discussions and they'll decide what to do next.

So Marika and I are going to, once we have these recommendations finalized in the next couple of days, then Marika and I are going to work on setting up the new polling. And you'll get a note about that.

And I'm hoping we can do that this week. And then we can discuss on the 24th which might be our last meeting before Brussels, how the results have fallen out.

Okay any final thoughts?

Man: Thanks Berry.

Greg Aaron: Okay so hearing none we have a few action items. I'll put those up to the list. And we're going to push towards a deadline of the 21st for redlines. And we're going to try to do our polling this week.

It looks like...

Faisal Shah: Hey Greg, this is Faisal.

Greg Aaron: Yes?

Faisal Shah: I mean you - well I just - well I had to get off the Adobe but I've posted up the recommendation on the offensive names which has not been discussed now. So I'm just trying to figure what you wanted to do with that?

Greg Aaron: Oh okay. Okay let's put that up to the mailing list then.

Faisal Shah: Okay.

Greg Aaron: And I encourage everybody to take a look at Faisal's work and post any comments or edits you have. And we'll see what we can do on the mailing list in the next day or two on that.

Thanks for creating that and we'll figure out how to work that in. Okay if not we are at 30 minutes past the hour.

If all goes well next week will be our final meeting before Brussels. I encourage you to if there's anything left to discuss, anything you've forgotten, et cetera do two things. Bring it up to the list, and any redlines you have to the report post those up to the list as well.

Okay thank you everybody. That was a very constructive meeting. Thanks for your support and your good thoughts.

Mikey O'Connor: Thanks Greg, great job.

Greg Aaron: Thank you Mikey. Everyone have a good week.

Man: You too Greg.

Wendy Seltzer: Thank you. You too.

Greg Aaron: Take care.

Wendy Seltzer: Thank you. Bye-bye.

END