

GNSO Protection of the Rights of Others (PRO) Working Group Teleconference

14 May 2007

18:00 UTC

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The audio recording is available at:

<http://gnso-audio.icann.org/pro-wg-20070514.mp3>

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

Attendance:

Kristina Rosette - IPC Chair of the working group

Peter Olson - IPC

Lance Griffin - IPC

Kelly Smith - IPC

Margie Milam - Registrar/IPC

Mike Rodenbaugh - CBUC

Jeff Neuman - gTLD Registries c.

Michael Palage - gTLD Registries c.

Jon Nevett - Registrar c

Avri Doria - Nominating Committee appointee to the GNSO Council

ICANN Staff:

Liz Williams - Senior Policy Councillor

Glen de Saint Géry - GNSO Secretariat

Coordinator: Lance Griffin joined.

Glen deSaingery: Hi Lance.

Kelly Smith: Hi. Kelly Smith is joining.

Kristina: Hi, Kelly.

Glen deSaingery: Hi, Kelly.

Coordinator: Liz Williams joined.

Kristina: Hello, Liz.

Liz Williams: Hi, Kristina.

Glen deSaingery: Hi, Michael. Hi, John.

Woman: Hello.

Man: Hello, Glen.

Glen deSaingery: Hi, Margie.

Margie Milam: Hi. How are you?

Glen deSaingery: Fine. Thanks.

Margie Milam: Good.

Kristina: All right. Glen, I'm going to ahead and start the recording. We've got a lot to cover, and by my watch, it's slightly after 2:00.

If you will be so kind after I've done that to take roll, I would very much appreciate it.

Glen deSaingery: I'll do that, Kristina.

Kristina: Thank you.

Coordinator: Thank you all participants for standing by.

At this time, I would like to inform all parties that today's call so being recorded. If you have any objections, you may disconnect at this time.

Thank you. Please go ahead.

Kristina: All right. Glen, if you'd be so kind to take roll.

Glen deSaingery: Certainly.

We have Liz Williams and myself from staff on the line. Kristina, we have you, Lance Griffin...

Coordinator: Avri Doria joined.

Glen deSaingery: ...Kelly Smith, Michael Palage, John Nevitt, Margie Milam, Avri Doria, and Jeff Newman.

Jeff Neuman Jeff Newman.

Kristina: Excellent. Welcome everyone.

Glen deSaingery: Have I missed anybody?

Jeff Neuman Jeff Newman. I just joined.

((Crosstalk))

Kristina: All right. In the interest of making the best use of everyone's time, I'd like to lay out the order in which I'd like to get things done in this call and it's frankly open to only a small amount of discussion.

As you all know, we're near in the end of our work period, the final report is due Wednesday. There are still a number of principles that need to be discussed, a number of definitions that need to be agreed on, and the like.

So what I would like to do is as follows.

Margie was kind enough to prepare some suggested definitions apposed to those released on Friday. I had a - requesting us to have some associates with extra time. So, had some additional.

And it really just kind of (unintelligible) changes with the idea of making the definitions slightly broader for purposes of prospective use, and I posted those to the list.

What I would like to do is, at least for now and up until Wednesday, leave discussion of the definition with the exception of one of them to

the list in the sense that I haven't seen really any comment or any other suggestions.

So what I'd like to do is really make that incumbent on everybody to review and post any comments they have so that we are in a position on Wednesday on - to do a kind of thumb up, thumbs down on a definition-by-definition basis.

The caveat to that -- and we can talk about this now or we can talk about this later, although I'm kind of inclined to say that perhaps we should just keep it in our mind for now and come back to -- is we need to have a definition of prior rights that we are all comfortable with.

And what I think would also be useful for illustrative purposes is that whatever we come up with provide or contain a - including to but not limited - including but not limited to construct, in a sense that - to the extent that we can come to an agreement as what the baseline should be, then I think that will be helpful for further reference.

Is anyone else getting this weird echoing?

Woman: I am.

Kristina: All right. Does anybody know where that's coming from?

((Crosstalk))

Glen deSaingery: I'll ask the operator to do something.

Kristina: All right.

So I guess what I would like to do then is move straight into discussion of some of the principles. And what I would like you to use as a guideline is the conventions that I circulated on Wednesday in terms of co-agreement support alternative view.

And what I would like to try and do is -- Liz, would you be able to really kind of describe for purposes of determining where we are in terms of agreement for alternative view?

Man: Yeah, Kristina, good afternoon. Just some quick questions.

Kristina: Sure.

Man: On the definitions, you have alternatives to some of them?

Kristina: Right.

Man: Why are they - what makes them - I mean, why are they alternatives and - or how is that going to be presented?

Kristina: Well, basically, I - instead of - I thought it would be easier for people to read that, for example, where I have included an alternative definition, the alternative is the definition that I am suggesting, but I thought that it would be easier for people to read instead of doing kind of a straight red line of the deleting what Margie had in replacement with that to just kind of identify alternatives.

And what we can vote on is we go forward is, you know, if people have other alternatives, then the list will become Alternative A, Alternative B, Alternative C, and then that's what we'll vote on.

Does that help?

Man: Okay. Thanks.

Kristina: Right.

So keep in mind that we're going to be using an agreement alternative view structure and that we are also going to use an overlay on that, the "must," "should," "may" convention, I believe, probably will be a (unintelligible) to phrase it, from the IE.

Yes, what I would like to do is start -- and I guess let's just do this in the order that they were submitted. So, (Tim), I think you are really the first one to submit principle. So, let's go through them and see where we are.

What I would like to do is, as we go through them, if it turns out that they're in agreement on one, next step will be to just ask - I will ask if there are kind of word choices or word changes that could be made to that principle that would then allow us to say whether or not there is agreement, and if so, then that's what we'll do, and if not, then we'll just leave that open and perhaps, you know, to the extent that we can, circle back to it on Wednesday.

So - and I guess that actually before we do that, is (Victoria) on the call?

Woman: No.

