Registrar Accreditation Agreement (RAA) DT
Sub Team B
TRANSCRIPTION
Monday 14 December at 20:00 UTC

Note: The following is the output of transcribing from an audio recording of Registrar Accreditation Agreement (RAA) drafting team Sub Team B meeting on Monday 14 December 2009, at 20:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:
http://gnso.icann.org/calendar/index.html#dec
http://audio.icann.org/gnso/gnso-raa-b-20091214.mp3

Present for the teleconference:
Steve Metalitz - IPC – Chair
Tatyana Khramtsova – Registrar Stakeholder Group
Michele Neylon – Registrar Stakeholder Group
Tim Ruiz - Registrar Stakeholder Group
Statton Hammock - Registrar Stakeholder Group
Elisa Cooper - Registrar Stakeholder Group
Marc Trachtenberg – IPC
Kristina Rosette – IPC
Phil Corwin – CBUC
Cheryl Langdon-Orr - ALAC chair
Holly Raiche – At-Large
Beau Brendler – ALAC

ICANN Staff
Margie Milam
Marika Konings
Dave Piscitello
David Giza
Liz Gasster
Glen de Saint Géry

Absent apologies:
Avri Doria – NCSG
Heidi Ullrich - Staff

Coordinator: Thank you for standing by. I would just like to remind you that the conference call is being recorded. If you have any objections, please disconnect at this time. Ma'am you may begin.

Glen de Saint Gery   Thank you. Shall I do a roll call for you (Steve)?

Steve Metalitz   Yes, please.

Gisella Gruber-White: On the call we have Holly Raiche, Anita Cooper, (Tatyana Khramtsova Michele Neylon, Cheryl Langdon-Orr, Tim Ruiz, Statton Hammock), and Phil Corwin. For staff we have Margie Milam, Marika Konings, David Giza, Dave Piscitello, Liz Gasster, Glen de Saint Géry.

Thank you. Over to (Steve).

Steve Metalitz   Great, thank you very much. So I'm getting a little bit of an echo here. Is anybody else hearing an echo?

Coordinator: One moment.

Man: No, but I'm confused. I've now in the space of two minutes and have gotten two different addresses for the Adobe Connect for this meeting. I'm...

Margie Milam: Yeah, I'm sorry. This is Margie Milam. It looks like there's some confusion. The first one that Glen sent out is the one that's correct.

Man: Okay.

Margie Milam: The last one that just came out from Gisella is not correct.

Man: Okay.

Margie Milam: Does that make sense?

Glen de Saint Géry: (Unintelligible) again for the...

Margie Milam: Yes and the one you sent, not the one Gisella sent. Because otherwise, we'll really have confusion.

Glen de Saint Géry: (Unintelligible).

Kristina Rosette: Kristina Rosette joined.

Steve Metalitz   Okay, well we didn't send out a formal agenda in advance of this, but I did circulate a couple of things. I think we really want to try to do two things today. One is to just take one step back and see where we are in terms of our three tasks of this group. And if we can, try to identify some target dates for completing each of these steps. And then I think it would probably make sense to turn to the document that was circulated actually during our last call on the 3rd of December, and that's Margie's revised reorganized spreadsheet of the topics that have been submitted for possible RAA amendments.

And I don't know if we need to walk through that line by line or my likely just see if people have questions and - or if there's anything that's been omitted from that or perhaps put in the wrong place. We can then see if we can proceed ahead on the basis of that document.

So those were the - basically the two agenda items that I had proposed. Was there another - any other agenda items that people wanted to suggest?

Holly Raiche: I actually think that going through that document is a very, very useful thing in light of your revised agenda.

Steve Metalitz   Okay.

Holly Raiche: I'm saying I think the document is a very good one to go through in light of your agenda and just to identify the things that we can do and what is going to take a bit more time. I actually like your agenda.

Steve Metalitz   Okay, thank you. Any other thoughts? If not, then maybe we can turn to our three items on - three tasks that we were given. The first was to identify topics on which further action in the form of amendments of the RAA may be desirable. That's number one. Number two is from List 1. Flag any topics that may require further analysis as to impact on consensus policy. And three was proposed next steps for considering such topics.

Clearly, we've been working on Number 1 up until now, and I guess it would be helpful just to make sure we're all - we have kind of a common vision on what needs to be done in order to complete that first task starting with going through the December 3 compilation. And then you know Tasks 2 and 3, flagging topics and proposing next steps.

And maybe the best way to do it - do Number 2 is simply that as we look over the list of topics that we've compiled. If we see any that - people see any that they think may require further analysis as to impact on consensus policy; we are just supposed to flag those. We're not supposed to resolve you know how that comes out, but I think we are supposed to flag any such topics.

The one thing that we haven't really had much or any discussion about is what the next steps ought to be, and maybe we can - so we should think about how we're going to develop proposals for the next steps. And then the last point there was (regarding) the timeline.

