GNSO
Registration Abuse Policies WG Sub Team: Uniformity of Contracts (UOC)
27 August 2009 at 19:00 UTC

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 http://audio.icann.org/gnso/gnso-rap-20090827.mp3
On page:
http://gnso.icann.org/calendar/#august
All recordings and transcriptions are posted on the GNSO calendar page:
http://gnso.icann.org/calendar/#august
Present for the teleconference:
James Bladel - Godaddy Registrar C.
Mike O'Connor - CBUC
Berry Cobb - CBUC

ICANN Staff
Margie Milam
Marika Konings
Gisella Gruber-White

Coordinator: The conference is now being recorded. Thank you.

Gisella Gruber-White Thank you very much (Denise). Barry, would you like a quick roll call just
                                on who we've got this evening?

Berry Cobb: Yes please. Thank you.

Gisella Gruber-White: Very good afternoon, good evening everyone. On today's call we have
                                Mike O'Connor, James Bladel, Berry Cobb. From staff we have Margie
                                Milam, Marika Konings and myself, Gisella Gruber-White. Thank you.

Berry Cobb: All right. Great. Thank you very much. I sent out a spreadsheet yesterday sometime kind of the next stab of our research. Hoping everybody got it. Margie, I didn't include you on the distribution list so I'm hoping Marika maybe forwarded it over to you. If not, maybe Marika if you can.

Marika Konings: I was just in the process of doing it.

Berry Cobb: Okay. Thank you. My apology. So there's quite a bit of data there in the spreadsheet. Got about six or seven kind of bullet points of disclaimers to talk about before we kind of dive into what we see there, take any questions on it. So if you'll give me about five minutes I'll run through these real quick.

                   Hopefully they'll alleviate any (of your) questions or concerns you might have about what we see right before us now. Excuse me.

                   All right, first and foremost taking a look at the overall matrix, if you will. There's approximately 20 or 21 registrars that are loaded in there. And I just wanted to talk about how those registrars were chosen.

                   From our previous call we had said after we had reviewed the first take of the data, you know, that we needed the top five - five from the middle and five from the end in terms of ranking by number of - number of domains registered.

                   When I started taking a look at that list, if we went to the extreme bottom five, you know, those registrars that are accredited had left them a thousand domains or in terms of percent of market share, they weren't even getting up onto the radar.

                   So I, you know, I took a look at the overall list as you guys are probably much more familiar with them. So after running some quick numbers, basically the top 16 registrars make up 75% of the marketplace or approximately 78 million domains.

And the number of registrars according to that list that are greater in rankings in a hundred only account for 4.1 million domains. So pretty much those registrars that are ranked greater than a hundred, I kind of removed from the list because they were so insignificant in terms of the amount of market share out there.

That's not to say that we shouldn't go and review some of those down the road if we choose to. But I guess the point that I'm trying to make is I kind of strayed from the top, middle and bottom and I tried to get a better cross section in the greater areas of market space and I tried to - and I fudged it a little bit in terms of trying to encompass more countries that - so that we'd get a better - kind of a wider spectrum.

So that's kind of how I came up with the registrars that are on this list for now. We can certainly add to it or subtract to it. Maybe some of you might know of one or two of these that didn't kind of report very well. Maybe they are true resellers or something and maybe we should pull them out. We could talk about the details of that later. So that's how I came up with the list of registrars.

The second bullet I'd like to talk about. (Greg) had brought up from a previous to our last session about the categorization of what we're finding across the contracts or kind of how we laid it out in this spreadsheet.

And, you know, he basically said, you know, there's - it's almost TMI, too much information because, you know, there's only a small segment of it that actually deals with our scope which is abuse or registration abuse; much more of what I've been tagging as outside of that span.

And so I think I mean he asked basically, you know, is there a way to hide it or remove it. You know, is it even necessary that we tag it? I still decided to

keep the information in there because I think it was really the best gauge of kind o f trying to mark the inventory across all of the contracts.

I want to try to make sure that I was accounting for every section within that contract so that I could say this section didn't look like it had anything to do with abuse and yes it was pretty much relating to fees and payment. And so, you know, that's why it got the other tag down at the bottom.

So again just for the most part, I felt it was necessary to kind of just conduct an inventory across all of these contracts to maybe turn over every stone so to speak and that's why I'm still keeping it all encompassing.

Plus I think that it also still kind of provides a comprehensive view of how well or how badly, how we choose to view it, that these contracts are being built out there.

Third point I'd like to make. The matrix in the results that you see here up to this point are really an inventory of a specific section within a contract. And so what I want to - I guess the first disclaimer, if you will, and the only way I can think I can describe this is by an example.

If in the category of let's say waiver as an example in the other section or well, because we're registration abuse, let's say in the category of UDRP between Go Daddy and eNom as an example. Both contracts have the flag. They do have UDRP language in their contract.

That's as far as this matrix goes right now. There is no comparison being made to the specific language within that UDRP section stating, you know, and I'm not - I guess the point is is that I'm not trying to get to that aspect that Go Daddy UDRP language may be better or more precise than (Kinsa) at eNom so it's strictly a comparison of does UDRP language exist or does it not.

So that's kind of where we're at now. If after - or we kind of dive deeper into this analysis that we need to get to the sentence level and start really dissecting words and structure and that kind of stuff then that's kind of our next step.

Two more bullets and then I'm done. The next to the last bullet is my second disclaimer about what we see here. Oh, I'm sorry, three bullets. The prior to this one - is a structure of this spreadsheet is the - you know, there's kind of four sections, if you will, when you're - when you're looking at the matrix.

The top section is primarily the registrant agreements that are available to us out there. You'll notice across the blue bar that each registrar kind of names them differently but generally they're, you know, domain registrant agreements or registrar agreements, those kinds of things.

But they were the - they are more or less viewed as the primary document that a registrant would review when they go to sign up for a domain name. What we - what I noticed is that I really needed to add on a couple of more layers.

Several of the registrars - some chose to have all of their language and their agreement in one document. Other registrars chose to have it in two, sometimes three documents either across terms of use, the registrant agreement itself and maybe some services type of agreement and everything.

So I felt it was important to try to cover some of those documents as well. So the first section, like I said is typically the registrant agreement. The second section is a sister document labeled whatever the registrar chose to the terms of service or some of those things.

Then there's a third section basically about terms of use and just the flag is conduct of use. And then the fourth section again goes back to our list that

the overall working group is working on that has all of the abuse types that we have identified.

So the kind of the next disclaimer, if you will, that last section is subject to change as the larger working group refines that list as to what are the abuse types that are within our scope and we've got the definitions, et cetera. So we'll need to adjust that as we go.

Next to last bullet, the big disclaimer here. This is the Barry disclaimer, if you will. And for lack of a better phrase right now, there are several ways to skin a cat so to speak.

So when you're looking at this matrix and kind of working in isolation, if you will, you know, my logic for categorizing what I found in the contracts could differ 180 degrees from how Mikey might choose to classify it or James, you know, if you tried doing this. There would be - we would probably wind up with three different versions of what were coming up here.