Kristina: All right.

She had felt rather strongly that since the (unintelligible) for best practices, that we should identify whether or not we are going to - whether or not what we recommend to be called best practices.

And I know that, (Tim), you had articulated some concern about that in my recollection -- and please jump in.

Is (Tim) on the phone?

Glen deSaingery: No, not yet.

Kristina: Not yet? Okay. Well, then we'll circle back. We'll keep his stuff and come back then.

But my recollection is that (Tim) had articulated some concern that if we were use best practices, that perhaps there might be a negative connotation associated with or imposed upon a registry applicant that did not impact (unintelligible).

Who just joined?

All right. Does any - is anyone else of that view? And if so, are there any perhaps caveat we could put at the end of a definition of best practices that would solve that problem?

Jeff Neuman Well, actually this is Jeff. I actually agree with (Tim). I don't - I'm not sure we should call - I think we should talk about the principles first and then figure out what...

Kristina: What we want to call them? All right.

I think then in the next quarter, and I think what I'm going to do, Kelly, if this is all right with you, is integrate your proposals in with mine because I think in a way they're kind of both mine in the sense of what I posted.

The first being that - I guess if you could elaborate as to what exactly you mean with regard to selection of the process should be left up to the gTLD registry operator.

Can you clarify whether or not you're saying that the decision of whether to provide one is up to the discussion or they must provide one in which one they provide up to the discussion?

Kelly Smith: The latter.

Kristina: Okay.

So that goes, I guess , to the first principle in this chart that I put forward, that all new gTLDs must provide -- I don't know, the grammatically correct way to construct that -- but a rights protection mechanism or I guess A, we should start with that.

Is there anybody who opposes that principle?

Man: Say that again please?

Kristina: This is a document that I circulated I guess last night. The first - and I'm just going to run through them.

All new gTLDs must provide a rights protection mechanism.

Michael Palage: Can I ask you this, Kristina? This is Mike Palage.

If you look at the 2000 proof of concept round and if you look at the -- what is it -- the 2004 sTLD round, there were specific provisions that said the proposed registry operator must propose how they are going to protect the rights of others, how they are going to minimize potential abuse for registration.

Kristina: Right, right.

Michael Palage: This is - so I guess what happens is - my concern is you talk about mechanism here and the mechanism is what causes my concern because I look at what ICANN has down to date by specifically providing for this provision in the RFP.

And I just see a - requiring "mechanism" that sounds something different than what - a mechanisms have been a philosophy or a principle, and that's what I'm concerned with if that makes any sense.

Kristina: I mean it does on a philosophical level. I'm not really sure how that translates to what we're trying to do here though.

Because - and let me just back up and say that the rights protection mechanism definition that I have suggested is very broad and is not specific to a particular type of process.

And in fact, you know, as I take my comments on the list today made clear, I include a TLD that has an eligibility verification validation process and a name selection criteria. Those are rights protection mechanism.

So, I'm not really quite sure how to translate what you're saying into a principle or not.

Mike Rodenbaugh: Maybe we - this is Mike Rodenbaugh. Maybe we just copy the language from earlier documents that you're referring to, Mike?

Michael Palage: Yeah. As I said, I mean I - it's just something that I wanted to raise because when we get - when people talk about mechanism, right, it's - well, these are the mechanisms. And if one looks back to when this group originally started, it was the Sunrise working group and then protecting the rights of others.

And there's - I think that there's a concern more of a form over substance that to what pigeon hole your rights protection mechanism falls into. And instead of really focusing on what the desired result is, i.e. minimizing defensive registrations, abusive registrations that potentially could be missed. And again, that's just something that has appeared in all the RFI - RFPs to date.

So, I don't want to take up anymore time because we do have a tight agenda, but I just want to raise that. So, thank you.

Jeff Neuman And this is Jeff.

The other thing I want to try to avoid, and I'm not saying it does it, but I don't want to appeal a registry who's got an idea going forward to be judged on their rights protection mechanism.

In other words, ICANN can evaluate it and, you know, maybe figure out ways to improve it or whatever, but I don't want a - I don't want the intellectual property constituency to business constituency to basically to be able to vote up and down a registry proposal based solely on how they perceive the rights protection mechanism. I mean they should be able to comment. Remember, registries are not intellectual property experts so they'll put something forward.

But they just don't - if you guys remember the 2000 round as some of your rounds, it became the circus where the intellectual property constituency drawing matrices and evaluating people's proposals and based solely on whether they have a Sunrise or not, they voted them up or down, and the intellectual property constituency expected that ICANN would just follow that.

I want to make sure that the next process doesn't turn into that that it shouldn't be evaluated on a basis of the rights protection mechanism, but that is something that, you know, people can comment on and improve upon when someone proposes it.

Kristina: Jeff, would you be comfortable with something along the lines of - that basically would save the rights protection mechanism? And I guess

we're going to get to this in a minute, and actually, let you get to that in a minute.

Because what I was going to say -- and this gets more of a kind of the second principle which I'm just going to number as they appear here -- that, you know, the presence of want, and just put it efficacy, I think it should be a factor in the evaluation. But I don't think - would you be comfortable if we said that it should not be just positive?

Jeff Neuman Well, I mean, definitely it shouldn't be just positive, but what you're saying it should be a fact. I mean there should be - they have to proposal one, but the efficacy, I would not, no, I would not - I don't think a registry should be judged on whether their proposed mechanism is going to be effective or not. I think that's subject for negotiations so for the expert evaluators evaluate it.

And I'm assuming that there'll be intellectual property evaluators as well. If they determine that that's not going to be effective, then they should sit down with the registry and negotiate it and try to figure out something that would be effective. But I really don't even think it should be the efficacy.

Again, I'm a registry. What expertise do I have on whether intellectual property mechanism is going to be effective? I can propose something but...

Kristina: All right.

((Crosstalk))

Kristina: Liz, what happened in the 2000 round? And this is the question I posed on the list, that if somebody just simply didn't fill out that section of protecting the rights of others or -- I forget exactly what the categories. What happened?

