

**Registration Abuse Policies Working Group
TRANSCRIPTION
Monday 19 April 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 19 April 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-20100419.mp3>

On page:

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

Present for the teleconference:

Greg Aaron - Registry stakeholder group - Working Group Chair

James Bladel - Godaddy Registrar stakeholder group

Berry Cobb – CBUC

Martin Sutton – CBUC

Faisal Shah – MarkMonitor

Mike O'Connor – CBUC

Robert Hutchinson – CBUC

Wendy Seltzer

ICANN Staff

Margie Milam

Glen de Saint Géry

Marika Konings

Gisella Gruber-White

Apologies:

none

Coordinator: The recordings have been started. Please go ahead.

Greg Aaron: Thank you. Glen or Gisella would you mind doing the roll call?

Gisella Gruber-White: Absolutely not. Go ahead - good morning, good afternoon to everyone on today's RAP call on Monday the 19 April.

We have Greg Aaron, James Bladel, Rob Hutchinson, Faisal Shah, Mikey O'Connor, Berry Cobb, Martin Sutton.

We have from staff Marika Koning, Margie Milam, Glen de Saint Gery and myself Gisella Gruber-White. I do not have any apologies.

Now if I can please remind everyone just to state their names before speaking. Thank you. Over to you Greg.

Greg Aaron: Okay thank you very much. And let's go ahead and get started where we dropped last time which was we're in the summary of public comments that Marika had written.

And had we left off with malicious uses of domain names which is on Page 5. And this is one of the unanimously accepted, the recommendations.

We do have some public comments. Basically summary of the registry constituency group is that supports a recommendation for various reasons, some positive reason and then deals that the issues to address listed are criminal use of domain names are outside of scope.

George Kirikos thinks it's out of scope as well. BN supports a recommendation that opposes - attempts to make it mandatory.

CADNA supports the alternate view, thinks the recommendation is too soft. ICA supports the practices, PBUC supports.

So those are the comments. As always what we're going to do is we'll just run through these summaries. And then we will continue to look at the individual comments in more depth.

Any comments on that summary? If not we'll move on to Whois access which was supported by the registry constituency.

George Kirikos noted that verified Whois in his opinion the real solution. But I'm going to have to note that Whois accuracy is not a topic for this group. So he's commenting on something I think is off-topic.

There he notes that some registrars don't provide, support free access. So that is on topic.

BN says the current system requirements, registrars to give everyone access needs to be revised to take into consideration such abuse negative impact on registrant and says that many registrars either do not have functioning Whois servers or block access in such a manner as to give the impression that the server does not exist.

(Kenneth) supports recommendation. ICA supports additional research and process to ensure that Whois data is successful.

Mergers focus on fraudulent registrations that may be associated with domain theft. That's off-topic isn't it? I don't know, James?

James Bladel: Hi Greg, James speaking. And if you could just help me refresh my memory. Do we make notes of some of the - or operational differences between thick and thin registry is when we talk about Whois accessibility?

Greg Aaron: There is a note in the report that right limiting for example, can be a valid practice.

James Bladel: Thank you. That was exactly what I was going towards. If we've already mention it then I'll withdraw my question. I just didn't want to trust my memory.

Greg Aaron: Okay. Marika I have a procedural question. Some of these comments we're seeing here are off-topic because they're about Whois accuracy. Should those comments be stricken from the summary as non-relevant?

Marika Konings: This is Marika. I don't think they need to be stricken here because the summary normally summarizes what people's views are.

I. think the - in the discussions we're having now the group can just no that, you know, they're not relevant in relation do to the reports. I. don't think they necessarily need to be stricken here in the summary.

Greg Aaron: Okay. All right continuing on, the IPC proposes an alternate recommendation for PDP to investigate the connection if any between privacy inter-proctor servers and registration abuse.

I mean I'll just say that that's off-topic. And two, they wanted a PDP to investigate the possibility of best practices for privacy and proctor services and the accreditation of those.

So again that seems outside the scope that this group is engaged in. Any disagreements? And (PBC) supported the recommendations. So that's it on Whois.

Any additional thoughts on that summary on Whois?

Okay the next section - oh James posted a note. Did you want to say something James?

James Bladel: No, no, no. I just think that we're getting cross-pollination of the Whois topic with another comment that was open about the same time. So...

Greg Aaron: Okay.

James Bladel: ...just making note that the public comment calendars were in collision there. So that's why we're receiving some of those comments about Whois accuracy.

Okay. Uniformity of contracts, the registry stakeholder groups. By the way, Marika just as a question, if a commenter didn't comment on a topic then they wouldn't - we would see anything here, is that correct?

Marika Konings: This is Marika. Yes I think for most of the issues were they didn't provide an inputs - I didn't specifically mention like person X didn't provide an input. It's just not there.

Greg Aaron: Okay got it. Okay thank you. Okay uniformity of contracts. Registry stakeholder groups said that the GNSO should be skeptical of the proposed PDP. It would pursue and an identified problem and urges rejection on their recommendation.

GD I think is GoDaddy. It says that requiring uniformity in registering registrar agreements would have negative impact on innovation, competition and the problem of abuse itself. We provided some comments on that which we'll read through later.

George Kirikos said that this appears to be another attempt to compel creation of abuse policies in every agreement.

It goes far (unintelligible) on the legal standards. And quote, most abuse happens due to anonymity and throwaway domains by cyber criminals hence a need for verified Whois.

Cabinet supports the recommendation. The registrars stakeholder group opposes creation of an issues report and says all registries, registrars and registrants are already contractually obligated to abide by ICANN policies notably existing or new consensus policies.

The PDP being the mechanism specifically designed to create uniformity where it is needed. Instead the registrars stakeholder group supports consideration of possible abuse contact best practices.

PBUC supports the UA noting that this recommendation shows strong support among the group.

So, anything on uniformity of contracts?

Okay if not we have uniformity of reporting. And George Kirikos adds notes about XML documents and APIs, so reporting every user data can be simplified. Okay so that's more operational perhaps.

BN highlights the need for standardization and simplification of abuse reports. CADNA supports recommendations. PBUC supports. And that's it.

Collection of best practices. George expresses concern in relation to the funding requirement. He says that ICANN needs to be focused on an (ER) technical role instead of engaging in mission creep.

