

**Registration Abuse Policies Working Group
TRANSCRIPTION
Monday 27 September 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 27 September 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-20100927-en.mp3>

On page:

<http://gnso.icann.org/calendar/#sep>

Present for the teleconference:

Mike O'Connor – CBUC – Drafting Team Co- Chair

Berry Cobb – CBUC

Faisal Shah – Individual

Philip Corwin – CBUC

Elisa Cooper – CBUC

David Donahue – Individual

Joi White - Intellectual Property Interests Constituency

Lisa Rosaya - Intellectual Property Interests Constituency

Apologies:

Greg Aaron - Registry Stakeholder Group – Drafting Team Co- Chair

ICANN Staff

Margie Milam

Marika Konings

Glen de Saint Géry

Gisella Gruber-White

Coordinator: Please go ahead. This ICANN conference call is now being recorded.

Gisella Gruber-White: Thank you (Tim). Mikey, I'll do a quick roll call if you'd like to.

Mikey O'Connor: That'd be great. Thanks Gisella.

Gisella Gruber-White: Good morning, good afternoon to everyone on today's RAP

Implementation Drafting Team call on Monday, the 27th of September. We have Mikey O'Connor, Faisal Shah, Elisa Cooper, Lisa Rosaya, Berry Cobb, Joi White.

From Staff we have Marika Konings, Margie Milam, Glen de Saint Gery and myself, Gisella Gruber-White, and we have apologies from Greg Aaron. If I could please remind everyone to state their names when speaking for transcript purposes. Thank you. Over to you Mikey.

Mikey O'Connor: Thanks Gisella and thanks all for joining us today. As you can see on your screen the agenda's pretty simple. I've compiled the responses that you all came up with in a pretty elaborate spreadsheet.

And I sent you all a very late breaking version just about an hour ago that probably would be handy for you to have open, because it's got a summary page that I just created and that's what's in the Adobe Connect space.

But it's also got all of the details behind it and it's probably going to be really useful for you to be able to toggle back and forth between those tabs. It's pretty cumbersome for Marika to flip from tab to tab, but she can do it.

But I think from the most part we'll probably just try to do it on our own machines. Just to walk you through this summary page, what I did here was very quickly sort of eyeball each of the columns, so for example the Expected Complexity tab, and then if it was unanimous I just wrote in the answer.

So for example in the very first one, Row 4, the expected complexity - everybody said that was high so I just wrote in high and there's no question mark.

If you look over two more notches in that same row, you'll see that resources required has high but it's got a question mark behind it. And my little approach here was if it looked like it was pretty close to unanimous, I put it in there.

And so if you feel strongly that it's - shouldn't be high it would be, you know, we want to get to the point where, you know, we either are unanimous or have discussed any points of disagreement and resolved them.

So what this is saying is that buried down in the detail somewhere somebody said something other than high, and if they feel strongly we'll talk about it. The next row or the next column where it says - the column heading is Nature of the Effort and the summary says PDP or Advisory Group, and a question mark means that we were sort of split between two and we need to figure one of those out.

And so that's sort of the key to how you read this thing. A fair amount of agreement in the first, you know, in Columns F through H, and then we start to, you know, we start to get more entertainment as we get further to the right.

And I didn't put the sequence results in because they're quite varied and I think that we will benefit from completing the rest of this analysis. It'll make it easier for us all to sequence them, because I think that what at least emerged for me as I went through all these was that it would be really useful to put these efforts into piles and then sequence the things to like things.

So if we can make a pile of PDPs and then sequence the PDPs and make a pile of Advisory Groups and sequence those and find a pile of low hanging fruit and basically say, "Do all of these at once," that it will make the sequencing a good bit simpler.

There was also - I know that I went through it there was some things that were pretty confusing for me, you know, especially when I was trying to do the sequencing and as I went through the answers I think it was confusing for others as well.

So I think that we made a lot of progress and that with another turn of the crank we'll be in pretty good shape. So that's sort of my reaction to the summary.

Does anybody else have any sort of overall reactions before we get into the nitty gritty of it? Berry? Oh Berry, you're agreeing.

Faisal Shah: Hey Mikey, this is Faisal.

Mikey O'Connor: Yes, go ahead Faisal.

Faisal Shah: I got the clarification that was sent out by Marika, I mean, just kind of trying to set out all - some of the definitions. But I guess the one thing I wanted to get a further clarification on is the difference as you guys see it between maybe a Working Group and an Advisory Group, or are you guys looking at that as the same thing?

Mikey O'Connor: That's a great question. Actually that's what Marika and I were talking about just before the call started. The tricky bit is that Advisory Groups are a little bit of an undefined thing within ICANN.

I was on a couple of Advisory Groups - well I'm on one that's still running and one that wrapped up. There were two forms, one was for the high security TLD zone and the other was for something called zone file access.

And they were originally formed as part of the implementation of the Draft Applicant Guidebook for new gTLDs. They were a different critter than a PDP because they weren't launched by the GNSO.

They were launched by ICANN and were brought together to address a specific implementation question from the DAG rather than out of the GNSO policy making process.