Liz Williams: They met.

Jeff Neuman Yeah, I mean I can answer that...

Kristina: Okay.

Jeff Neuman ...for the round. I mean you have to fill out the section which I agree we'd have to in the future. And then it just became literally free for all.

And, you know, the intellectual property constituency came out with the matrix and they evaluated the ones they thought were the best. But in the end, the ICANN staff pretty much ignored it.

Woman: Jeff, I just want to double-check something. Maureen Cubberley was the chair of - are you talking about the 2000 round or 2003?

Man: 2000 proof of concept...

((Crosstalk))

Jeff Neuman 2000.

Man: This is the...

Woman: Okay, fine. That's, you know...

Man: ...pre Maureen.

Liz Williams: This is seven years ago. I think what might be helpful is to turn to the way in which the business is done, criteria were measured in the other - the next round.

And I think that if you're proposing that, sorry, I have a scratchy voice today, if you're proposing that there's some kind of business (unintelligible) criteria that needs to be included to measure a capacity to run the rights protection mechanism or to protect the rights of others, that frankly is not going to be up to the thumbs up or thumbs down (unintelligible) public constituency.

That's going to be up to experts' evaluation - evaluators who are retained to provide expert advice on the whole content of an applicant's proposal.

Woman: Liz...

((Crosstalk))

Woman: Oh I'm sorry, I didn't mean to interrupt.

Liz Williams: No, no, no, no, go ahead.

Woman: Is this something that we need to include? I mean I guess what I'm wondering is, you know, do we need to address that here? Do we need to get...

Liz Williams: Well, I think when I sent my (unintelligible) irritating posed to the group which posed different questions, I think that one of those things that you want to think about the group is that it's actually not in the - first of all, it's not what we're looking for in this kind of work.

And secondly, I think that it would only be in the context of an implementation guideline as opposed to a hard and fast recommendation that will be included for the new TLDs report. And that's the context in which this work is being taken - is being undertaken.

So I think you have to be - one has to be very careful about the expectations one has of where these principles might end up.

Woman: All right.

Liz Williams: Sorry, very scratchy voice as Glen will attest.

Woman: Right.

Liz Williams: This has been going on for about four days now. So I'll minimize my talking, but I'm happy to answer any questions.

Kristina: All right.

Just so we can take a straw poll, who - Jeff, what I'm trying to do, and I don't need to discourage your concern, I'm just trying to figure out how to work it in here, whether we need to work it into one of these or whether we need to have it as a freestanding.

And I guess the other way, what I would suggest, is that if you could circulate some language, and then we'll make a point to discuss that on Wednesday, and to the extent that that language directly impacts whether or not we can come to a decision on "a principle" then, you know, we'll just note that and move on.

Jeff Neuman Okay.

Kristina: Can we do that?

Jeff Neuman Okay.

Kristina: All right.

I guess going back to the original principle -- all new gTLDs must provide a rights protection mechanism. Are we - let's put this - like who objects to that? Who cannot agree to that principle?

Jeff Neuman Again, this is Jeff.

I think the - doesn't the second question kind of encompass that? Each gTLD must describe how it's going to intend - oh, I'm sorry. Each gTLD must describe in its application the mechanism it intends to provide and how it protects the rights of others?

Kristina: I mean it's certainly - you know, one of the things that I try to do was I try to be very kind of incremental and I didn't want a principle to presuppose another one. That's clear.

I mean, in other words, it seems to me that, yes, to a certain extent, it is implicit -- the first principle is implicit in the second one, but I thought it was important that we kind of just fill them out. And that I know comes out - that comes up in some other areas here as well.

Jeff Neuman Yeah, I just - I'm fine with it, you know, I think it's - the RPM is something we need to define.

Kristina: Right. Oh no, absolutely.

Jeff Neuman But with the current definition, I don't oppose it.

Kristina: Okay.

So, would it be accurate to say that the tentative conclusion -- and of course, this is going to - we're going through this all again in Wednesday - subject to a definition of RPM that can be set to be the subject of agreement?

I'm sorry, Avri.

Avri Doria: This is Avri.

I just - yeah. I just put noise at your line. I know (unintelligible).

I'm wondering whether the "all" and the "must" -- in other words, I can imagine new TLDs that I know we're not using the notion of supported but that are specific communities and may not be even as develop the notion as you're coming up with because in there, is there identification

of who they're for that they're already (unintelligible) and not dealing with that or not needing to deal with that.

So, one can say, yes, that the - the definition of who the community is is tight enough that one doesn't need it. So I'm wondering whether it's just possible to go with all new gTLDs should provide RPM.

And it should mean that in most cases (unintelligible) there may be exceptions. And I'm going to go back on mute...

Kristina: Okay.

Avri Doria: ...so I'm not making noise on the line.

Kristina: Okay. Thank you, Avri.

I think I'll make a note if I could, because what I would like to do frankly is to make sure that our definition of rights protection mechanism personally I think that concept encapture a very specific supporting community where eligibility is restricted because that's kind of inherently by virtue of who can and who cannot join you less likely and I think you've seen this at least based on the summaries that have been prepared, you're less likely too. I'll also make a note that you may want to change that to - that you know that we might want to change that to "should".

One has asked that, again, if we change it to new gLTD, it should provide an RPM. Do we have an agreement on that? If we change - of we get rid of "all" and change "must" to "should"?

Mike Rodenbaugh: This is Mike Rodenbaugh.

I like the existing language better.

Kristina: Right.

Man: Yeah, I do as well, if...

Man: Yeah.

Man: ...the definition would include, you know, the type of sponsored TLD issue.

((Crosstalk))

Man: ...I think it doesn't.

Mike Rodenbaugh: Yeah, it's very broad.

Kristina: Okay.

Michael Palage: (Christine), this is Mike Palage. And sorry for sounding like an engineer here.

But if it isn't broke, don't fix it.

