

San Juan ICANN Meetings
New gTLDs discussion
GNSO Working Group: Protecting the Rights of Others
23 JUNE 2007
9:00 A.M.
(Kristina Rosette – PRO wg chair presentation)
<http://gns0.icann.org/correspondence/pro-wg-report23jun07.pdf>

>>AVRI DORIA: Good morning. I think with we're going to start. I know people will keep drifting in but we have got a very full schedule so I figure it is better to start. Let me introduce myself. My name is Avri Doria. This is the first time I am chairing the new gTLD committee as opposed to just being a bothersome presence in the room. I will try to be less bothersome at the moment. So I wanted to mention that it was the new gTLD committee because the schedule sort of listed it as PRO and then RN working group and various schedules so I wanted to make sure people knew that. I have put an agenda up there on the board. What I wanted to first do is we have transcribers with us today. They don't know all of us. We don't know all of us. So I wanted to ask everyone to sort of go around the room, say who they are, you know, where they're from, are they here as a member of the committee, are they here as an observer and constituency for observers, and so I guess I'll start with that and we may have people on the phone. We have a phone connection. At last check, there wasn't anybody on the phone, but I'll certainly check. So I guess starting down at the far right. Annette, you would be first to say who you are. When you introduce yourself, please take a microphone.
>>ANNETTE MUEHLBERG My name is Annette Muehlberg. I am an ALAC member from Europe, from Berlin to be precisely.
>>NORBERT KLEIN: My name is Norbert Klein. I am a member of the GNSO Council, and I am delegated from the non-commercial user constituency.
>>RAY FASSETT My name is Ray Fassett. I am with the registry constituency here as an observer.
>>MIRIAM SAPIRO: My name is Miriam Sapiro with Summit Strategies International, and I am here assisting Craig Schwartz with implementation planning.
>>JON BING: Thank you. My name is Jon Bing. I am from Norway. Working at the University of Oslo with research and (inaudible), and I am a councillor noncom appointee.
Thank you.
>>FERNANDO SILVEIRA: Thank you. My name is Fernando Silveira. I am from Argentina. I am a member of (inaudible). This is the chamber of the association of ESP of Latin American Caribbean. And I am a member of the business constituency.
>>ALAN GREENBERG: I'm Alan Greenberg from Canada. I am the ALAC liaison to the GNSO Council.
>>MARILYN CADE: My name is Marilyn Cade. I am a former councillor, so I was on the task force of the whole. I am a member of the business constituency.
>>MARIA FARRELL: I'm Maria Farrell. I am the GNSO policy officer on the ICANN staff.
>>CRAIG SCHWARTZ: Craig Schwartz, ICANN staff.
>>LIZ WILLIAMS: Liz Williams. I am ICANN senior policy councillor and running the new TLD side of things.
>>OLOF NORDLING: Olof Nordling, member of the ICANN staff based in Brussels.
>>KRISTINA ROSETTE: Kristina Rosette GNSO Council, IPC.
>>SEBASTIEN BACHOLLET: New elected ALAC member from the European region from France.
>>MIKE RODENBAUGH: I'm Mike Rodenbaugh, GNSO councillor from the business constituency.
>>PHILIP SHEPPARD: Philip Sheppard, councillor from the business constituency.
>>CHUCK GOMES: Chuck Gomes, councillor from the registry constituency.
>>HELEN LAVERTY: Helen Laverty, dot alliance Canada, observer.
>>EDMON CHUNG: Edmon Chung, registry constituency.

>>JEFF NEUMAN: Jeff Neuman. I with the registry constituency. I am a member of the PRO working group.

>>MICHAEL PALAGE: Michael Palage, member of the IP business constituency as well as a member of the PRO and reserved name working groups.

>>EDWARD VILTZ: Edward Viltz, Internet Collaboration Coalition.

>>MARGIE MILAM: Margie Milam, registrar constituency and member of the PRO working group.

>> Jon Nevett, member of the PRO and reserved names working group.

>>AVRI DORIA: I would like to ask the people who are sitting around the edge to come find

a microphone. You can use this one.

>>WERNER STAUB: My name is Werner Staub from CORE. I am here as an observer.

>> Good morning, my name is Veronica Coretu. I am a newly elected ALAC member coming from

the republic of (inaudible).

>> Dirk Krischenowski, member of the business constituency with dotBERLIN and observer.

>> Johannes Lens-Havliczek, observer.

>> Katrin Ohlmer, observer.

>>AVRI DORIA: Anyone who hasn't introduced themselves, walk up to a microphone and do so.

What I also would like to do especially at the beginning but perhaps all the way through to

remember when you speak, introduce yourself.

>> Dan Halloran, ICANN staff.

>> Patrick Jones, ICANN staff.

>>AVRI DORIA: Thank you.

>>DENISE MICHEL: Denise Michel vice president of policy.

>> Cameron Powell, Earth Class Mail.

>>AVRI DORIA: Thank you.

>>MAWAKI CHANGO: Mawaki Chango, NCUC, noncom commission constituency.

>>AVRI DORIA: Thank you. We will have people coming in from throughout the morning so I

will stop this now. I will constantly try to remember to say this as we go through the day,

that -- is there anyone online, I mean, on the telephone? Going once? Nope. Okay. Perhaps

someone will join later and they will announce themselves when they come on.

So as I mentioned, this is being transcribed so please as you speak, as you start to

speak, introduce yourself to make sure the transcribers or transcriptionists can make sure

that they have the right name attached to your comments.