So it was chartered by ICANN rather than the GNSO. Its scope was broader than the GNSO, especially the zone file access one and participation was broader.

So my shorthand version of all that is to say that a PDP is a thing that falls entirely within the GNSO silo, whereas an Advisory Group is an issue that's broader than just the GNSO and needs a broader community group working on it. So in a way it's sort of a scope thing rather than a nature of the effort thing.

Faisal Shah: Right, so that, I mean, I guess Berry had the same questions, whether the GNSO has the authority to launch an Advisory Group. But also the - I guess the way I look at it is that - and maybe it just didn't come from the GNSO but it came from the Board actually was the IRT.

The IRT was an Advisory Group, right, made up of an STI I guess - I don't know, and made up of people that will kind of specialize in a particular area that could come together to provide additional advice on how something should be broken down or dealt with, right.

So is that how you're looking at it as well? Is - would the IRT be an Advisory Group?

Mikey O'Connor: I don't know. That's a good question. I hadn't thought about that but it seems to me that that would work for me. Basically my notion is just the Advisory Group is a broader thing chartered by somebody with a broader authority than just the GNSO.

And so Berry, in answer to your question is I don't think the GNSO can charter an Advisory Group. I think the GNSO could ask that one be chartered and probably have to ask either ICANN or the Board to do it.

So, you know, and now I'm being a guy here. I'm making this stuff up as we speak so don't treat any of it as gospel, but that's - that was sort of the way I was viewing it.

I think that Berry is saying in the chat, Advisory Group does not mean a policy change. I'm not sure that's true. In the case of the zone file access one I think there are recommended policy changes that are then forwarded to the respective bodies that need to make them, so that eventually they still go through the policy making process. But again I'm making this up. Marika, go ahead.

Marika Konings: Yes, this is Marika. I think just to confront on the first point indeed that, you know, the GNSO wouldn't have authority normally to, you know, launch initiatives that are beyond their scope.

But, you know, I guess as Mikey said there's, you know, they could ask probably the Board if, you know, they feel there's a wide initiative needed. But also to confirm indeed like, you know, any policy - consensus policy for, you know, the GNSO will need to go through a PDP process as it currently stands.

So indeed if, you know, if an Advisory Committee would come forward with recommendations, if those were, you know, suitable for policy development they would still need to go through a PDP to, you know, become policy.

I think, you know, the example of the Advisory Groups that currently exist, I think it's worth pointing out that those are all relating to the implementation of new gTLDs, so those are not specifically policy initiatives as such.

Mikey O'Connor: Okay, and where I got confused I think is the zone file. As they were figuring out the implementation part, they realized that some policy stuff needed to get changed. That may be the sequence of events.

Marika Konings: Right, and again those issues then might get passed back but then they would still need to go through the cycle of, you know, raising the issue, requesting the issues report, you know, launching the PDP.

So anything to become policy will need to go through that cycle if it's indeed related to the GNSO. I mean, the ccNSO has its own, you know, process for it as well.

Mikey O'Connor: Yes, right. So, you know, Faisal, back to the original question which is which pile to put these in, I think that my original sense still stands, which is things that fall entirely within the GNSO silo can be dealt with with a PDP.

And things which don't - I don't know, I suppose even those could be dealt with. Marika, that's where we were in the conversation just before we broke off.

So suppose we had something that was pretty broad like this first one, which is the UDRP?

Marika Konings: But that's limited, so that's a real - that's an existing GNSO consensus policy.

Mikey O'Connor: Yes, so let's go to one that's - I'm looking for a murky one. So let's go to the second one, the best practices one.

Marika Konings: But in principle, I mean, looking back, I mean, the Registration Abuse Policy's Working Group, it start out looking at the GNSO context. So I think now, you know, if there will be any thinking of taking it outside of the GNSO context it might, you know, be problematic because I think that, you know, the charter for the - or the assumption is that the recommendations produced by the Registration Abuse Policy's Working Group relate to a GNSO environment.

And of course it doesn't preclude involvement of other parties as, you know, GNSO Working Groups are open for anyone to participate in and I've also

been in census where, you know, a charter specifically requests participation from other, you know, Advisory Group or supporting organization as they are deemed important parties to that discussion.

So I would caution of, you know, broadening this outside of the GNSO remit as - my assumption was that the limitation by, you know, per definition of the Registration Abuse Working Group was limited to GNSO context.

Mikey O'Connor: So maybe the Advisory Group thingy which is entirely my creation in that spreadsheet is a red herring, and we should essentially drop it and say, "It's a PDP or not. Forget this Advisory Group thing."

Is that another approach that maybe makes more sense because, you know, I was just tippety typing away on my little spreadsheet and I may have introduced something that's way more complicated than it needs to be.

Faisal Shah: Hey Mikey, this is Faisal. I mean, I go - I totally understand that and I guess the only thing - and I guess one of the reasons why I raised - I thought that Advisory Group probably was more appropriate, you know, as I was looking at it was because, you know, when you're looking at something as big as UDRP you want - it seemed to me that instead of just opening the whole thing up and making, you know, kind of scratch copying everything into one, you know, one, I don't know, issues report or PDP, whatever it was, I think that - I thought it would probably be more appropriate to kind of do it methodically and just kind of have an Advisory Group that recommends where it needs to be, you know, where the issues are and how it should be dealt with, which would then lead into the issues report and PDP as opposed to just going straight to it.