This is the language from 2004 sTLD round and this is from Appendix A. "Provide protection other than exceptions that maybe applicable during the startup period for famous names and trademark owners." Provide protection.

And to me, you know, instead of calling this thing right, you know, these definitions, right, let's just go back what has been used in the past, nobody complained about, and use that -- provide protections for famous names and trademark owners.

((Crosstalk))

Michael Palage: That's already appeared in the RFP and, you know, to me it prevents us from coming up with new definitions that are only going to be construed differently by different people.

Kristina: I mean, you know, I represent trademark owners, I'm fine with that, I - it's the fact that there are others on the call who may not be.

Michael Palage: And people that aren't, who would they be?

Kristina: Anybody who believes that rights others than trademark and IP rights should be protected.

Michael Palage: But what happens is there's a difference between - and here's how I would argue to that. There's a difference between providing protection and granting them rights (and growth).

And this is one of the things that I think is significant when you look at the protections and connection with .biz, if in fact an applicant would be able - if a registrant was able to say I am going to make a fair use of this domain name in connection with X, Y and Z, that was enough.

It did not mean that just because someone had a trademark, that that provided some, you know, if you will, absolute right or monopoly right in connection with the term. And I think that is the balancing.

I don't think individuals are, you know, civil society are opposed to trademark owners because when you look at trademarks, they serve two purposes.

One, is to protect consumers, so civil society generally are in favor of trademark law because they protect consumers. What I think civil society has concerns about is when a trademark owner seeks to exert protection in connection with the term that is deemed unreasonable. So, you know, that's...

Kristina: All right. You know, I don't want to cut you off, but what I think we need to do is if you would provide an alternative principle for that and post it to the list and then we'll just make sure that we talk about it on Wednesday...

Mike Palage: Yup.

Kristina: ...to give everybody time to think about it because, you know, it is a valid point, why reinvent the wheel? But I want to make sure that everybody is covered here.

All right. And again, this goes to kind of what we call it.

But the next principle will be each gTLD applicant must describe in its application the RPM -- and again, kind of subject to whatever we end

up calling -- it intends to provide and how those RPM or that RPM will protect the rights of others and discourage the use of registration.

Anyone opposed?

John Nevitt: This is John.

Could we delete it at "have to protect the rights of others"?

Jeff Neuman Yes. This is Jeff Newman. I agree with that. I think we can never - there's always going to be abusive registration no matter what you put in place.

Kristina: Okay.

Is there anyone who's opposed to that suggestion?

Mike Rodenbaugh: Yes. This is Mike Rodenbaugh. I oppose that suggestion. I think that whole plan issue is to discourage abusive registration. That's what the RPM needs to be designed to do.

Jeff Neuman I thought the RPM is designed to protect the rights of others, right? Whether that discourages abusive registration. I mean there's a lot - people differ on what they abusive registration is.

Kristina: Right. The (unintelligible) actually unfortunately covers both and we send the lead in.

Mike Rodenbaugh: And I think abusive registrations could be a little bit broader than rights of others as well, thinking not, you know, other than intellectual property rights, there are abusive.

Man: Well, I mean I'll give you an example. I could have a Sunrise but I don't think that's going to discourage abusive registration.

Mike Rodenbaugh: Well, it needs to be designed to do that. I understand that every system will be (gamed), but what do you do, I mean - I don't know. I think abusive registration is - minimizing abusive registration as a concept that we've been talking about for a long time, so I think it needs to be in a principle specifically.

Man: Well, I think that we need to define it. We need to define what is an abusive registration and agree on the definition because that could be interpreted by too many people in very, very different ways.

Kristina: All right. Let's do this in the interest of moving forward.

Mike, if you would be willing to prepare (unintelligible) post the list a definition of abusive registration and we'll come back to this one as well on Wednesday.

Mike Rodenbaugh: Okay.

Kristina: And I really don't want to take everybody's time up with these calls, so to the extent that, you know, we can make better use of the list in terms of commenting, I think it's really going to be in everyone's best interest.

Moving on, currently, there is no “one size fits all” rights protection mechanism. And I realized that’s not the most eloquent way to say that (unintelligible).

Man: Well, can we just eliminate the word “currently”?

Man: And instead of “one size fits all,” how about “universal”?

Kristina: Okay.

(Peter): This is (Peter) in Copenhagen. I've been on the call for a while, I haven't said anything yet.

I just circulated a suggestion on this where I said that however in the event Sunrise is used, there should be a centralized outsource standard Sunrise to risk provider.

I think that's kind of the - one of the points of - one of my suggestions was that whether it's not - there's no “one size fits all,” it'd be great if we have it some place centralized in any case.

Kristina: (Peter), what I was thinking about doing is if you look further down in that list of principles, I have kind of a -- if a new gTLD elects to use the Sunrise process as its RPM, and that's where I was going to put those types of principles. Because they really, in those cases, they're really intended to apply where after the initial decision about whether or not to use Sunrise process.

(Peter): It's fine with me.

Kristina: Okay.

All right. If we change it to - see, the only reason I elected to change "currently" -- and I realized that might not be the grammatically appropriate construct -- is that I would hate for someone to actually come up with something that would work across the board and have somebody point back, you know, our principles and say, "Look, look, look." But I can live with that.

If we change it to "there is no universal RPM," does anyone oppose that?

All right, it looks like we have agreement. Hallelujah.

All right. Moving on, if a new gTLD elects to adopt and implement an RPM that consists of eligibility or membership verification requirement and second-level main selection criteria such as those used by the .museum, .aero, and .travel TLDs -- and I'm - you know, if there are others that need to go in that list, let me know -- an additional RPM may not be necessary -- not "should" but "may not be necessary."

Anybody opposed to that?

Man: Just a question. Does that imply to you all that additional RPMs are necessary? In the case - if the first two triggering events are not in existence?

Kristina: I didn't really - I wanted to leave a very open - Liz raised the same point. In that mind - in that context for me at least personally, I think you've got both of that.