CADNA supports the recommendation. COA supports the general recommendation that ICANN should do more to promote best practice development and dissemination including structured funded mechanisms for the collection and maintenance of best practices. CBUC supports the recommendation.

And that brings us to the end of the summary. So any comments...

Berry Cobb: This is Berry. Hi Greg. This is Berry.

Greg Aaron: Go ahead.

Berry Cobb: I think maybe that last section that says collection of best practices. I'm sorry, never mind. Strike that. Thank you.

Greg Aaron: That's all right. Okay. Well what we're going to do next then is now that we've got the lay of the land so to speak we're going to go to the public comments in depth.

And our goal here is to - then decide if we have to change anything in the report. So that of course includes any factual corrections.

If there is some comment that was notable what we can do is note that in the given section. For example if we're talking about uniformity of contracts and you wanted to say something about the public comments we can insert it in that section and of course then generally sharpen material in the paper. We can highlight things, change them - what have you -- based upon the comments.

One thing we will need to do at this point is again Marika's going to need to be the tracker of any changes.

So Marika at this point I guess we would be operating off of the draft that we sent to the council. That is the latest as far as I know. We haven't made any changes yet.

Marika Konings: Yes that's correct.

Greg Aaron: Now also...

((Crosstalk))

Marika Konings: (Unintelligible).

Greg Aaron: Yes. And then also we had some people working on some text. And maybe we should look at those now before we dive into individual comments.

And we - the action items were as follows. We had one change to the summary and analysis which Marika had taken care of.

In general we're going to call out the issue regarding use versus registration issues. We're going to work on that probably over the coming weeks especially as we digest additional comments.

We're going to work on the cyber squatting section of it as we work through the comments. And then Martin and Berry were working on text about slamming.

Berry and Martin you - would you like the floor to talk about that? You sent some material up to the list?

Berry Cobb: Yes hi. This is Berry. I've just basically I included - I tried to model the section for fake renewal notices into the slamming. I tried, you know, kind of providing the issue definition, a bit of the background and a recommendation.

The recommendation was basically to kind of modeling off of the fake renewal notices. I think how we had the fake renewal notices structured is that if, you know, we would take this over to compliance.

If compliance couldn't do anything then perhaps we would look at forming a PDP around that.

My intent with regard to slamming was kind of trying to do the same nature. Since they're both closely alike I thought that it'd be good if there was any kind of PDP for the fake renewal notices that we could incorporate maybe any work and effort to better understand the slamming issue.

So I think James had responded back, you know, stating that there was probably not any wiggle room for us to do a formal PDP as most of these issues are related to country code domains and that kind of stuff.

And I guess I would agree which is unfortunate because that's certainly where other abuses are going on.

But regardless I think if, you know, somewhere we need to in terms of even coming up with just the recommendation of creating education and awareness about this issue where does that work actually get done?

And so originally I went kind of the extreme right, let's include this into a PDP with the fake renewal notices and hopefully get the work done. If not then we can go, you know, tone it down and find the appropriate recommendation.

Greg Aaron: Okay Martin? Thank you Berry. Martin?

Martin Sutton: Hi. Yes thanks Berry. And thanks for letting me off lightly on here because you kindly did all the work on this one.

So I just wanted to pick up on one point. I know James has mentioned that the effect of slamming is probably far more related to ccTLDs currently.

But I was looking at this slightly differently. It's - who's orchestrating this and whether there is enough evidence collected which I doubt, but whether there's enough evidence collected whether it's accredited registrars or simply just resellers.

So I still think we've probably got to do a fair bit of research behind this before we can just discount it on the basis that it's largely focused on ccTLDs.

I kind of look at these as well, there was another comment about the fact that, you know, UDRP could support any issues relating to slamming if it was rolled out into the gTLD world.

When you look at the slamming as defined here, it's more of a pre-registration scam versus the post registration scam that you see with the fake renewal notices.

So who - there's slight differences. What can we do to prevent this in the first place? And I think that's where we were heading towards more of an education piece may be a suitable approach.

But first and foremost is what evidence have we got and how can we pull that together is one of the things that I think needs to be looked at.

And I think that's why Berry's quite right putting in here looking at an issues report to investigate it further.

Greg Aaron: Okay thank you Martin. This is Greg. I'm going to go to raise my hand and then we'll go to Mikey and James.

One of my questions is about terminology. What we're talking about is a notice that someone receives. And it says that someone is trying to register your string or a string you're interested in another TLD.

So we want to give you the opportunity to register that before we register it for the other person. Is that correct because I've got notices like that before myself?

Man: Yes correct. Basically you're getting an email notice. If I've misstated it here I, you know, again this is the first draft. And I welcome any edits to improve the definition or better shape the issue description here. I did this at the 11th hour last night so...

Greg Aaron: Okay the - my observation is that the term slamming might not be the best one. In the United States slamming is the term used when its subscribers telephone or Internet services changed without their consent for example, from one carrier to another.

So that's the way the term is in use at least here. It's more akin to an unauthorized domain transfer or something like that I guess.

We might need to come up with a new term. Okay so then let's see, then why don't we go to James next and then Mikey.

James Bladel: Hi Greg, thanks, James speaking. And I thought that I wanted to thank Berry and Martin for putting that together on the list last night.

But just had some thoughts and I sent them back. But in general my thinking was that what we're really talking about here is -- and I posted in the chat room -- some sort of a pre-cyber squatting or a threat of cyber squatting, you know.

And I think where I was getting - going with UDRP was that, you know, you could respond with the threat of cyber squatting with a response would be a threat of a UDRP. If the name is actually registered than the UDRP could proceed in reality.

And to Martin's point, the second I - second thought was that we should probably understand is there something about the nature of registrars or resellers that give them the exclusivity to perpetrate such a scam or is this really just open to Internet users at large? I suspect it's the latter but, you know, we can take a look at that as well.

And then the question was since this is primarily affecting as we discussed at least partially or mostly ccTLDs, is there a process or precedent for a GNSO

PDP to make recommendations to the ccNSO to examine an issue, to raise an issue report under their procedures?

You know, how does that work or is it just, you know, we send something over to them and they thank us and that - it's dead?

I'm really kind of curious if there's any sort of mechanism to pass information between the ccNSO and the GNSO?