So let me open the floor for comments from anyone about what is needed to be done to complete the first task and how we might ought to proceed on developing proposals for next steps. Any thoughts on either of those topics? I don't see anyone's hand, but I know some people - I'm not sure exactly who

is on the - I know we were all a little late getting into the chat room. So please just speak up if you want to contribute on this.

No comments.

Holly Raiche: I think everybody is probably - go ahead.

Steve Metalitz No, go ahead.

Holly Raiche: Yeah, I did send out an email saying some of the items that are on this are actually quite big items. Now I appreciate what's being done, which is there are in the matrix indications that some of the issues that were raised possibly are already in the RAA and may just need amendments. There are other things that are perhaps bigger issues.

I know that one thing I was concerned about was just the general issue of compliance. Because that was raised and it doesn't seem to be on the matrix. But I think it's worth saying if we actually propose (stuff), what is the possibility of it actually being enforced, and are there difficulties there.

And I think some of the next steps if you go down to the bottom, there were things like should it be a two-step thing. Should we think about some of the things we cannot actually put into the RAA because it will take a lot of work.

Is there any value in looking at the possibility of some lesser documents, such as Code of Practice or a Code of Conduct or something like that that would indicate this group thinks these are issues that are worthy of consideration. But at this stage going through it would obviously be a lengthy process. They are not going to make it into the RAA for some time. So those are the things I was thinking about when I looked at the extensiveness of this matrix.

Steve Metalitz   Okay, some very good points there. So may I summarize by saying I think you're suggesting that we think about prioritization or at least putting the topics into the shorter term and longer term baskets or something like that.

Holly Raiche: Yes, I think that's...

Steve Metalitz   Is that accurate?

Holly Raiche: Yes.

David Giza: (Steve), this is Dave Giza from ICANN. I just wanted to respond quickly to the question regarding compliance. Because as most people know on the call, contractual compliance is my responsibility at ICANN.

                  And so we are developing a plan right now to take the new provisions in the 2009 RAA and use them constructively in our enforcement work going forward, and so I do think that this working group needs to be aware of that. That you know compliance has been an ongoing mission, but not until just recently here with the adoption of the 2009 version of the RAA you know have we begun to see the kinds of compliance tools that we need to actually you know move forward and do our work you know more constructively and more proactively.

                  So as you begin to prioritize the topics ahead, just bear in mind that there is going to be a plan developed and released most likely by the end of this trimester that you know I think could be helpful for this group - or for others, if they want to know more and learn more about the enforcement actions that ICANN is planning in the future.

Steve Metalitz   Okay, thank you Dave. Let me - I know Tim had his hand up. Has anybody else wanted to get in the queue? Tim go ahead.

Tim Ruiz: Thanks (Steve). Yes, in regards to you know flagging topics that may require
             further analysis as to impact on consensus policy, you know I think the intent
             was that - the reason we would do that is because those that actually are
             consensus policy related are actually you know already provided for within
             the agreement as the topics for consensus policy. That those would be - that
             those would not be considered as part of the potential amendments. That
             those would be dealt with through the consensus policy process.

             So once those were flagged or identified, then those would be eliminated so
             to speak from this list of possible amendments to the RAA. So in other words,
             what we would end up with is a list of things that would actually require an
             amendment to get done. Those that could already be pursued through
             consensus policy would be dealt with through that process. Is that correct or
             is that clear for everybody? Or...?

Steve Metalitz   Let me see if anybody else wants to speak on this. Anybody else in the
             queue? I'll recognize myself. I think - actually, I have comments on a couple
             of things that have been said.

             First, Holly has suggested this prioritization and I think we should think about
             that. We may not know until - if we're trying to come up with two tiers let's
             say, the shorter term and longer term, we may not know which goes in which
             basket until we've gone through the whole list. But I think it may be worth
             making that distinction and at least including that in our - in what we send
             forward to the Council.

             I think in terms of the consensus policy issues, I don't disagree with what Tim
             said, but I think we may not reach agreement on what is covered by
             consensus policy or what needs to go through the policy development
             process. So I'm in - you know we may not be able to resolve that question,
             but I think we were asked to flag issues that may need to be looked at in that
             light.

So I'm fine with the general concept that if it has to go through a consensus policy process, it may not be appropriate for an RAA amendment. I'm just not sure we're going to all agree on what are in those new categories, but we certainly want to try to flag those that people in the group think are - do fall in that category.

Tim Ruiz: No, I think that's fair (Steve).

Steve Metalitz And then just in terms of what Dave said I'm not sure I heard you right. Is this a compliance plan that will be released by the end of the year or when is that expected to come out?

David Giza: Yeah, (Steve) we're developing the plan in this trimester, and so...

Steve Metalitz I don't know what a trimester is.