Anything above and beyond that is really kind of optional truly, I mean that's my personal view. Which is really if we're going to follow this kind of (ITF) month, the May contract, the May is really supposed to be kind of optional.

Is there another way you'd like to phrase that that you might be more comfortable with?

Man: No. It's just - I'm trying to understand what you're getting at there. And it sounds to me - the way I read it, it's - essentially if the first two clauses applied, then RPMs are not necessary. Additional RPMs are not necessary.

So, the converse to me would be that, if those two things aren't in existence, then our additional RPMs are necessary.

Kristina: I don't really (unintelligible) the converse of it. And in fact the reason I used "may" was to allow the TLD that if for some that if for some reason they wanted to be something else on top of that, that it would have the flexibility to do that.

Liz, from your perspective historically, do we - is the kind of converse going to be interpreted to be true here? I don't even know who's raising that point. Is that you Jeff or is that John?

Man: Sorry, Kristina. Just ask the question again if you don't mind.

Kristina: I've - I'm sorry. I hate to do this to you and you should feel free to type your answer.

Was that Jeff or was that John?

Man: It was John.

Kristina: Okay. John had raised a question about, you know, in this fourth principle, am I saying or is the principle intended to say that if you do this, nothing else is necessary. When conversely that if you don't do this you have to have something.

And I guess my first question is that I read the month should May convention to mean that, for example, that it may not be necessary. You can do it if you want and I guess maybe that's what John is asking.

Man: Yeah.

Kristina: I also don't mean the converse to be true.

Woman: Yeah. One of the things that I think is really important to remember is that all of these recommendations will be subjected to the test on the constituency in back statements. And that's going to be - and I sent that around with all of the members of the gTLDs - the new TLDs committee.

So, some of the people who are on this call are not - have not received that note. And I think that part of this answer to the question is about the time that it takes to implement the policy and the financial and technical impact associated with entertainment policy.

So, even we didn't, the recommendation is a good idea, we have to have an analysis of how long it takes and what it caused to implement the policy. Just to go to the language protocol, must is an absolute, may is a question.

So, very much that the - if you're going to recommend the must, then it's going to find its way into the applicant guidelines if they need to respond to. And it's going to find its way into the contractive conditions.

So, if your intention is - you should do something, than expected to find its way into not only the way in which an applicant must respond to an application for a new TLD. But that the contractive conditions that they will be bound by would have that condition associated with it.

So - that helps you enough. Is it? Anything else you needed?

Kristina: No. I think that is - John, if you could you identify, I guess what exactly is the - I think I know, but it would be helpful to have you identify what your concern is because we maybe able to come up with a way to draft that, that eliminates your concern and still allows us to reach agreement.

John Nevitt: Yeah, I know. It sounds like the intent was - I'm perfectly comfortable with the intent of what he says. So it sounds like maybe if we could tweak the language a little bit, that - understand the concern...

Kristina: Right.

John Nevitt: ...so, you know, let's offline take a look at and see if we could come up with something.

Kristina: All right. Would it be accurate to characterize our position on this one as tentative agreement?

Does any one oppose? All right.

And just you know, what I will do is, I will circulate a revised version of this, an updated version that kind of reflects some of the changes we talk about and has comments and notes in it.

Next one, each new gTLD should adopt and implement dispute mechanism under which a third party -- and that shouldn't be (unintelligible) could challenge another view of that gTLD's RPM.

Provided, however, that the challenging party must be responsible, and should be for, whatever filing fee is charge to initiate a proceeding under that diffuse mechanism.

What I'm trying to say here and what the principle is trying to get at in fairly not as concisely or clearly as it could, is that if you were going to have, for example, a Sunrise process, you need to have an opportunity for people to challenge a - someone's participation in that process.

For example, if we're going to have a Sunrise process, you have to have a Sunrise challenge. If you're going to IP claim, you have to have a staff. That you have to have some kind of procedural and substantive check on the ability to use that RPM basically to keep everybody honest. And that as part one retirement of that, is that the party that's objectee has to bear that the cost of the objection.

Jeff Neuman This is Jeff. This might be just a wording issue because I know you're - your intent is, but it might be a little bit broader. You don't really want to challenge the other party's use of the system. You want to - only if they prevail.

So in other words like .eu and others that have Sunrise processes where multiple people could apply, and you saw who else applied for those marks.

Kristina: Uh-huh.

Jeff Neuman You shouldn't the right to challenge someone else that applies for, you should only have the right challenge someone who actually gets it.

Kristina: All right.

Jeff Neuman So (unintelligible) with IP claims, you could have had ten people file IP claims...

Kristina: Right. No, you're right.

Jeff Neuman Right.

Kristina: Right. You're right.

Jeff Neuman So, we just need to figure out a different way to word it. But I think the concept is okay, that there should be some challenge - there should be some mechanism to deal with disputes over who - if that's RPM results and so on obtaining a registration.

Kristina: Right. That's actually the exact language that I was thinking about adding on. So we would add on - to challenge another use of that detail, this RPM, to obtain, no, or that results in, obtaining a domain name registration.

If I make that change, are you okay with that?

Jeff Neuman I think so.

Kristina: All right. Now, I'll put that agreement alternative. All right.

The next point is one that Liz correctly notes gets into kind of nitty-gritty of implementation, but it was something that I frankly had not really given much thought about until I kept seeing it over and over and kind of approve of concept reports. And the summit strategies - and if we want just of toss this as being not something - it's not somewhere we want to go, that's fine.

But that new gTLD should accept payment for participation in RPM's findings of (unintelligible) credit card, mainly to, you know, allow participation by people in those countries, much credit cards are either not routinely used or not used at all.

Comments, suggestions?

Jeff Neuman I'm going to - this is Jeff - I'm going to throw it to (John Nevitt). I mean, the registrars that collect the money, so...

John Nevitt: Yeah. I mean, I agree with Liz that it - that this is much more in the implementation phase than be a principle.

Kristina: Uh-huh. All right.