Greg Aaron: That's an interesting question. And we have several people on the call who can probably help us with that. There's Margie and Marika and also Wendy Seltzer is on the call is well.

Let's begin - does staff have any ideas about James's question?

Marika Konings: This is Marika. And I'm not aware of any examples where a GNSO has recommended the ccNSO to initiate a PDP and they've done it.

I know that there have been instances for example, the Fast Flux Working Group where, you know, we've asked for their participation or, you know, to look at the issues.

So I think it probably would be the latter that, you know, the GNSO can pass something on and it's up to the ccNSO then to decide what can be done with it.

And of course we need to follow as well their specific procedures to actually see whether, you know, they could launch a PDP on it or not.

Margie Milam: Can I get in the queue? It's Margie? I'm actually not on Adobe Connect right now.

Greg Aaron: Go ahead.

Margie Milam: Okay. Yes when we did some restructuring of the GNSO we've got two different voting thresholds, one for PDP recommendations that are within scope and another that for PDP recommendations that are outside of scope.

And I it strikes me that this is the kind of thing that would fall in that other category where we're just making a suggestion to the GNSO - I'm sorry to the ccNSO.

And it looks like at least under our voting thresholds that that, you know, it's contemplated that you could do that.

Greg Aaron: Okay well and if it was a recommendation it wouldn't even be a PDP request. It would just be more of like a - would it be more of a courtesy thing for the GNSO?

Margie Milam: Yes.

Greg Aaron: Here's something you might want to think about and hand it off. Okay. Okay, Mikey I think you're next in the queue?

Mikey O'Connor: Thanks Greg. I took my head down because James pretty much hit all the points I was going to raise.

Greg Aaron: Okay. Thank you. Berry I see your hand?

Berry Cobb: Yes just a couple of responses. And Martin thank you for the other vantage point of, you know, looking at it from the perspective that it could potentially be resellers and/or accredited registrars and that we need to find more information.

And I guess the other lens by which we should be looking at this is the new gTLDs. And I could certainly see how this type of scam could propagate maybe perhaps more predominantly in the generic space.

I mean speculation at this point because we don't really see much of it today but we, you know, possibly could tomorrow.

The other point that I would like to mention in reference to the cyber squatting comment by James at least from my perspective and the few examples that I've seen or that I've gotten, certainly they go beyond any trademark kind of purposes.

In fact, all the examples that I've seen is the registrant actually owns multiple domains in .com, .org, and .net. And that seems to be a bigger target than those that just maybe have a .com.

But nonetheless in terms of like trying to battle it from a UDRP perspective I don't know where we would get with it if we never actually registered the domains.

Because typically what I think what happens is that at least from what (Rod) had mentioned, the domains never really get registered if you just kind of ignore it over time which is most likely the case.

But two, do we have if they were to get registered which is probably pretty slim because the original registrant of the domains in the .com net org didn't have a trademark do they still have ground to stand on so to speak? And I guess that's really just a question. Thank you.

Greg Aaron: Thank you Berry. This is Greg. I have a question...

James Bladel: Greg if I could respond real quick?

Greg Aaron: Go ahead James.

James Bladel: Thanks Greg. Yes and Berry I think you hit on a really important point there at the end of your comment is that if I had the same string in com. net, and org and it's not a registered trademark, does that presume any rights in other TLDs either first right of refusal or the right to block someone else or something like that?

And I think that that's something we should be very mindful and careful of just because, you know, I would think that if one wanted to extend a claim on a string that that should be a registered mark some - in some jurisdiction.

So, you know, I just wanted to put that out there that the reverse of this would be that you - if you get a string in com net, and org and then suddenly you are infused with rights outside of that.

Greg Aaron: Okay.

James Bladel: And it's just maybe a, you know, a side effect of a first come first serve environment that folks would assume that, you know, that they should be able to get conflicting strings.

Greg Aaron: Okay. Thank you James. This is Greg. I have a scope question. We started off by talking about these problematic transfer issues. That's how this came up.

And the issue there was somebody was representing themselves as the registrar when in fact they were not as part of the shake renewal notice. But that's with an existing domain name with an existing sponsor.

The issue here is domain names that don't even exist yet. And I - maybe we can all agree that it's a - certainly a slimy practice to try to mislead people. But is there an ICANN or a GNSO issue here yet?

And this - is this something that ICANN should be involved in, the pre-creation of domains that don't exist yet or, you know, is this more of a consumer protection issue? What are your thoughts on that?

Wendy Seltzer: This is Wendy. I just wanted - I had put my hand up just to add a note into our earlier discussion that the existence and protection of common law trademark sometimes muddies the issue a bit in that if you can demonstrate common law rights to a string even if you haven't registered it as a trademark you may be able to kick someone out using the UDRP.

That still doesn't mean that you necessarily have rights if you received one of these - someone's trying to register your name.

You might be in the position that in fact you could use the UDRP to kick them out if they register or you might be in the position of having no superior rights and just either you register it and you take it or you don't and somebody else does or doesn't.

So I guess I agree with the general sentiment that this is a perhaps deceptive practice of those sending the notices around but not clear that it's something that ICANN needs to do something about.

Greg Aaron: Okay thank you Wendy. We've got Berry. And let's go to Mikey and then Berry.

Mikey O'Connor: Thanks Greg. This is Mikey. I'm on the fence on this one. I can see the point that Berry's making in this. But I also see the point that several interesting puzzlers.

One is that in many, you know, we're about registration abuse. In many cases these names haven't been registered and probably never will.

You know, it's language that's being used to scare somebody into registering a name. So that's a puzzler.

The other is that on the fake renewal notices thing at the core of that in some place in that pile there's always a registrar.

And in this one and there isn't necessarily a registrar. I mean anybody could set up shop to do this. Unless - but I guess if they if they're doing this notice it seems like there maybe does have to be a registrar involved because otherwise they wouldn't get any money.

Greg Aaron: The party sending these notices out is almost always a reseller I think.

Mikey O'Connor: Yes.

Greg Aaron: So (buy net) is a registrar somehow which it may or may not be aware of what's going on.

Mikey O'Connor: Well but that's - that swings me towards Berry's view which is that if there's an ICANN contracted party involved, reseller or registrar, then I - and they're doing this thing in order to eventually defraud people, then I think that there is a case to have ICANN at least take a look at it.