David Giza: Yeah, let me give you a little background on you know life inside ICANN. And so ICANN has a fiscal year and it divides the fiscal year into three trimesters. And so we're in the second trimester, which actually started in early November, and it runs until the middle of March.

So by the middle of March, we will have a draft plan developed. We will probably be talking about it quite frankly in Nairobi to get some public comment, feedback, and support from you know interested parties in terms of how ICANN intends to use the new tools in the 2009 version of the RAA as part of our ongoing enforcement work.

Because as many folks on the call know, there was an extraordinary amount of work and effort that went into creating the 2009 Version of the RAA, and now ICANN wants to take every opportunity that's available to us to maximize you know enforcement work using those tools going forward. You know tools such as aggressive audit provisions, tools that allow us to levy sanctions for noncompliance, and tools that allow us to explore other areas of the RAA that

were not previously explored or enforced. So that draft document will be available by again - by March 15.

Steve Metalitz   Okay, thanks Dave. That's very helpful clarification. Michele has his hand up. Anybody else want to be recognized? Okay, go ahead Michele.

Michele Neylon: This is in relation again to compliance. And I think David might - I know David won't be able to give a concrete answer on this at the moment. I know that is part of what he is working on at the moment.

But I mean a lot of the issues that compliance seems to be dealing with at the moment seem to be historical as in registrars haven't paid ICANN fees for what would appear to be several years. So the question I suppose really is in terms of compliance, is - are they still playing catch up or are they getting to a position now where they will actually be able to enforce kind of general/more so serious provisions of the RAA off the contracts?

David Giza: The short answer is that we are closer to the latter, not the former position. We've done quite a bit of catch up this calendar year as well as in the prior fiscal year in terms of non-renewing and terminating registrars who were not compliant with the 2001 Version of the RAA. And we're working I think as many folks know very aggressively on our registrar data escrow program, which is an emerging area of compliance that is one of our Top 3 focus areas for this fiscal year.

So we're actually starting to get ahead of the curve here in that respect and I think we've made it around the corner with regard to the registrars who you know have failed to pay us fees and registrars who for historical reasons you know have found themselves you know not in compliance with the 2001 Version of the RAA.

Steve Metalitz   Okay, thank you. Any other comments at this stage on our - looking at our overall tasks here? Well if not, it sounds as though in terms of Tasks 1 and 2,

we can kind of do these at the same time I think as we go through the December 3 spreadsheet. We should be thinking about whether there are any topics that may require further analysis about impact on consensus policies, so people should just speak up if they think they see one.

And then I think in terms of Holly's suggestion, we can try to put these in shorter term or longer term baskets with the - I mean and we review it at the end and see if we have got the right split and the right mix there. It strikes me that would be the best way to proceed on Numbers 1 and 2.

On Number 3, about next steps for considering such topics, I guess I would suggest that we might - we would encourage people to circulate something on the list about that. I think we - rather than wait until we're done with the compilation, let's start thinking about what we think the next steps ought to be and how to move these topics forward. And I don't have a specific proposal at this point. I don't know if anybody else does. But unless somebody does, I think we should encourage people to circulate something on the list and get that discussion started while we're working our way through Tasks 1 and 2.

In terms of our target dates, I think - I'm not sure we can say anything right now. Let's - you know maybe we should see how things go on the rest of this call in terms of walking through the spreadsheet. But I was - the staff did send out a document giving the deadlines for you know how far in advance a document has to be ready in order for it to be considered by the Council at one of its meetings in January, February, or March. So maybe after this call, I can circulate some suggested target dates for these tasks.

But I have the benefit of this other chart that shows me for example that if we want to get something on the Council agenda before the Nairobi meeting, we have to have the document all ready by February 4, which would mean we'd have to pretty much have done the work by the last week of January. So that's just you know to give an example of what these various deadlines are.

So are there any comments on what I've just said in terms of how we will proceed from this point? Okay, if not, then I guess I would suggest that we turn to this December 3 spreadsheet, which I think is on your screen and at least on my screen it's in extremely small type. But this was circulated on December 3 and I think I sent the link out to it again this morning.

Maybe if there's no objection, maybe we should just ask Margie to give us a quick overview of how this is organized and you know what the different columns mean, and then we can delve a little more deeply into it. Margie, do you want to...?

Margie Milam: Yeah, sure. And I believe the settings on the Adobe Connect room are such that you can adjust the size and scroll through the document yourself, so hopefully that will help you see it.

Basically, what I did was take all the info that we'd received to date and categorized it and consolidated it. Because there were a lot of duplicate ideas and I thought it would be useful to see them all in one place.

Now you know in many cases, suggestions were slightly different. So when I categorized something per issue and then (aligned) these sub parts within the issue, and then I've identified who provided the recommendation and any other additional language or implementation options that were suggested.

