Registration Abuse Policies Working Group
TRANSCRIPTION
Monday 26 April 2010 at 14:00 UTC

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http://audio.icann.org/gnso/gnso-rap-20100426.mp3

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

Faisal Shah – MarkMonitor

Fred Felman – MarkMonitor

Robert Hutchinson – CBUC

Wendy Seltzer -NCSG

Mike O'Connor – CBUC

ICANN Staff

Margie Milam

Glen de Saint Géry

Marika Konings

Coordinator: The recording has now started. You may go ahead, thank you.

Glen de Saint Géry: Good morning, good afternoon, good evening. This is the 26th of April and it's the Registration Abuse Policies call. On the line we have James Bladel, Fred Felman, Faisal Shah, Greg Aaron, Berry Cobb, Robert Hutchinson, Wendy Seltzer, and for staff we have Marika Konings, Margie Milam, and Glen de Saint Géry, myself. Have I left off anybody? Thank you, Greg over to you.

Greg Aaron: Thank you Glen. Before we dive back into public comments let's briefly go into the schedule that I sent around late last week. Marika had noted that the deadline for Brussels as far as documents that have to be discussed by the community is May 31 if you count business days.

However, this document has already gone through its public comments so it could be due even later so we're going to ask - we have asked Chuck Gomes, the head of the NSO Council just to ask about the timing and also when we want to have this issue scheduled for council discussion in Brussels.

So anyway, for now I think the schedule that I posted up to us is fine. It basically means we have four meetings to go through the rest of the public comments and at the same time also work on the document. So May 24 is going to be our last call for changes and we want to publish it at the end of May, beginning of June if at all possible. So are there any questions about scheduling?

Okay, all right if not that just means we need to move along in our meetings and it also requires us to deliver edits to the documents in a timely fashion. Marika I was wondering, we've got the last draft that - which is up on the Website. Would you like to prepare a new draft? Because I guess the new draft needs to include the chapter with the public comments summary. Also does that draft need to contain the constituency statements as appendices?

Marika Konings: This is Marika. That's a choice that the working group can make. I mean, in previous reports we have included also, you know, full public comments in appendices, you know, I think if we provide the links that might be sufficient as well.

The question is of course, if you put it in the document a document becomes very long. If you want to translate it, you know, it gets as well into the question of additional cost and time for translating having additional pages while, you know, that information could be provided as well by a direct link.

So I think it's a question for the working group whether they would like to have full comments there or, you know, just constituency statements or just summary and analysis with links to where the different submissions can be found.

Greg Aaron: Okay. Yeah, translation is something I hadn't thought of before. So the precedent is to certainly include links to all public comments and also include the constituency statements because this is a GNSO document? Is that pretty much the precedent?

Marika Konings: This is Marika. Actually the precedent has changed slightly. I think the last few initial reports we've just provided the summary and links and actually haven't included the full statement in the annexes but just provided the links to public comment forum or we'll provide a link as well to the constituency statements that have been posted on the Wiki.

And also as this is not a formal working group and we haven't really specifically requested constituency statements apart from those that were submitted as part of the public comment forum they're actually, you know, I think part of the public comment forum as such. So if you make them separate you might need to do that for all comments, I'm not sure.

Greg Aaron: Okay, all right. Well unless there are any objections then we have I guess a page or two with links to all of the comment. One thing I would suggest Marika is if we have a page with all the links that those be very clear about who the comments are actually from.

On the comments message board, sometimes it's clear and sometimes it just says who posted it but it's not stating who the comments are actually by. So for instance if the - if a particular constituency sent comments in, let's clearly identify those as a statement from a constituency, not from an individual who happened to mail them in. How does that sound?

Marika Konings: Greg what I can do, this is Marika again, is in the summary and analysis there is the list of those that have submitted contributions which does identify, you know, for which you consider is a constituency or stakeholder group statement. Maybe an idea would be to include the links there so people can actually from there and they see as well who's the person or the entity that has submitted the comment.

Greg Aaron: Okay. All right let's do that then so that they're clearly called out and findable by readers, I think we're good.

Man: Greg just a point, just looking at the page it looks like every comment summary on the page actually calls out the organization in the description.

Greg Aaron: It's been inconsistent across boards which is why I mentioned it. In this case...

Man: But then it depends on how the people have self titled their stuff. So anyway, that sounds good. Sounds like we're covered.

Greg Aaron: All right. Now there were a few items from last week, one of which was Margie was going to give us some background on what resellers are obligated to do and she has pointed out some material and it actually is - it looks like it's summarized in two paragraphs in the non-lawyers guide to ICANN contracts. Margie would you like to go ahead?

Margie Milam: Sure, can you guys hear me okay?

Greg Aaron: Sounds good.

Margie Milam: Yeah okay good. I guess the question was where a registrar would be obligated for the acts of others. And this document, the non-lawyers guide, was put together at the request of the at large community because they thought, you know, it would be useful to have something that explains the rights and obligations and it's helpful in this particular case because it actually addresses the issue that we were talking about a couple of weeks ago.

And so there's two areas that deal with resellers. The first area deals with common controlling interest and so if there's a registrar or registrars are owned by, you know, have common interests. There might be, you know, have common ownership that there's provisions in the RAA that deal with even though they are separate legal entities they might have additional obligations because of the close relationship to affiliated companies. But not all registrars actually have affiliates.