This one is at least for me is well in the gray area. And I don't really know where I sit yet.

Greg Aaron: Okay thank you Mikey. Berry?

Berry Cobb: Thank you Greg. This is Berry. Again just in reference to your scope question, like Mikey said I - in some record respects I can be on the fence with this.

And I don't mean this to sound as a vendetta but I think I do have a - the unique perspective of being fairly new to this industry although that excuse is getting old here pretty quick.

I got scammed by this. So the examples I provided with (ballotportal.com) back in 2008 which is within my first year of experience in the domaining world, I saw this come across.

And having, you know, very little knowledge about cyber squatting and how brands were protecting their marks across several TLDs and that kind of stuff, I was like oh my God, you know, the bells went off. And I'm like well I should go register these.

Now fortunately I wasn't naïve enough to try to go through the party that sent me the notice. I went through my own accredited registrar that I trusted and secured those names for the normal registration price.

You know, I held on to them for a year. And then when my (streak) IQ has improved over that timeframe I just let those expire because they weren't doing anything for me.

But funny enough is and, you know, basically a year after that in 2010 I get the exact same notice.

So in terms of the scope it does become in scope if the registrant does register those domains by whatever method that they do.

So, you know, again it's I don't know that we'd ever be able to put a price tag on this but again, how I know that it's a prevalent issue is I've had several of my close friends that are completely clueless about this industry ask me what they were going to do.

And most of them had said oh my God I was even going to go through that notice person to try to register those names as opposed to going through a GoDaddy or (ENama), a truly respected market participant. So that's just my comment about the scope aspect of it. Thank you.

Greg Aaron: Thank you. Let's see we have Martin and then Wendy and then James I think. Let's try that.

Martin Sutton: Okay cheers Greg. It's Martin. Yes I think we're still struggling because of the scale and who's actually the players involved in this.

I've just gone through an example. I receive these by the day either for other parties around the group or directly.

I've got one here which is (laying out) the list of domains in different ccTLDs as .Asia and a number of other ccTLDs related to Asia listed for, you know, do you want first option on this because somebody else is going to register it otherwise?

Now I've just got through to the Web site on this particular organization that sent the email. It's some - called DS Network Solutions Limited.

If you look up on About Us, then they say they're partners with and list a whole load of (NIC)s that they're supposedly associated with.

So it kind of tries to add some validity or it could be running a perfectly legitimate business on the side of this but also some dubious marketing scams on the side.

But where do you go? I think though this is the issue is that there are loads of these.

We don't know the volumes of it because most people either ignore it or they get duped into registering them and that's it. Nothing else happens.

So I still think that we're scrambling around here but probably need to have an element of research to back up one way or the other to what extent the problem is, what are the players involved, and how can we actually address that if we perceive there to be a problem?

Greg Aaron: Thank you Martin. If - let's see, if nothing else from Martin then we move on to I forget who I said next. Let's...

Martin Sutton: It was Wendy next.

Greg Aaron: Let's try Wendy then.

Wendy Seltzer: That's okay. Thanks and thanks for welcoming me into the group at this point.

What I'm hearing here sounds a lot like a simple problem of fraud that's - or a excellent place to call in sort of national legal systems and something that we don't particularly need ICANN involvement.

Because as we say in many contexts, ICANN is not a law enforcement body. And this is a good place for people to again, to go back to fraud but not I think something that ICANN has unique competence in.

If people - if they are falsely advertising that a name will be purchased by someone else and that someone else doesn't exist, then it's a - it sounds to me like even criminal fraud.

But so to me the best course would be reference to a law enforcement agency and not ICANN.

Greg Aaron: Okay thank you Wendy. And this is Greg. I just add that that was the route that was pursued in some of these false transfer cases.

There's - there was one entity in particular who did a lot of this in Australia, Canada and the United States. And I think law enforcement in perhaps in all three cases in all three countries did pursue the entity that was doing that either through law enforcement or regulatory communications body of some sort. That might be something we should look into.

Wendy Seltzer: Yes And I say that particularly because it sounds as though many of the people involved in perpetrating the scams are not sort of members of the ICANN contractual system there.

When their resellers who aren't contracted parties ICANN doesn't have a good handle on flushing those scams out.

Greg Aaron: Although one thing that's come up in our past conversations Wendy which were before your time was that well what's the responsibility that a registrar has for its resellers?

Man: Right.

Wendy Seltzer: To me, zero. But I'll go back and join - rejoin earlier conversations around that.

Greg Aaron: There's the - yes there's the practical question and also just whether or not a domain is registered by a reseller matters a great deal practically, but also doesn't matter at all because the registrars the party of record that has responsibility for the domain.

So the existence of a reseller matters and also maybe it doesn't if you see what I'm saying. So anyway, just wanted to let you know we had - we wrestled with some of those thorny issues. Let's go to Mikey and then James.

Mikey O'Connor: I'm sorry that's an old hand. I'll take it down.

Greg Aaron: Okay James?

James Bladel: Hi Greg, James speaking. And this has been really I think fascinating topic of conversation today.

I think we're all in agreement that this is a widespread issue. I mean I receive them myself and that it's pretty underhanded and pretty slimy.

But I think, you know, we need to kind of take a look then further what we need to do about it.

And the way I'm just jotting down some notes here, I think I've come up with a way to narrow this issue or define it a little bit better.

It's essentially that there would be three tests. The first one is that whether this is a gTLD versus a ccTLD, second test whether or not the name is actually registered or it's just the threat of registering a conflicting name and the third test being that the perpetrator is an ICANN contracted party versus just some individual or group of individuals out there on the Internet doing that.

And essentially think that, you know, you have to, you know, you have to hit the three tests exactly right for this to be in scope for ICANN.

It has to be a gTLD. It has to be registered and it has to be involvement of a contracted party. Any failure on those three tests would mean that it suddenly in my opinion moves out of scope.

And if it hits all three of those, then it starts to look a lot like cyber squatting. And I think we've determined that the UDRP is the best thing we have going right now for something like that.

So, you know, but I think this is interesting. I think we could benefit from some more research. I think we've all experienced this as individuals and can share our antidotes for a while.

But I think that ultimately we're going to need some more quantitative research on what's going on here.