So for the first one, the first issue related to cybersquatting, and if you scroll through the document, it was essentially a recommendation to have a prohibition on registrar cybersquatting. And the recommendations came from staff and from (Danny Younger), and so that's what these provisions are here. And there are various ways of approaching the issue. I don't think we need to go into that now, but that gives you the background as to why we have four or five different options here. And maybe you will want to talk about whether this is an issue that has priority, doesn't have priority, or raises and issue of consensus policy.

Steve Metalitz   Okay, so Margie the list of issues is the shaded band and you have - you start with cybersquatting and you have a total of 18 issues I guess. Was there any - were these listed in any particular priority order from your perspective or just - is this - is there some other order to this or this is...

Margie Milam: No, there's no order to it. I think it's just the order they came up, so there's no particular order to the numbering sequence.

Steve Metalitz   Okay and then I noticed the cybersquatting seems to turn up on every page, but I assume that's just a formatting issue.

Margie Milam: That was a formatting thing. I apologize for that.

Steve Metalitz   That's fine. I think it's a very useful document. So you have cybersquatting, you have front running, registrar warehousing, malicious conduct, and so forth. And then where you've got a duplicate - or for example I see on the third page or so under malicious conduct there are several things listed as 4.4, which means I guess that these are very close to each other or in the same topic area.

Margie Milam: That's right. When it sounded like they were the same topic, I tried to keep them numbered the same so we wouldn't have to be repeating it and we could reference it easily on the list and in discussions.

Steve Metalitz   Great. Okay and then you have RAA reference, which is where there's a particular provision of I guess of the 2009 RAA that is involved here. You've referenced that obviously. Some of these suggestions listed particular provisions and some didn't, but that's drawn from what's actually in the suggestion, right.

Margie Milam: Yeah, that's right.

Steve Metalitz   Okay, great. Are there any questions about how this has been organized or presented here?

Holly Raiche: Just a comment. Some of these things might are to do with compliance or the Code of Conduct, which seem to me in a little bit of a different category to issues. So maybe we can kind of put those to one side given that we've already had the discussion with Dave and (the compliance team) we're looking at and what we do about that, which reduces the numbers somewhat of the issues. Just a thought because I see cybersquatting, front running, registrar warehousing in a little bit different light to what I'd say the comments on compliance and the code, which is further down the list.

Steve Metalitz   Okay, did you have an example of something that you felt should be put to one side or should we wait until we get to that?

Holly Raiche: As we go through, I think we can say the issues that talk about compliance and process - maybe are in a different category to the actual issues like front running and cybersquatting.

Steve Metalitz   Any other comments at this stage. Okay, well why don't we - then why don't we start with the first topic, cybersquatting? And you see there are four rather specific options that have been put forward by the staff, and then there's a very general topic that (Danny Younger) put forward. So I guess in a way we have a couple of questions here.

                  First, do people understand - you know are people reasonably comfortable with understanding what's being talked about here. And second might be do we have any thoughts about prioritization or any view on whether there's a potential consensus policy issue here.

                  Any comments on cybersquatting.

Holly Raiche: I hate to jump in again, but I think where we got to last time was a recognition that we almost need to agree on a definition that is workable, and it seems to me this is a longer term issue. Because once we define what it is including

how you determine bad faith, which is always a big issue, this issue will even thought it's very important take I think a fair bit of discussion. I'd almost put in a longer term issue (thing).

Steve Metalitz   Okay, you're voting for the longer term category. Michele had his hand up.

Michele Neylon: It's exactly the same thing. I mean without a workable definition of cybersquatting, any discussion (knowledge) is pointless. It's - cybersquatting is a term that a lot of people use incorrectly. Some people understand it to me one thing, other people understand it to mean something else. So you know while some of the concepts there probably are fine without knowing what exactly cybersquatting is, I can't see how on earth anybody can do anything with this.

Steve Metalitz   Kristina and then Tim.

Kristina Rosette: To the extent - I think the definition problem is solvable and actually relatively so. I mean yes there are a number of existing definitions of cybersquatting, some of which are actually used in - you know in the (unintelligible) whether it's in...

Steve Metalitz   Kristina you are dropping out here.

Kristina Rosette: Okay, I think the definitional problem is solvable and may not be as large as we may initially think about it simply because I do think there are a lot of existing reference points, many which exist within the ICANN universe that we can look to whether it's (BDRP) requirements. Whether it's - you know what the (SPI) is recommending for (UDRS). Whether it's - what the (DCTLD) registry operators are using.

And I think frankly if we were to actually just have you know a chart of what's the definition, where is the source, and even perhaps just starting within ICANN setting aside national legislation. I think we could come up relatively

easily with what the common elements are, and I would actually put this on a pretty high priority.

Steve Metalitz   Okay, Tim and then Marika.

Tim Ruiz: Yeah, I'm going to mention something similar to what Kristina said. And the other source you might look at is the registration abuse working group whom I think have been working on a number of different definitions of different types of abuse, so that might be another source to look to get an idea of you know if they've looked or discussed the definition of cybersquatting. And if they have, what their definition of it is.