And so the RAA actually talks about where there is a common controlling interest of some of the affiliated registrars, one registrar might be in breach of the RAA based upon the acts of one of its affiliates. So that's kind of one are.

And then the other area deals with resellers and it's a question that we were talking about here on the group. And the 2009 RAA actually included additional language related to resellers and the RAA prior to that didn't have any reseller related obligations.

And essentially this requires registrars to do additional steps when they have resellers. One, they actually require that their reseller agreements have certain provisions so if there is a reseller and there's an agreement the registrars are obligated to make sure that they have certain provisions in their reseller agreement.

And then there's also specific requirements related to privacy or proxy registration services. If the reseller offers them then the reseller needs to do one of three things. Either deposit the information in escrow; deposit the information with the registrar; or post a notice that the information is not being escrowed. And so that's also part of the RAA.

And then the last part of that relates to that if a reseller is violating any of these provisions the registrar agrees to take some kind of enforcement action. So those are the only areas where they may be some requirement related to resellers.

Greg Aaron: Okay thank you Margie. Does anybody have any questions for Margie?

Berry Cobb: This is Berry. Just kind of - this doesn't necessarily need to be answered here, I'm just curious. With the RAA working group, is anybody aware of any other items that are being discussed in that forum with regard to resellers?

Margie Milam: I can answer that Greg. Yes they are doing a number of amendments and some of them do relate to resellers so at the moment they're in the process of identifying the list of topics for potential RAA amendments and there are some provisions that relate to resellers.

Berry Cobb: Okay great, I'll go seek those out, thank you.

Greg Aaron: Okay anyone else have any questions about the material?

Wendy Seltzer: This is Wendy.

Greg Aaron: Go ahead Wendy.

Wendy Seltzer: I would just note that these provisions are in some sense less effective than general broad considerations because they are only enforceable by ICANN so if ICANN is not being an active enforcer the end user who may be harmed by some of these things has no recourse.

Greg Aaron: This is Greg, I'm raising my hand. So as far as these provisions my assumption is that the registrar is actually responsible for the compliance action, monitoring and compliance unless ICANN compliance sees a problem with some particular names and they go talk with the registrar about it. But I don't - in this situation I don't see ICANN going to resellers.

Wendy Seltzer: No ICANN can't, but if ICANN isn't doing anything that puts pressure on the registrars then the registrar has little incentive to comply or rather those that don't comply aren't punished for it if we don't enforce compliance of their resellers.

Man: Yes policy without enforcement is an issue.

Greg Aaron: Okay, anything else anyone? Okay, all right. If not let's move on to the other item from last week which was about slamming. I'd like to say a word up front that the slamming issue we're talking about is a new topic for this report which is the practice of sending notices to potential registrants enticing them to register a domain name. So that's different than the transfer issue we've been - we've discussed in the past and in the initial report.

I'll also say that we have limited time available to discuss this topic. I would like to keep the discussion very focused. Now what we have so far is a draft from Berry and been marked up by James. There are a couple of questions about I think do we want to address this issue and is it in scope. That's one of the questions that James raised.

The issue being that this is - it certainly is (unintelligible) practice, I think we all agree, but this is before domains are even created and what if any role does ICANN have. So let's discuss the scope issue first which is gating factor. Let me open up the floor. Berry and James, jump in at any time.

Berry Cobb: Okay this is Berry. I guess I was expecting other people to comment. You know, ultimately, you know, when no domain is registered in this event I would agree it probably is out of scope. My concern is when a

registrant is - takes action against this type of deception to register a domain once that domain is registered it does seem to me that it does fall in scope. You know, we'll probably debate this until, you know, the cows come home.

I guess, you know, I'm just kind of taken back a little bit because again this seems like one issue where there are - where both sides of the fence recognize that this is a problem. Certainly registrants out there are being taken advantage of and yes we can debate as to whether this is just a deception versus hard core marketing/selling.

I just, I don't know, I think that there are harms out there and all of us on this call that have talked about it and those in the community are veterans of the domain industry and know that when they receive these that they can just shred it and ignore it.

My concern is for the 90% of registrants out there that don't have the street IQ that we do, that actually are deceived and do take action against these, and so yes is there really harm? Maybe not. They're getting domain names for an inflated price, whatever that percentage is.

I guess my only question back to James and to the contracted parties is why you guys wouldn't be more on board at least wanting to put this forward to the council for at least some kind of notice and/or further research. Because from my perspective, if I were a registrar I wouldn't want these deceptive practices to be going on out there because that potentially takes business away from me for, you know, I'm going to use me as an example.

I'm a customer with Go Daddy and I received one of these notices. I actually took action against that notice and as I mentioned last week I was just smart enough to not register it through that deceived practice but to go through Go Daddy to get that domain.

But more often than not, the inexperienced registrant will more than likely go through the deceived practice to try to register that domain, therefore taking business away from the current registrar that they work with or associate themselves with.

So I don't know, at the very least would I would like is that in the draft that I included, I included four different recommendations that we just put that out onto the list and if we can do a quick vote like we did with the other sections and see where we stand. And I still think that it warrants putting populating it into the paper, if at the very least hopefully the recommendation that we come out of this group is that, you know, we try to find resources to do more actual research for it. Thank you.