Greg Aaron: Okay thank you James. Anybody else? Martin I see your hand up?

Martin Sutton: Thanks yes, Martin here. Wendy, welcome to the group and thank you. I love to hear the confidence in law enforcement in these circumstances.

But I think I'd be quite confident to say that this would never reach the radar of law enforcement that I'm aware of. And if this - this wouldn't go close.

I think this actually takes us back to one of the other issues, matter issues that we had discussions with previously which is one of those things where nobody really knows where to go to when they receive these for - and for any action to be taken.

You either follow it under duress because you think that you might miss out and you go and register some domains and potentially extortion of costs or you ignore it which is what tends to happen within my organization.

But on the scale side of it, ccTLD and gTLDs you may end up with a lot of approaches which are going to be mixed anyway. They'll have some new gTLDs potentially mixed with some of the ccTLDs. We don't know.

But I just think that there is some crossover here with these sort of matter issues that were raised previously with types of incidents where we don't really have a home to go to.

In terms of who cares would be another issue. I don't think one way or another registrars or even ICANN are particularly bothered because it will just be the registrant, whoever picks it up that will be paying for the domain name and feeding it through.

So I think it still goes back to getting some data. I call that an end to my piece today.

Greg Aaron: Okay thank you. All right so where are we on this? We need to kind of figure out our next step.

Berry Cobb: Greg this is Berry. I'm just trying to bring closure on this. If I think I can probably at least get consensus that we modify the recommendation on this that we send it back to the GNSO council.

We won't call for an official PDP. I'm not sure how we would frame it, either a pre-PDP or something along the lines of, you know, we need to get some sort of group behind this or some sort of body to do the research that we're looking for and then come back with the results of that and take it from there.

Greg Aaron: Okay. So Berry you're proposing that we amend the proposal in the existing paper. Is that correct?

Berry Cobb: If you want to call it existing paper, I mean it -- from what I've included here yes. I can tone down the recommendation that we just send it back for more research I guess because we're definitely not going to be able to accomplish it in this pre-PDP here.

And I mean I would agree I don't know that it warrants a full PDP either, but I just don't want this to kind of go to the wayside.

Some how some way we need to find a group that would be able to conduct the kind of research and the data gathering that we need to make a more intelligent decision about it.

Greg Aaron: Okay other opinions? I see Faisal's hand.

Faisal Shah: Yes. I guess I was a - a couple of things. I guess I'd go back and little bit and say to something you said Greg a long time ago in this conversation about this not being slamming.

It's really there's - the whole slamming thing came about because of the panic.com incident that we had a few years ago.

So maybe that's kind of throwing us off a little bit. But I think it sounds to me like most of this of what's happening here is a result of what's going on with resellers.

And maybe the better way to do it -- and I can go - I mean I'm in that gray area too kind of like where Mikey's at.

But maybe there's a way of doing this by pushing for best practices for registrars to educate resellers on what they can do and what they can't do in connection with this kind of practice as maybe being another possibility that we can - because it seems like it - to some extent I think James is right.

I mean it's coming from some third party that has nothing to do with any contracted party. Well then who really cares if it's coming through the resellers?

Maybe there's a way of getting to those resellers and maybe there's a way of being able to educate them as to what they can or what they can't do at this point. I don't know.

Greg Aaron: I mean some Google searches turn up some things about the background. I'll send it out to the list.

And like I said, sometimes it's going to be resellers like Domain Registry of Canada who does a lot of those transfer notices.

One accredited registrar's name who comes up in some of those complaints is Brandon Gray Internet Services which is a fully accredited registrar.

All right, one-way we could go forward is for Berry to provide some suggested language based upon what he suggested today. And does anybody else have any additional ideas? Mikey?

Mikey O'Connor: I actually just have a question. And that is the extent to which contract provisions for the registrars flow through to the resellers?

And it might be useful to clarify that either here or somewhere. Because I was sort of under the mission - misimpression that a lot of the ICANN contract stuff that was laid on the registrars was also flowing through to resellers.

Faisal Shah: I actually think that's right. But isn't the reseller the agent? So aren't they bound with the same duties and obligations?

Mikey O'Connor: Yes. And, you know, Wendy's comment was what sort of perked my interest there. Because if they are not bound to the structure of ICANN contracts then I think we've tripped over a much more interesting issue that bears on a lot of the other recommendations that we're making. So a little clarification in that would be helpful.

Greg Aaron: Margie this is Greg. I'm wondering if you have any thoughts on that?

Margie Milam: I'm sorry can you repeat the question?

Greg Aaron: I was wondering if you had any thoughts on that. Mikey's question basically is are resellers bound to do the things that are in the RAA? That's I guess another way of stating it.

Margie Milam: The RAA has some provisions related to the RA - to resellers, but I don't know that it's all of them. I'd have to take a look at them and I can send something, you know, by email or for the next call so I can clarify that. But my recollection is there's some but not all.

Greg Aaron: Would you be willing to just send a note up to the list with some pointers? I mean because like the RAA says that registrars have to do certain things like ask their registrants to provide valid Whois information and this and that.

I mean I'm assuming that resellers don't have to escrow for example? That might be most properly done at the registrar. But what responsibilities does a reseller have that flow up or flow down?

Margie Milam: Okay. I'll follow-up with that on the list.

Greg Aaron: That'd be great. Thank you.

Okay, any other comments or ideas before we leave this topic? I see Faisal's hand and James's hands up. Are those old hands or new hands?

James Bladel: New.

Greg Aaron: Okay James go ahead.

James Bladel: No just that I believe that the RAA, at least the latest versions stays fairly clearly that registrars are responsible for the conduct of their resellers ultimately in that, you know, the resellers are not under contract with ICANN.

So if any name is attached to a registrar, you know, the register has to design their reseller program so that they can govern those sorts of things.

I - you know, that's not a comprehensive opinion, but I think that that's just in general the sentiment among registrars is that they have to govern their resellers.

Mikey O'Connor: This is Mikey. Let me just barge in. Then the question becomes it seems to me suppose that one of your resellers is doing fraud like these folks are?

Do you as a registrar -- I do want to put you on the spot - do registrars as a group feel that they have any obligation to stop that or is the, you know, there's a couple examples tacked on to Berry's email.