Steve Metalitz   Okay, thank you. Marika I think you...

Marika Konings: Yes, this is Marika. Tim actually already made my point. In the registration abuse policies working group, they've had quite extensive discussions all on the definition of cybersquatting and how that fits into potential work in this area or recommendations they might make. It's likely that this group will come out with an initial report just before the Nairobi meeting in which it will put out all of these definitions for these different types of abuses including cybersquatting.

So you know it's (another moment as well) for members of this group and (just the network) to see you know what they have put forward and maybe use it as an opportunity to provide input as - once the Council looks at that as that might be a definition that can be taken onboard.

Steve Metalitz   Thank you, Marika. Tim did you want to be recognized again or is that - am I misreading this. Maybe your hand is up from before. Okay, Kristina.

Tim Ruiz: Sorry, (Steve). Just lowered it.

Kristina Rosette: I was just going to ask Marika does the (RAP) working group - do they have any kind of matrix or chart of the various definitions that you know they've looked to or are they starting from scratch

Marika Konings: There is a wiki where there are the different discussions points because they started looking at the (BDRP) discussions, but they also looked at the - I think it's the (ATPA) definition that has been used.

Kristina Rosette: Yeah.

Marika Konings: But there hasn't been a lot of discussion on whether that would fit or not or how it should be modified, and I think they are actually back to the original UDRP discussion. But I can post on the wiki - on the Adobe Connect from now where that wiki page can be found so people can see the discussions the group has had on that issue.

Kristina Rosette: Right. That would be helpful. And I would just note that personally I think if we start - I think we create many difficulties for pretty much everyone and every stakeholder group if we come up with a definition of cybersquatting that is materially different from within the UDRP. Because then you have different definitions applying in different contexts, which you know can certainly happen. But I think if that's the road that we decide to go down, I think we need to be very careful about that.

Marika Konings: And just to reassure you, I don't think it's going down that road. I think as (they've stuck to the base with UDRP), the only discussion that they had was whether certain elements would need to be added. And I think there was no consensus in the group that that should be done.

Steve Metalitz   Okay, thank you. It sounds as though there are some definitional resources, and I don't know whether they are available now and perhaps more in the near future. I don't know if that changes the views from Holly or Michele about the long termness or short termness of this issue.

Holly Raiche: From my point of view, if there are several definitions, I think it does perhaps say (the definitional issue) is alive and well. But if it is being discussed and already a part of an ICANN (unintelligible), I think it would be more sensible for us to see what comes out of that discussion rather than try to address a recommendation ourselves, or at least make a recommendation that says we would support something in line with work that is being done elsewhere in ICANN.

Steve Metalitz   So maybe we would- it would have to take into account definitional work being done elsewhere by ICANN.

Holly Raiche: Yes.

Steve Metalitz   Okay.

Michele Neylon: There's no point replicating stuff. I mean if somebody else is already actively involved with this, then you know it's fine to say, "Okay, cybersquatting is maybe something that needs to be addressed, but this group over there is working on that," and move onto stuff that isn't being addressed elsewhere.

Steve Metalitz   Well actually I'm hearing two different things here. One is that in terms of a definition, we may have one soon. Obviously we have one in the UDRP that we've had for ten years. We may have one soon in the registration context that is coming out of the registration abuse group. Before Nairobi is soon in my book, and therefore that suggests to me that this would be a good topic for the shorter term rather than the longer term. Am I mishearing something that people are saying?

Okay, if not, other comments on cybersquatting. Okay, let's move on to Number 2, which is front running. And there's a suggestion from (Danny). So (Danny) is not on the call, so we have what we've got here and I will open the floor for comments on the front running issue. Again, we're thinking in terms

of possible prioritization possibly and also the question of whether consensus policy is implicated.

So I will open the floor. And obviously if people have other questions about this, this would be appropriate now too. So I've got Michele and no one else at this point, so Michele go ahead.

Michele Neylon: I thought that front running had more or less been dealt with with the modification that was made in the last year or so. I mean the - since you can't just register domains and kind of get away without paying for them, I thought that was actually being nipped in the bud. Maybe I misunderstood something.

Steve Metalitz   Well it may be - I don't know. I think that was dealing with tasting rather than front running as I understand front running. It's where the registrar knowing that people you know have an interest potentially in registering something uses that information for its own benefit. I think that's what may be meant here, but Kristina has her hand up and she probably has a better answer than that.

Kristina Rosette: Well no, I was just saying that personally I would put it at a lower priority than for example things like cybersquatting, malicious conduct, and warehousing. But you know given that I don't - I haven't printed this out, so I don't have the whole chart in front of me. I don't want to make it the lowest priority, but it's certainly not the highest for me.