Greg Aaron: Okay thank you Berry. James?

James Bladel: Hi, and thanks Berry and I appreciate you putting this together. And, you know, I think I mentioned on the list that I'm struggling a little bit with this. I think that we recognize that this is out there, it's going on, it's a slimy practice. It certainly is something that we would not want to lose customers to.

But, you know, I also - I think that the question was and it just comes down to is that, you know, a pitch that ICANN should be swinging at. You know, with everything that we have going on, you know, I think

research would be good. I would love to have some data either from ICANN or from an outside party on how prevalent this is and what kind of magnitude of a problem we're talking about.

So I think I have some issues just in terms of, you know, just the fundamental nature of this. It is - as Berry mentioned it is an attempt to prey upon, you know, novice or unfamiliar registrants. It's kind of like the driver at the airport rather than the pilot taxicab or, you know, maybe even the stereotypical shakedown for insurance money for a mom and pop store so that, you know, we don't, you know, in case something would happen to that nice domain you have there.

I think - I'm really just struggling with the scope issue and whether or not there's actual - there's action here or the threat of action. You know, I think we put down in section - I think Berry accurately captures some of our discussion in one of the lower sections here and I don't want to take up too much time Greg but, you know, if we look down at the section highlighted is it within ICANN's scope with some tests there.

You know, I think that's pretty straightforward and perhaps we could even press upon Mr. (O'Connor) to make a pretty flowchart because he's very good at organizing these things visually but, you know - hello? Hello? I'm sorry, I hear some background notifications there.

So anyway I don't want to spend so much time on this or belabor these points. I think the draft and the comments I think capture, you know, the issue here. and Berry I don't think it's a reluctance to take this on necessarily as much as a recognition that there are problems and harms occurring and not everything is, you know, germane for ICANN.

So it's more of a recognition of ICANN's limitations as opposed to any kind of a discount or diminution of the harm. So I'll just leave it at that.

Greg Aaron: This is Greg, I had raised my hand. What James said at the end is also true for me. I don't discount the impact of it, what I'm wrestling with is whether it's in scope or not. I mean, personally I don't think those tests are probably complete, I mean, just because it eventually touches a contracted party doesn't necessarily mean it's within scope for example.

It's not how a domain is being created, it's not, you know, about the process, you know, are you having a sunrise or, you know, all those kinds of things which are definitely kind of in scope. I think it's before the domain is being created, I think it's a lousy practice perhaps.

We don't know how much it's being done. On the other hand I think in these kinds of issues we have seen that where appropriate regulators or law enforcement does get involved. We've seen that with some of these deceptive advertisements through the years.

And I think there's a place for ICANN to make sure that registration issues are done, you know, practices are done on a level playing field. For example registrants should be given the opportunity to transfer their domain names to their registrar of choice and therefore should have some mechanisms to be able to do that but I don't know how far ICANN's role as far as general consumer protection goes.

ICANN at base is not a consumer protection organization exactly and in this case I think, I mean, I'm concluding that for me this kind of falls outside of scope as far as policy making so I question whether it

should go to further research. So that's - those are my thoughts. Anybody else?

Faisal Shah: Yeah this is Faisal. I guess the only thing I would say is or I guess just really quickly a couple of things. That if you look at the definition of uses we have, where we have causes of actual and substantial harm is a predicate of such harm I would argue that the fact that it hasn't been registered yet but it will be registered is a material predicate of the harm which is the actual registration and it does cause actual and potential harm.

And I think that we could recommend best practices by which we can ask the registrars to like I said on the last call, perhaps even educate resellers as to, you know, these kinds of practices. So I would actually be in favor of further investigation of this issue.

Greg Aaron: Okay thank you, anyone else? James?

James Bladel: Yeah Greg, James speaking. I thought that - I think I would also cautiously support an issues report or further investigation either by ICANN or by an outside or independent research organization. I just want to make sure that we're not taking away from, you know, we talked about our calendar, we talked about all the things we have going on now with ICANN, and I just want to make sure that we're not contending for staff resources that are already very thin.

Greg Aaron: Yeah and by the way, asking for an issues report is the path down to a PDP.

James Bladel: But it's not necessarily.

Greg Aaron: It's not necessarily but that's - it's more than just - asking for an issues report is probably more than just research.

James Bladel: Okay maybe we shouldn't say issue report, maybe we should say research. I know all PDPs have to have an issues report but not necessarily the other way around.

Greg Aaron: Yes, true. I see Wendy's hand up.

Wendy Seltzer: Just very quickly to echo the concerns that while this is an important issue I think outside of ICANN's scope to remedy it.

Greg Aaron: Okay thank you Wendy. This is Greg, I have a suggestion. We have four draft recommendations and we could do a straw poll at this point. Let me read them off. The first recommendation is to recommend nothing. The second recommendation is that the GNSO pass the issue over to the CCNSO for research, investigation, and potential remedial action and that is because we think the issue is predominantly with CCTLD domains.

The third recommendation is that the GNSO monitor in the generic space and designate a team of ICANN staff to conduct research and create education for awareness. The fourth recommendation is that the group recommend the initiation of a PDP of this in conjunction with fake renewal notices. And I see some handy polling functionality coming up.