Greg Aaron: I mean I know that Mikey, our organization aggressively goes after those types of folks.

Mikey O'Connor: I guess the question is is there any - I mean I'm not a lawyer and don't even play one on TV so I'm really bad at this.

But if somebody's - if somebody's doing fraud under somebody else's wing and they don't do anything about it, presumably these people in China aren't under GoDaddy's wing. They're under somebody's some other registrar's wing.

You know, this is why I'm in the gray area. It seems to me that eventually we do find ourselves back at a ICANN contracted party somehow.

And I tend to agree with Martin that I know that if I went to my local law enforcement folks with stuff like this they'd kind of go Mikey I don't know that we care. The amount of money involved is so small and the harm is not overwhelming. So I'm not sure that it would get them very excited.

And yet if there's some sort of legal chain assuming a fraud being committed and a contracted party, it seems to me that this is not an unreasonable thing to have ICANN speak about.

I'm still - you know, I'm still very on the fence. I really don't know what to do on this one. I like the idea of more data and I don't like the idea of just shrugging this one off. It just feels like something that I cannot have an opinion about.

Wendy Seltzer: So this is Wendy. And the law enforcement resources are not limited to sort of call in the local cops. It's also a private enforcement of the law through civil lawsuits. And if this is a big enough problem one of - the way the legal system deals with this is offering up class action opportunities at least in the US.

So if somebody saw enough people being defrauded by this means, an enterprising class-action lawyer could pick it up and litigate and win most of the penalties for himself and his firm. But that would stop the practice.

So it seems to me that there are a lot of other places where it can get resolved without throwing ICANN's regulatory group into the mix.

Mikey O'Connor: Tasty conversation I, you know, worthy of more conversation I guess is my bottom line on it.

Greg Aaron: Okay thank you. Any last comments?

Berry Cobb: Greg just to solidify the action items basically assigned to me, I'll - first action is we'll put out to the list to try to come up with a new term for this. James came up with some creative ones and we'll try to work from those.

And second I'll look at maybe putting a couple of different proposals for recommendations up. And then when we get to the point of incorporating this into the final report and we go to do our final consensus polling, you know, we can move from there if that's acceptable. Thank you.

Greg Aaron: Okay so Berry the action item will be for you to send something out before the next meeting. And also if you could, we need to get a handle on the right terminology. And slamming may or may not be the best one. I'm Wikipedia-ing the main slamming. There's actually a definition there.

So there may be some pointers in those footnotes about past industry terminology and so forth. Okay.

Berry Cobb: All right, I'll do some searching.

Greg Aaron: Okay we will take that up next time and then we'll have to make a determination about it.

So in the meantime we're going to move on to the specific comments about the initial report.

So what you need to do is go to the public comment board. And I'm going to put that here in the Chat box.

And what we can do is just take them in chronological order from the first posting to the last.

And the first public comment is from WIPO. And it's signed by Erik Wilbers who is the director of WIPO. And it's dated March 26.

So you can bring that up in your browser and we've got it right there. And this is difficult probably to summarize. I - if you haven't read it already please start reading it.

In the first part of the letter Mr. Wilbers said UDRP as a mandatory best practice. Okay so I have a problem with the terminology right there. It's a policy not a best practice.

It says - he says it continues to limit exposure for registration authorities and ICANN. Any process outcome that destabilizes or compromises the principles and practices of this bedrock or mechanism for out of court dispute resolution concerning online identifiers would jeopardize this effect.

So I think what he's saying there is UDRP is a process that is handled by third parties. And everybody in the chain, ICANN registries, registrars, registrants all says that they're going to participate in that process.

And by having a neutral dispute provider that exposes liabilities for the registries, registrars ICANN...

Woman: Sir?

Greg Aaron: So let's read into his letter and see what specifically he says.

He says the issue is not whether UDRP can be improved but rather whether a process of this nature is likely to achieve some results.

Realistically this effort may well end up also incorporating design proposals facilitating the type of practices that prompted the creation of UDRP in the first place.

I'm not sure exactly what those first couple of sentences mean or how to parse them. Does anybody have any thoughts?

Wendy Seltzer: There's a whole bunch of scaremongering going on here.

Greg Aaron: Okay Wendy tell us what you think?

Wendy Seltzer: That's my general thought. I don't - sorry.

Greg Aaron: No that's all right. Any other thoughts? I've stepped away from my computer for just a second so I can't see the hands. Just identify yourself if you'd like to speak.

Mikey O'Connor: This is Mikey. I tend to agree with Wendy. This is - this seems to be a note from a group of folks who really don't want to see the question of UDRP opened up for discussion, change, review and that they're trying to head off that part of our recommendation that you know, I think I agree with Wendy. This is pretty over the top rhetoric. But I'm not sure I agree with it.

Faisal Shah: This is Faisal. I think what I read from this is that what they're saying is that maybe the UDRP really isn't broken that, you know, if you open it up now maybe you'll end up making it - getting into a worse situation than where you are right now.

And potentially a better way of doing this is to work with what you have right now and the structure you have right now as opposed to throwing you wide open and letting everybody jump in and creating a bigger problem than you have now.

To some extent that's right but I'm not sure I fully agree. But I can see where you're coming from.

Mikey O'Connor: This is Mikey again. I think that the problem that I've got with this is that they've got a huge conflict of interest in that point of view since they're the - one of the three, four, for the UDRP.

Faisal Shah: Yes but they also know it better than anyone else.

Mikey O'Connor: I'm not sure I'm quite willing to sign up for that. I mean I think that there are lots of folks who are - I'm not one of those folks by the way. I don't - I've never done a UDRP of any sort.

But there are people who are very engaged in that process who I think have a lot to say about it but are outside...

Faisal Shah: I don't disagree with that.

Mikey O'Connor: Yes.

Greg Aaron: Okay.

Wendy Seltzer: This is Wendy with a more serious phrasing of my comment. I read this as of major incumbent provider of UDRP services doesn't want anything done to UDRP services that could just place it or force it to compete with providers on different terms from what it's already very successfully doing.

I don't see serious criticisms of what we're doing here that we need to take into account so much as a lot of hand waving about try - touch this process and you'll set off a chain of dominoes which I don't think is true.

Greg Aaron: This is Greg. By the way there's an upcoming ICANN board meeting on the 22nd. And one of the agenda items is UDRP policy and relationships with service providers: changes in procedures.