So, you know, I think hopefully you guys are aware that it is a, you know, it's kind of the natural human nature, if you will, that everybody is bias in one degree or another. But, you know, my newbie logic so to speak tried to assign these particular sections to these certain categories.

In some cases there, you know, it was up for interpretation as to did this part of the contract actually satisfy the category or not. So again my point is, you know, some people might have varying opinions about well it should be here or there. And that's something that we'll just have to work through.

So to kind of summarize this last disclaimer is when we started off on - down this road, we didn't have any kind of picture at all. Our end goal is to have a perfect picture of what current state might look like out there. And I would say that we're what - with what we have right now, we're about 80% of the way there in terms of the clarity of that picture. So that's kind of where that is.

My last point and then I'll shut up for a while is basically kind of questions that are on the table and this is for the entire group to discuss and ponder through this call and over the next couple of weeks while we play with this stuff.

The first one is, you know, does this exercise tell us anything that we didn't already know? And I think what we need to come up with next or is kind of (smart) to formulate what some of the main takeaways are. You know, what are some of the things that we're seeing from the results of this?

Second question is does the sub team, you know, do we as a sub team actually share this research and if so, do we sanitize it to make it anonymous or is it important that, you know, because these are public documents, et cetera, I think the overall workgroup is kind of itching to see what we're doing.

So I'm kind of feeling under the pressure to kind of start sharing some of this. So I just want to make sure we have consensus or agreement about how we go to share this stuff.

Next question is kind of moving into the area of how we would approach registrars or the registrar or registry constituencies, et cetera, is - you know, do we take this data and as an example, I keep picking on Go Daddy just because you're on the call James.

But, you know, should we approach the registrar like Go Daddy and say, you know, here's our findings on what we kind of come up here. Would you like to - you know, should we - should we interview Go Daddy so to speak and give them the opportunity to help refine the findings.

You know, maybe they'll pick up on some areas that they actually did have covered that I didn't show in the work here. You know, kind of the next step is how do we engage the registrar if we do at all. And it's all in that effort of

trying to find out, you know, what practice - how effective the practices are out there across the marketplace.

Two last questions is, you know, I think the next kind of - in the next step category is, you know, do we start to add like the standard RAA agreement to this matrix and would that help formulate any kind of baseline around some of the abuse language?

And then the last question is do we apply the same technique to the registry contracts as well and in our effort to, you know, cover our spectrum possible abuse information out there?

So that was a lot of stuff, probably took about seven or eight minutes instead of five. I'm going to open up the table to questions, concerns, comments and opinions as to where and what we should do with this.

Thank you.

James Bladel: Barry, this is James.

Berry Cobb: Go for it.

James Bladel: Okay. I just have numerous questions and concerns and I know Mikey is driving. So...

Mike O'Connor: No. I'm done now. I'm...

((Crosstalk))

James Bladel: Oh okay.

((Crosstalk))

Mike O'Connor: ...even have the spreadsheet open.

James Bladel: Fantastic. Okay. So let me start with a small and work up to the larger. First question is what is the difference - I get the difference between the binary scale one to zero but what is the difference between zero and a yellow, a pale yellow square? What is that telling me?

Berry Cobb: Okay. On the title page I tried to create a small little legend that's probably not very apparent but it's - so if we're looking at the registrar summary by rank page...

James Bladel: Oh, I see it now. I'm sorry.

Berry Cobb::   Okay. Good. All right. So...

James Bladel: One is that it's met in that agreement; zero is met but it's met somewhere else and no mention at all is pale yellow.

Berry Cobb: Correct. So just to refine that example is for instance with Go Daddy the primary domain registration agreement definitely has lots of language around how a registrant is supposed to manage their contact information and who is updates, et cetera. And so within that contact it got a green - it got a one tag so it was there.

                   Right below it is conduct and use. I think Go Daddy has a terms of use document that's separate from the registrant agreement. And so that conduct and use category was actually covered in that document below. So up in this section, you know, I need to try - again it's kind of back to the inventory component.

                   I wanted to make sure that - if I didn't put a zero kind of lighter green flag there then it would give the impression that Go Daddy wasn't covering conduct in use. So I wanted just, you know - the idea there is yes conduct in

use is covered but it's in a separate document. And then like you said James, the yellow section is - there was nothing found in any document at all.

James Bladel: Okay. And I think it would be helpful if going over each of these categories here where it says Tier 1 and registrant - and other agreements. And then it's got that kind of light blue where it lists category after...

Berry Cobb: Right.

James Bladel: ...the (unintelligible) field. If we use the notes function to describe exactly what it is that we are looking for because for example, and I'm trying to be as amenable as possible if you were to say to me that there is no - in this agreement or in another agreement there is no entry in the Go Daddy rainbow of agreements for breech or termination or spam or expiration, I would find that assertion a little hard to believe. So, you know, I just wanted to point that out.

So understanding exactly what it is that - what tests we're attempting to satisfy would be flagged. I think noting that on this sheet will help us in two ways. I'll get back to that in just a moment.

The next thing is - and it's these tabs with the bar graphs, okay. I don't think there's a lot of information around these. They're just total score or ranking the total score. And this is precisely the type of information that I was concerned would be compiled out of this group and could possibly get into the wild. Okay.

And, you know, leaving my own employer out of this for a minute, you know, because I mean it says right there, you know, Go Daddy compares favorably to eNom but not favorably to (Noad Solutions) for example. But suppose this other one down here that only scored a two or a three were to suddenly be hit with an influx of abusive use that they were not prepared to deal with?

You know, I think that whether there's any merit to it or not, I think it points to a chart like this and says hey, you know, you've basically identified us as easy pick. You know, you set us up as a target therefore you're responsible, culpable. You know. I think that we need to be very, very careful about that.

And finally, oh well, mostly finally, I'll (say) that when we get to - when we - if we go back and we actually list the test that we're looking for and were to phrase it thusly to - you were mentioning as steps forward and interviewing the different registrars.

I mean one approach might be to say something of the affect of where in your agreement do you address VRP? Where in your agreements do you address the termination of service? You know, and then list out all of those things. And then let each registrar essentially respond back to that.

And see, you know, some of them are going to be all blank because they're not going to respond. But I think that you would see for example the larger folks - the dispersion that we were talking about last time, the larger registrars here would close ranks pretty quickly because I'm sure they all have special legal staff on board and they all fully understand that all these things need to be covered in one agreement or another. It may not be readily, you know, readily apparent to laymen such as ourselves.

And that just brings me to my very last point, which is the Barry disclaimer and the James disclaimer and the Mikey disclaimer that would all look at these differently. And I think that that was kind of my concern when we were going into this that it not grow or morph into a comparative legal analysis. Because there - you know, that's an exercise that does - it doesn't help the working group and it certainly creates a lot of pitfalls for us in doing so.

So I think that - just to show I'm not this type of person that just can poke holes in ideas, I think that, you know, taking this and then flushing out each line item in that blue column and then presenting that to the registrar that

we've identified here and allowing them to as you said, refine it or fill in the gaps.