Woman: I'm trying to keep up, let me see if I can - wait there's one or two.

Man: There's really good feel there. We need a joke or something just to fill out the time.

Berry Cobb: This is Berry. I just, you know, for the sake of time I just ask that we kind of - if we can just put this poll onto the list like we've done with the others and that way we can just move forward. Thank you.

Greg Aaron: Well Marika how long will it take you to do it?

Marika Konings: Well I can just, you know, we can just continue discussing other issues until I get the poll working and if people during the call can just indicate their vote and we can come back to it.

((Crosstalk))

Greg Aaron: Okay let's let Marika work on it, in the meantime we can move on. The next step would be to look at the public comments and go on with those. I am going to give you the link here to the public comment forum. And remind me where we left off. We did the (WIPO) comment. I think we did the registries.

Marika Konings: This is Marika. I think we only did (WIPO), I don't think we covered the registry stakeholder group separately from the summary. Maybe I'm wrong.

Greg Aaron: Okay well I can summarize that one quickly. Basically the registry stakeholder group said that registration issues do need to be defined carefully, use is a very useful differentiator and it's a good test for whether something is within consensus policy making scope or not and

therefore think that use issues such as malicious use of domain names is out of scope.

The stakeholder group supported the cyber squatting recommendation assuming - noting that it was this particular recommendation did not try to deal with other post domain creation rights protection mechanisms which the working group commented on separately and is not in favor of discussing RPMs at this time, the additional RPMs.

Thought that the group made a good decision regarding gripe sites and so forth. Talked more about malicious uses of domain names, definitely support the best practices that the group has recommended, gave some background on why they thought the (buying) practices were out of scope.

The group - let's see, supported the two recommendations about who has access and felt strongly that the uniformity of contracts PDP is ill advised. Thought it would pursue an undefined problem and thinks that consensus policy making is a better, safer, and existing mechanism rather than trying to pursue something which is general and does not define a problem be solved.

So that's the capsule summary. Does anyone have any questions about it? Okay in the meantime you can look at the slamming poll which is up on Adobe Connect. We have four votes so far. Okay I see five votes. If you haven't voted please do so. Is there anyone who is on the phone but is not on Adobe Connect?

Berry Cobb: Yes, Berry.

Greg Aaron: Okay and Berry which one would you vote for just so we know?

Berry Cobb: Well to be honest I'll take any one except A. Like I said I'm driving right now so I'm not in a position to be voting but, you know, at the very least because there's scope issues I'll just take the more research one.

Greg Aaron: Okay. All right so I should - Berry can you put yourself on mute please? Okay thank you. Okay so we have six votes now. Somebody hasn't voted yet. If you don't want to vote just click No Vote so we know that you participated. Okay. I'm going to give this one more minute so consider this your last call to participate in the straw poll.

Berry Cobb: Greg this is Berry again. I'm going to add that this go to the list because there are several members that aren't on the call that won't get the opportunity to vote so thank you.

Greg Aaron: Okay this is a straw poll at this point. Now Bob says he voted no but it's not recording. So at this point I think that's seven votes, we have four for no recommendation and we have three for monitoring. And Fred can you explain your comment? You said this is a limited vote.

Fred Felman: Yeah, I mean, I just don't think it's worthwhile, I mean, this is a much larger group, this isn't representative of the group. There are six of us on this call so I just think it's limited.

Greg Aaron: Okay this is a straw poll Fred, this is not a binding thing. We're trying to feel out where the group is. Okay so we have four who said recommend nothing, we have three who want more research.

((Crosstalk))

Man: I thought James and I and Berry and Fred would be four for the further investigation. Has James slipped over to no recommendation?

James Bladel: Yeah this is James. I'm kind of torn between the two right now, I'm on the fence between recommendations or - I think the problem I have there is the recommendation for research specified ICANN staff and I think I would like to see it say something like ICANN staff or an independent research firm.

Man: Yeah that would be fine with me.

James Bladel: I'm sorry?

Man: I think that's great, that's fine.

James Bladel: Yeah. I mean, other than that, I think that would probably make me feel more comfortable with the do more research. Oh now they're changing even more.

Greg Aaron: People are shifting, all right.

James Bladel: Yeah if we made that change then I would be fine with that idea, I'm just concerned about over burdening staff right now between now and Brussels.

Greg Aaron: Okay, all right. So now we've got votes narrowed down into two areas. Let's take this to the list. What I can do is post up the two recommendations as they currently stand. We can ask for some edits

to those and see what we get. Okay, all right thanks everybody for participating in the straw poll.

All right, let's move on then. Let's go back to the public comments. We just went through the registry stakeholder group comments. I didn't hear any questions about those. So the next one would be the Go Daddy comment and James would you like to summarize it?

James Bladel: Sorry, what was that? I was multi-tasking.

Greg Aaron: Oh sorry. The next public comment in line is the Go Daddy submission.

James Bladel: Okay I don't have that handy but I think that, you know, I don't think there's any surprises there inasmuch as I've probably echoed a lot of these in the call and I don't think we necessarily diverged from anything that's contained within the registrar stakeholder group comment.