And that's all it says. So I just saw that posted. So I don't know what it means but it's coming up at the board for some sort of discussion.

All right, well let's continue to read the letter and let's see what Mr. Wilbers says.

It continues against the backdrop of the recent constellation of embedded ICANN processes, WIPO cautions against any outcome however well-intentioned in some ways that would ultimately harm the legitimate interests of trademark owners as well as ICANN stakeholders.

This would also include registrars who may be well to recall that under the UDRP system unlike in national courts, monetary damages and legal costs are not awarded to the prevailing complainant.

Likewise and on their own level we believe that registrars and registries have their own trust in UDRP's ability.

And then in bold type the basis for inclusion in the UDRP and the RAP working group initial report especially against the background of ICANN's new gTLD program is unclear unquote.

I'll just say that the basis for including it in our work is very clear. Because this is the cyber squatting and registration issue.

And what we see here is ICANN now linking this to the new gTLD program which is a whole other can of worms.

He says the link between the report concerning abusive practices undertaken by certain registration authorities on one hand, okay that's interesting.

Abusive practices undertaken by certain registration authorities. What he's saying is that abusive practices undertaken by registries or registrars.

Is he accusing registries and registrars of doing something wrong here? It seems to me he's saying yes when what we're talking about are policies that also bind registrants who are the cyber squatters.

Is he saying - so I'm not sure what he's saying here but it's something different I think than what we've been discussing.

And anyway he says the link between a report concerning abusive practices undertaken by certain registration authorities on one hand and the cyber squatting recommendations investigate the current set of the UDRP.

On the other hand if on it - I'm sorry. If on (unintelligible) surprising rather might have been expected that any recommendation would have sought to address any registration authority conduct that may tend to frustrate core UDRP principles and ICANN compliance conditions particularly as UDRP panelists have found occasion to publicly discuss the various and unfortunately sometimes repetitive facets of these issues.

So what he seems to be saying there is ICANN not taking care of registrars who are not executing UDRP decisions. I see Martin's hand.

Martin Sutton: Yes it is Greg but it was following on really from the previous discussion. But it was my regular gripe on this. And I look at WIPO's response here as highly defensive of UDRP.

And I think it misses the point which is we want to have a look at the UDRP and determine what gaps exist because it is still relatively young as a policy.

And whilst UDRP has its purpose, it tends to be for where there is a strong commitment on the registrant and the complainant and to fight it out.

Whereas most of the domain name cyber squatting abuse never goes through UDRP. It's just far too expensive in terms of the volumes that are out there for any brand owner to contemplate bar some that have deep pockets presumably.

So I think we've still got to look at this as yes they're very defensive of UDRP, but our actual recommendation is looking at the gaps of what UDRP - what is there beyond UDRP and what gaps exist in the current UDRP space.

So I just wanted to mention my normal gripe on that. Thank you.

Greg Aaron: Okay thank you Martin. Anyone else?

Okay if not, we'll continue on. The letter says that such practices seem to persist substantially and forms the concept of the WIPO proposed post delegation procedure for new gTLD registries. The concept appears equally appropriate vis-à-vis registrar conduct.

Okay so let me give you a little background about what that's about.

There is a concept that is currently under discussion in the new gTLD process. And it's about let's say ICANN gives a new TLD to an applicant. Then what happens if that applicant doesn't do what they said they would do with the TLD?

And there could be various problems that come up. For example the applicant loses its sponsorship from the appropriate community or the registry says it's for one thing and it's for a certain use and then does something completely different with it.

People worried about, you know, applicants being dishonest basically about what they're going to do with this TLD or what it's for or what (unintelligible) is going to be allowed to do it.

As an example the Apple Growers Association getting a .apple and then using it to market to Apple computer users or something like that.

Now one of the controversial things I think in that process is that WIPO has said that registries should be responsible for certain things. And there's going to be - there's some public comment happening on those topics right now.

So I think what Mr. Wilbers is doing is he's saying he wants to loop all that into this conversation about UDRP.

So that's pretty, I personally think pretty complicated and wide ranging. Any comments about that? Okay.

The discussions occurring - I'm sorry. He says discussions occurring within the context of ICANN's new gTLD program would seem to already address these cyber squatting recommendation.

I think that's a surprise to all of us because we've discussed that in depth over the months. Calls to investigate the UDRP may also be driven by a particular proposal for a uniform rapid suspension system, URS occurring within the context of ICANN's new gTLD program. At its core the URS is intended to interoperate with and complement the existing UDRP by seeking to deliver faster and cheaper results in appropriate cases.

Whether the current URS proposal meets these objectives remains open. For example further to our proposal of April 3, 2009 we note that removing the need for a panel appointment in cases of respondent default in a URS proceeding were the envisioned remedy of a temporary suspension of an infringement domain name would exponentially decrease the cost and time attendant to such a procedure with already adequate registrant notice and appropriately crafted mechanism through which a defaulting respondents or unrelated third party could later establish they're bona fide with respect to a

suspended domain name. The benefits of a default based filtering mechanism to all ICANN stakeholders would seem obvious.

I'm not sure what a default based filtering mechanism is.

Wendy Seltzer: Isn't it obvious?

Greg Aaron: Any comments on this? Wendy what you think that might refer to?

Wendy Seltzer: I do not - I don't know what - I'm not familiar with the WIPO proposal that he's referring to. I just find it hard to take this seriously.

Do we think that others are taking it seriously enough that - I guess we do since we're spending so much time reading through it. But it seems over the top.

Greg Aaron: Well we're going - or we're going to read through the comments and then we'll have to decide whether we think it's, you know, serious or not. But...

Wendy Seltzer: I mean I know they make it seriously but I find it hard to believe that anyone would read it and say we must jump.

Greg Aaron: Yes well and let's continue. In the meantime informed by the administration and some 17,000 UDRP related cases WIPO will continue to upgrade its nonprofit public resources -- et cetera, et cetera, et cetera and UDRP case administration -- blah blah blah.

In boldface, rather than seeking to amend the time tested UDRP, independent focus on meaningful complementary mechanisms may yield more practical results.

Okay. So what they want is don't look at the UDRP. Give us URS. And the other things thing have been proposed or new to gTLD.