The agenda is up on the screen at the moment. We're going to first go through a PRO report

from the working group and some discussions, and I want to mention something about

discussions in a second. Then we'll have the reserved names report and discussions. Chris

Disspain will be coming in to talk about ccNSO, GAC and IDN concerns. As people probably

know, there was a letter sent to the board relating to IDNs and IDN concerns so he will

discuss that with us, especially as it relates to the PDP that the council is working for.

There's a working lunch for the council in this room. Then after lunch, Kurt Pritz will

basically be talking about the work that's been done on the staff implementation notes that

have been released and then we'll go into an open discussion based on issues, lists

developing during the day.

What I am hoping we can do throughout the first, one, two, three, four items on the agenda

is have people mention their concerns, mention their issues, develop it as well as you need

to develop it but not get into the discussions that will hopefully include the give and take

that leads us to consensus and sort of save that for the afternoon discussion.

So everyone that has an issue, please get it stated. Both Liz and I will start collecting

them. Perhaps, where there are issues in common, we can collate them so, basically, when we

are talking about an issue, we can talk about it in all of its complex characteristics as

opposed to just based on one person's discussion.

The other concern I've got is that some of these issues are so content-full that if we start on one of them in the morning, we may never get to the rest of it, so I really did want to get them collected. And then we will get into the discussion in the afternoon and see how far we get today and we will be continuing this discussion later times in the week, et cetera. Any comments or questions on the agenda at this point?

>>LIZ WILLIAMS: Just to explain what you have got in front of you, if you look at the binder -- the black binder as part A which is the substantial piece of policies, principles and implementation guidelines and the discussion. It reflects the discussion from the committee from the 7th of June until the conference and then subsequent e-mail correspondence that's gone back and forth. In the large part of the binder, there is all the supplementary material that you might need to refer back to, which includes all the procedural stuff about the meetings. It includes the reserved names working group report, the PRO working group report, the GAC public policies and other pieces that you will need throughout the week. Please keep those binders. There is also this slim document in the white cover. That's the staff implementation notes. All of this is online, on the first page of the GNSO's Web site.

Of course, if you need anything, just ask me.
>>AVRI DORIA: I have -- before I hand it over to Kristina to do the PRO report I have one note about the network. I don't know if it showed up. The ICANN staff is working on doing a shift from the hotel's network to the ICANN network. At some point this morning, it will show up. It will be an advertised SSID. So when you see it, it's there. There has been reports that the Italian restaurant network is working fine for some people. So if you can't wait for the ICANN network, go to the Italian restaurant but only virtually. Did I forget anything that I should do at the beginning? No, if I didn't, Kristina, it is yours.

>>KRISTINA ROSETTE: Good morning, everybody. I am the chair -- was -- of the protecting the rights of others working group. We do have a lot of ground to cover today so I will try and try to keep my presentation to the remainder of the hour. Do feel free to ask questions at any point. I will primarily initially be following the report. I realize given the number of documents that have been distributed in the past few years, you may have not had a chance to review it closely which is why I am going to start with that. The working group was tasked with a two-part mission. The first, to document additional protections implemented by existing gTLD operators beyond the current terms and the registration agreement and existing dispute resolution mechanisms to protect the legal rights of others during the domain name registration process, particularly during initial startup of new gTLDs where there is contention for what registrants perceive as "best" names. The second aspect of our mission was to determine whether to recommend to the council a best practices approach to providing any additional protections beyond the current registration agreement and the UDRP for legal rights to others during the domain name registration process, again particularly during the initial startup of the new gTLD where there is contention for what registrants perceived as the best names. With regard to our initial project tasks, we -- and particularly with regard to fulfilling

the first component of the statement of work, we reviewed the existing registry operations and previously implemented mechanisms and all of the summaries of those that were prepared by working group members and constituency members appear as one of the appendices to the report. We also reviewed the new gTLD draft recommendations, the various registry proof of concept reports that were submitted in connection with the last round as well as the summit strategies report from July 2004, the evaluation of the new gTLDs.

With regards to consultations, we developed within the working group an online questionnaire that was intended to really try and get a broader, realtime input from the community as to what members of the community believe the issues were that were presented by these previously developed mechanisms. We also consulted with many of the members of the working group, had extensive expertise on these matters. There was a participant observer from WIPO, members from the various registries that had previously participated in these rights protection mechanisms, including those persons who had actually drafted and developed the sunrise and IP claims process that were used at least initially by dot biz and dot info.

We developed our report and developed a list of principles which when I get to those in a minute it will be very clear that although we did reach agreement on some key principles, there is a significant amount of work that remains outstanding, and that work -- if there is a desire to continue to pursue it -- can be developed and pursued in various modules, I believe.

With regard to the team, there were 20 members of the working group. One observer was staff support. We had a face-to-face meeting in Lisbon and 14 teleconferences.

As an overview, we were unable to reach consensus on whether to recommend a best practices approach. There was primarily articulated a concern about negative implications for new registry operators that may arise if they choose not to implement what had been defined as best practices. I know there are members of the working group here who had particularly strong feelings about that. So to the extent I'm not as describing the objection correctly, they should feel free to chime in.

The other primary motivation behind at least at this point not developing a best practices, so to speak, was a recognition there are a wide variety of registry service business models and once of the first principles we agreed on is there is really no, quote-unquote, rights mechanism that will be appropriate in all circumstances.

There was some concern by developing a best practices approach it could be misinterpreted as intending to have a wider application that was really the desire of the working group.

We did develop a list of principles that various working group members believed should be considered as policy statements, but full discussion of those was not completed.

