

The Working Group to Protect the Rights of Others (PRO)

Wednesday 2 May 2007

18:00 UTC

Note: The following is the output of transcribing from an audio recording of the Working Group to Protect the Rights of Others (PRO) teleconference on 2 May 2007. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. The transcription has not been corrected for language accuracy, nor for correctness of spelling, etc. and in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. This decision was made by the Chair, in the interest of efficiency. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

The audio recording is available at:

<http://gnso-audio.icann.org/pro-wg-20070502.mp3>

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

Attendance:

Kristina Rosette - IPC Chair of the working group

Peter Olson - IPC

Lance Griffin - IPC

Kelly Smith - IPC

David Maher - gTLD Registries c.

Avri Doria - Nominating Committee appointee to the GNSO Council

ICANN Staff:

Liz Williams - Senior Policy Councillor

Patrick Jones - Registry Liaison Manager

Glen de Saint Géry - GNSO Secretariat

Absent - apologies:

Jon Nevelt - Registrar c.

Tim Ruiz - Registrar c.

Glen Desaintgery: Sorry, (Kelly Smith) has just joined.

Kristina Rosette: Come closer to the phone, Glen.

Coordinator: And the recording is ready.

Glen Desaintgery: (Did he) just joined?

Kristina Rosette: Peter Olson.

Peter Olson: No, I've been here for awhile. It's someone else.

Kristina Rosette: Maybe (Ned). Glen, would you (this are) kindly to take the roll?

Glen Desaintgery: I will indeed. Kristina, we've got yourself, Avri Doria, David Maher
and Peter Olson. Please tell me who else is on the call.

Liz Williams: It's Liz, Glen.

Glen Desaintgery: (Liz), yes.

Kelly Smith: Kelly Smith.

Glen Desaintgery: Pardon?

Kelly Smith: Kelly Smith.

Glen Desaintgery: Kelly Smith, yes.

Kristina Rosette: And Lance Griffin

Glen Desaintgery: Lance Griffin.

Lance Griffin: Thank you.

Glen Desaintgery: Who else?

Anybody else? Now we've got Kristina, Avri, David Maher, Peter Olson
Kelly Smith and Lance Griffin with Liz and myself.

Kristina Rosette: All right. What I would (suggest) to do today and I was hoping that we
could do and we can do just one of two ways. One would be to just
discuss now that everybody's had a chance, so two of them on the
proposals that Peter had posted last week along with some other ideas
that some of us have come up with in the past week.

Or any alternative, we can go through Mike email that he circulated,
that kind of group dramatically some of the features and some of the
PRO mechanism and to the extent that there's the strong (ceiling)
formulated. The other about any of them are strong practices, we can

kind of flash those out. I have no particular preferences. So if anyone on the call does, please speak up.

Liz Williams: Kristina, it's Liz. Can I just ask you two questions?

Kristina Rosette: Sure.

Liz Williams: Number one is I just wanted to give a quick overview of the polling results that just come in because the 4th of May is the cut off.

Kristina Rosette: Right.

Liz Williams: And the second was the report production.

Kristina Rosette: Right.

Liz Williams: So, I'm happy to do that at the end to let the conversation run but I need to do that.

Kristina Rosette: Why don't, we...

Liz Williams: And can you speak up a little closer, I can't hear you very well.

Kristina Rosette: Okay. Well, I can't actually cut very well being quite fixed.

Liz Williams: Oh, okay.

Kristina Rosette: So, why don't we do this? I'll just make a note that at five before the hour, real shot. And I've just got an email from Tim Ruiz that he's not able to join but he's hoping to post some suggestions soon.

Why don't we do this? I guess, Peter – I'm wondering whether, you know, David and Avri, if you have had any questions about some of Peter's proposal? I know that, you know, Peter has refined them a little bit since they were originally posted.

So, Peter, you wanted just to run through some of the additional features that we've talked about in the past week?

Peter Olson: Hello.

Kristina Rosette: Yes.

Peter Olson: Yeah, okay. Great! I was muted.

Kristina Rosette: All right.

Peter Olson: And I don't know how to do this. The question was should I run through some of the proposals?