So for example, you know, a recommendation - the right - like a recommendation that came out of the IRT, I thought those were good and kind of laid out a process.

And I was thinking that maybe the Advisory Group would do a very similar thing as opposed to just a mad dash. And so not necessarily saying, "We're not going to go to the PDP," but simply that there's one step before that that's going to make it more effective because, you know, it may not - it may be that we're not going - maybe there's only certain areas that we need to look at. So I guess that's kind of how I was approaching it.

Mikey O'Connor: I think there's another way that we could get that done, and that is to use sort of, you know, and Berry's got it there in the chat. Berry's our secret chat participant today.

And that's some sort of pre-PDP effort or a Drafting Team or a charter Drafting Team or something like that. Marika, what's - when an issue is complicated and needs to be carefully framed before launching the PDP, what's the usual vehicle to do that? It's not an Advisory Group, it's something else, right?

Marika Konings: This is Marika. I think in the past some Drafting Teams have done similar things. For example if you look at the interregistrar transfer policy, I think they already had - I don't know if they called it a Working Group or Drafting Team, but basically they had a group looking at identifying all the different issues, you know, based on input from constituencies, stakeholders, public comment period, trying to categorize those in, you know, relevant buckets and then recommending to the Council, you know, taking those in sequence of different PDPs.

There we for example have I think five or six different PDPs that look at the overall review of the IRTP so, you know, the Working Group could or the Drafting Team could recommend something like that, a pre-group and, you know, you might call it a Working Group or a Drafting Team that's created.

I think, you know, as I tried to distinguish in my email that I think the difference between Drafting Team and Working Group has typically been that a Working Group is more open.

You know, you look at public comment input from constituencies and stakeholder groups, while a Drafting Team normally just, you know, comes together, does its job and gives that to, you know, the Council for further consideration.

So in this context, you know, you might look at that - a Working Group that does that task of trying to label the issues and identifying those, and then move on to, you know, moving those in buckets and launching PDPs.

Of course another option could be that something like that could be done in an issues report, although I think in this, you know, looking at the UDRP I don't think it's something you'll do in the existing 15 days but it might be something where you say, "Okay, you start - before you start an issues report you actually launch a public comment period for example of trying to get people to provide input and then move in, you know, identifying the issues report to different categories that the Council might look at."

And indeed if there is a clear view that they're going to be many complicated issues, you know, recommending separate PDPs on each of those. So there are different paths to follow but I think it, you know, will be helpful if indeed the Drafting Team is explicit on what it thinks, you know, will help the Council move certain efforts forward.

Mikey O'Connor: So the difference between a Drafting Team and an issues report is those Drafting Teams is generally made up by stakeholders and an issues report is generally written by Staff, right?

Marika Konings: Right. Yes, the issues report, that's a Staff document.

Mikey O'Connor: So if the Drafting Team wanted to go out for a little public input, is there anything that prohibits them from doing that? I wouldn't think so. I mean, you know, I guess where I'm headed and this is still in answer to Faisal's question, which is how do we structure this work thoughtfully rather than just launching a PDP?

And what it seems like we're honing in on is either a Drafting Team to do it or an issues report to do it. And there's probably an interest in having community involvement so that would lean me towards Drafting Team, but I also like the idea of going out for a little public input for the Drafting Team and...

Marika Konings: So Mikey, in this one you might want to point to what was done for IRTP, although I think there there was, you know, it took a very long time before it actually got to the, you know, recommendation for PDP stage, but I think that, you know, was - raised some other issues.

But that's a model where indeed the first attempt was made by a pre-PDP Working Group or Drafting Team to try to categorize, and I think that was in combination with a number of public comment periods and also questions to constituencies and stakeholder groups to provide input and on the basis of that, you know, categorization was done.

I think they already went for, you know, what are the issue - easy issues that we probably can deal with, you know, relatively quickly and which are the ones that, you know, need to be dealt with later?

I mean, part, you know, I'm not an expert in UDRP. Part of the challenge might be that there are certain tradeoffs that, you know, I don't know if in the UDRP context it really would need to be reviewed as a whole or rather it's, you know, it would indeed be possible to break it down in little chunks and, you know, I'm not sure about that.

But that's maybe something as well that such a Working Group would be able to identify or make recommendations about.

Mikey O'Connor: So what if we called it a pre-PDP - well I suppose we could just call it a pre-PDP Working Group like this or a pre-PDP Drafting Team, something on those lines.

Before we get too far into that let me circle back to Faisal and see if this direction that we're headed works for you.

Faisal Shah: Yes, I think that's - it's great.

Mikey O'Connor: Okay, as long as we're going in the right - I just want to make sure that as we drill into this a bit, because I think we're on to something and if we can kind of nail that down then we could label I bet a lot of these with the same label.

Marika, Berry, any ideas on the name of this critter so that it's clear for people, pre-PDP Working Group?