Using -- there was agreement on six principles, support for six. And of those supported principles, there were six alternative views for four of them.

With regard to the outstanding work, that falls within three general categories. The first would be general principles. Second, fee-related aspects. I should note that there were various considerations regarding fees that were brought up, and the working group decided fairly early on that it was really most appropriate and efficient to essentially just set those aside and just note that they had been raised. And if there was a desire to pursue those further, then those could be but that it wasn't -- it was generally viewed to be

inappropriate to consider to pursue those.

There was also -- again, these are included within the working group -- a variety of new rights protection mechanisms or features of mechanisms that were proposed by various members of the working group that were not as fully discussed, although I'm hopeful that even if there is a decision not to pursue any of this work, the outstanding work in any form, that perhaps potential TLD applicants might wish to at least look at those mechanisms that have been proposed to get some insight as to how certain members of the community might have some ideas of ways to do this better.

In connection with our work, we agreed on 15 definitions which are in the report. Four of the definitions that are included in the, quote-unquote, agreed-upon principles, I set out separately here because I think it is helpful to have those in the context of those principles. Abusive registration. This definition was taken in large part, I believe, from the Nominet U.K. definition in the context of their dispute policies.

We agreed to define it as a domain name which was either registered or otherwise acquired in a manner, which at the time of registration or acquisition took place, took unfair advantage of or was unfairly detrimental to another's legal rights or it has been used in a manner which took unfair advantage of or was unfairly detrimental to another's legal rights.

The second is authentication of legal rights. This is something that had fairly wide support, the idea that there should be mechanisms for authentication of those rights and that the point at which authentication was required would really vary depending on the mechanism. But we agreed to define it as a process performed by the authentication agent to confirm that the complaint legal rights are prima facie authentic based on documentary evidence and of a nature and class accepted by the TLD registry for its rights protection mechanism. And then authentication of those legal rights is no bearing on their validity which is a matter for court's jurisdiction. With regard to that latter point, what we were looking to do, was to say if you were going to claim you have legal rights and trigger the mechanism those are going to be authenticated, there should be at least a process or procedure for saying do you own a trademark registration for this mark issued in this country on this date, with this registration number?

It does not go to whether or not those rights are valid, whether they are in violating someone else's rights. Do you, in fact, have documentation to support that you have the right that you claim to have.

Legal rights, again, kind of a key definition here. Rights of a nature and class recognized by a TLD as subject to authentication, entitling owners to participate in a Rights Protection Mechanism. Then we go on to identify the types of rights that have been included thus far, registered, national and regional unitary marks, unregistered trademarks, trade names, business identifiers and the like. In the latter category, it depends on the national or regional law. Rights Protection Mechanisms, processes or mechanisms adopted and implemented by TLD registries for the purposes of protecting legal rights by discouraging or preventing registry of domain names that violate or abuse a participant's legal rights. These are in addition to the protection afforded through the UDRP and registration agreement.

There are a number of other definitions we agreed on, authentication agent, charter

eligibility, defensive registrations and the like. There was an additional definition provided by the NCUC, that they wanted to ensure was included in the report and it was not approved by the working group primarily because given the time at which it was submitted, there simply was not an opportunity to discuss it. But, nonetheless, they felt fairly strongly that it be included in the report. I wanted to recognize that by including it in the presentation, namely, rights of others, right of the public to use descriptive and generic words, including where permitted by the law in the nation state where they reside to use words that are may be subject to legal rights.

In relation to unregistered legal rights, including the right to use words that are not subject to protection in their nation's state or where no goodwill or reputation arises.

Again, that would also include the right to make fair and legitimate use of words in which others may claim legal rights.

In terms of our methodology, we utilized the IETF conventions you have been seeing recently among the council, agreement support in terms of identifying the "should," "must," "may." We also used the RFC 2119 which you have been seeing more frequently in council work.

With regard to the principles on which we actually came to an agreement. The first and by far the most important one as far as the working group is concerned is that there is no universal Rights Protection Mechanism. Again, keeping in mind how we've defined Rights Protection Mechanism. We're not talking about the UDRP here. This is above and beyond the UDRP.

That there simply is no one mechanism that will apply in all situations to all registrants, to all registries, to all business models. That was truly agreed upon across every constituency that participated.

Second, that each new gTLD should adopt and implement a dispute mechanism under which a third-party could challenge another's use of gTLD's Rights Protection Mechanism that results in obtaining a domain name registration. That refers to if the Rights Protection Mechanism will result in a domain name registration, there has to be a mechanism for challenging the award of that name. In terms of what we have currently, that would apply essentially in the sunrise context. Where the sunrise registration process will result in a registration, you have to have a process whereby the third-party can challenge that registration.

Third, the legal rights on which a party bases its participation and seeks to protect in a Rights Protection Mechanism should be subject to actual authentication, at least if the authenticity of such rights is challenged. Again, essentially -- not necessarily saying that all rights have to be authenticated in all circumstances, but that if there is a mechanism for challenging the authenticity of those rights, then they should as a threshold matter be subject to authentication.

Third, that if a new gTLD elects to use a sunrise process as its rights protection mechanism, it should restrict the eligible rights in such a manner as to discourage abusive registration.

And this was really developed as a reaction to what those of us who participated in the dot EU sunrise referred to as the Benelux problem. Namely that by virtue of how you define eligibility for sunrise registration, the recency of the registration was loosely defined

enough so that people realized, "Gee, I could go get a Benelux registration in a matter of weeks" went and did exactly that.