You know, it may be disappointing because we may see, you know, that they all now suddenly are full of ones. But we need to give that opportunity. And then I would strongly caution about any release of this material into any public form with the names and scores and things like that attached because like I said, I think that's not a good - not a good direction - not a good path to charge off on. So, that's my questions, comments, suggestions. I'll go back on mute not.

Berry Cobb: Thank you James.

Mike O'Connor: Okay. This is Mikey. So here's an exercise for you. I've looked at the main chart now at all scales and I now have it on my screen at the smallest percent magnification. So I can see the whole spreadsheet at once. And I can't read anything.

First off - first observation, typical. Amazing amount of work; great job. You know, I think incredibly useful. Second point is, you know, are there patterns? And as far as I can see once you get out of the top four there's really no pattern.

And since our charge as a group is to talk about uniformity of contracts, I agree with James that we should scrub the identities because the identities aren't terribly relevant to the analysis that we're charged with doing. And I agree that getting this out in the wild would be trouble. So I'll second that.

But if you - if you look at this, what's really interesting is that there is a lot of dispersion, actually quite a bit more than I was expecting. And at least from my 25% magnification bird's eye view, that means that we do have - let me come at it the other way.

Let's say that the top eight or nine lines, the ones that are really relevant to the working group were all green. Then I think what we would have is sort of a non-starter. We'd go back to the group and we would say well, there seems to be huge uniformity of contracts. So our charge is complete. We've discovered that the contracts are all pretty uniform and end of story.

But I think that what you've done here Barry - and I agree with James too that we should give at least the 15 registrars a chance to take a look at this and tidy it up.

But let's presume that it stays more or less the way it is. Maybe some changes, maybe a few come in with more green. Then what we've got is that our charter with uniformity of contracts still has some validity. There is dispersion. That's what we set out to prove as quickly as we could.

And so, you know, so then my next observation is does the pattern change as we go from larger ones to smaller ones. And again if we throw out the top four sort of outliers, there doesn't seem to be any pattern. You know, there's some small ones that have pretty extensive coverage and some small and larger ones that don't have any.

So they're at least - the size segmentation doesn't seem to be the thing that flushes a pattern out which enchants me. That's quite interesting.

Berry Cobb: Just real quick. To me the biggest pattern was the bi-country matrix. And especially when you kind of look at the summary by country just the actual blue graph.

Mike O'Connor: Oh yes or even just the little - yes, I get that. But, you know, I do tend to see more in the North American.

Berry Cobb: But that does - I guess the caveat there is that takes a look at the entire contract in terms of all categories that for our purposes here we're only

concerned with registration abuse. So, you know, that graph would probably look - it'd definitely look a lot different.

Mike O'Connor: Yes. You're right. So I guess, you know, in terms of next steps of this analysis my immediate thought subject to all the usual James and Barry caveats would be that we've driven this far enough to do two things.

One, scrub off the names; two, maybe send it out so that it doesn't have all of the non-RAA stuff; three, take it back to the registrars and let them, you know, identify which column they are and let them correct them to the extent that they need to be.

Barry Cobb: Yes. Yes. I guess that's certainly a question that I have. You know, if we're - if we're going to keep this anonymous from this point forward, you know, does it really beg the question of actually going to the registrars to flush it out in more detail. Like I said, we're about an 80% clarity on the picture.

Michael O'Connor: Yes.

Berry Cobb:: To get that extra 20% does it really warrant the time of going to the registrar and - because again, you know, I mean...

((Crosstalk))

James Bladel: Absolutely Barry. This is James. Absolutely. I mean I'm right away looking at the columns for the company that I'm most closely familiar with and, you know, it absolutely must be sent to the registrars for correction.

Mike O'Connor: Yes. You know, I think that if you - Barry, if you could figure out a way through the magic of Excel, make it A, pretty easy for them to fill it in and B, easy for you to consolidate. If you get stuck on that, you and I could do that one offline. Because it would seem to me that there should be a way that you

could give this to them and they could, you know, fix their column and mail it back and then you can merge them pretty easily.

((Crosstalk))

Berry Cobb: So again, at what - if this is anonymous and all we're really trying to answer here is is there dispersion across contracts or not. You know, like you - like you mentioned James, we answered that. It does look like there is.

((Crosstalk))

James Bladel: Yes. Well I don't know that that is - I don't know that it - I think it would be possibly premature to draw that conclusion without having - giving folks an opportunity to bring that up. I mean as I mentioned, I think that if you sent to Go Daddy, eNom, Tucows, Network Solutions and (Overnight T), you would see shockingly that dispersion would evaporate.

((Crosstalk))

Mike O'Connor: And I think that's worth the trouble.

James Bladel: You know, I think that those columns would all line up green top to bottom in lockstep. That's - you know, can I pick on Margie for just a second? Is she still on the call?

Marika Konings: No. She actually had to drop off.

James Bladel: Oh no because I mean not only is she a lawyer but she was also Chief Counsel for registrars.

Marika Konings:: But I'm happy to take the question back or I mean you can...

((Crosstalk))

James Bladel: Well I just - I would have asked her to channel her previous position and, you know, weigh in on that. Because the type of person that we would be wanting to submit these to Barry is actually now working to ICANN, so. And Margie - but I do feel very strongly that this may at this point - and I think what it comes down to is I'm questioning the 80%. I think we're, you know, 50, 60% of a picture and that we still need another 20, 30% to go forward.

And the other question I would like to pose to Margie, so maybe Marika this is more appropriate, is this idea of uniformity and are we driving towards a uniform registration agreement because I know that there are required elements for example in the RAA that we have to pass through to registrars.

So does it then become a question of the most appropriate comparison or a measurement of uniformity where (unintelligible) needs to say, you know, who is doing that and who isn't and then does that also overlap a little bit with compliance efforts.

So again I'm not trying to disparage the work effort and the research that's going into this but I think that I find some very troubling elements of what we're looking at here and I'm very concerned that either the working group or this subgroup or even just, you know, in general if this were to get out of the wild that people would go charging off with this information and I don't feel that it's fashionable at this point meaning one could draw any conclusion from it at this point.

So - but, you know, again I just want to put those concerns out there.

Berry Cobb: Okay. And I'd like to ask one more question relative to, you know, the consistency across contracts that we do see here. So as for an example, UDRP the very first section, you know, across all of the ones that I tagged so far, there are only five out of the 21 or 22 that didn't seem to have any kind of UDRP language in their primary contract.

That's not to say that they don't have a link to the ICANN site or that it may be in a separate agreement or separate document. I guess, and probably UDRP is not a good one to use. Let me - let's go as an example we're talking about cyber squatting and that's one of our identified abuse types.

A lot of the contracts actually virtually every one that I reviewed through, not one of them specifically mentioned cyber squatting. And what you'll see down at the bottom is that I still have the cyber squatting field tagged because most of those contracts or agreements did have language in there that you can't infringe on trademarks or third party rights and that kind of stuff.

So that type of language is predominantly consistent across all of the registrant agreements. And so we look at all the domains that are registered out there. Now let's say - now let's ask how effective is that consistent uniform language so to speak mitigating cyber squatting? And I think the answer is probably very minimal if at all.