Kristina Rosette: Yup. Well, just on through some of – yeah.

Peter Olson: Yup.

Kristina Rosette: Well, you run through your proposal at a very high level and to the extent that we've kind of refined it on end of discussion amongst ourselves...

Peter Olson: Right.

Kristina Rosette: ...how you would that.

Peter Olson: Right. There was three basic proposals that the outsource Sunrise where we take the Sunrise and put it like at ICANN or at LISO, once and for all and have them run it such that the registries don't have to learn to do this one off thing every time. Or each new registry has to do it with to-do a form. That was the one.

And the second was this defensive release somehow getting these domain names that people really don't want just getting them removed rather than registered.

And then the third thing was a name string and notification letter will be like people could describe through trademark or their organization name. And then if anything came any domain name contains that string, then you get the opportunity to oppose.

Kristina Rosette: It should stop from going on in the background.

Peter Olson: Yeah, that's mean. That's Peter, you know, I should mute again.

Kristina Rosette: And well, some of the additional features of it that we talked about a little bit for example which regard to having a centralized database as verification and validation. And that would be, you know, something that ICANN could put out an RP4 with the thinking be that, you know, just as PWC acted as the validation agency forgotten you that there might be another organization that would be interested in taking on that job and then it could be centrally administered through ICANN.

And trademark right owners rather could subscribe to it in much the same way for example. But they would have to initially submit an application, you know, name, address, et cetera, for the purposes of really just record keeping. And that at the same time they would also pay perhaps any kind of an initial subscription fee, you know, \$100, \$50, whatever.

And they would also have the opportunity at that time to either create kind of a deposit account against which these could be drawn or on a pay to go basis. And the idea would be that they could submit the information and documentation to support all of the rights that they made was to rely on in various mechanisms. And then that entity would validate those or you could wait until they were the challenge or competing applicants to verify.

And then, participants in this kind of validation database could essentially bend as detail this we were about designate which ones they wanted to participate in and on what basis. In other words, on what right that had already been entered into this database and verified, would they want to go for it, and this would kind of tie end with the lots service which would really anticipate more of kind of an IP claim process as opposed to Sunrise with (competing).

In order to participate in the watch service, for example, you know, we were talking with Mike this morning, you had (about) this is (Mark). If Yahoo wanted the watch service on YAAHO, they wouldn't be able to even request participation in that watch service and those occasion process until they had already established right through the validation database.

And it – what would happen is in much the same way that their IP claim process, required applicant for domain name to acknowledge the existence of IP claims for that domain name and confirm that they wanted to go forward. That similarly would anticipate a system that for example, could Yahoo was notified that there were some domain names that contained the YAAHO string, they would be notified simultaneously the applicant would be informed.

Look, there's a (tribunal) at the, you know, that Yahoo has a watch notices issued based on the claim submitted by Yahoo based on this right. You know, would you please in order to proceed with the registration you need to confirm to basically acknowledge that you received this information and confirm that you want to go forward.

If at that point the applicant wanted to go forward, then you would have to say a similar but preferably expedited the fee process very similar to what that (unintelligible) did with the staff in the sense that it would be – the domain name will not be activated until after the period for the right owner to object and the resolution of any objection. And so that was kind of another variation that we talked about a little.

Avri Doria: This is Avri, can I ask a question.

Kristina Rosette: Sure.

Avri Doria: A couple of questions. One - the first one is you would expect the same mechanism to work in IDMs as well as LDH is?

Kristina Rosette: I don't see why not.

Avri Doria: Okay. I'm - I guess I'm sort of curious concerned about – I understand that the words that are trademark that aren't common words would probably get into this database, usually. I'm assuming this database would be completely open and visible and that anyone could challenge someone's entry.

I guess the one that concerns me most is the variance. And how one really determined that a variance of the trademark that that's considered, you know, qualified for that. It's not the word donuts but it's the word like Yahoo or maybe Google. No, that one doesn't work out.

But anyway, that basically a non-word, how do you control that, chose that swab it fragment that could show up in many different combinations that aren't the mark itself, aren't validated as it were.