So the idea here is really if you are going to use a sunrise process, if you are going to link it back to prior rights, prior legal rights, then they really should be prior legal rights, not something that is really obtained in a mechanism and in a manner to essentially gain the system.

Fifth, that regardless of other authentication of legal rights, all new gTLDs should institute measures to deter abuse of the rights protection mechanisms and clearly false submissions. These measures could be automated or conducted on an ad hoc basis to focus on rights protection mechanism submissions that are nonsensical or likely to be false. And the example we gave here is where the registration number is 12345, where a claimed registration date is 00/00, where the registrant name is John Doe.

This is really in large part a reaction to the fact that many participants from the business and IP constituencies from the working group have repeatedly encountered situations where the claimed legal rights are clearly so false as that, frankly, there should have been really a check to catch those. So that there really should not have been a need for an owner of legal rights to have to go through the entire process of challenging the authenticity of those rights because they are just facially invalid. Or at least so facially likely to be invalid that it merited further consideration. I know there have been some TLDs who have implemented some screening of those. And finally, that all legal rights to be protected in a rights protection mechanism must be capable of being authenticated.

And this is really kind of more of the macro correspondent to the previous authentication point. Mainly that in terms of defining a category of rights is that the right itself, if it's simply not possible to authenticate it, then you really should not use it as a basis of a rights protection mechanism simply because you will never have an opportunity for people to, "A," demonstrate that they own it and, "B," third parties to challenge whether or not it exists.

With regard to supporting principles, the first that all new gTLDs must provide a rights protection mechanism, alternative view, may provide a rights protection mechanism. Another one, that each gTLD applicant must describe in its application the rights protection mechanisms it intends to provide and how those rights protection mechanisms will protect the rights of others and discourage abusive registrations.

Two alternative views, the first that each gTLD applicant must describe in its application the methods that they will employ to protect the rights of others.

And yet another alternative view, that they must describe the methods, if any, that they will employ to protect the rights of others.

A third supportive principle, that if a new gTLD election to adopt and implement a rights protection mechanism that consists of eligibility or membership verification requirements and second-level name selection criteria, such as those used by dot museum, dot aero, dot travel, an additional rights protection mechanism may not be necessary.

The alternative view essentially change is made to "shall not."
The thinking there is where you have such restricted eligibility in terms of both participating in the TLD as well as the types of names that an eligible participant is

entitled to, that you either may not need any other mechanisms or that you don't; again, depending upon whether you are the support -- which category you fell in within there. With regard to electing to use a sunrise process, if a first come, first served allocation basis is not used, then competing applicants may be provided with an opportunity to reach an allocation decision either among or between themselves as the case may be, as opposed to automatically going to something like an auction or qualitative entitlement examination as to who is entitled to the name.

Really, let's let the applicants try and work this out amongst themselves. You may find that what ends up happening is that they decide that one is entitled -- one will have the name and that everyone else will have rights, sub-rights to it. Another principle is to the extent the gTLD is intended for or targeted to a particular geographic region, the legal rights on which the owner or claimant bases its participation in the rights protection mechanism should originate from the laws that apply to a country in the region or in the case of a gTLD intended for or targeted to a region within a country, the laws that apply to a region.

This is essentially intended to get at a situation in which you have a TLD that may be intended to target a particular, for example, North America. That if you are going to have that type of TLD and you are going to have a rights protection mechanism, that as a threshold, a nexus requirement, that the legal right originate from the laws of one of the countries or regions within, depending upon, of course, how the registry operator wants to define it, that there be a connection there. That if you are going to have a TLD targeted for North America, then it doesn't necessarily make sense, for example, to have people relying on rights from (inaudible) or somewhere else.

Finally, and this is actually an area that I think merits further work. Even if not formally in a working group. That the creation of approved model rights protection mechanisms should be available at the registry's sole discretion to select, which standardizes the rights protection mechanism across the registry/registrar, to minimize the costs of implementation and eliminates the need for ICANN to scrutinize this aspect of an application during the new TLD process. A registry applicant that fails to pick an approved model rights protection mechanism must not be prejudiced in any way if it elects not to use an approved model rights protection mechanism because this is purely a model, a voluntary standard. And of course this list will be updated from time to time as new approved models were developed.

One alternative view was that it should be, as opposed to being available for discretion, that it should be used by the new registry unless there's a particular reason for not using it. That the use of that standardized mechanism could minimize the costs of implementation and wouldn't eliminate the need for ICANN to scrutinize this aspect, but could lessen it. A third alternative view is basically just modify the (inaudible) ICANN scrutinize this aspect of authentication was the suggestion that it could eliminate it, not necessarily would.

Getting back to the point about this, this was something that was discussed very early on in the working group and again at the end and I think this could end up being a valuable contribution to the sense that to translate this, the thinking was we are not going to say that someone has to use a sunrise process. But if you are going to use a sunrise

process, this is what it should look like.

These are the key elements that it should have.

If you -- You don't have to use an IP claim process. But if you are going to use an IP

claim process, this is what it should look like. The idea being that if these had been

predeveloped, worked on and developed by the various subjective (?) constituencies and made

available to new registry operators, that having these available will really accomplish two

goals. Well, several actually. First would be that it would decrease the business costs and

startup costs for the registry. They don't have to go out and reinvent the wheel. They can

if they want, but there will be a number of options for them to select from.

Second, that depending upon how this would translate into the ICANN process, this could also

minimize the time and financial resources that ICANN staff is required to expend on reviewing

this aspect of the application.

From the intellectual property constituency side, it would also decrease and eliminate the

need from every time there's a new rights protection process, for every trademark owner to

have to consult with their lawyer and say what do I have to do, what do I need to get in

order, what boxes do I need to check this time.