Does anybody care - does anybody feel strongly that I should not take it out? Because I'm going to take it out given (unintelligible) on it.

Avri, I'm hear you're coming off mute.

Avri Doria: Yeah. This is Avri Doria. (Unintelligible).

Kristina: That's okay.

Avri Doria: I agree with (unintelligible) specific for a principle, but I'm wondering if there's some way say that payment for participation of things that should be flexible, should reflect, you know, the diversity of participants or something like that.

So you're not telling people credit cards or how to do it, but you basically as a principle saying that this thing should be flexible enough to support participants from other cultures essentially.

Kristina: Right, right. And that's frankly what this is intended to do and I think that was...

Avri Doria: ...if it's possible to get something that's more principle that use credit card...

Kristina: All right.

Avri Doria: ...flexible to somebody else.

Jeff Neuman This is Jeff again.

How can I disagree with that principle? The problem is registry is, you know, even if you look at the new report (unintelligible) are required to use registrars. And a registry cannot really propose in its proposal some mechanism that's not supported by registrar.

Kristina: Got it. I see what you're saying.

Jeff Neuman Right? So, again, I like the principle, but that's something that needs to go only to registrars and should not be up to the new applicants.

Kristina: Where is everyone's thoughts, and Liz, you can respond by email because your voice (unintelligible) I'm thinking that we're definitely -- and this goes to some of the more detailed proposals as well -- that we may want to have kind of an additional section that covers things such as kind of points that we didn't necessarily want to make principles because they were too micro, but that we thought were important to note.

And similarly, that would be the section in which to the extent that some of us have come up with detailed proposals about ways to do things, that those could go in there as well.

I mean if we were to do that and I guess the first question is, would anyone have an objection to our doing that? All right.

If we were to do that, with those of you who have concerns and I realize that, you know, there are valid concerns on both sides of this.

Would it be acceptable to everyone to put it there in that, you know, to put this type of statement in that section?

Jeff Neuman Yeah, I mean - again, this is Jeff. Yeah. I would be opposed to it. Again I'm not opposed to the principle, but in the sense that it's being used to evaluate potential registries and it's not really something a registry...

Kristina: Right.

Jeff Neuman ...I mean, it should be - it's totally something that's outside this process...

Kristina: Okay. I see what you're saying.

Avri, do you want to come up with some language and maybe we can, you know, I don't know that we're actually going to have kind of like a minority work frankly because I'm still writing. But would you want to come up with some language?

Avri Doria: Sorry, it took me a while again.

((Crosstalk))

Avri Doria: Yeah. I mean perhaps -- and I understand what's being said that were asked pretty good condition on registry that really is not to deal with. So, perhaps, just listing in a comment that there is a concern that perhaps needs to be dealt with elsewhere in the process and just leaving a note.

I don't even want to go so far as to call it a minority. It's kind of like an auxiliary concern...

Kristina: Right.

Avri Doria: ...that this process brings up that needs to be noted and passed on. But I don't want to take it so far as to say it's minority report.

Kristina: Okay. All right. Then I'll just note that (unintelligible) concern.

All right. The next one, and this is where I think we're going to have some lively discussion. The fees charge by a gTLD for participation in its RPM must not exceed the reasonable cost directly related to the average cost on a per participant basis of administering the RPM.

And this I elaborate on, I think as much as I could frankly in the note that I posted this morning, and what I'm really trying to kind of get at here is a couple of things is that, first, it may in fact be the case that different classes -- and I mean that just in terms of categories -- of participants within a registry RPM, may just by virtue what rights they're relying, that the existence of different rights and the availability of mechanisms to check and filter and all the rest of it, those rights, may in fact create different levels of costs for different levels of participants.

And as a practical matter, just using the example that was in the Summit Strategies Report of national registrations -- national trade registration, I realize this is a sweeping generalization.

But it would not be unlikely for the participants who would fall within the classes for which the cost will be highest, actually being placed in the situation where they're at least able to afford them, and just to give you an example of what I'm actually saying is that, if for example, you have a registry that is going to limit prior rights and the right protection mechanism to rights that are the subject of trade market registration with national effect in countries and it turns out that the relevant countries are countries that have completely online of today comprehensive, reliable national trademark office databases that is a relatively - and I don't mean to minimize it.

But in terms of cost, it seems that you would cost less to do that, than for example, a right protection mechanism that perhaps was broader to include other country that didn't have online - databases if you'd actually have to deal with documents and receipt verification all the rest of it versus somebody who maybe relying on a non-trademark right and even if they had a trademark right, you know, their trademark office is, you know, six years behind in processing.

So, and as practical matter that's in the latter scenario, we've got huge developmental - huge processing delay that tends to be countries that are generally not as affluent.

So, having said all that, I'm just going to open the floor to comment on this one.

Jeff Neuman This is Jeff.

I'll get in the queue. If...

Kristina: All right, Jeff. You're the first and the only so far.

Margie Milam: And I'd like to be in the queue too. It's Margie.

Kristina: Okay.

Mike Palage: Palage.

Kristina: All right.

Mike Palage: Ladies first.

Kristina: No. Jeff was first.

Jeff Neuman So, I object to this on a number of levels.

First of all, the use of the word must is objectionable because there's no way to predict how much it's going to cost. There's no way to predict how many people are going to participate.

And, you know, from someone who's been involved in the launch of a number of different TLDs, there's no way. And even if he tried to guess, you'd be completely wrong. There's way to tell how many people are going to be - are going to participate.

In addition, I'm not sure you're aware, but most times people propose mechanism, but they don't enter into contractual arrangements with the supposed providers of this service.

So, for example, if you were - wanted a Pricewaterhouse or someone else to actually do the work for you, no one will even give a quote on how much it's going to cost until after you're actually selected, and not the practice you're not going to change. So there's relationships need to be worked out later on.

And then the other point is that, these are priced, you know, the registry can charge a price, but the registrar can completely inflate up to a level, you know, for example, we charge, you know, for Sunrise (unintelligible) we charge - we didn't charge an extra fee, but registrar is still, you know, a mountain above that.