Kristina Rosette: I'm not telling he's right understand the second question but with regard to your first one, the fact that somebody would put information in this validation database would not necessarily give them a resubmitted aspect of it. Any, you know, this is on a Sunrise database. It's not as if I could get information they're entitled to – automatically entitled for the domain names.

So you could have, you know, eight different entities putting in a claim for Apple based on various rights and various geographic locations. There's no reason why you couldn't do that. You're not making, you know, one superior to another.

And in terms of the – can you...

Avri Doria: But once apple was in apples sauce would be as problematic as Apple, or apple pie or...

Kristina Rosette: But that would be...

Avri Doria: I love the apple.

Kristina Rosette: It won't necessarily be problematic (with a turn) as kind of notification that you could even put in a claim for, you know, a validation for Apple? Absolutely, doesn't mean that would have to do anything about it.

Avri Doria: But it would give – it would give those who have registered for Apple the ability to stop “I love the apple” from registering until they were satisfied?

Kristina Rosette: Well, it would basically be a delay. I mean yeah, in much the same way that would get these, none of the names that were applied for is to kind of the initial say could get registered unless and until all the IP claims had gone through the process.

So for example, you know, using apple sauce for – or joining the “I love apples”, it doesn't matter, I guess. Say, you had an applicant who wanted “I love apples dot”, you know, font or whatever. If Apple computer and Apple (lechers) and, you know, the Apple grows of America and the apple (lechers) the syrup could all put in validation claims for Apple or whatever their mark or claims like were. And had also based on that subscribe to the watch notice for apple.

Yes, they would all see notification that somebody was - if he apply for iloveapple.firm at which point simultaneously the applicant for iloveapple.firm would get, you know, a notification saying, "Your name has not a, you know, a watch notice." Or would you cut off with the wording but this is of it would be that they would be notified that the name had been put on a watch notice and by whom and on what basis.

And they could then say - they would then have to say, "Yes, I want to go forward to the registration because" - and they wouldn't have to give the explanation but internally they could - they would, you know, give the (unintelligible) of apples, they don't want to go to the dentist, they love apples.

So, they could decide to march themselves, you know, "I love apples", you know, that we're entitled to there, there's no reason why we didn't have this. And could say, "Fine, we acknowledge that we've received notifications and watch notices and we want to go look forward." And...

Avri Doria: And then...

Kristina Rosette: Once that happened, there would be a time period which I think realistically would probably be between a week and two weeks in which all of the parties that had, you know, Apple records, Apple music, Apple goes America, Europe, et cetera, would have the opportunity if they really wanted to and if they actually thought that they would win to object and try and block the registration of that name.

In order to do so, and this is where Peter could, didn't come where you are or Kelly, if you've got your note to our other conversations. You

would still have to pass to prove certain elements to win. They wouldn't be kind of complete UDRP because there's no use of being made of the name. So that element would come out.

But there would still be kind of a small (unintelligible) if the registrar would automatically say, "Okay. Well, you know, Apple records who said that this history of their watch (unintelligible) and you're going to go ahead anyway but I'm going to need the letter which is signed out to be that you're not at all." So...

Avri Doria: Who would you to take to be paid?

Kristina Rosette: I'm sorry, I can't hear you Avri.

Avri Doria: Who would you to take and who pays for these all? So, if I as an individual, you know, not a very rich person wanted the "I love apple" selling and Apple records, say signed, you know, that I challenged it. Then who may decide to that as a valid challenge and be. Then who has to pay for them doing the blocking and doing the whole process or basically does Apple records being richer than Johnny Appleseed make them the obvious winner?

Kristina Rosette: No, not at all. And in terms of the first question, I think we had envisioned that you would have this that if you handled by a defeat resolution provider, for example. I know that NAF, the National Arbitration Form, for example, handled the stock claims and the (Docu) process. You know, LISO has handled kind of Sunrise challenges for entering that movie.