I mean, this really seems to be an area in which, if we can have the time and have a very

focused root on this -- and again assuming that this is something that the council would want

to pursue -- that I think could really be a very helpful contribution that frankly would

benefit everyone. I think it really would.

I suspect there is someone somewhere that would just, across the board, object to this. But

it frankly would be in many ways a win-win scenario.

In terms of outstanding work, there are a number of principles that either were not fully

discussed by virtue of time limitations or were not discussed, and again, things that were

not discussed, it was really a function of time, not a function of exclusion. That

outstanding work fell into three categories: General principles, fee-related aspects, and

new rights protection mechanisms.

In terms of the general principles, the first one that all registrants have legal rights,

that gTLD operators should not consider the legal rights of IP holders as superior to legal

rights of others to register and use a domain name.

That the rights protection mechanisms used by gTLD operators should not presume that a

registrant is essentially intending to act in bad faith.

Third, all potential registrants should have an equal opportunity to register common words,

phrases, labels or strings as domain names.

Four, all principles relate to go rights protection mechanisms should apply equally to both

ASCII LDH TLDs and IDN TLDs. And I frankly am not entirely sure why this ended up in

outstanding work simply because I had thought, and I would welcome the contributions of

others and Avri, you might be the best person to speak to this, I had thought there was

generally agreement on this one but I know towards the end there was a decision that it would

best be put in outstanding work.

>>AVRI DORIA: I don't remember specific reasons, but I think it's that the -- there's a

question mark at the end of all the IDN discussions in terms of exactly to what extent, when

you are dealing with all the various scripts and all the various nations and all the concerns

that are coming out, are we sure that it's covered.

>>KRISTINA ROSETTE: So more a functionality of the IDN process than this working group.

All right.

Then finally that rights protection mechanisms for second level names should also apply to third and higher level names that are made available for registration by the TLD operator. Fee-related aspects. Again, these were really -- they were raised and it was decided early on that we needed to set these aside. Accepting payment for participation by means other than credit cards. The fee should be reasonable, and each gTLD applicant should identify in its application the basis for the fee calculation. That the fees charged for participation should be reasonably close to actual costs. And of course at the complete offset of the second and third, that the fees can be established at the sole discretion of the gTLD operator.

Finally the proposed new rights protection mechanisms and features of such mechanisms. And frankly, some of these have an awful lot of appeal and support within some of the communities such as the IP and the business community.

A centralized mechanism for authentication of legal rights. Standardized sunrise process.

An outsource sunrise process. Defensive removal. Name-string notification. Procedures for addressing competing rights. A name-string watch service and notification and a rapid suspension procedure.

And I think in particular, and I think it might be more a function of what people have had opportunities to discuss not only within the working group but beyond the working group and amongst themselves, having a centralized mechanism for authentication legal rights and a standard sunrise process -- in other words, that ICANN could issue an IFP for some organization to essentially collect all of the information about the legal rights, collect the documentation that is purported to authenticate them. Owners of legal rights could then kind of opt in on a per TLD basis as to which TLD they wanted to participate in, and it would be that centralized provider that would be basically responsible not only collecting the information but forwarding it on to the registry, who would have a trademark owner, IP, whoever was claiming the legal rights would have an annual obligation to verify that the

rights remained valid, and the like.

And that's it.

Any questions?

>>AVRI DORIA: Thanks.

What I would like to do now, on questions, is if you have a question, please, as I said, again introduce yourself and actually point to specifically which of the recommendations or supported statements or principles or outstanding work you are actually commenting on, if possible.

I mean, if it's a general comment, then a general comment, but -- thanks. And I guess I will leave it with you so you can put it back up if someone sort of says, "I'm talking about the supportive statement that says," and then it can come back.

>>KRISTINA ROSETTE: so I am clear, you don't want me to answer them but leave them for later?

>>AVRI DORIA: I think if it's a clarification point, certainly.

>>KRISTINA ROSETTE: All right.

>>AVRI DORIA: So anyone have --

>>KRISTINA ROSETTE: Michael, I thought I saw your hand.

>>MICHAEL PALAGE: I'll wait.

>>AVRI DORIA: You will wait.

Okay. Anyone want to start?

>>KRISTINA ROSETTE: Jeff.