So then that asks the next question which kind of ties back to one of your previous questions is James is uniformity even the best thing here is. You know, if we did come up with a recommendation that phishing and pharming and these other kinds of components should be a part of the contract and help increase the uniformity, will that necessarily help with the effectiveness of combating this? Did that make sense?

James Bladel: Yes, it does. It does. In terms of like for example, you know, one of the criticisms about agriculture is that, you know, there's one hybrid now that's 90 plus percent of all the corn grown in Iowa let's say. And so if there's any kind of a disease that's going to attack, it's going to find a much easier path because there's so much uniformity in the, you know, in the - there's no - there's no diversity of that.

Berry Cobb::   Right.

James Bladel: And I think that when you are talking about registrars and registrants that are existing in all forms of regions, geographic regions and national and international jurisdictions, you know, uniformity becomes maybe less desirable and maybe also an illusion of something that can never be achieved. But I think that, you know, it is worth noting uniformity. It's not (no) self-evident that uniformity is a - is a desirable thing to be pursuing.

Another example is, you know, for example on this list there's Go Daddy and there's Tucows. Completely different business models. Okay. Tucows has a network of, you know, tens of thousands of resellers and Go Daddy has millions of direct customers.

So, you know, who are you writing this agreement - who is he intended recipient or entering party into this agreement? What sort of agreement are they looking for? And do you use a lot of business-oriented language or do you use a lot of consumer-oriented language?

So I think that, you know, there's just a - I mean I understand that this exercise is in our charter. Understand that we've gone through a lot of trouble, we, Barry, has gone through a lot of trouble and put a lot of time and effort into this and it is visually and, you know, very well organized.

But again, just very, very hesitant about what - where we go from here, how we clean this up and then even then what we do with that information. And I would even hold out that for example, on one of the charts we have summary by country, sorry. Do I have that right? Yes, we have North America, Europe and Asia Pacific. So summary by region I guess.

And North America is much more - much higher scores and much more uniform. We'll I'd also say that that's probably, you know, how much of that can be attributed to the fact that we live in a more litigious society and we live

in possibly one of the more litigious industries in a litigious society. So let's be mindful of that before we start putting together (small words) like this.

Mike O'Connor: So this is Mikey again. I'm trying to figure out how to move this forward. And it seems to me that there are couple of things we could do. One, we could summarize this at a much higher level for the working group; so not forward the spreadsheet.

Berry Cobb: (Well, yes). I guess to that there are capabilities on here that you can filter out by tags so we could just only have the RAP tagged type things showing and remove all the others and the PEDNR to close it up. And then in terms of actual display, you know, I can take screen captures after we like make - remove all the names; make it anonymous.

Then I can screen capture the visualness and put it into a PDF or presentation or whatever so that we can just give them a visual idea across the categories. You know, of these registration abuse categories across these X number of registrars, you know, this is what we kind of found and given them the visual. And then that way it's super sanitized and it doesn't - but I don't know how helpful...

((Crosstalk))

Mike O'Connor: Well I us thinking even one level higher. And I guess - it seems like there are a couple of parallel tracks. One, I'm sympathetic to James' point that it would be a really bad idea to get an inaccurate version of this out in the wild and it may even be a bad idea to have an accurate version of this out in the wild for different reasons.

And so rather than running the risk of it ever getting out in the wild, just summarize the first round conclusions which are subject to lots of caveats like first round conclusion looks pretty dispersed but this is prior to confirming with registrars.

And, you know, in terms of confirming with registrars, maybe we could just recruit a couple, three friendly ones like Go Daddy and, you know, (Newman) and somebody, you know, a few more just to - just to do a sanity check on this to make sure that it's, you know, at least close to right.

And if the sanity check comes back yes, pretty good, you know, nope, we don't have any language about blah, blah, blah in there, again, we still wouldn't teeter on the edge of releasing this piece of research just yet.

But that would let the working group know that there is at least at the first pass, because remember that's what we were trying to do. We were trying to do a fast pass, a non-exhaustive pass to determine whether there was an issue at all.

And if, to James' point about uniformity and hybridization, which is a great analogy, I love that being a farmer myself; I think that there's the difference between uniformity and the meeting of minimum thresholds.

James Bladel: Exactly Michael, Mike.

Mike O'Connor: I don't think that we want uniformity for all those reasons you described James. But I think it's safe to say that we do want some sort of minimums out there.

James Bladel: Yes. Can I jump in on just a second on that point Mikey?

Mike O'Connor: Sure. Go ahead.

James Bladel: You are absolutely 100% correct. You want the minimum thresholds and you want to ensure that they're all being met and those are I believe - I wish Margie were on the call. Those are - those minimum components are required as part of the RAA and if they're not being delivered, you know,

Barry and Mikey, rather than calling those folks out, what we need to be doing is we need to be turning them over to ICANN compliance.

Saying, you know, I'm getting some letters out from (Stacy Burnett's) group that they're not upholding those provisions of their accreditation contract, so.

Mike O'Connor: Well and the one caveat I'd add to that is that we may have more topics in this matrix...

James Bladel: Okay.

Mike O'Connor: ...of - from the abuse standing than the minimums that are already called out in the RAA.

James Bladel: Okay. I agree with you and that's the flip side of that formula which then says is it an expansion of that, you know, that minimum portfolio.

Mike O'Connor: Could be. And, you know...

((Crosstalk))

James Bladel: And if it is then to getting that - in order - do you see where I'm going with this Mikey? It's like - it either matches with our minimum requirements...

Mike O'Connor: Correct.

James Bladel: ...or it's saying you're, you know, you don't have enough pieces of flare even though you're wearing ten or whatever and the minimum is five. And, you know, and it's like well wait a second here. You know, what is the minimum? Are we - are we - are we pushing the minimum up?

Mike O'Connor: Yes. And I know - I think that may be the crux of the policy issue which is as we fleshed out that list, seven or eight yellow tags on the far left and then we

applied that list of abuse types to the contracts. What we may have done is discovered that some of the contracts already have language about that because they've exceeded the RAA.

James Bladel: Right.

Mike O'Connor: And others don't. And, you know, so then the next kind of question is well, to what extent does that exist and the answer from this very first pass is well, it's pretty diverse. There are some that, you know, it's sort of all over the map.

It's not like - what I was sort of looking for when we originally started to launch this and launched Barry down this rabbit hole was that if there had been sort of green stripes across this spreadsheet where everybody had language about a given abuse type and other strips where nobody did then I probably would have said ah, there's uniformity and there are areas that aren't being addressed.

And that's a different inclusion than what we are seeing at least, you know, caveat, caveat, lots of foam on the runway. What we're seeing in this analysis, which says it's kind of all over the map. That's I think maybe all we need to take back at this stage to the working group is to say there's a lot of variability in there. We are going to tighten this up.

We may never release this detailed report because I think you raised some valid points. But this was an exercise that Barry was doing for his own edification and understanding and it's great work. We are confirming some of this stuff.

But we've got some puzzlers for the working group. One of the puzzlers is this one of the extent to which the current minimums are sufficient to cover the abuse types that we've got. Another puzzler is sort of your hybrid issue which is the question of whether it's a good idea to drive uniform language

into contracts or whether it's a better idea to drive minimums and if so, which ones.