So, you know, we're envisioning that these types of challenges would be heard by various types of the organization? And I don't think we've made any decision on the fee. And I certainly can't, you know, speak on behalf of a lot of trademark owners but I would imagine that it wouldn't be unreasonable to say that the trademark owner, or the rights owner, who ever the claimant is. They're the filing fee for the challenge proceedings. You know what it was and stop it.

Kelly Smith: We also discussed earlier - this is Kelly Smith – the possibility that just having the applicant have to verify and the safe of the claim? Yes, I want to proceed with this application, might have enough of a deterrent effect that you could just then rely on the UDRP, if indeed they chose to go ahead and use the name and end up right claimant could say that wasn't bad game.

Kristina Rosette: Right. I mean...

((Crosstalk))

Kristina Rosette: Right, and if you look for example, at the numbers into the (doc biz) was a concept report, you know, that acknowledgement of a claim, would you be effective in terms of – well, the number of people who went ahead with applications in the phase who got of IP claims was not, you know, I think it was less by 50%. I don't have the exact report in front of me. Perhaps, well maybe I do.

Kelly Smith: And Kristina, when we spoke earlier today, I envisioned that a note will go out to domain name applicant if not only their proposed name triggered a watch notice that if the right owner said, "Yes, I intent to insert rights against this name."

So, in your “I love apples” scenario, I – it's to say that they wouldn't get those notice until Apple decided, “Yes, this is something we don't like”.

((Crosstalk))

Kristina Rosette: I mean, you know, it could work that way.

Kelly Smith: I think that might...

Kristina Rosette: The problem with domain with that way though is that I think, yeah every time you have to go back and forth to the rights owner, given a slow down, you know, just then the time and so the name can go live. That would be the only (unintelligible) to doing it that way.

Man: Right.

Kristina Rosette: Yes.

Kelly Smith: Okay. I think I understand. I mean I think it's wrongly waited in terms of those who claim property rights onwards and against the individual, because they know it's in an individual, you know, if I get a letter that sort of says, “Apple computer is going to challenge you.” I'm more likely to back off even if I think I'm justified but I think I understand what putting forward.

Kristina Rosette: Okay. Does anybody have any other question?

David, I don't want to put you on the spot unless you (unintelligible) expected to speak for the registry though, you know, put your own

registry. But what's your general reaction to kind of these ideas centralized validation than having more of kind of a launch motive type system.

David Maher: Well, first I don't have any official view from the registries and efficiency.

Kristina Rosette: Right. No, no, I understand that.

David Maher: And but secondly, my own – my personal standpoint, it sounds practical and I think it's better than a number of the other proposals sort of bit name. Okay, if one of those areas where I'm somewhat - I won't say reluctant but maybe defendant about getting into these because as an existing registry that has – well, we've been around so long that there was no thought of a Sunrise or the PRO back in the early 1990's.

And I understand that some of the registries have had considerable difficulties in administering the various Sunset provisions...

Kristina Rosette: Uh hmm.

David Maher: ...of that. And I - again, I'm not speaking for them but anything that can be done for that source, I could get support and can get a consensus to be a reasonable approach and that's my two sense.

Kristina Rosette: Another thing that I have been thinking about and actually thinking, that emphasis I'm thinking is whether another opportunity to kind of deal with the abuse of registration process after the fact as opposed to having to go kind of through the full pledge UDRP that whether there

would be - and this would have – this idea would work, you know, setting aside objections. But it would work only if there was something that you could do through the rules of UDRP as opposed to having said, you know, deal with the policy tough which in that case I'm not interested in putting forward.

But basically, you know, if there ways for example, to kind of create a – how do I say – a use or pay system and an UDRP type proceeding. But to basically structure it for example, that when a complainant and they'd still be bound by the various requirements that they got to attest that everything is true and that they're not submitting this for a purpose of harassment or for reverse high jacking, et cetera.

That when they submit a complaint, they would commit their fee as ordinarily and that would when LISO or NAF, whatever the providers is, notifies the respondent that the proceeding has been filed which they'll do anyway.

That would start a kind of - I don't know. Maybe a seven day, a ten day window whatever, probably seven days within which the respondent would have to basically put up a bond, so to speak.