>>JEFF NEUMAN: Sorry. Got all these binders in the way. My name is Jeff Neuman. I guess it's just a question on -- and I have never kind of been clear on this, as to what the role of this report is.
I mean, I know it's going to be forwarded -- it's forwarded to the whole new TLD committee, but for statements that have -- that are agreed and supported and then you have the outstanding work. What do we envision is the process moving forward?
>>AVRI DORIA: Okay. Well, it definitely has already been forwarded to this committee, so that part is done.
I think that it's basically, in part being integrated into the new gTLD recommendations that will be made to the council. I think it will be discussed. I think it will be part of the discussion that we have in terms of finding the consensus slash rough consensus points. I think in terms of the continuing work, that's something that, you know, if the committee feels that that work should be done, then it goes to the council and the council decides whether another working group, whether it's work that is really best done by staff. I think that the outstanding work part needs to be further discussed in addition. And I think we'll also need to figure out if any of that outstanding work is work that must be done before a policy recommendation for new gTLD first round, or whether it's something that should be done but can be done in parallel.
So I think those issues still have to be explored.
>>JEFF NEUMAN: Okay. And just, this is for Liz. I don't think -- I think I should have been on there for the -- in the recommendation summary as supporting number 1, 2, 3, 4, and 6.
>>LIZ WILLIAMS: Do you want me to amend the table?
>>JEFF NEUMAN: Yeah. I just wasn't included. I don't know why.
>>LIZ WILLIAMS: Just send me a little note, will you? And I will put it in.
>>AVRI DORIA: And I think that should probably apply to anyone that's got the "I'm not properly entered in the table," to just send a message to Liz.
>>LIZ WILLIAMS: Yep.
>>AVRI DORIA: I have Marilyn. Anyone else? Marilyn and then Liz.
>>MARILYN CADE: Thanks, Avri. My question really is -- it's Marilyn Cade speaking for the transcribers.
My question is really just to go back, if you would, to something you said and elaborate. When you use the phrase "can this work be done in parallel," as I understand the full launch calendar process, there's a period envisioned of, and I have heard the term four months used before, in which there would be a notice provided to the public at large about the opening of the ability to apply for applications.
So really, when we say parallel, it seems to me there's -- I'm just seeking to understand, it seems to me there is a window of opportunity where some of this additional work could be accomplished. It's actually in parallel with the completion of the launch process, but it's before the launch actually happens.
Could you just elaborate on your thinking?
>>AVRI DORIA: I guess when you are looking at work scheduling, you have things that have common begin dates, common end dates, staggered end dates. So I guess in determining what "parallel" means and when something has to get done, yes, that would be a great consideration. Is this something that should be done before the launch but during that window? Is this something that is not really needed until a second round?
Those are open questions.
So I think, yeah.
>>MARILYN CADE: Okay.
>>AVRI DORIA: It's basically a project management question, is what is the terminal date of

anything that the council decides needs to be worked on.

>>MARILYN CADE: But just to finish, my -- thank you.

The reason I ask is, some of the additional work that's called for, for instance, and I'm

not prejudging what the council would determine, what needs to be done by a certain time, I

just wanted to flag that time of -- that period between the council approves a process but

certain bells and whistles may be announced that they are going to be concluded in that -- in

that period so that it's not going to hold up the launch process. But it does still provide

time to complete additional work if additional work is planned.

>>AVRI DORIA: And it's certainly true of all the staff implementation stuff.

>>JEFF NEUMAN: I want to comment on that.

>>AVRI DORIA: Did you want to comment on that?

>>JEFF NEUMAN: On just that one point. Just being involved in drafting responses for a

number of RFPs for TLDs and also in a number of launches, it would be my strong argument that

all work has to be finalized prior to the issuance of the RFP. Companies spend a lot of

money, like my new one, on responding to RFPs on being detailed, and certainly once the

application is selected and contracts, you know, we're supposed to have a base contract so it

should be theoretically signed pretty soon after its selected, once that happens, building

commences. And if you are actually in the operations, you know that months and months in

advance, you have to lock down all the work.

And any little -- any change, no matter how little you might think it is, costs a lot of

money and time and resources.

So I would say that all work that's going to be done for a launch process needs to be done

prior to the issuance of an RFP.

>>AVRI DORIA: Okay. Thank you.

Liz.

>>LIZ WILLIAMS: Yeah, it's Liz Williams. Just a quick clarification. Just to make sure to

make sure that I think everyone is on the same page as this, this relates to application on

the same level, not applications for strings. So this is definitely stuff that fits into an

implementation plan, will have a direct bearing on what Jeff has just said. It's very, very

important that we complete the work prior to the release of the implementation plan and the

RFP. It would be unreasonable to have parallel work taking place at the same time that

related to an implementation plan. And Craig and I were just talking about that right now.

It's not --

>>AVRI DORIA: I guess what I meant is, for example, some of the work that talks about the

-- whatever the we call the templates, the recommended forms, the recommended -- one could

decide, the council could decide that we won't try to put those in for the first round and

that those are something that might happen at a later round.

So there could be that -- and I'm not -- I'm not --

>>LIZ WILLIAMS: That's a different point.

>>AVRI DORIA: And that's why I'm taking the word work as a group. Yes, anything for the

first round is one question. Anything that we say, well, it's interesting work, we should

think about it some of more, but perhaps we don't need it for this first round. We will need

it for future rounds. That wouldn't necessarily.

>>LIZ WILLIAMS: That also speaks to the valuation of the first round at a particular point

after the closing of the round. And Craig and I talked about inserting it that because it's

going to be necessary to do an evaluation, and when you can see that coming up, that's when

you will start to do that work. So no issue with doing it, but Jeff's point is exactly

correct in terms of what would be completed prior to the (inaudible).

>>AVRI DORIA: Thank you.

Ray.

>>PHILIP SHEPPARD: Philip Sheppard here from --

>>AVRI DORIA: I'm sorry, Ray and then you next. I was just saying I got your name. Sorry.

>>RAY FASSETT: Ray Fassett, registry constituency. I had a high level question. Was it

the expectation of the group, the output of the group, that all new TLDs will be required to

have a rights protection mechanism as part of their application process?

>>KRISTINA ROSETTE: That was a subject -- I mean, to a certain extent, that was almost an

implicit assumption but it was something that, frankly -- I mean, that ended up being kind of

a -- there wasn't unanimity on that. It was supported, but it wasn't clearly agreed on.

>>RAY FASSETT: Just a follow-up. So that is not one of the recommendations coming from the

group?

>>KRISTINA ROSETTE: To the extent that you are saying that the only recommendations are the

principles that were the subject of agreement, then yes.

>>AVRI DORIA: Philip.

>>PHILIP SHEPPARD: Thank you. Philip Sheppard, BC.