Let me just pull it up here real quickly. I think we addressed some of the ideas that there are certain types of abuse that while they may be problems they are outside of scope.

You know, Go Daddy has made significant investments in combating abuse on our own and working, you know, with - collaboratively with industry consortiums. And I know Greg and some of the other folks know that there are a lot of different groups that we participate in as well as, you know, maintaining a 24/7 team to handle these issues internally.

And we think ICANN, you know, primarily is a facilitator bringing people together who maybe have different perspectives on abuse problems to help coordinate anti-abuse efforts. But I think ultimately the scope issue boils down to we don't think criminals necessarily respect contracts and so that, you know, contract compliance is possibly not the most effective anti-abuse mechanism that, you know, we can put out.

I think we put in there that we cautiously support some rework, refresh work on the UDRP. We'd like not only for there to be some discussion about how effective it's been versus cyber squatting but we'd also like to address or at least examine some other issues regarding UDRP in that effort, particularly how UDRP providers can modify their supplemental rules.

It's not entirely off topic because I think that, you know, the changes in the supplemental rules have almost really threatened the U in UDRP which stands for uniform and I think that we're starting to enter an era where uniformity of the panelists procedures is starting to diverge a little bit.

With regard to rights protection mechanisms and new gTLDs, we'd like to see how they play in new gTLDs before any discussion of moving them into incumbent gTLDs. I think that's just a conservative approach to making sure that we don't have any unintended consequences.

And I think with uniform contract, I think that, you know, I brought up the indemnification issue. I think that, you know, I think we're generally against this idea that because we don't feel one that it would be

necessarily effective against abuse and two that we feel that it would be - it could have other unintended consequences in the industry.

So I don't know, that's just a brief synopsis Greg. I don't think that it's contrary to anything we've said on the calls, posted on the list, and I think it mostly aligns with the registrar stakeholder group of comment as well.

Greg Aaron: Okay thank you James.

James Bladel: And Wendy is laughing at me. I don't know what...

Wendy Seltzer: I'm sorry, I'm laughing at Marika's comment that she couldn't upload the file because it was protected.

James Bladel: Yeah we're going to stop doing that now, sorry. It was our policy to lock those PDFs when we put them up there but, you know, I know it causes Marika more headaches than any kind of abuse that it might solve so abuse of our comments. So we're going to stop sending protected documents to the comments forum, sorry about that.

Greg Aaron: That's okay. All right, any questions for James? Okay if not we move to the next one which was from George Kirikos, our former group member. Let me just run through it quickly.

He thought that the recommendation for review UDRP, he thought it was biased in favor of complainants to already overwhelmingly win UDRPs and if UDRP is to be revisited it should be in order to address reverse domain name hijacking and there should be formal contracts

between ICANN and its providers. UDRP should not be a mandatory process he thinks. Good luck with that I think.

Let's see, and then he goes on, he talks a little bit about reverse hijacking and so on. He then goes on to address front running. He thinks that it should be taken up by the group and he lists the reasons why. He doesn't offer any additional proof that front running is happening however.

See gripe sites, he thought that was out of scope. Fake renewal notices, better education is an obvious solution he says. Kiting, he says he thinks that's a non-issue since the excess deletions policy is now in place. Malicious use, thinks that was out of scope, thinks that non-binding best practices is - actually he's against that one and he goes on to give some reasons why. He thinks verified who is data is actually better.

So who has access, again he's talking about verified who is data which is out of scope for this group. Uniformity of contracts, he says it's an attempt at compelled creation of abuse policies in the agreements that goes beyond label standards. So he's against that one, he gives some reasons.

Uniformity of reporting, he liked XML and generally likes it. Collection of best practices, he has concerns regarding the funding and then he has some concluding remarks and basically says leverage economics to deal with abuse. So that's a summary. Any comments, James?

James Bladel: Hi Greg, James here and I don't really have any comments on any particular items in George's comments. I just think that, you know, it's a

very thorough and there's a lot of information here and I certainly don't always agree with George but I think that, you know, I wish he had stayed involved with this group.

I think he has - there are some interesting topics here that we could have maybe benefited from discussing as a group. I'm not saying that I would have come down on his side but I just think it would have been interesting to work them into our deliberations.

Greg Aaron: Okay thank you James. Anyone else? I'm not seeing anyone's hand. And as a reminder, as we go through the comments if there's something that you think should be noted in our document, an idea or a point or a piece of data that someone brings up in the public comments, we can insert those into the document. So if there is something of note please bring it up.

Faisal Shah: This is Faisal. I like the part where George indicates that ICANN is a traveling circus. Maybe we should put that in there.

Woman: Send in the clowns.

(Mikey): This is (Mikey), I was actually going to make quite the opposite point. One of the things I think about George and some others in the ICANN community is that they score a lot of points against people who really because of their jobs can't defend themselves.

Greg Aaron: Okay thank you (Mikey), anybody else? Okay if not let's move on. The next one is from (Black Knight). I'm actually not familiar with (Black Knight) solutions. I guess they're a hosting and colo service.

Man: They're Michele, that's Michele. You don't know Michele? That's amazing. He's leading the IRPP working group.

Greg Aaron: I stayed as far away from that as I could.

Man: Some of us just loved spending years at that.