You know, obviously nothing – absolutely not more than the filing fee and they could probably be rest on that. And the idea being the respondent didn't put up that bond in that time that the proceeding would essentially be terminated and the complainant would be granted the release of thought.

And that would constantly reduce the fee for the complainant. Because, you know, the provider wouldn't need to have a panelist. And there would be no decision. That would be the other thing, is that there

would be no kind of panel decision, there'll be no panel appointed in those kinds of decisions. They would just be, you know, transferred, canceled, you know, whatever.

This however, the respondent wanted to just send it right to the domain name and put up the bond. Then we will go through the proceeding as regular with the caveat that the prevailing party would get the amount refunded to it that he'd put forward regardless of whether if the complainant or the respondent.

Avri Doria: Hi. This is Avri. Again, I guess I have a problem with that if that's prejudice against the individual registrant who doesn't have a corporate entity behind them. I mean anytime as an individual, you're saying that you have to pay, you're basically putting a threshold of richness in the past of somebody doing a registration.

And if less than petty cash for the company that wants to preserve and actually, you know, make wings around the onion sort of presentation, that they're not only a bit defending the core which is their property but their putting that sort of variant expense around it. And you basically made it very easy for them to stop individuals from participating.

Kristina Rosette: I actually disagree pretty strongly with that Avri. Because there's a practical matter, no trademark owner is going to the extent to prepare and file an EDR complaint against the domain names that is registered to an individual whether the individual clearly not using it for commercial purposes. It simply doesn't happen.

Lance Griffin: Yeah, also, I would add that, I mean for Disney, there's thousands of marks out there that we can make claims against. So, you know,

whatever it is, if it's 500 bucks a pop, it's still \$500,000. I mean it's not peanuts.

Avri Doria: Yeah, but it's - okay, you know, I mean it's obviously not one that we will resolve here, but that \$500 for Disney is possible that \$500 for me is impossible. And so, therefore if the cash flow issue for you, sure you've got to put the 500 in the pot but knowing that statistically, most of the people challenged would not be able to meet the challenge basically makes it free. They got a cash flow issue.

Kristina Rosette: Well, you know not really because in the event that, you know, the respondent doesn't respond at all. I mean it's not as Disney get (its money back).

Liz Williams: You know, what this is trying to deal with Avri, is the huge problem that you have all of the frankly, cyber squatters who register all these domain names and don't respond – they don't respond to the UDRP. They never intended to. All their looking to is monetized the name for Kristina.

Avri Doria: Yeah. No, I understand the problem and I'm not arguing that the problem isn't a problem, I'm just sort of trying to look at it from the perspective of a great multitude of registrant who aren't squatters and I'm specially concerned about those where they happen to go for something that's similar, that, you know, it's not Mickey Mouse, it's just mouse. You know, or, Michael Mouse because that happens to be their name.

And so, I'm really looking for how does this affect the great multitude of registrants the individuals for whom, you know, it's the \$6 fee. It's a –

well, the \$70 once you've finished signing up for all the things you've got to sign up for. And if that's a big expense for them, or at least that's, you know, versus the corporate interest whose trying to, you know, widen in order to protect the core which is their actual mark that it isn't the proper word, that's building these layers of the onion and sort of Talmudic expenses. You make the defense of perimeter so far out, so that you've protected your core. And in the meantime a lot of regular people are basically excluded from the process. And that's the concern I've got. I'm not trying to...

Kristina Rosette: I understand – no, no, I understand your concern and, you know, I guess what I want to say, and I apologize that if it wasn't clear. But it's not as if we're saying the rules of UDRP no longer apply. You still got to show that it's being registered and you've been that state. I mean - so it's not as if you're automatically saying that that requirement goes by the way side.

Avri Doria: Yup but my...

Kristina Rosette: If that's the requirement that a lot of, you know, contended, I mean that's the requirement that keeps most trademark owners from going forward when they decide not to go forward. If they're not, you know, is not a slam dunk. And nobody wants to go forward with something else unless it's a slam dunk regardless of who the registrant.

Avri Doria: But I'm saying that the bonds requirement basically works to the advantage of the mark claimants because that's prior to actually having to go through with the whole UDRP process.