So...

Margie Milam: Hi. This is Margie. I just dialed back in.

Mike O'Connor: Oh, cool.

James Bladel: Oh, hi Margie.

Margie Milam: Hi. Sorry. I had an emergency with my husband's car.

James Bladel: No problem.

Mike O'Connor: Well, we've got puzzlers for you. How long have you been back on the call?

Margie Milam: I just dialed back in.

Mike O'Connor: Okay.

Marika Konings: I did (jabber) Margie with a little bit of the background already so but you might just want to recap for you (unintelligible) so she has some time to think.

Mike O'Connor: Yes, James, you hit it.

James Bladel: Well Margie, we kind of wanted to pick on you - or I did. I don't - I shouldn't say we. Anyway I wanted to pick on you a little bit both in your position, your current position as a, you know, in your senior policy role at Go Daddy or at ICANN; but also in your previous role as the counsel for a registrar. And, you know, some of the concerns, and I don't know if you've had a chance to open the spreadsheet that we're discussing, but, you know, we're really wrestling with some existential issues here.

First off is we didn't want this to turn into a comparative legal analysis because I believe that given the opportunity, legal representative for each registrar would, you know, would claim whether they're correct or not but they - but they meet all of the criteria.

The second thing is whether - it is the larger question of whether uniformity is, you know, desired in all situations for all business models in all regions, et cetera. And whether or not that is driving towards some sort of a uniform cookie cutter registration agreement that contains, you know, equivalent or identical language.

And then Mikey brought - very astutely brought up that rather than doing that that we should have minimums which I believe there are some - several minimum components of the RAA stipulates have to be present in a registration agreement. And then that only raises further questions about whether this exercise is a tactic call to expand those minimums.

So we're wrestling with a lot of questions here and I think we're all starting to traipse into areas that could benefit from your experience.

Margie Milam: Whoa. Put me on the spot here.

Mike O'Connor: We weren't kidding when we said we were going to pick on you.

Margie Milam: Well I - there's certainly different business models and different contracts that are used on the registrar side and depending upon the kind of customers that they're trying to deal with. So there's certainly truth to that.

I think there's - you know, as we deal with the RAA already, there are certain provisions that I can, you know, require to be included in the contracts but then I can't - doesn't clarify what has - whether every provision has to be in the contract.

And so from a uniformity of contracts perspective, it seems like it would be maybe less problematic to just have, you know, you should have an abuse clause that covers, you know, or, you know, covers this subject and you don't necessarily have to dictate exactly what it says.

I mean that's one approach that could be taken. And that would allow the various registrars to, you know, go back to the legal counsel and make sure they're compliant with local laws and all of that. Or you could go more specific as we do in the RAA. I mean there's a cross spectrum of approaches.

I think it's not unreasonable to try to come out with a more medium approach, you know, like you should, you know, consider a, you know, an acceptable abuse policy that deals with these issues and leave it to the registrars to define. I mean at least that's what I would have said as - on the, you know, as someone who was working for a registrar at that point.

I did see some other questions about like compliance related issues or having a summary of all the contract terms. I think one way to avoid having this look like a compliance effort is just focus on the provisions that deal with abuse and not with the other provisions because, you know, by narrowing what a summary like this does, you won't be highlighting things that the registrars won't - or that they're - it's not intended to be highlighted at this point because this isn't mean to be a compliance effort in any, you know, means.

It's really trying to be a useful tool that we can use to develop what, you know, thoughts on whether there should be a uniform approach on contracts. So, you know, so there might be - it might be more appropriate to have a center version of this document that doesn't have so much information that's not relevant to the topic at hand. Is that going to be answering some of the questions?

James Bladel: Okay. I think, yes, I think that's good. I mean what, you know, suppose - I don't know if there is or not. I can scroll all the way over. But I don't think (Mark Monitor) is listed on this sheet. But suppose you were in your old position and this were, you know, this were to come across your desk.

You know, how would you see this as informing the policy making at ICANN? Are we driving towards some sort of, you know - I guess what I'm wrestling with is are we driving towards some uniformity in all cases?

If the answer is no then we need to go with Mike's, Mikey's very abbreviated or a synopsis or a report. If the answer is yes then I think that opens a lot larger and more numerous questions about, you know, why, how and, you know, what are we looking to gain from doing that.

Mike O'Connor: This is Mikey. Let me jump back in. It seems to me that the way we started was we said, you know, the sort of chartering question is would uniformity of contracts as they address abuse be a useful thing. And then we said we don't know whether they're uniform. If they're all uniform then we have a non-issue.

James Bladel: Right.

Mike O'Connor: And then Barry volunteered to find out and has come back with, you know, lots of caveats. Pretty good documentation that's not so uniform. I think that's the point at which we stopped with this kind of analysis and then say, okay, now that we know that we don't have total uniformity, what are we going to do? It's...

James Bladel: And I'll back up from that Mike Mikey and say what are we going to do but for that - is that a problem?

Mike O'Connor: Right. No, I think that's - but I think we now know that the first question that we asked Barry was are these contracts uniform. If they are then we're done.

I think Barry's come back with good work that says no, they're not uniform. Okay. Now what do we do?

James Bladel: And I'm not fully on board with that yet until we've had a chance to present these to the registrars and allow them to correct some of the gaps that we've identified.

Mike O'Connor: Yes. Although I would think - I mean I haven't dug through all these the way Barry has, but I would be willing to be that if there's no mention of UDRP in a contract that it's not going to magically appear. Margie, what's your reaction?

James Bladel: No, they could call it something else for example Mikey. They could say we're - we are bound by all ICANN consensus policies. There you go. You know.

Mike O'Connor: Margie, what do you think?

Margie Milam: Well I - I guess I'm trying to understand the purpose for having such breadth of information for the purposes of the, you know, of our working group here. You know, when - I just coming from the registrar side as part of my involvement with ICANN, I know that the registrars would be concerned if this turned out to be - would morph into a compliance effort because that's not what the intent of this group.

Mike O'Connor: We're all on board with that.

Margie Milam: But on the other hand, there is value I mean with the work that's been done here and maybe there's ways to do it in an anonymous type way so that the information can get displayed, at least the information that's relevant for our purposes and yet not point a finger to a particular registrar.

So you could have it be, you know, Registrar A, Registrar B, you know. You could identify them that way as opposed to, you know, eNom or Go Daddy or whoever. So it's more an educational, you know, examination. And I guess

the question is is it really - what's the value of getting the registrars to confirm this?

If the information's been gathered from what's, you know, publicly available and I assume how this was put together, you know, is there a need to verify. Because all we're really trying to do is identify what the standard is now and whether there should be, you know, a little bit more uniformity in the contract language.

So we do not need go through the exercise of verifying it because it may not, you know, really help our analysis.

James Bladel: This is - this is James. And I think that to -I'll answer that question with a question. Margie you're familiar with our general counsel and our legal team. And to - as this document indicates, to, you know, imply that they have constructed legal agreements that are missing some of these key elements and have these, you know, pretty substantial omissions in them, I think - I think is laughable. I'll just say it that way.