Marika Konings: Yes, this is Marika. I would prefer the Working Group and if indeed the intention is to, you know, get public comments and input from, you know, different constituencies and stakeholder groups, as I think - as I said I think the Drafting Team has normally been more seen like as this group, you know, come together, produce a product and give that back to the Council and, you know, they decide what to do with it. So I think Working Group would probably be the appropriate term then.

Mikey O'Connor: Okay, well that's cool. So if we waved pre-PDP Working Group at this slot - oh, Berry and then (Phil). Go ahead Berry.

Berry Cobb: Thanks Mikey, this is Berry. So, you know, I mean, I do agree with the road that we're heading down. I think Advisory Group should be kind of, you know,

certainly tossed out the window and now we're balancing between Drafting Team or pre-PDP.

What we did in RAP was a pre-PDP and now we have a mini pre-PDP to determine how we're going to implement. So, I mean, we've already done the pre-PDP part.

That's why I do agree with Marika saying what RAP - IMP is just equal to a Drafting Team. But this is why when we first met that - and we had Chuck on the call, is I was really hoping we would get more direction from the GNSO about implementing the best practices part, because that has never been done before and I was - again I was hoping that we would get further guidance, because I think this is the real stickler for me.

Cybersquatting, you know, the pre-PDP team made the recommendation to create an issues report to get a PDP started. That one's pretty easy but the second one, the malicious use of domain names, which is only best practices therefore will not affect policy or consensus policy or maybe even have - result in consensus policy.

Therefore by what part of the GNSO charter does it operate and move on from there. And it sounds like it's going to be a Drafting Team which is fine, but then it becomes a question as, you know, like you were saying Mikey, how do we engage the public versus just operating, you know, internally.

Mikey O'Connor: That's a good one. Hang on (Phil), I think we got to work on Berry's for a second. Marika, you got any thoughts about - oh you got your hand up. Go ahead Marika.

Marika Konings: Well I actually got my hand up in relation to the first part of Berry's comment because, you know, he does have a point that, you know, the recommendation that the RAP Working Group made was to request an issues report.

So I don't know indeed if we would say, "Oh well, we think that should be a pre-PDP Working Group or a Drafting Team if we're actually then, you know, changing the recommendation."

So I think we probably are so basically I think in that one the only option is indeed the requesting of an issues report. And then, you know, I guess what this Drafting Team could still do is say, "Well, you know, hopefully the issues report will take into account or identify that there might be many issues and maybe, you know, make a recommendation to break it down in different parts or, you know, get public input as part of the issues report, you know, before drafting it."

But, you know, I think that if - we would maybe be changing the recommendation if we are actually adding another step to that as it currently stands.

Mikey O'Connor: Okay, so now I got two threads going. Let's tie that one off. Faisal, are you okay with that approach? It's different than yours. It's basically handing Number 1 off to the issues report, and we are - interestingly enough in the summary we are unanimous on request an issues report.

Faisal Shah: Yes, I would - I'm actually still - I think I'd still like to see an interim process before we go to the issues report. So I think I would - I'm more in favor of a Drafting Team or pre-PDP Working Group as opposed to just flying right into the issues report because I - again I'm still at the point where I think that it's far too complicated and it has to be broken up.

And there may have to be a PDP on each one of the different complicated issues that's around the UDRP. So I...

Mikey O'Connor: Well, so let's - okay so we'll note that one as a choice that we get to make. The IRTP process is the best example of that and the rationale is exactly the

same, which is that it is a really complicated issue. It does need to get split into pieces, et cetera.

So let's park that one and we can poll on that in the next iteration I think and sort of see where we're at. Now I want to go back to the issue that Berry raised in terms of the second one, which is what do we do - and, you know, one of the things that we could do is we could ask Chuck about that.

I mean, Chuck has said, "Look, you know, if there's anything I can do to help don't be shy." And he, you know, he can't make all these calls but we could certainly come back to Chuck with that question of yours Berry and say, "How does this get done given that there isn't a policy outcome?"

Oh, you already did and you didn't get a good answer and did you get an answer at all, because I don't really remember?

Berry Cobb: I - this is Berry. I can't remember exactly what Chuck said but I think it - if I recall probably incorrectly, but I think it was something along the lines, "Well that was still for us to determine in - within this group."

We didn't get a really definitive answer, and more specifically one of the recommendations in this list is for the GNSO to figure out how they're going to handle best practices.

So it almost seems like a dependency that that one be addressed first before the malicious use of domain names gets started. But the conundrum is malicious use of domain names I think was first or second place for us in terms of prioritization.

So, you know, again I think we're all aware of how fuzzy the best practices thing is going to be. You know, I can easily see a team being - a Drafting Team being formed and it has, you know, multi-stakeholders from contract and non-contracted parties and law enforcement and all that kind of stuff.

And they operate as a Drafting Team for six months and then they come up with all these great best practices, but then there's no authority - authoritative mechanism for anybody to sign up for those best practices.

And so my fear is that we're going to go down the road of six months to a year of effort talking about what all of that should be, come up with the report and come up with all this great stuff, but then nobody prescribes to it once it gets published.

And that's the dark hole that we're in with the best practices part, and so just to circle back around I don't - Chuck - I don't think Chuck gave us a great answer because I don't think there's a great answer to be given at this point.