Unclear whether they're requesting that specifically in all TLDs or just the new TLDs. As noted rather than focusing efforts and processes unlikely to be getting progressive results, WIPO believes that the focus should be on development of rights protection mechanisms that truly add value for the prevention and resolution of disputes in a massively enlarged GNS so on so forth.

The integrity of the UDRP depends on the providers ICANN chooses to accredit. Perceived issues - perceived UDRP issues tend not to be rooted in UDRP itself but rather in its often profit driven application by certain providers and their constituents.

WIPO's publicly alert to ICANN to provider practices that may violate the letter or spirit of the UDRP. So that seems to be a swipe against WIPO's competitors. And then the letter ends.

So let's open this up for comment. What do people think of this letter? Are any of these comments valid? And if they are not, should we know why?

Don't speak all at once. Okay I think Mikey.

Mikey O'Connor: I this is Mikey. I think I'll just sort of repeat what I said at the top. There's sort of a wide perception across the ICANN community that there are some folks who want to open up the UDRP process to fix it and there are others who are quite adamant that by so doing it may get terribly weakened and best just leave that ticking time bomb alone.

And I think that this WIPO letter falls squarely in that latter category. I have more faith I guess in the ICANN process than they do. And so I just disagree with them.

Greg Aaron: Anyone else? Okay, I'll speak purely for myself. This is Greg.

I think that first of all the UDRP is ICANN's policy. It's not WIPO's. And WIPO is one of the parties who's been tasked with executing it. So they do have a defined role in the process.

I think it's absolutely ICANN's right to examine its own policies on occasion and decide whether there should be changes or improvements.

Some of the comments that we noted in our report were about the policy itself. And some of the comments were about the execution of the policy, specifically the UDRP rules and how the dispute providers and their panelists, you know, carry things out.

And I have to say that a lot of the comments and criticisms about uniformity and process have come from some of WIPO's own panelists.

So I think what we're also getting into is the discussion of well the new rights protection mechanisms are in some way a supplement to or extension of UDRP.

UDRP was originally the way you dealt with domain disputes. Now there are all these additional mechanisms being discussed which basically do the same thing but in different situations or cases or flavors of disputes.

So it seems disingenuous to me for WIPO to say we don't want you to change UDRP but we highly advocate you change UDRP in the following ways which is use these other mechanisms. But I think there's some internal conflict there.

Faisal?

Faisal Shah: Yes. Go back to what Martin said earlier, I think it's exactly right. I think that they're probably very - you know, the UDRP process can be pretty costly to brand holders and they're probably some shortcomings.

I think maybe taking this letter in the light most favorable to WIPO, I think perhaps what they might be saying is look let's again let's not open it up, go at the UDRP completely and go after everything.

Maybe there's - maybe it has to be done in a ad hoc basis. And maybe there's certain ways of being able to pull in some of those or address some of the shortcomings within the UDRP itself by looking at certain processes.

So for example maybe there's a way of being able to come up with a similar - - and I'm just throwing this out -- maybe a similar URS but within the UDRP itself to be able to be more cost effective for brand holders and maybe be more efficient in terms of time. Because, you know, as it is, it's a pretty lengthy process.

So I don't know, to some extent if - I mean I would think that, you know, throwing it wide open and saying okay everyone go at it is probably not the right way to do it.

And maybe what they're saying is look, you know, there may be ad hoc ways of being able to do it so that we go after little pieces and still maintain the integrity of the systems.

Greg Aaron: Thank you Faisal. We by the way are coming up at the end of the meeting. It's almost 30 after.

I think one of the questions we'll have to think about is whether we put anything in the report to specifically address WIPO's comments. There are a highly relevant party when we're talking about cyber squatting certainly.

I'm wondering if it may make some sense to address some of their questions since one of their first questions is why did you even talk about this issue? Why does the GNSO even - you know, looking at the issue I think that might need to be addressed.

All right, so we're at the end of the meeting unfortunately. I think some of us might want to draft - start drafting some text around this.

Let's also see what other people say about the cyber squatting issue as we go through the comments.

Next time we will have to pick up at the next public comment which was from the registry stakeholder group. And we'll see, you know, how many more of these comments we can get through the registries. And then GoDaddy's comments are next.

So we have a few action items from today. I'll write those up, send them out to the list. And does anybody have any parting thoughts? Berry?

Berry Cobb: Yes just a question. Can you remind me again our - I guess our due date for all of this is do we need to have the final report by our next meeting or not our next meeting but Brussels?

Greg Aaron: Yes you have to have papers in X days before Brussels. I calculated it. I'd have to go back into my notes here.

It's we need to be done in late May I think it is or beginning of June. I'll go back...

Marika Konings: This is Marika. It's 31 May would be the deadline if the document is to be reviewed at the Brussels meeting.

Greg Aaron: Yes. And we need to have it done by then. So we need to keep a pretty decent clip and have that document finalized before...

Berry Cobb: Okay so that basically gives us like five more RAP meetings roughly?

Greg Aaron: Approximately yes.

Berry Cobb: Okay because I think we still have a fair amount of public comments to go. I'm concerned that we might run out of time.

I don't know what other people's schedules are like but, you know, if we could maybe move this to two hours or I don't know, maybe meet twice a week or something.

I guess it would be nice to see exactly kind of a - just a final to do list of everything we need to check off and make sure we get done to ensure that we've encapsulated the final report and we make that deadline.

Greg Aaron: Fair enough. Let me confirm the due date, the number of meetings we would have. I can only speak for myself but I don't think I can do twice a week.

But let's definitely work on a timeline that we're going to need to adhere to. And as individuals we will certainly need to all hit our deadlines for whatever assignments we decide to take on.

Because that deadline's going to be an absolute one for Brussels. So thanks Berry for bringing that up.

Berry Cobb: All right, thank you.

Greg Aaron: Okay let me send the notes out about that. I'll work on the timeline a bit. And then I'll send that to the list. And I'll appreciate comments that anybody has on that. And we'll talk about that at the top of the next meeting then.

Okay well thanks very much guys and as always, very thoughtful comments from everybody. And we'll reconvene at the same time next week.

Man: Sounds good. Thanks Greg.

((Crosstalk))

Greg Aaron: All right, bye-bye.

Man: Thanks Greg.

END