You know, it may not be easy to find. They may not be, you know, labeled or identified as that specifically the term that we were looking for. But I would not be able to sleep at night if I didn't know some of these things were in there.

Mike O'Connor: Well, you know, I am a former ISP so I'm not speaking from the same set of contracts. But, you know, a big one like Go Daddy or (Mark Monitor), you know, where you've got a full time professional legal staff available, you would be amazed when you get down into a little company where the lawyer costs you big money, $200 an hour and you don't use them much because you don't have that money.

So you generally go to somebody else's contract and kind of steal that and write your own. I could easily imagine that as you get off of the very large,

very professional registrars that in fact there's a fair amount of dispersion in these contracts.

James Bladel: And Mikey, I wanted to mention before that I agree with you. If you wanted to say that there was not a lot of uniformity once you got out of the very large providers, I think that, you know, there's probably a lot of evidence in this graph to indicate that.

But I'm just purely putting my blinders on and going right down the Go Daddy column. And for example, the very first one, you know, to say that nowhere in our domain registration agreement or our uniform terms, universal terms of service that we don't have the ability to address or take action when we encounter spam is silly.

I mean...

((Crosstalk))

James Bladel: ...hundreds of times a day. It could be called bald email. It could be called email abuse systems or unsolicited emails or something like that but, you know, I assure you it's there.

Berry Cobb: James, and that's - and that's not the intent of what I'm trying to do here. You know, for instance, so you're going down your column and spam (so) whatever it is is empty. So in that primary agreement what Go Daddy labels as domain registration agreement, you know, I even search for span as the word itself and it wasn't found in that document.

That doesn't mean that there isn't language in there that still allows Go Daddy to fight span. I just didn't find the formalized section that other, you know - in fact there's only one registrar out there out of this group that actually lists spamming as a formalized section in their contract.

Margie Milam: Yes. And I can certainly kind of clarify as a former, you know, counsel for a registrar and a contract lawyer for many years that a lot of it's drafting style. So of the lawyers like to be really specific because they feel that if it's not, you know, actually mentioned in the contract then they, you know, they have a hard time, you know, doing whatever the action is.

Then there's other philosophies on contracts saying no you don't want to be that specific because what happens if you - if you leave something out? And so the other philosophy is you say we have the right to suspend or, you know, take action, you know, up on evidence of illegal activity or, you know, something, some general statement to that effect.

And so a lot of what you're seeing is differences in contract style versus, you know, policy within the company that they don't take action when they - when they, you know, are faced with a spam complaint for example.

And so, you know, at least, you know, if you're - if we categorize every - if we were to categorize the, you know, like the generic - the general statements and then spam and malware and phishing and all that other stuff are sub parts of illegal activity for example, you know, maybe that's more useful to the group.

And I don't know James if that makes any sense what I just said. But, you know, you know, it would surprise me if some of the large registrars don't have some sort of language that gives them the, you know, broad reaching rights to take action when faced with, you know, illegal activity.

James Bladel: Yes. And I agree Margie and some of these may come down to just styling or categorization. And by the way, I did pull up our universal terms of service, did a search and Section 5 says, you know, if you are using these services as determined by Go Daddy in its full discretion in association with spam or morally objectionable activities, you cancel your service. Says right there.

So right away I think at a minimum Barry that cell should go from pale yellow to light green.

((Crosstalk))

James Bladel: And, you know, what I mean...

Berry Cobb:: That was your universal terms of service but is that your registrant agreement? So that whole top section is specifically your registrant agreement.

James Bladel: Right. Right. And the green flag indicates that it is not present in the registration agreement but it's present in the other terms of service. Correct?

Berry Cobb: Right.

James Bladel: So that yellow square that says no response should at least say present in another agreement at a minimum.

Berry Cobb: Now, let me...

James Bladel: So that's why I'm saying, you know, this needs to then go back to - at least when we're talking about the, you know, your top five in terms of market sharing needs to go back to the counsels of those registrars. I guess we can't - we can't go forward with it the way it is in my opinion because I see a lot of holes that I know I just - you know, maybe I'm - you know, maybe I'm living in a dream world. But I know that the top five registrars would not have some of these holes in their language or in their - in their terms.

Margie Milam: So James you're suggesting because it - the counsels of the registrars obviously know their agreement and know how they interpret it and maybe they interpret it with a combination of the registrant agreement and, you know, terms of use or, you know, acceptable use policy, whatever they

happen to do in their particular company. So that's what the exercise would be useful to go back to them and say would you like, you know. At least given them the opportunity to clarify.

James Bladel: Yes. Absolutely. I'd like to say for example how - what part of your agreement governs, you know, spam? What part of your agreement governs - tells registrants that they're, you know, subject to the UDRP? And let them, if they can, fill in these gaps.

We don't have to do that for all of them, you know. If we want to say that there's a uniformity in the, you know, top five and then it drops off quite a bit after that, you know, I'm certainly not going to belabor that point. But I believe that given that type of an opportunity that the uniform - or the uniformity -- the top five will close ranks and you will see that, you know, the gaps start to shrink and disappear.

((Crosstalk))

Mike O'Connor: This is Mike.

James Bladel: Go ahead Mike.

Mike O'Connor: I kind of like that idea. I kind of like the idea of - it, you know, what I was - this is kind of like a system design project where you tell the designer to do one thing and he does it and then when it does it you go, oh no, no, no, that's not what I meant.

I mean what we really started Barry off on this was to sort of take a quick scan across a pretty broad set of folks to see if there was uniformity. And we didn't specify a method. So he used a method. We're changing the method a little bit. I don't think that's bad.

And it would be very useful if at least a few of the top five registrars' legal counsels could quickly scream through this and fill in those gaps so that we could see whether they do close ranks. So it seems like that's something we could all support. Barry, are you okay with that notion as a could do for next round?

Berry Cobb: I'm up for anything. Play the messenger here.

James Bladel: Well, you know, and I think before - I think that's something we should look at before we pronounce there is no uniformity.

((Crosstalk))

Mike O'Connor: Yes, right.

James Bladel: We might qualify that even further and say well there is no uniformity once you get to this region or this type of business model or this type of - or this size of registrar. I think, you know, you might see uniformity within some of those sub categories.

Mike O'Connor: Yes. It's - I'm sort of trying to figure out where to go next.

Margie Milam: I have a suggestion just looking through the categories of agreement clauses. It strikes me, yes, that some of the things that you've marked those other are things that, you know, if we're going to go through this exercise, you know, legal departments are generally pretty busy and they're not going to want to answer all of this for, you know, 40 or 50 topics. But, you know, the ones that as a group you identify to be related to registration abuse, you know, you know, that might be easier to, you know...

((Crosstalk))

Mike O'Connor: Right. Oh yes. I...

Margie Milam: ...so whether your, you know, your contracts covers these top whatever 10 items or 15 items as opposed to whether they have a waiver clause or, you know, that, you know, some of the...

((Crosstalk))

Mike O'Connor: I was sort of presuming that. That, you know, we wouldn't hand them this whole list. We'd say here are the...