I think certainly we would share the sentiment that Jeff was expressing. I think it's

essential for clarity in this whole process that we are crystal clear, as council, in that

sort of in these things are part of the process, and probably we need to be explicit a

therefore as to what is not in the process if we're going to say that in terms of the

outstanding work.

And that is not clear at the moment from our existing reports.

So that is clearly a work item for us as council.

>>AVRI DORIA: Thank you.

Chuck.

>>CHUCK GOMES: Thank you, Avri.

One, I concur with what Philip just said, is that the committee really, I think, is in

unanimous agreement that the RFP needs to be clear right out the door with no significant

changes at all.

The question I want to ask in that regard, though, and this is kind of directed at Jeff, is

what if there were some relatively minor contractual changes such as reserved names?

For example, you will see in a little bit when I give my presentation that there are --

there's some work that needs to be done a couple of areas of reserved names that could change

which names are reserved; okay?

Some of those may or may not have impact. I fully appreciate if there's impact that it

would be a problem. I'm just curious whether you think that would still be problematic.

Obviously we have to define what's minor and that might be problematic.

And last comment before Jeff responds is I think we do have a window. I don't know how long

it will be but it's probably several months, where some work can be done before the RFP is

finalized. So we should keep that in mind, too.

>>AVRI DORIA: Mike Palage, and....

>>MICHAEL PALAGE: Thank you, Avri.

Kristina, thank you for your leadership on this thankless job. And as the former chair of

the working group, it truly is thankless on this topic.

Just a couple of points.

The first has to do with the definition of abusive registration. And in the definition,

there's talk about registered or otherwise acquired. And I would assume that that would

potentially encompass a transfer of the domain name.

And the reason I think that's important, it's unfortunate that Jon walked out, is I think

that wording potentially does have some impact that might be of interest to, if you will, registrants or in the registrar community. And I base that upon a discussion that just happened on the INTA listserv last week with John Berryhill. You may recall, there was talk about is it possible to within a UDRP where the trademark rights were acquired after the initial registration.

And there was a cite to the WIPO, the majority and then the minority opinion. So I think that this definition may potentially have some issues of how the UDRP may be interpreted. And I just want to sort of flag that, not arguing one way or the other, but as Avri said at the beginning of this, try to flag points of discussion that would be better, if you will, fleshed out at a later point in time.

And I think this definition does potentially have some other potential consequences, whether with the UDRP on that area.

That's my first point, if you want to respond to that.

>>KRISTINA ROSETTE: I'm not entirely sure that I am following that conclusion, only

because, to me, this is really talking about not the acquisition of the rights but, rather,

the acquisition of the domain name.

>>MICHAEL PALAGE: Well, I guess here's my -- I will sort of skip ahead.

And when we look at what we're discussing here, the protecting the rights of others, this

occurred within the context of new gTLDs.

>>KRISTINA ROSETTE: Right.

>>MICHAEL PALAGE: But one of the things, and wring the people from dot Berlin actually

prepared a very good synopsis that was circulated within the business constituency that did

an analysis of the UDRPs.

The majority of the UDRPs, the abuses that are taking place, are not happening in the new

TLDs.

For example, I'm just looking at the WIPO decisions issued on Friday, and I see about --

upwards of about 30 names. All 30 names that decisions were issued on Friday all involved

dot com. There was not one info, biz, name, pro.

So I guess one of the points that I think when we talk about protecting the rights of

others, there are issues that are happening, and most of the abuse still happens in com.

So I guess this goes back to not wanting to, if you will, impede the roll-out of new TLDs

because the abuses are really not happening. I did not see any noted abuse or documented

substantial abuse happening in the newer rounds of TLDs from 2004.

So I guess I'm just concerned how this definition may play out in other areas, where it be

the UDRP and --

>>KRISTINA ROSETTE: Right, the important thing to kind of keep in mind is that the

definitions are really -- you know, we went into this being very clear that it was not

necessarily going to be the case that the definitions that we agreed on would have wider

application beyond the work of the working group. And in fact, that was one of the things

that was really important to keep clear so that we could actually reach agreement on some of

them.

>>MICHAEL PALAGE: And that's the reason I'm trying to raise this point out, is there were a

lot of IP attorneys participating, and again, I appreciate how they try to plant seeds.

What I'm just trying to do is to educate the non-attorneys who may see how this --

particularly in the registrar and registrant community, how some of these definitions may

potentially impact other rights in other areas.

I'm just trying to bring attention to that fact so that people are -- they don't sit there

and say "how did this happen?" People could at least say "this is what is what was going on."

With regard -- Another definition that I have deals with legal rights. And in the definition, the legal rights appear to be, if you will, narrowly defined to more of, if you will, trademark-oriented, whether registered, unregistered, stuff of that nature. And I think it's important, and this is a point that you are well aware, Tim Ruiz was raising about being able to protect the right of an individual to have rights in commonly used words and phrases.

And I think what's important here is if you look at the dilution act, at least the U.S. dilution act that was passed, there actually was legal rights provided to individuals through the use of an exemption. And that exception -- let me see -- talks about, if you will, fair use, including any nominative or descriptive fair use or facilitation of fair use of a famous mark by any person in connection with advertising or promotion that permits consumers to compare goods or services, identifying parity and criticizing.

So I think if you look at legal rights, the rights that Tim Ruiz has been trying to advocate regarding individuals to make use of certain terms, I think those rights can actually be incorporated if we, in the definition, we recognize that fair use might be a legal right of a registrant as well.