Steve Metalitz   Great. Thank you. Any other comments on this point - on this topic. All right, so I don't hear a clamor for putting this in the top bin. Any - unless there's other comments on front running, why don't we move on to registrar warehousing. This is Item 3.1 and then there's also 3.2. 3.1 is prohibition on warehousing or speculation, and 3.2 I think is - obviously it's the same general topic about registrars registering something in their own name.

But I think it's a little bit different suggestion, which is that registrars should be directly responsible to ICANN for the fulfillment of duties of registrants rather

than a prohibition on warehousing. This would include - this might allow - this might be the case where something is an acceptable type of warehousing, but the registrar would take on - ICANN can directly enforce against a registrar the obligations of registrants I guess is what it comes down to. So those are two topics in the same general area of registrations held in the name of the registrar.

So we will open the floor to comments on either of these. Michele you are first. Does anybody else want to make a comment on this? Michele go ahead.

Michele Neylon: Just the prohibition (unintelligible) activities. I mean without defining exactly what warehousing is, that seems a little bit broad. I guess does that mean that if for example my company expands and we end up with multiple subsidiaries that are involved in a variety of different activities, we're prohibited from registering domain names. It just seems very, very, very broad. So I'd be interested in seeing what exactly is considered warehousing.

Steve Metalitz   Okay, so there's a definitional question here obviously.

Michele Neylon: What to start with. I mean without understanding - it's a bit like some of the stuff that came up with regards to law enforcement. Without fully understanding what the spirit of the concept is, it's very hard to either say yea or nay. Based on what I see here, I'd run a mile from it. Or maybe that's not what's intended.

Steve Metalitz   Okay and you're talking mostly about 3.1 here.

Michele Neylon: Yes.

Steve Metalitz   Okay, other comments on either 3.1 or 3.2. Kristina go ahead.

Kristina Rosette: All right, I actually think that this is a fairly high priority and that Michele the understanding that you have in terms of - you know warehousing is not

intended to cover you know registration and use of domain names by a registrar for its you know principle business.

I think you know there's always been this bizarre clause in the RAA that basically says that registrars will abide by consensus policies including topics such as warehousing, et cetera, et cetera, but there's never actually been a consensus policy on warehousing. Which I guess leads me to think that perhaps we would need one for this particular topic given that the RAA calls it out for that.

But I think - you know I think we would need to kind of carve out and perhaps this work is going to be dependent on the work of the post expiration domain name recovery working group. Is that the right name of it? Because I think that there's definitely some of that conduct or alleged conduct at play, whereas from that perspective it's at the backend after the name has been you know originally registered and used by a third-party registrant who fails to renew it. And then you know what happens to the name in terms of does it go back in the pool, and if not, why not.

You know I think that in particular as the new GTLD process goes forward, this one in particular is going to be really important. Because you know part of the rationale for having new GTLDs is that everybody - nobody can get the domain name they want because everything is taken.

Well if you're going to expand the pool of domain names and theoretically the actual available pool of domain doesn't really increase because there are abilities of contracted parties to say, "Well you know these look like they could be valuable. I am going to take them," or, "These look like they are going to be valuable. I am going to keep them."

And you know I don't think anyone disagrees that that happens. (Elliott) got up and said in (Seoul) that anybody who didn't do it as a registry is a fool. But you know from that perspective I do think from the front end - in other words,

making the names available for registration in the first place. So I do think we do have a definitional issue on this one. I think it will be a little bit more challenging, but I think it's solvable.

Michele Neylon: So just coming back on that. Some of the GTLD registries - you know they clearly define - they reference warehousing within their contracts. They clearly define what they mean by that.

So for example - I'm trying to think of one offhand. (Dot DE) for example. Under your contract with (Dot DE), you have to do a certain number of actions per a 365-day period of which you cannot - it cannot be a case of just registering domains just to yourself and nothing else. Yeah, it's a definite - I mean with a definition, it would help from my perspective anyway.

Kristina Rosette: Absolutely. I agree. I mean it lacks a definition absolutely.

Steve Metalitz Tim did you have your hand up?

Tim Ruiz: Yes, I did (Steve).

Steve Metalitz Okay.

Tim Ruiz: It's in regards to 3.2. And I just wondered. There must be something specifically different about what the (IPC) would like to see there other than what's already in the new agreement. The old agreement of course had the clause where you know even if a registered name holder is licensing that that they are still responsible unless they provide the licensee's information. You know if there was reasonable evidence of (actionable) harm or whatever, so there's that part.

But under the new agreement, there was a specific section added in 3.77 that when a name is registered by a registrar for its own purposes, that they still had to submit to the following provisions and still be responsible to ICANN for

their compliance with all obligations of the registry's name and holder as set forth in the agreement, blah, blah, blah.

I'm just wondering how - what - of those two existing clauses, you know what else is needed or meant by what's being asked for in 3.2. And maybe this isn't the call to clarify that, but it would just help to have a better understanding of that.