Margie Milam: Yes.

Mike O'Connor: Here's the list that we'd like you to check on and they're all related to registration abuse. But right, not go through their whole - because cripes that would be - that'd be a boatload of work too. I'm sort of trying to avoid the boatload of work problem.

((Crosstalk))

Margie Milam: Yes. And I'm looking it from the perspective of we really do want to get, you know, information that's helpful to us. So the easier we make it to get that information the better, you know, by narrowing what we - what we really need.

Mike O'Connor: Right. Now there's...

James Bladel: Right. And I wanted to just say my agenda here is to make sure that if we're going to do anything we do it with a complete and thorough and comprehensive of data as possible whether that means pronouncing that, you know, we have uniformity or not.

And also making sure that we are very, very, very, very careful not to traipse into areas where we're making comparisons or in poor judgment decisions

about, you know, X being better than Y or pointing out that, you know, certain small registrar off in some far corner of the globe is easy targets because they have nothing governing their abuse and the agreement. So that's my - that's my goal here.

Mike O'Connor: Yes. See the tricky bit is that we've got sort of conflicting goals going. And trying to think how we...

James Bladel: Well that's not true Mikey. I said in addition to your goals and Margie's goals.

Mike O'Connor: No. No. No. It's just - I mean what I worry is that we dig in too deep. That we get too many people digging too deep on something that what we were really trying to do is sort of a first pass. But let me come at this another way.

What if we tabled this for the moment and made the following premise. Let's presume that aside from the top five there is a fair degree of dispersion amongst the contracts of the registrars.

And if - and then maybe spend our next session etching out what we would do if that was true. But get into all issues that, you know, we were talking about a little bit earlier on the call like the minimums, absolutely uniform contracts, changes to the RAA, all that kind of stuff. Because what if we went through all that and we decided not to act at all?

Then we would have run all these people through all this work, all these, you know, not to mention Barry whose already gone through a whole boatload of work. But we would now run a whole bunch of registrars, general counsels through a whole bunch of work when in fact we then at the end said well, we're not going to do anything.

It's - you know, I guess that's sort of - let me - let me try and restate that. If this had come back solid green then I would have said we're done. We have uniform contracts and we don't have an issue. But if it had come back solid

yellow and you had agreed James then I would have said, wow, we're really got an issue.

We're in a gray area. And one approach to the gray area is to delve a lot deeper in the research but maybe before we do all that research we want to do some of the sort of preliminary policy thinking to see whether that research is warranted. I don't know if I'm saying that clearly or not.

James Bladel: No. I get that entirely Mikey. I guess my opinion is that, and I agree with you. I don't want to spin up legal counsel in a lot of different registrars if it's ultimately not going to go in any direction. I think the only thing worse than that would be not giving them the opportunity to fill in these gaps and then going off and using an incomplete picture to inform policy development. I think that would probably be the only thing that would less preferable than...

Mike O'Connor: Oh yes. No. No. I agree that if it got to that point we'd have to - we'd have to take - we'd have to inch this up one level. But maybe...

((Crosstalk))

James Bladel: ...I do believe - I do believe, going back to what you originally said, I do believe that this, at least in the top 4, 5, 6, 10 registrars that it is solid green or solid green and pale green. But the yellows I think would, as I said, evaporate given the chance to vet this by their counsel.

Marika Konings: This is Marika. I have a question because, you know, I think James you mentioned, I think Margie mentioned as well that we'll probably find that even though, you know, most registrars might mention all the different abuse categories in which they will (take down) but they'll have a more broader, you know, provision which says, you know, we have the authority to take down if you feel, you know, you're doing something that's wrong.

And isn't the real question on the line that when are the actually enforcing that and, you know, it's a question I'm not really sure if there's an answer to it because I'm not really sure how you can find out in, you know, how the registry actually applies that and in which case it's - it will enforce a provision and in which cases it doesn't. But isn't that the real question we're trying to - are trying to find out?

((Crosstalk))

James Bladel: Well I think so but - this is James. I think so but I think that that's where we start to step into the - step over the fence into a compliance...

((Crosstalk))

Mike O'Connor: Yes.

James Bladel: ...and effectiveness measurement, so.

Mike O'Connor: This is Mikey. I actually don't think we are. I think that really what we're chartered with is prior to compliance the question is A, are the contracts uniform; and B, if they were uniform would that help address abuse?

Now at some point you then get into Marika your point. If they have contractual underpinnings, how are they doing the compliance? But I see the enforcement compliance action part as outside the scope of this group.

Marika Konings: Well one of the questions is if you don't know how provisions are actually being implemented, you know, it's very nice in that everyone has the same provision, but if it means that everyone is doing something differently - you know, one registrar doesn't do anything, respond only when it's, I don't know, phishing or, you know, something else. Then uniformity doesn't mean anything.

((Crosstalk))

Marika Konings: You still don't know in which case this is being used or not.

James Bladel: You know, that's a good point Marika. You know, I think that we have a couple of different things here. Uniformity of contract language, uniformity of application and, you know, I think - I think we're even getting into a situation here for example, if Go Daddy has registration agreement and Go Daddy has a Web hosting agreement and we think someone is being a bad guy but we can't find the appropriate provision to apply in a registration agreement, we'll just pull their hosting because we know that we control that. And it's much more broadly written.

So I think, you know, would another registrar hide behind that difference or would they also use it to their advantage to correcting the problem. And I think that - I think that now we're getting into an area where I don't know if we can discern those different approaches or postures towards abuse just by looking at language in contracts or...

Mike O'Connor: Right.

James Bladel: ...or even compliance issues.

Mike O'Connor: Yes. Because I think that the - you know, let's presume that the top five have the - have uniform contracts. And, you know, that's about the extent to which this subgroup can go. Then there's a whole other question which you raised Marika which I think is certainly a valid question which is to what extent do each of the registrars actually enforce their contracts.

Berry Cobb: Or even if it's not in a contract at all. You know, I mean so phishing as an example there are very few contracts that I searched through or terms of use or anything where anybody specifically called out phishing. You know, so even if you don't call it specifically out in your contract, you know, and will you

have general language that allows you to fight that abuse or not, the fact is that the abuse still goes on. You know, what is it that the marketplace is doing out there to still try to combat it?

You know, we can legally use this to death and try to put every form of abuse into a contract and try to fight it but the fact is is it still goes on. So, you know, it goes - it ties back to the effectiveness question. Right?

James Bladel: Right. And then if presented with incidents of phishing that a registrar doesn't have specifically called out in their contract, would they take another task tact like, well, you're pulling it at this hosting account. So I'm going to yank your hosting agreement. Or...

((Crosstalk))

James Bladel: ...precipitated the phish with your email account so I'm going to yank your email account. You know what I mean? There's other ways to - other angles of attack that can be taken to address a single problem even if it's not called out by name in the agreement.

((Crosstalk))

Mike O'Connor: This is Mikey.

Berry Cobb: And we can see the - we can see the failure of it today. I'll just kind of repeat the point that I made earlier is practically every contract whether it's in the registrant agreement or a terms of use or universal, there's some sort of language that says you will not impede on trademarks. You will not infringe on anybody's rights.