Kristina Rosette: Well, you know, yeah but it's not going to even come into play unless the person is, you know, using the domain name in that (unintelligible) in the first place. Well, but, you know, we're not going to agree on this one.

Avri Doria: Correct.

Kristina Rosette: I know that. I mean I actually thought long and hard about, you know, how to come up with this in a way that it doesn't impose an unrealistic burden and frankly, you know, if somebody is truly using the domain name for commercial purposes, you know, you would think that it's generating revenue for them at some level.

Avri Doria: Right, yeah. We had a discussion in an earlier meeting in the WHOIS meeting about how difficult it is to say what indeed is commercial purposes, you know, but anyway, so that becomes yet another issue. I understand. I understand that I'll probably have a minority feel on that.

Kristina Rosette: Uh hmm. Just try to be that IR proposals and (unintelligible) presenting, I think it's probably covering it all, the ones that we talked about.

Liz Williams: I think so.

Lance Griffin: Just so I'm clear. Is this proposal instead of Sunrise or would it be coupled with the Sunrise or...

Liz Williams: It would be coupled.

Kristina Rosette: Yeah.

Lance Griffin: Coupled.

Liz Williams: Right, to my views, be coupled.

Lance Griffin: Okay.

Liz Williams: So in Intel, depending on, you know, one of the (unintelligible) that are considering coming down the pike, I may choose, actually have a name in that TLD that resolve but I can pick and choose. And then, if I sign up this name subscription idea - IP claims kind of ideas, then that would be on-going for all of the new domains. But I could cherry-pick and put these things in the Sunrise, you know, for certain of the TLD. That's how I envisioned it, that they work in tandem.

Lance Griffin: And were we talking about outsourcing the Sunrise to LISO or someone?

Kristina Rosette: I think it makes sense to have, you know, to come up with a way because that it can be outsourcing. You know, I don't know that way but it's probably going over themselves to run it.

But It then, you know, if you can find an external organization that is contractually obligated to develop and implement it, then, you know, you take that financial burden off the registries. It take the financial learn off the registrar.

Lance Griffin: Yeah, that seems like a great idea.

Liz Williams: Agreed.

Avri Doria: I mean that part of it. I guess, I do agree with - this is Avri again - that if there must be a process that that process be standardized, be the same for everyone, be verifiable, be public, et cetera, and to be cost neutral to the registrant at least the first part. Then another is we don't jack up the registration – initial registration way. Then it's certainly better than I think the (piece meal) individual each registry kind of does in its own way process.

So, while I may argue about what the process is, I think the generalization and standardization of it is a reasonable goal.

Kristina Rosette: I mean and I have personally and again, this is, you know, this isn't something that have been finalized but, you know, to certain extent I think, you know, the cost to participating in kind of the centralized validation and verification basis, I mean absolutely should be, you know, born in great part into the actual on-going participation cost by the rights owner.

And, you know, and it maybe that as a practical manner, there would need to have to be kind of a one time payment by the registry in order to have access to the data but I would think that - and again, I'm kind of speaking blindly because I frankly have no idea how much it cost a registry to design and increment its own process and over and over and over.

But I would have to think that there would be a way to structure that, so that regardless of how much the payment was that it was still significantly less than the cost of registry had incur and having said, you know, due to solve and stuff.

And frankly I think the only people who might not like it are likely the people who've already gone – they've already encouraged you to expect. And so, to the extent that they would view this as an additional expense and I could, you know, that idea is source of objection.

Lance Griffin: But maybe they could bid on it.

Kristina Rosette: What do you mean Lance?

Lance Griffin: Well, I guess I was thinking - I mean if they had the system in place maybe they could put in a bid to be the outsourcer or the place you go to that (but on). Is that possible?

Kristina Rosette: You could. I personally would have – I'm not sure it's a good idea to have the, you know, given that this would be kind of the database for all time. Well, you know, for how it's launched for all TLD that it would necessarily be a good idea to have a registry on it.

Lance Griffin: Right, I see.

Kristina Rosette: That's why I'm personally fixing the feeling on it.

END