Greg Aaron: Okay so anyway, (Black Knight) calls himself a hosting and collocation and brand protection service and ICANN accredited registrar. Okay so the comments are gripe sites and offensive domain names, they were against that on the basis of freedom of expression and thought it was too subjective. Domain names is basically an indicator string.

Fake renewal notices, they say as a registrar they have received complaints from registrants about those and would welcome action to proposals to address it and would support the group's recommendation at this point. Who is access, it says that bad actors do abuse who is and there needs to be I guess revisions to the current requirements need to be revisited and also that compliance is needed on all registrars. And then also a comment above which I can't find.

As far as reporting, they support standardization and simplification of abuse reports which is not - well kind of recommendation we made. It's unclear to me what he's actually talking about as far as abuse reports.

(Mikey): This is (Mikey). I think what he's really supporting is standardization, that's a theme that has come up in a couple of other working groups that Michele is working on and I think he's basically just saying yeah, me too.

Greg Aaron: Yeah what he says, he says as a hosting provider registrar and network operator and colo provider we receive abuse reports for activity of all types across our network. So I don't know if he was talking about malicious conduct or just the concept in general I guess.

Regarding UDRP, he says a review of the process as a whole would not be unwelcome. Any process should be reviewed from time to time to assess whether or not it's effective. Any review of UDRP needs to be balanced and talks about some abuses he's seen.

Front running, he says without evidence any further discussion is a waste of time and resources and malicious use, he supports the concept of developing best practices, he would strongly oppose any attempts to make such practices mandatory, uniform practices would work in the favor of criminals and uniform practices could prevent innovation. And that brings us to the end of his comments. Any notes on the (Black Knight) submission? Okay none?

Wendy Seltzer: Wendy, I'll just suggest since we've heard a couple of times the recommendation that UDRP review be balanced we consider a note on that account.

Greg Aaron: Okay. Wendy would you be able to suggest the right spot or some language that could be put into that section of the report?

Wendy Seltzer: Sure, I'll take a look, thank you.

Greg Aaron: Okay cool, thank you. We'll put that down as an action item for the week. Okay any other comments on (Black Knight)'s comments? If not, we move on to the next one which is from CADNA which is the

Coalition Against Domain Name Abuse. Okay let me send the link up to the notes. There it goes, okay.

Okay and it says cyber squatting is one of the issues that directs - affects them and their members because their mission is protecting brands. And they did agree with the recommendation to look at the UDRP, said the UDRP exists as a reactive rather than proactive means of combating cyber squatting.

And they recommended that we also do a PDP to create a mechanism to prevent cyber squatting before cyber criminals can register infringing domain names. That strikes me as something we did do when we talked about the other rights protection mechanisms which put up barriers before or at time of registration so I think we did do that.

Let's see, and then they said that the RPMs in the new TLD space are inadequate and as such should not be applied to the current GTLD space. So their objection is they don't go far enough.

CADNA supports the recommendations regarding who is access, uniformity of contracts, and the meta issues. One aspect that emerged across each of those recommendations was the need for consistency across different entities, consistency in policy is vital. All right, issues have resulted from lack of consistency.

In terms of malicious use of domain names, CADNA agrees with the alternative view and thinks that ICANN should impose mandatory practices on contracted parties. Regarding the use of domain names the recommendation for non-binding best practices is too soft.

And they were disappointed to see that we refrained from recommending action on certain problems namely front running. They said it seemed as though the group did not have enough information about these issues to provide informed advice on how to improve them. So they said should monitor as report suggest but actively also investigate and seek out the root of the problems. So those are the CADNA comments. Does anyone have any observations?

Man: Faisal, you posted a note regarding recidivism?

Faisal Shah: Yeah I think that at some point we're talking about the PDP trying to be proactive. I was thinking maybe they might have been referring to some kind of recidivist type of mechanism where you can somehow get to these cyber criminals before they register but I'm not sure, you know, unless it's some kind of a list or something. I'm not sure how you would do that.

Man: So you're talking about serial abusers?

Faisal Shah: I think that might be - I thought that's kind of where they were coming from but they weren't very (unintelligible) their comment. And I don't know if Fred is still on the phone, if he's got some thoughts on the whole recidivist.

Fred Felman: I am on the phone. I mean, it's hard for me to read into what they're saying, that is the only thing I could think about. That is one thing that is unaddressed and actually the report is, you know, some way of dealing with behavior that repeats.

Faisal Shah: Yeah.

Greg Aaron: Okay, any other comments on CADNA's submission?

Faisal Shah: So I guess the only other thing I would say is should we consider putting in not only monitoring but maybe also investigating whether or not front running is an issue or not since it's kind of where we're going with the slamming as well, right? Is it something that we should be thinking about investigating and also monitoring?

Greg Aaron: Well let's go back to our document and see what it says. We've got a little background noise. Perhaps you could try putting yourself on mute.

Man: Jet plane.

Coordinator: This is the operator. I'm trying to identify where it is coming from. Just one moment please.

Greg Aaron: Okay thank you. Now in the meantime our front running (unintelligible) follows. It is unclear to what extent - oh thank you, that's better. It is unclear to what extent front running happens and the group does not have a recommended policy development - does not recommend policy development at this time. The group suggests that the council monitor the issue and consider next steps if conditions warrant.