But it's - that's one of the main abuses that still goes on out there today. And so what good does it do us that we all have uniformity about trademark other

than legal protection. If we're in a lawsuit situation it still doesn't necessarily combat the issue.

The only way we have to combat it is if, you know, if the person being infringed on stumbles across it and then they follow a UDRP or they go get their own legal assistance to fight the abuser directly. But, you know...

James Bladel: Yes.

Berry Cobb: ...regardless of whether it was in a contract or not, it still goes on and we still try to fight it.

Mike O'Connor: So this is Mikey. I've got - I've got another approach. Also I need to know how long is this call supposed to go?

Berry Cobb: It's supposed to end 24 minutes ago.

Mike O'Connor: Okay. Let me - let me offer another approach. Margie touched on this. And I'm not going to use quite the right words. So Margie don't winch when I use these words because they're not your words. They're my words.

But rather than - you know, I was just thinking that what would be cool; if I were a registrar or as a little registrar like my little ISP, what would be neat is the following document.

Dear Mike. Abuse is a big problem as you know and so here is some - here's some kinds of language that you ought to have in your contract or you at least ought to have a mechanism to address the following kinds of abuse; blah, blah, blah, blah, blah.

And here are several ways you could do it. You could either put the following kinds of general language in your contract or you could use these other kinds of language in your contracts and the strategies that you could use to fight it

could be pulling their account; some of the things James that you were rattling off.

But in a sense, sort of define this as a project to define best practices rather than getting it right down to the jiffies as to whether the language is the same in each contract. But rather providing a minimum toolkit for a registrar when they're building their agreement so that they have the tools they need to enforce and to act.

And then a subsequent discussion is, and I'm not sure it's this working - this subgroup, is Marika's point, which is then to what extent are the registrars actually doing anything about it. But if we just stop at that sort of litany of best practices and said here are useful clauses that should be address in your contract somehow and approach it that way. Is that a way out of this?

James Bladel: Mikey, I think that's a great idea and in fact I would even stop just a little bit shorter and not enumerate the different things that we want to see or actions that we want to take but just put it in the form of an open ended question and see what they come back with.

Which part of your agreement address this issue, this type of abuse? And what are your options for remedying it? And then just kind of - because they may come back with stuff - I mean I'm the only registrar on this group and I know that I certainly, you know, Go Daddy as large as they are is probably not representative of the entire universe of what could be done.

Mike O'Connor: Yes.

James Bladel: So let's leave it a little more open ended and let folks come back. And then I would also recommend in parallel to doing that we should go back to the group as a whole and say something to the effect of, you know, Barry has put some exhaustive research and data collection into this issue. Did a great job.

We've had some lengthy and contentious discussions and, you know, rock, paper, scissors and all that stuff.

Mike O'Connor: I want to disagree with that contentious comment.

James Bladel: Okay. We'll we've had some very vibrant and interesting discussions/thumb wrestling on the teleconferences and we've got some open questions that we'd like to continue to flush out such as uniformity in the top X number of registrars, you know, whether that exists or not. You know, whether or not business models and what some of the other folks are saying and doing out there.

But for the moment let's just say with some degree of confidence that when you're getting into - when you're getting off the beaten path with, you know, the large registrars with a professional full time legal department that there is a lot of dispersion. Now what do we do about it? Or is that bad? Or, you know...

((Crosstalk))

James Bladel: I would be fine with something like that.

Mike O'Connor: Yes. And I don't think we need to be perfect when we go back to the working group. We can just say wow, we're busy. Don't bug us right now. We need a couple more meeting before we can come back to you and report.

James Bladel: Yes.

Mike O'Connor: You know. Because I think we are. I think we're actually digging into some pretty fertile productive territory here. And that maybe our topic for next time - I'm going to have to drop off in one minute by the way...

James Bladel: Yes. Same here.

Mike O'Connor: ...is, you know, let's pick this up and figure out sort of where we want to go and let's not give the working group as a whole an exhaustive report of where we're at. We'll just say yikes, we're deep in it. We'll be back to you and leave it at that.

James Bladel: That sounds good. You know, once again, as long as we don't hand them this spreadsheet.

Mike O'Connor: Yes. I think that spreadsheet - yes. I agree with James on this. This spreadsheet...

((Crosstalk))

James Bladel: This is a hand grenade right now and I'm trying to be nice about that.

Mike O'Connor: Yes. I think we do have to be careful on this spreadsheet. I agree with that. Barry, you are a prince. You have done a fabulous job. You've been beat up roundly for an hour and a half and you need to know that it's not you. It's your work has triggered probably one of the most productive policy discussions that I've been on in quite a while. And so you should - you should know that your work is deeply appreciated even though it's not done.

Berry Cobb: No problem.

James Bladel: And Barry I'd like to echo that. And as Mikey and Margie and Marika will tell you that although on this particular subgroup I may sound like a bit of a, you know, a bit crotchety, but I'm probably one of the nicest guys you could meet at ICANN.

((Crosstalk))

James Bladel: So great work.

Mike O'Connor: ...not this grouchy. I don't know what you've done to...

Barry Cobb: I knew that James so no worries at all. Like I said, I want to make sure we're doing the right thing, you know, at the right time. And try to please as many as we can.

James Bladel: Well and I think that, you know, you've done stellar work here and I certainly recognize the time and effort and thought and organization that went into it. I'm just very leery of going back to - I know that, you know, some of these groups and I know registrars especially...

((Crosstalk))

Mike O'Connor: (Okay kids). I got to scoot. My 3:30 just walked in. Bye bye.

James Bladel: Okay. Bye bye. I know registrars in particular can be a pack of ravenous wolves and I would hate to - I think this spreadsheet would be like walking into that room wearing a T-bone sweater. So I just would not want to, you know, to be wearing that sweater.

Barry Cobb: Good deal. All right. We'll I'll update (Greg) briefly before next session and we'll just move forward with that, you know, or we're heads down working and we'll get back to you soon.

James Bladel: Okay. When are we meeting again? Is it next week or the week following?

Barry Cobb: It'll be two weeks from now.

James Bladel: Okay.

Marika Konings: Same time?

Barry Cobb: Roughly the same time. I'm going to send out a doodle again just in case...

Marika Konings: Okay.

Barry Cobb: ...we need to modify by an hour or something but roughly the same time.

Marika Konings: No problem.

James Bladel: Yes, I think that's a good idea because, you know, Mikey and I are probably within 100 miles of each other, 200 miles, and I know Margie's in the states as well. But I think it's just Marika and (unintelligible) that have to burn the midnight oil a little bit.

Barry Cobb: Right. Correct. Okay. Well thank you everyone and we'll talk to you again on Monday.

James Bladel: Okay.

((Crosstalk))

Margie Milam: Thank you all. Bye bye.

Gisella Gruber-White: ...Barry.

Barry Cobb: Thank you.

Margie Milam: Bye.

Marika Konings: Bye.

Gisella Gruber-White: Thank you operator. Thank you (Denise), sorry.

END