Mikey O'Connor: Margie, are you in on this one?

Margie Milam: Yes, and actually I - Berry said a lot of things that I was going to say as well, that we had already done a pre-PDP work and that was the group's task was really to, you know, to be the whatever, the Drafting Team to figure out what needs to happen next.

I mean, maybe I'm misunderstanding what the - what our charter is but I thought that was the goal of this group. And with respect to the issue on best practices versus policy, you know, the PDP rules aren't limited to just policy.

So if the intent of the group is to try to explore best practices for some of these issues, you certainly can use the PDP process. The only reason why people might choose not to do the PDP process is because of the length of time involved.

And so if you wanted something faster, you know, than what you'd get from a typical PDP, you might want to do something that's shorter. And so I understand that.

But I just wanted to clarify that you could certainly go through the PDP rules and end up with best practices.

Mikey O'Connor: Berry, what's your reaction to that?

Berry Cobb: It's very, I, you know, I'm cool, to be quite honest or, you know, I guess in the interest of full disclosure, I wanted malicious use of domains to become a PDP.

But, you know, that I need later circled back. And the only way that we could get this through to unanimous consensus was to make it best practices. I'm perfectly, you know, I guess I'm, I have no preference as for the vehicle for determining the best practices.

Again, I just kind of reiterate my concern if it's not going to be a policy change, then all of this just becomes voluntary. And my concern is that, you know, again we're going to spend a lot of time and effort to do it.

And then there's, you know, there is a fair amount of risk that nothing actually gets executed from it. So, and again that's why, you know, we - I guess I'll just reiterate that the low - the, one of the recommendations down below is for the GNSO to figure out how to do best practices.

And as you're aware Mikey and everybody on this call, there is - we've got fast flux, now we've got RAP and I'm sure there is some other sprinklings of best practices that people want to move forward.

We've got to figure out how the GNSO is going to handle this moving forward.

Mikey O'Connor: Let me just check in with (Phil). You've been very patient.

(Phil): Thanks Mikey. I've been listening to the conversation.

Mikey O'Connor: Is your stuff on this? Or if it's not, I'm going to...

((Crosstalk))

(Phil): It's on cybersquatting. Are we still on cybersquatting?

Mikey O'Connor: Let me just keep, no, at this point I'm on the next one down. Hang on to that one and we'll circle back to it.

(Phil): Okay.

Mikey O'Connor: Because I don't want - I kind of want to beat this one to death if we can and then.

(Phil): Okay then I'll...

Mikey O'Connor: Then we'll circle back to that.

(Phil): I will stand by until, I'll take my arm, my hand down.

Mikey O'Connor: No, no, leave it up. Leave it up. That's no problem.

(Phil): Okay

Mikey O'Connor: Margie, Marika, oh, Margie is done. Marika go ahead.

Marika Konings: Yes, this is Marika. I mean something indeed, you know, coming back to Berry's point. Something that we might want to note indeed as well that, you know, the recommendation or the issue to the development of non-binding best practices is linked to, you know, the other recommendation that talks about, you know, getting a better grip on what best practices mean.

Or whether there should be some kind, you know, uniformity of rules around that. Of course, such a group that is, you know, working on best practices could also identify, you know, ways of how those best practices might be implemented or promoted.

So I think even though they're not policy, I think such a group, you know, does have at their disposal ways of trying to identify, you know, for example, you know, asking ICANN to, you know, put it on their Website site in a, you know, very obvious space.

Or, you know, other mechanisms that, you know, might help in incentivizing registrars to adopting those best practices for example. So I think even though if you, even though you don't go through a policy development process, there are ways to which a working group could identify certain.

And, you know, at the same time, in addition to the best practices, certain ways that might help promoting those. And indeed making sure that it's not, you know, wasted time.

Mikey O'Connor: I've got a question for Margie. And that is, Margie you said that the PDP process could be used for a non-policy outcome. And yet the name of the critter is the policy development process, which is going to confuse folks.

If we were to launch that exact same process with the expectation that it's a non-binding policy, are we tiptoeing far - close enough to the edge of the bylaws and the authority of the council that we need to go back them?

Can we call it something? I mean I'm taken with the idea of using the process to come to a non-policy outcome. But I wonder whether we really can, any thoughts on that?

Margie Milam: I mean I realize it's called the policy development process. But when a lot of people look at that they think consensus policy. And so there's a distinction between consensus policy and other work.

And when we talk about the consensus policy, what that really means in the minds of most of the community is finding, you know, enforceable policies on contracted parties like registrars or registries.

So, you know, just because you come up with best practices doesn't mean it's out of scope of the PDP process. The question is is there any value to using the PDP process knowing, I mean you know Mikey, from the vertical integration group all the steps that have to happen.

You know, the issues report and then you've got the, you know, public comment period. Then you've got the initial report and then the final report. And if there's value to you using that process you can go ahead and call it a, you know, a PDP because, you know, in essence it brings in a lot of the protections that you typically see when you're trying to come up with consensus policies.

Does that make sense?

Mikey O'Connor: Yes and I'm wondering if we invented a new thing called a non-binding PDP, whether that highlights that? It's not quite right. But...