My recollection of the conversation was other than one documented case nobody has ever stepped forward with good documentation that front running is actually happening. We also recognize that it might be a little tricky to demonstrate depending on who's doing it and it can be done by many different parties.

What we tried to do in our recommendation was split the middle which was say it might be an issue, let's keep an eye on it, but we don't want to recommend that we start a bunch of process or more research especially since the ICANN staff already did - they did do one study on it. It seemed to have some - there were some methodology issues brought up but we went out in search of data, we just didn't find a lot of data to say that it was a problem.

It wasn't that there was no data, it's just there was a complete lack of proof that it's a big deal. So any other thoughts, James?

James Bladel: Yeah Greg real quickly, this is James speaking. And I'm sorry if I'm duplicating or contradicting things that might be in our report, I just don't have it in front of me. But you know, there are several issues that could be confused with front running like a few registrars in the past have experimented with putting names on hold or in a cart.

I think that with AGP changes that those kind of went away and I think that there was also a question of there was some malware out there that was trying to gain access to registrar control panels and was also intercepting search terms.

So I don't know if we can mention those in our report as possible things that could happen in the past that might have looked to a registrant or prospective registrant as front running, but in fact were kind of third party intercepts or attempts at other value added services that were, you know, kind of being painted with the same brush. So I just want to make sure that we have some mention of those in our report.

Greg Aaron: Okay so would you like to examine that section again and see if the cart holds and some of those kinds of things were discussed? If not, would you like to recommend an insertion?

James Bladel: Yeah I'll take a look at the report and make sure that there's something called out there and if not I will put together a few lines, a few sentences.

Greg Aaron: Okay great, thank you. Any other comments on CADNA's submission? Okay if not, we move on to the next one which is from the Coalition for Online Accountability sent in by Steve Metalitz. And it says as follows.

First is who is, they liked the recommendation on accessibility. Well actually what he said is the commitment to publicly accessible and accurate who is data. We commented on accessibility, we specifically did not comment on accuracy because accuracy is something else that the council is looking at through studies.

I think what we did do is say there are inconsistencies in the fields that are provided and so forth. So anyway but they liked the recommendation and appreciated emphasis on the efforts of the ICANN contract compliance team and like the recommendation for an annual compliance audit, registrar contractual obligations.

It said there should also be greater transparency about how ICANN compliance staff reacts to reports of non-compliance and discusses some of the things we could put in the report. And says that by the way, a lot of - some of these topics do better on the registrar accreditation agreement. So that's it for who is.

Second, they said regarding malicious use of domain names COA participants note that copyright and trademark infringements carried out online may also fall into the category of malicious behavior especially to the extent that these infringements are performed on a commercial scale and thus attract criminal liability.

The think that - agree that ICANN can and should do more to encourage accredited registrars and registries to enforce their terms of service and develop best practices to address these malicious uses. The discussion of registrar and registry terms of service and indemnification seems excessively differential to perceived concerns of these contracted parties.

We note that this discussion does not point to a single instance in which a registrar registry has been successfully sued by a registrant whose registration has been canceled based on violation terms of service.

Three, best practices. Without necessarily adopting the views of the working group about particular issues on which ICANN can do no more than call for best practices, COA does support the general recommendation ICANN do more to promote development and dissemination of best practices including structured funding mechanisms.

Left to their own devices the contracted parties too often lack either the motivation or the energy to undertake this work. In this regard it is instructive that although over the past nine years the registrar accreditation agreement has always contained a commitment the registrar stood by a code of conduct, that the accredited registrars

might develop by consensus special development has never occurred. And that's the end. So comments there, James?

James Bladel: Yeah if I could just touch on a couple of issues. One, the registrar code of conduct I believe is under development now along with a registrant rights and responsibilities declaration or document as well. So I think, you know, that stuff is underway as well as registrar training, you know, that's mentioned in the RAA but hasn't been implemented to this point.

Then with a mention here about - I'm trying to hit all the different topics that Mr. Metalitz rates here. You know, mentioned something about recommendations for compliance, annual compliance audits. I think there are - the compliance efforts and audit schedule is posted on compliance Website and it's different quarters they address different topics.

And I think that, you know, if he's recommending changes to that schedule he should maybe reference that schedule or we should in our report. It's not just who is, they're auditing just about every aspect of registrar agreements.

And there was one other point here that I wanted to just offer a thought here. Yeah, I must have lost it. I had three points and I think those two and there's probably another one that I'll be reminded of here shortly so I'll lower my hand.

Greg Aaron: Okay thanks James. This is Greg, I raised my hand. The comments say as follows. We note in this discussion - we note that the discussion, i.e. the report, does not point to a single instance in which a registrar or registry has been successfully sued by a registrant

whose registration has been cancelled based on violation terms of service. I'd like to draw attention to some careful wording there. It says where registrar registry has been successfully sued. I wonder how he is defining successfully.

James Bladel: Greg that was the other point I wanted to raise.

Greg Aaron: Yeah I - one could take that to mean the - a trial has taken place and a judgment has been rendered by a judge or a jury or whatever and I would note that a lot of people sue people in order to get a work towards a settlement and I guess settlements are more common than actual judgments. So some lawyers think that the mere act of filing that suit is a success criteria.