And we're also going to keep in mind that, "Look, registry has want to increase a number of registration." So, they don't really have an incentive to price it so high that nobody is going to actually do it.

And I - and would more and more TLDs on the market, I'm becoming less and less convinced at intellectual property (unintelligible) really need to buy a name in every single TLD.

And I think that's evidenced from some of the things in the survey where you saw a number of IP owners respond that they didn't own any .aeros or (.colops) or .museums, or dot, you know. So I mean there are about 20 different levels in which I object to this statement. (Unintelligible).

Kristina: All right.

Let me just ask you very quickly. Given kind of the perspective, the context in which I was trying to make a statement, is there anything

that could be done to the statement that would make it something you could agree to?

Jeff Neuman The only thing I could agree to is, maybe if they just have something that, you know, the fee charge should be reasonable, and then have the applicant propose why it's reasonable, and explain why it's reasonable. That I'm okay with. But the rest of it, no.

Kristina: All right.

Margie?

Margie Milam: Yeah. My comments are actually pretty similar to Jeff's because the registrars are the ones that actually do the charging for the defensive registrations. And on the registrars, we just don't know upfront how much it's going to cost to implement a Sunrise period.

And, you know, if our profit is somehow capped at, we may not participate at all which I don't think really helps the people with the prior rights.

But even on a more fundamental note, I mean, this raises all kinds of NIH issues. I don't know why we're going in the price on this, you know, as a former (NHF) attorney, you know, I would just stay away from any kind of discussion on, you know, on prices unless you guys really think it's important to do so.

You know, if it turns out that a registry actually makes money on a rights protection mechanism, or a registrar, I don't see what's wrong with that. You know, at the end of the day, they're going to try to come

up with a price that works in the marketplace and I'm not sure ICANN should get involved in dictating what that price should be.

Kristina: All right. Mike.

Mike Palage: Well, I think Jeff and Margie have eloquently ticked all the boxes. Again the only thing I would reinforce is the antitrust concerns.

Kristina: Right.

Mike Palage: One of the things, particularly being within the registration authority community, I have always been adverse and have beat this drum for the last seven years. We should, you know, we should not be discussing price. That's kind of a no-no. So, that's it.

Kristina: All right.

(Peter): This is (Peter) in Copenhagen.

I was wondering about the general idea about outsourcing this to a centralized place and let them decide the price. Have we discussed this or any...

Kristina: We haven't got...

(Peter): ...it's really off of, you know...

Kristina: Yeah...

Mike Palage: Can I perhaps respond on (Peter) on that is...

(Peter): Yup.

Mike Palage: ...(Peter), when a lot of people were originally involved in drafting the original UDRP, we met...

(Peter): I was there too.

Mike Palage: ...yes, in Georgetown. You remember that (Francis) had spoken about how there would need to only be one UDRP provider. And at that time, you know, I was rather passionate about there needs to be competition and, you know, that's what ICANN was about.

So, I guess my concern here is, if you go with soft of designating one person, that one person then potentially has market power to raise their prices which is almost counter-intuitive what you're seeking to do here.

That's, you know...

(Peter): Unless it was ICANN itself.

Kristina: Well, but we had talk about this last call because I believe -- or two calls ago because somebody, and I think it might have been Victoria, had raised a concern about that.

And I think the outcome was that we agreed that it would be a good idea to have a centralized service, but it could be through different providers. And that's the way - same way that, you know, you've got

WIPO and (NAF) providing dispute resolution services, but they're all applying the same factors.

Jeff Neuman Yeah. But this - and I raise - this is Jeff. I raise this the last time. That presumes Sunrise.

Kristina: No, not necessarily.

Jeff Neuman Well, it would because you can't - I mean, essential provider, you know, the only thing essential - the only thing that is a provider for these days is Sunrise. So, I can't imagine a central provider for a IP claim service or...

Man: A stop, yeah.

Jeff Neuman It just - I mean, well, for dispute resolution, you need to have what exist today, but for claims. And you're also discouraging a new RPM that nobody has thought of.

Kristina: Well, no, no, no. I mean - and, you know, let's - I mean, my - I really see kind of decentralized, and let's call a decentralized repository validator instead of calling it, you know, a database or, you know, provider of the actual services.

I really see this as a way, and this is, you know, (Peter's) original suggestion -- I mean I see this as a way for owners of prior rights regardless of what the rights are, to just to have to, you know, one place where they can deposit documents and exceed, you know, 10, or 11, or 12, or however many, you know, entities want to participate.

And, you know, those will be the entities responsible for collecting and validating the information. Those will be the entities that would, you know, be responsible for funneling it on to the registry or, you know, whatever in the context of the (unintelligible) protection mechanism.

But anyway, we can talk about that. That's different.

Here is kind of the concern that I have. I understand what you're saying. And what I'm wondering then is - what I don't - I don't know. I mean I definitely understand the (NHS) concerns.

I just would hate to get into a situation where trademark owners or owners of prior rights regardless of what the classes are, kind of, you know, held hostage, in the sense that, you know, some of the prices are so high.

But for example, they believe that there is particular - there's likely to be such a demand for particular TLD that, you know, you can say it's a matter of business choice, but it's a practical matter. It ends up being virtually necessary for the trademark owners to participate.

(Mike): (Christine), this is Mike...

(Christine): Yeah.

(Mike): ...and Margie, perhaps you could provide some background on this.

I think .name when - .name I think had one of the largest price points ever for a dispute mechanism...

Kristina: Yeah. They did.

(Mike): ...4,000, I mean, it was in the...

Kristina: Yeah.

(Mike): ...thousands of dollars.

Kristina: Yeah. Yes. Yes.

(Mike): And as I recall, a lot of people just - a lot of trademark owner just said, "No, thank you." That was probably one of the least utilized protection mechanisms - you know, and again, I think that's kind of what Jeff and I have tried to articulate having been through different launches, you know, you have to let the market try different thing to see what works and what does work and find that balance.