Margie Milam: If I may comment, I would caution against coming up with some new process that's not identified in the bylaws. Our working group that Marika and I are working on with respect to the restructuring is dealing with all of this.

And we're coming up with new rules that hopefully will get implemented, you know, in the near term. But until they're actually adopted I would, you know, I'd caution against calling it something else.

Mikey O'Connor: Do you, you guys that are a lot closer to the restructuring process, if you listen to Berry's point. And try and feed that into the revised version of the process. Could we accomplish what Berry wants to accomplish which is to get, you know, this best practices stuff figured out?

And implemented within the new version of the PDP process? Or is it different enough that it, you know, although it's not something we are real keen on, it actually does require a different process?

What I hear you saying is that it doesn't. That we could use the PDP process to get that done. I just want to confirm that.

Margie Milam: Right, right, we could.

Mikey O'Connor: Okay. Berry what if we launched a PDP or we recommended the PDP be launched? But we instructed the chartering group to be aware that the outcome that's expected is best practices not policy.

Would that accomplish what you want to see accomplished?

Marika Konings: Mikey so just a question. This is Marika. So why would you then go sort of PDP? That's my question because I mean a working group that's chartered to, you know, come up with best practices would still bring back their results to the council who could then, you know, or normally if there's agreement would then endorse them.

And, you know, could provide certain instructions on how these might be implemented or, you know, might request as well a board endorsement or, you know, I don't know which different steps that could take.

But, you know, if it's really clear up front. And if I recall, well I think that, you know, what was discussed in this context in the working group was either, you know, to go through the PDP process. And have, you know, possibly

binding rules enforced on contracted parties or the other option of best practices.

I'm a bit concerned if we now for this recommendation say well, you know, we're not going to have, you know, we don't want binding practices. We really want just best practices.

You know, why would you go through the PDP. And I'm worried as well if that might cause, especially because, you know, we actually don't have any of I think those that were in the (camp) of saying well, you know, will you support best practices.

We don't want the PDP route on the call today. So I'm wondering as well if some might see this as a way of changing the recommendation instead of, you know, because the working group did not recommend launching a PDP on this.

So I'm just trying to figure out what the value would be in trying to go down that road if it can be achieved as well through a non-PDP working group.

Mikey O'Connor: I think that the bind that we're in is that we, you know, the RAP working group, the one that created that recommendation knew that they didn't want to go through a PDP. Because they didn't want to wind up with changes basically in the constellations contracts between contracted parties and ICANN.

So then the question becomes what in the arsenal of choices available to the GNSO do we use to get that done? That's the question that Berry was asking Chuck, and didn't get an answer.

Marika Konings: This is Marika. And then I think that's where you can create basically a non-PDP working group. And that has been done on, you know, a variety of

issues where, you know, it was identified that it doesn't, you know, it wouldn't fall in the scope of a PDP.

Or as Margie said that, you know, there was a need to do things faster and in a different way. Involve, you know, potential other groups as far, you know, normal working groups had been created.

And where then, you know, the first step is, you know, creating a drafting team that develops a charter for example. But then outlines okay, so what are the specific issues that this working group is tasked with.

And some of them might still follow the PDP model because that happened for example in the registration of used policies working group where the group said well, you know, we would like to follow the PDP model.

And having an initial report and doing proper comment periods. But that, you know, the different steps in the process might still be the same. But you don't have the, you know, the bylaw requires steps. You can be more flexible.

And in addition to structure that is, you know, kind of foreseen in for example in GNSO working group guidelines. Those guidelines are not specific for PDP working groups.

So they outlined sort of different elements of a working group. How decisions are being taken. What elements, you know, are supposed to be in a charter? So there are, you know, there is a structure in place for working groups that are not PDP working groups.

So, you know, and mind you that fits in the current GNSO operating model.

Mikey O'Connor: So would we call this thing a non-PDP working group in our chart? Would that make it sufficiently clear that it's not a policy outcome. But also - but still falls within the working group guidelines.

So is that the critter that we're trying to describe here? Berry's liking non-PDP working group. That works for me. It's a lot better than non-binding, which is what I came up with. I like non-PDP a lot better.

How is about that? Now if we did that and we said that the malicious use is not an advisory group now. It's a non-PDP working group. We'll have to check back with the folks who, you know, like (Craig) and stuff who is not on the call today to make sure that this is okay.

But what do people on the call think of that approach? Why don't you just use your little tick mark up in the attendee list thing if you're liking that. And use your little X if you don't like it and we'll hash it out.

Oh, we're looking pretty good. Okay, well good for us. I think we just solved a fairly complicated difficult thing people.

Okay (Phil), back to cybersquatting. You can - I'll clear your little check marks now. We'll go back to the cybersquatting question.

(Phil): Yes thank you Mikey. And I want to start by just apologizing for not getting a matrix in. But a bunch of Senators dropped a Bill in a week ago today to what the US shut down domains around the world. And that got me pretty busy last week.

Three thoughts on cybersquatting which I hope will be helpful and not add to the confusion. One, the language here saying the efforts should address how the UDRP has addressed the problem of cybersquatting.