In the cases we mention in the report, you know, the cases were dismissed in favor of the registries and the registrars but it still cost the registries or registrars $80,000 to $100,000 per case to simply defend themselves from what was a spurious lawsuit.

So successfully sued I think there's a lot of variance about what that actually means in the document and maybe also in actual practice. Also those cases were not about necessarily canceled domain names. One of the issues is also putting domain names on hold or suspending them.

I'll speak also just for myself for a moment. I take exception to the statement that the contracted parties too often lack motivation or energy to undertake anti-abuse work. I think it would have been more appropriate to say some do because I know I have spent personally a lot of my company's time doing some good work in this area so I think

that was a very broad and perhaps over general statement. Anyone else?

James Bladel: Greg you reminded me of my last point which was that sentence about successfully sued for the cancellation of a domain name. I think successfully as a qualifier, also cancellation I think you pointed out is one. I think that one of our examples is either putting a name on loss or either implementing a UDRP decision, you know.

It doesn't mean that they're going to be successful but I think that the fact that, you know, registrars can be exposed for implementing, you know, a decision that was rendered according to ICANN policy is a good reason why we need to not just dismiss this idea of indemnification.

And also I do join you in saying that, you know, a lot of registrars have spent a lot of investments in dealing with abuse issues. This doesn't necessarily translate into larger market share, more revenue, or higher profits, this is purely a cost driver, you know, that we're absorbing to clean up our, you know, base of names under management and, you know, in fact reach out to other registries and registrars and help them combat their abuse issues.

So I do agree with you that saying that contracted parties, you know, as a whole are not interested or motivated. I think that our dollars and our efforts and our time speak otherwise to that.

Greg Aaron: Okay thank you James, anyone else? Okay, I don't see any hands so we can move on to the next one. And we've got just a couple of more minutes but maybe we can squeeze one more in. The next one is from

Phil Corwin on behalf of the Internet Commerce Association and it's actually fairly long. I don't know if we'll be able to get through it in the next couple of minutes actually. Maybe we should tackle it at the top of the next meeting.

So let me just run through the action items we came out of today's meeting with. We did our straw poll and we'll need to discuss the two positions that people are interested in. We'll send those up to the list for comments and edits. Marika will you be able to over the course of the week provide a new version of the document, the master document for mark up?

Marika Konings: Yes, no problem.

Greg Aaron: Okay great. Wendy is going to look at the UDRP language regarding balance. James is going to look at the front running language to discuss the items he mentioned like cart holds and other issues. And I don't know if anybody wants to add comments regarding the COA comments. James for example mentioned the compliance schedule and the ICANN Website and so forth. Anything I'm missing?

James Bladel: Greg this is James.

Greg Aaron: Yeah.

James Bladel: Yeah real quickly, I'm not real comfortable with, you know, saying that anything meaningful resulted from our straw poll. I'm thinking that perhaps if we could convert that into a survey. While leaving the language of the recommendation as flexible as possible, I think we'd

like it something a little more useful that we could, you know, and then if we choose to include that in our report we can.

So just a thought, I don't know if anybody on the call supports that but there are a lot of folks that are absent from this call. Now to be fair, there are a lot of folks that are absent on this call every week and then suddenly show up for the last day when we start to vote or have surveys and stuff. But I would be more comfortable if we are going to exclude it or if we're going to include it if we did so based on something a little more formal than the straw poll.

Greg Aaron: Right, well and the idea is we did the straw poll to see what options people are interested in. Now we're going to put those options out to the list for further discussion. The language is there for comment and for editing which I think that's what you're interested in at this point. We haven't taken a vote on it in any formal way or, you know, measured consensus levels at this point. We're not nearly there yet. Is that okay?

James Bladel: Yeah, no I think we're thinking the same things here that, you know, nothing, you know, it's just helping kind of lining up the choices for future surveys or consensus tests and I'm fine with that approach.

Greg Aaron: Yeah, okay no problem.

(Mikey): This is (Mikey), just to chime in a little bit. It seemed like we were moving consensus forward when we were talking about James's idea to broaden the language on who does the research because James's concern, and I agree, is over burdening staff. So if we could maybe take a crack at revising the language before we go to a poll.

Greg Aaron: Yes and I'm not suggesting we go to a poll yet because I don't think we're far enough on the language.

(Mikey): Oh okay.

Greg Aaron: One of the items as you mentioned is do we want to more research, if so how should it be done, should it be done by staff or someone else, etc. So we've got a fair amount of work to do and as you see that language, again it's a starting point so then mark it up or introduce any more ideas as you think appropriate. This week was the first time we've seen that material so we've got a little more work to do.

Okay so anyway, today we got through half of the detailed - I'm sorry, we are now through half the detailed public comments so we're making pretty good progress I think and we'll see how much of it we can get through next week.

Any parting thoughts before we adjourn for today? If not, thanks for attending everyone and look for some more discussion on the list this week. I encourage use of the list so we can be well prepared and move things forward on the next call. So thanks and have a wonderful week.

Man: Thanks Greg, great job.

Woman: Thank you.

Man: Thank you.

Man: Thanks Greg.

Greg Aaron: Take care everyone, thank you.

END