Steve Metalitz   Well that's a good question. And my recollection is that we felt that the - those provisions did not cover the whole universe of situations in which the registrar is registering its own name in its own name or that of an affiliate parent, subsidiary, or entity under common control.

And those deal with one situation where you're licensing it out, the other where you're using it for some other purposes, but we felt that that didn't capture the entire view. For example, it wouldn't cover when you are basically registering (in respect to other purposes). That would be one example.

So I agree with you. We don't want to get too much into the weeds.

Tim Ruiz: Yeah, okay. I got you.

Steve Metalitz   That was basically the motivation. Other - do we have other comments, or questions, or thoughts about Topic 3, registrar warehousing. So I heard from Kristina that this might be something where there would be - this is one that might implicate consensus policy because of the language in the existing RAA, but she felt that it was probably a relatively high priority and that it should be a (debatable) term. And I know Michele had a concern about the definition.

Are there any other comments on 3? Okay, if not, why don't we move on to Number - I'm sorry. Go ahead.

Tim Ruiz: Just a quick question. I'm just curious why front running wasn't considered a part of the warehousing of or speculation in domain names. I don't know. Maybe Margie had a reason why it wasn't included in there.

Margie Milam: Tim this is Margie. Yeah, you're probably right. They are very similar topics. I think it would make sense to consolidate it here.

Steve Metalitz   All right, so - all right. If not - if there are no other comments on 3, let's move on to 4. Now there's a lot of points under 4. I think there are - it's down to 4.6 and there's several flavors of these different provisions on malicious conduct. But maybe we could just start with the first batch that were proposed by staff that are on basically the bottom of Page 2 - 4.1, 4.2, 4.3, which includes a registrar code of conduct, and 4.4 which is about maintaining complete and accurate contact information for a point of contact for malicious conduct.

        So maybe just starting with those, do people have comments on these again from the standpoint of priority and/or consensus policy? I see Tim and Michele.

Holly Raiche: And Holly.

Steve Metalitz   And Holly. Thank you. Anybody else? And Kristina. So let's start with Tim.

Tim Ruiz: Yeah, (Steve) I just didn't lower my hand from before. So you can move on.

Steve Metalitz   I'm sorry. Okay, Michele go ahead.

Michele Neylon: Well first off, I think just - the one thing I would be a bit concerned about is - just bear with me one second. The - where is this? (Certain clients of the RAA) requiring registrants investigate within a certain time - within a time certain. (They report demonstrating) (Unintelligible), blah, blah, blah. Yeah, this - okay law enforcement agencies (buying) security professionals (by)

attorneys (by) consumer protection agencies (by) trademark holders. Wouldn't that normally be attorneys?

Woman: Not necessarily.

Michele Neylon: Right. Because the kind of thing we've seen happen a lot in the past is where we get a lot of (spurious) takedown notices from people regarding domains, Web sites, and everything else mainly because the person in question is trying to use copyright and other things to settle business differences. So I would be very wary of anything involving the direct contact with trademark owners in that respect.

Steve Metalitz Okay, Holly and Kristina.

Holly Raiche: Yeah, I would actually separate these out into four. I think there are two easy ones here - that is one there's already rules about providing a point of contact. To me that's almost a compliance thing. The new one is the malicious point of abuse conduct and that seems to me very straight forward and also fairly critical. So I'd kind of put that as very important and it's very clear what's being asked for.

Steve Metalitz Can you discuss which one you are saying would be the...

Holly Raiche: Okay, I'm going down a little bit further, which is malicious point of conduct, which is a different set of requirements to just point of contact. So I think there are two. One is simply a compliance matter, the other is a new requirement, which is a provision of a 24/7 contact who can actually do something when they are contacted about some kind of malicious behavior. That's a separate one, but I think that's really very important.

And then the others are issues about the obligation on registrars to investigate. That appears to be (fairly) new and I think that may require a little bit more discussion, but I think probably a very high priority.

And the other subset - and this is simply registrars. If they are supposed to be actually looking at malicious conduct, then I think using an audible tracking system for (compliance) will be a tool in that process. So that's kind of the way I conceptualize what seems to be a lot of points under this heading.

Steve Metalitz   Okay and you - I think I heard you say that you would - the first two at least would be high priority and the third one, the audible tracking system...

Holly Raiche: That's a part of - if you are looking at investigation that probably would be a tool. One is already just to me a compliance matter. The other has been indicated as a very high priority.

Steve Metalitz   Well you say it's a compliance matter, but I think the point is that at this point, the registrars - correct me if I'm wrong and Dave could certainly correct me if I'm wrong as far as compliance. That registrars aren't required to maintain an abuse contact.

Holly Raiche: I was talking about the first one, which is simply a point of contact as opposed to an abuse point of contact. We had discussions last time saying they already have the provider contact, but what's really critical is a different set of information, which is an abuse point of contact.