So again, I'm not trying to argue one way or the other, but just trying to flesh out an issue that Tim, I think, felt very passionately, and unfortunately, he doesn't arrive here until Monday. So I'm not speaking on his behalf but just trying to put that out there as a marker.

>>KRISTINA ROSETTE: I understand that. I think what needs to be made very clear is that

the second sentence within that definition is not intended to be restrictive. It is intended

to be illustrative. So the definition is not on its face limited to trademark names.

>>MICHAEL PALAGE: I appreciate that. I guess my concern is that the rights of others talks about -- the fact that the rights of others tries to talk about the fair use rights that Tim was trying to articulate, one might argue, well, although it's illustrative and it is not intended to be limited, the fact that you described those rights in a separate definition, again -- I'm just trying --

>>KRISTINA ROSETTE: I understand that. I would note it was the NCUC representative who wanted to have a separate definition for that as opposed to incorporating it into the legal rights definition. That's really all I can say. I don't know the thinking there.

>>AVRI DORIA: Okay. Mike. I want to give about five more minutes to this and then we will move on.

>>MIKE RODENBAUGH: Mike Rodenbaugh from the biz constituency. To follow on Michael Palage's comments about dot biz and others not being subject to WIPO decisions of late, I think there is two strong reasons for that and that's that all of those TLDs had, in fact, Rights Protection Mechanisms at launch and, secondly, the fact that the cost of the UDRPs is essentially outrageously high and impossible to justify where most dot com domain names much less valuable names like dot biz, info, et cetera. I take that WIPO information with great assault.

[Laughter]

Less market value in general, Jeff, which I think you have a tough time arguing. Secondly, I don't know like the notion where you are going with that argument, Mike, is that

essentially we can put -- what I have heard Avri suggest as well, we might be able to put off discussion or implementation of Rights Protection Mechanisms in this next round. I think that would be a huge mistake and would be unfair not only to the last round TLD operators who, in fact, had RPMs but also later rounds which will have additional cost that this round won't have, not to mention the unfairness to businesses and IP owners.

>>AVRI DORIA: Thank you.

>>MICHAEL PALAGE: Can I respond? Mike, just to respond to that as I articulated in the PRO group, if you look at every RFP criteria that ICANN has issued, the 200 round, proof of concept round and the 2004 sTLD round, there were always explicit provisions where the applicant had to recognize what right protection mechanisms or how they were going to address. I have always supported that. I continue to support that, so I just -- you know, just want to make that clear.

>>AVRI DORIA: I do want to put off discussion. Yes, anyone? There is Jeff and then anyone else want to go before we move on to the next topic? We will come back to all this. And then Ray. And then we will come back to these topics again this afternoon.

>>JEFF NEUMAN: I just want to respond. I guess Chuck had asked me a question earlier I thought I would come back and just respond to it so the record was complete. Chuck said, my comment was everything should be nailed down by the time the RFP comes out and Chuck said something about what about reserved names. Many my architects and developers and engineers were here, they would say -- as they have said to me many times, it is a slippery slope you go down. There is lots of little things that a reserved named means blocking out one registration. What's the next thing and what's the next thing and what do they say?

Sure, if there were a number of reserved names that could be finalized to be included in the contract, that would probably be something that's reasonable unless it was the addition of a reserved name that the person who applied for intended to use in some sort of way and specify that use in the application. So that's just my point on that.

And, you know, I read Tim Ruiz's comments to adding additional rights. Back in 2000 when we wrote the dot biz IP claim process, that was a reason why we didn't do a sunrise because of the fact that just because someone has a trademark writes in a certain mark, doesn't mean they have rights engrossed to that mark in every single class of goods and services, in fair use and non-commercial. So back in 2000, we came to the conclusion that a sunrise could never work because of that specific point and that's why we created the I.P. claims process which was really a means of notifying all applicants that a trademark owner or multiple trademark owners claim intellectual property rights in that work and then ask the applicant whether or not he or she or it wanted to proceed with the application, knowing that it could potentially be challenged if they got the registration. That was the whole reason.

So my question is, I like Tim Ruiz's statement by the none commercials that other entities have rights to those names. I don't know how to put that in place or in practice, and I know it is an implementation question. If we are going to come up with policy, those are the types of things that we kind of need to have in the back of our minds. How would you put that into practice, other than an I.P. claim process? I have not found a way to do that.

>>AVRI DORIA: That's certainly a good conversation for later, especially after we've gotten

the staff implementation discussions on -- that should bring out some of those issues. Ray,

you had the last comment at this. We will be getting back to this later.

>>RAY FASSETT: On that, I will pass until later.

>>LIZ WILLIAMS: This is the first time this report has been discussed formally. There are

a couple of amendments to the report. One is Jeff's insertions of his support for the

particular recommendations, and the second part is inclusion of the comments from Tim Ruiz

which have been referred to. I have just done those amendments straight away.

The completed version of the report will be posted, and that will be it. It's now static.

>>KRISTINA ROSETTE: If you wouldn't mind, if we are going to just add -- and I don't

disagree at all that Jeff should have the opportunity to indicate his support, but I know

there are members of the working group who were not able to respond within the window within

which we finalized the report. I know -- do you want to indicate --

>>LIZ WILLIAMS: I will do a last call to the observers and say we've just made this on the

fly, if you are not here, you've got three minutes to do it. Maybe not three minutes. 24

hours.

>>KRISTINA ROSETTE: Thank you.

>>AVRI DORIA: Thank you.

>>LIZ WILLIAMS: I will do that right now.

>>KRISTINA ROSETTE: I know, for example, Peter and Lance were not available.