To me that's a tautology. I mean the UDRP is about cybersquatting. And I don't know how you would parse out how it addressed cybersquatting without reviewing the entire UDRP. I think is a practical matter. That's what this effort is going to turn out to be.

Second, particularly with the decisions made this past weekend by the ICANN board where if you read, if you haven't yet read the summary of what they did at their meeting in Norway on trademark protections for new TLDs.

They real - they made some very modest changes but really didn't respond to a request to reopen a lot of major issues. So I think it's a practical matter any PDP on the UDRP, some of the of the issues.

And an obvious one is the URS which would just be a faster version of the UDRP where there's no response from the registrant are going to find their way into that.

And third, the ICA sent a letter to Mr. (Bextrum) and (Fresh) last week in regard to UDRP reform where we suggested, and this basically plays to the fact that this stuff is very complicated.

The UDRP was put in place over a decade ago. I mean a lot has happened on the Internet in the last decade. It's like ten Internet years are a hundred normal years.

Particularly no on I think envisioned the role that advertising would play in funding just about every form of content on the Internet. And we recommended that ICANN consider bringing in some impartial expert third party review - review group to look at what the state of trademark law is generally on the Internet.

And also to look at the major issues that keep coming up in UDRP cases, whether there's been consistency or lack of consistency both within providers and among the providers.

That is whether it's still uniform. And we think that kind of impartial expert review of what the state of trademark law is on the Internet, which really

determines what the rights are generally would be very useful to inform a PDP on UDRP reform.

So I hope those thoughts are helpful in regard to how UDRP, PDP might go forward.

Mikey O'Connor: Let's hammer on that one again given our conversation. So where we're at is that the RAP team recommended a PDP. And in fact in our summary, we're pretty much unanimous that the next phase is in an issues report.

I'm going to go back to Margie and Marika on this and ask how flexible is the issues report process in being able to incorporate some of the issues that Faisal and (Phil) are raising?

And sort of the, you know, the issues report is sort of a pre-PDP kind of activity. Could that issues report writing process be enhanced with some of the things that (Phil) and Faisal are thinking about?

I know it's probably never been done but hey, first...

Marika Konings: Yes, this is Marika. I mean the bylaws stated it's not very flexible. There are 15 days to write it. There are a number of elements that a report needs to contain.

But, you know, what we've done in the past and that's something, you know, that the group might want to explore. And if indeed, you know, there's agreement to go ahead in the council that and, you know, staff is giving advanced warnings.

So basically the actual request for the issues report is delayed as such so that some pre-work can take place. You know, something that we're discussing in the context of the new PDPs as well whether, because I think,

you know, everyone agrees that, you know, 15 days is not sufficient to really scope out an issue.

And, you know, get all the different angles and then all the different parts of the story on the table is for example to organize workshops or meeting ahead of indeed asking for such an issues report where certain issues can be worked out.

And I think hearing the discussion here, you know, I think that's definitely something that, you know, either the group or staff could take back as well in saying well, you know, there is a recommendation indeed to request the issues report.

But, you know, in our view, you know, looking at UDRP, I think we all agree that this a, you know, very big issue before actually making that formal step of requesting the issues report which, you know, starts a certain timeline ticking.

Although there have been extensions in the past as well by the council. You know, maybe we'll want to socialize this issue a bit further by, you know, having a workshop or having a discussion or having a public comment period first before going down that road.

So I think that's, you know, something that staff could recommend. But also maybe, you know, following on from this discussion, the group might want to make a footnote saying well, you know, we do know that there is a request for an issues report.

But looking at this issue the council might also want to consider to do some pre-work, you know, or have some alternative steps as part of the issues report in order to make sure that, you know, we cover all the grounds.

Mikey O'Connor: If we were to wrap a wrapper around that pre-work, Berry threw out the notion of that wrapper could be a chartering, a PDP chartering effort.

Faisal has thrown out the possibility of a pre-PDP. I think that where we run into trouble with that Faisal is we're now through the pre-PDP exercise. That was the RAP thing. I think that's basically what Berry is recommending.

So what we are looking for is a jar into which we could throw some of that pre-initial report activity and give it a name. Is there a good name for that container?

Pre-PDP doesn't quite work I don't think. Drafting team could work, or chartering team could work as long as it was clearly understood that it's got quite a bit of stuff perhaps going on including, you know, maybe going out to the public and et cetera, et cetera.

Is there some other better jar that we could use? And, you know, we're in sort of the same boat as we were with the last one which is that we're pushing the limits of existing processes a bit.

And I'm not seeing anybody throwing their hands up. So what I'm writing in my copy of this is pre-work before requesting an issue report is the next step. And I think that an action that we probably need to take away from the call today is to figure out a better description of that jar.

And see if we can, you know, maybe find something in the new version of the working group guidelines. Or, you know, maybe chartering effort, chartering team, I mean to you working group guidelines folks, is there much in there about what a chartering group does?

Hang on Berry, I want to bug Marika about this for a second and then I'll get to you.

Marika Konings: Yes this is Marika. It does provide very detailed guidelines on what a charter should contain. You know, obviously normally the charter comes in when there is a call for a working group.