Steve Metalitz   Right, but I think that's new though, right. That's not a compliance matter.

Holly Raiche: No. No, that one is new and critical.

Steve Metalitz   Okay, yes. Okay, thank you. Kristina I think was next.

Kristina Rosette: I think I pretty much agree with everything Holly said.

(Steve):   Okay, does anybody else - I'm not sure if anybody else is in the queue, but basically I get a sense that this is a high priority.

Holly Raiche: Yes.

(Steve):   All right. Okay, assuming - are there any other comments on - obviously, there are a lot of different flavors of 4.4. But without getting into the details there, 4.5 deals with resellers providing a point of contact. Are there - do people have thoughts on - is that included? I guess Holly was really responding to the whole set of Section 4.

Holly Raiche: Yes.

Steve Metalitz   Any specific comments on 4.5 dealing with resellers.

Holly Raiche: I guess my comment would be with the new RAA and with the new sort of flavor of the amendments, which is responsibility for resellers - it would seem to me logical to say, "Well if you're going to say there is a point of contact for abuse (methods) that the resellers and the registrars between them would have to sort it out, (but) there would have to be a way to get very quickly to a reseller as well."

Steve Metalitz   Okay. Okay, I've got Dave and Michele, and then I think we will probably have to wrap it up at that point unless there's something - is there anybody else that wants to be in the queue?

                  Okay, Dave Piscitello why don't you go ahead.

Dave Piscitello: Yeah, I wanted to make the point that 4.1 through 4.6 are priorities among the security the community, the anti-phishing community, law enforcement. The ICANN (desk tech) has weighed in on this with several formal documents. I would hope that we could make this a high priority. It has been around for almost a year in various forms, and I think it's time we pay attention to it.

Steve Metalitz   Okay, thank you. Michele.

Michele Neylon: I will just keep this short and to the point. I mean I think you know the serious malicious conduct is something which should be addressed separately from IP stuff. I just think pushing the two together is going to be problematic.

Steve Metalitz   Okay, any further comments on this point. Okay, well you know I think we're off to a good start here walking through this document, but of course we've only gotten through 4 of the 18 points. So I'm wondering - I think this is - I mean one way to proceed would be to try to do this online. But I'm not sure - I wouldn't be too optimistic about that, because I think it's helpful to have the back and forth and to see if different people have different views on either the priority or the question of consensus policy.

                  I think Dave has - Dave you have your hand up again.

Dave Piscitello: I just wanted to make an observation about trying to work you know through the email lists. When we had a number of similar issues that we had to wrestle with in the (fast flux) working group, the way that we approached it was that the chairman essentially grabbed one topic at a time, used it as a subject line in electronic mail, and started a thread. And the notion that that was going to be on the mailing list was a sufficient stimulus to get people to - you know to participate.

                  And the participation was fairly vigorous. I think Marika can attest to the fact that we had thousands of - you know 1500 or so email exchanges during the course of the working group. So I would be very happy to - you know to try to you know conduct some of the conversation using electronic mail.

                  I know that you know we are approaching you know the Christmas Holiday, but even if we could get one or two tackled between now and when everybody disappears, it would be useful.

Steve Metalitz   Okay, other thoughts on that. I'm certainly willing to try that. And I'm kind of shuttering at the thought of 1500 email messages, but you know I guess that would be success. It would show people are engaged.

So yeah, we could certainly try that and hopefully we can make some progress on that online. And then I've also asked already for people to start thinking about Topic 3 or excuse me Task 3, which is what should be the next steps and I'd welcome people's suggestions on that.

In terms of our next meeting, I don't think it's feasible to try to have a meeting before the end of the year given what people's - what's likely to start happening to people's schedules next week. But maybe we could shoot for a call the first week of the year, the week of January 4. And perhaps if we run a (doodle) on that you know very soon, we could get people to get something on their calendars for that first week and we can - we will see what we get done on online and wherever it is we could pick up and try to just focus on this - on getting through the rest of this spreadsheet.

I will also suggest if people have comments like - you know organizational comments like Tim's about front running you know fitting under the other category, I've noticed there's one or two items that were in the IPC submission I didn't find in the spreadsheet. So let's get those to Margie and the staff or circulate those so we'll make sure that we clean up any loose ends like that, which I'm sure there may be some. I think the staff has done a great job pulling all of this together, but there may be a loose end or two.

Any comments - any reaction to what I've suggested here as far as our next steps? Okay, if not, I don't want to keep people beyond the hour. And I want to thank everybody for their participation. I wish everybody a Happy Holiday season and we will hopefully be very active on the list and we will next convene the week of January 4.

Woman: Thank you.

Steve Metalitz   Thank you.

Man: Thanks (Steve).

Woman: Thanks. Bye-Bye.

Steve Metalitz   Okay, bye-bye.

END