And in this context if you go down the PDP road, you know, the working group comes after the issues report and once the council has decided to initiate a PDP.

Mikey O'Connor: Oh okay.

Marika Konings: So I think we might make it unnecessarily complicated if we start recommending drafting teams and, you know, chartering groups before the actual launch of a PDP which is, you know, the basic, you know, the basis for this recommendation.

You know, it might just be easier to include it in the footnote, you know, following discussion. And I think, you know, I'm sure Margie and I both will be closely involved if this goes down the road of indeed requesting an issues report.

There's a need a strong recommendation to first have some discussions in either the form of a workshop or a public comment period or both before, you know, making that formal step of trying to incorporate all that into an issues report.

So I don't know if it's easier to just, you know, say okay, the next step would be requesting issues report. But footnote there is strong support or consensus in the working group that such an issues report should be proceeded by some additional information gathering to make sure that the issues report has a, you know, a broad base of information.

And represents, you know, the different views in the community and identifies all the different issues that might be part of the review.

Mikey O'Connor: Oh I love MP3s because we might be able to steel some language out of your last paragraph there Marika. Thanks. Berry, go ahead, I think this is the last comment of the day and then we're going to have to wrap up by the way folks.

Berry Cobb: Oh yes, well perhaps, I actually have two quick ones. Well the first is to your answer question Mikey about the container for this. I guess it just seems to me the IRTP, you know, I'm rehashing this.

But the IRTP is the example or the model that we should be following for the UDRP EDP. And again, I don't have the history exactly as to how that got set up.

But whatever it was that's what we should follow because that's what's in works today with the caveat that whatever the working group policies may have changed that.

And I just have one other quick question for people to think about that, you know, I want to get in people's minds. And then maybe we can bring it up for our next meeting is we've got an overall list of recommendations here.

You know, with our prioritization exercise, et cetera and understanding the present demand out there. It's clear that we're not going to be able to launch all of this stuff at once.

We're going to have to pick and choose the top ones to start on. My question is what tool or mechanism does the GNSO have to track other issues and or recommendations that aren't going to be implemented today?

So as a specific example let's say we come up with the exercise of implementing UDRP, PDP and the malicious use of domains non-PDP working group.

And then everything else gets tabled. But, you know, how do we track those to make sure they never fly off of the radar. And my I guess example to that is in the world of IT you have incidents that come at you.

And when the same incident happens several times, it gets promoted to what they call a problem. And then when it's designated as a problem, there's a root cause analysis that goes in behind it and then a whole bunch of sub-processes to determine root cause.

If root cause can't be determined, that problem gets designated as a known error up in to the point some new technology or some new code release or whatever can correct that problem. And then it gets removed from the radar all together.

So I'm just curious if, you know, does the GNSO have anything like that? And I don't need an answer now. Thank you.

Mikey O'Connor: Thanks Berry. Actually, yes that's a (meta) issue for sure. And, you know, the analogy that popped into my head as you were talking about this is the way that IT shops manage the maintenance of the portfolio of systems.

And you're right, there's whole boatload of methodology for that. That's a great question for the working group process team I would think. But I think we'll have to leave that for another day, except to note it.

And Berry if we don't nail that down by the end of this little working group, why don't you make sure that we do. Because I think it's a great point.

I'm going to go off the radar on this project for the next three or four days because (VI) just woke up in a big way. And so I think what we'll do is I was planning to do another round of the spreadsheet. But I think I won't.

I think this discussion today was pretty productive. And that we don't need another spreadsheet quite yet. So why don't we just plan to pick up where we left off at the next meeting?

We'll have Greg back with us and...

Marika Konings: Mikey this is Marika, just a question. I don't know if you saw the note that Glen sent to the mailing list. But policy staff will be on a retreat, an off site meeting the whole of next week.

So there might be limited support available. I'm sure we can accommodate, you know, setting up the call and, you know, seeing the early hour where we'll be, you know, we might be able to participate. But it depends on our schedules so.

Mikey O'Connor: Yes I did see that. I think we're going to keep going. And we'll, you know, we may get stuck because you and Margie were instrumental today. But I think we'll give it a try just to keep things rolling along.

Marika Konings: Okay and I'll definitely try to be on the call if possible.

Mikey O'Connor: Yes that would be fantastic. But, you know, don't bend yourself completely in knots if it turns out that it's really difficult. Are you going to be in Marina del Ray? Is that where this is going to be?

Marika Konings: Yes.

Mikey O'Connor: Okay so you're in Berry's time zone. It's, you know, you can have breakfast with us.

Marika Konings: Merrily.

Mikey O'Connor: Okay thanks all. We were a little over time. I think we covered a lot of ground today. Is, Marika would it be possible for you to sort of screen through the MP3 today and pick out some of the highlights of the things that I think we decided and just write a quick summary?

Marika Konings: Yes that's fine.

Mikey O'Connor: I think we've gone a long way in filling in the first two rows. And I'd love to capture that. That would be fantastic.

Okay all, see you next week with Greg. And for those of you on (VI) I'll talk to you in an hour. That's it for me. Bye bye.

Marika Konings: Thanks.

END