So, the concern here about a registry being able to say where to going to charge, you know, \$10,000 and get into in an extortion scheme, you know, a Sunrise extortion scheme. I just don't see that happening. And again...

Kristina: Okay.

(Mike): ...this is based upon what Jeff was saying, the more TLDs that are out there as survey suggest trademark owners are just going to say, "No, thank you..."

Kristina: Okay.

(Mike): ...to some of this TLD offerings.

Kristina: All right. Well, I can see that we're not going to have any supporter, anything even close to that.

Do any - that any of the people who haven't spoken up who have any strong objection to that coming out?

All right.

Mike Rodenbaugh: Well, yes, I do. It's Mike Rodenbaugh. I mean I think - I don't know why it needs to come out completely. I don't really understand any trust concerns about, you know, talking about cost at a very high level, at least a principle that the cost should be reasonable and somehow tied to the actual cost, I think is completely legitimate to have as a principle.

I don't think that registries or registrars should be able to profit, at least not very much, from rights protection mechanism.

Woman: (Unintelligible) I'm wondering if there's a way we can draft to try to address the (NHS) concern. If you strongly state it now, it's going to be - make it...

((Crosstalk))

Jeff Neuman Yeah, I think - this is Jeff. I think the way you do it is, you basically say, the fees need to be reasonable and to keep it broad, and then you ask - any RFP, you ask the registry operator to explain why the fees are the way they are, and then it could be evaluated.

John Nevitt: Yeah. And this is John. Just so will clear, this is a fee charge by the registry in the application, right?

Kristina: Uh-huh.

Jeff Neuman Which could in theory repeat the whole purpose because the registrars could jack it up.

John Nevitt: Well, you know, we're constrained by the market. We're subject - as a registrar, we're subject to competition. So, you know, jacking it up as you say is not a market based solution.

Man: Well, there's - I mean - a fee is a from a dispute provider, potentially from the registry. I'm not sure exactly why and from the registrar, right?

Woman: The registrar fee includes the registry fee.

Kristina: Right.

Woman: So, when we charge our customers, it would be the registry fee plus the markup, you know, for the services that we provide.

Man: Well, what's the registry fee though? I mean, well, I guess it all depends on what dispute mechanism we're talking about.

Man: You have to think of it just like a registration where we're charged \$6, I guess currently by (VeriSign), and then the market bears with the marketable bear as far as, you know, which registry you go to, which additional services you get...

Man: Right.

Man: ...so what we're talking about is the \$6 fee.

Kristina: Right.

And Mike, in some cases, for example, in the proof of concept report, and I know that there is one that does it, but I can't remember which one maybe it's the name.

Somebody actually says kind of what the whole sale cost was for particular mechanism and what does the average registrar charge was, you can kind of see that differential.

And in this particular one is, you know, pretty significant. But anyway, so...

((Crosstalk))

Man: Yeah, and it's...

Kristina: ...you know, (John's) point is very well taken.

Man: And as far as why there is a registry fee, I could just tell you and you can read that this proof of concept, by implementing the IP claim system cost a lot of money to make everything automated and, you know, this is something you can post on a registry, and therefore, they should be entitled to reasonable compensation.

Man: Right. Which they ought to be able to get through their registry fees.
Absolutely. But not by charging right to protection - rights owners to protect their rights, that's just - is wrong to me.

Kristina: All right. Why don't we do this because I want us to move on and I don't want to cut off debate? But what I'm suggesting is that, I will revise the chart to indicate that revised principle of that to believe it was just fed, and then we can kind of circulate and talk about - and I really do want people to kind of comment over the next couple of days.

All right. The next one. The prior rights on which a party bases its participation and seeks to protect in an RPM should be validated.

They didn't say when, they didn't by whom which is that they should be validated.

Any objection?

Jeff Neuman Yes. This is Jeff.

In the IP claims, that was not validated. I think it worked because an IP claims didn't resolve in a registration. So, why would it matter who claims intellectual property like in the certain marks?

If you have a Sunrise where it actually grants someone on registration, then maybe that's the case, but not in the protection mechanism that doesn't resolve in a registration.

Kristina: What if we change it to say, if participation in an RPM result in a domain name registration. The prior rights on which that party basis is participation should be validated.

Man: Or what about Tim's preference. If the RPM gives preference to alleged rights owner or prior rights owner that should be validated.

Man: How about (Peter's) suggestion this morning that prior rights must be validated in the event of a conflict. Actually, I agree with Jeff, I'm not sure we need to recommend they always need to be validated.

Kristina: Anything subject to validation?

Man: Because since validation - unless you have a cost, I think maybe that should only happen in the event of a conflict.

Man: Well, again, there can be ten people filing IP claims the way (unintelligible) work...

Man: Right.

Man: ...where some or ten people filed a claim and then the applicant later on was notified about all ten parties that filed a claim, and the applicant made a decision on whether people want to proceed or not based, you know, based on what it knows about the ten people who claims the name.

And again, there was no reason for those ten to validate it. It was up to the applicant, him or herself, to make that determination.

Man: Yes. I think there's no reason for most people will have to validate their right honestly and shift the cost for everybody (unintelligible).

Kristina: What about - what if we cost that one and take the second - the one below it that tinker with it. And what I'm thinking is new gTLD registry operators and I don't know frankly if registry operators is the right phrase in there and you're never really quite sure as just who - what go in there.

It should require a validation of prior rights as a prerequisite to registration of the sought after second level domain name. Does that - because that then, Jeff, would take into account the points that you had made about IT plan.

(Peter): This is (Peter) in Copenhagen. My point which Mike raised has to do with the fact that these validations which where there's no conflict, it's just an added cost.

I mean the .eu validation was a farce. No on e- a lot of people didn't understand it and a lot of people waste a lot of time and energy validating things for or trying developing things where there was no conflict.

So I think that really, it has to be a validation in an area of conflict so I think that tossing the first one and adding the second one where they should require validation as a prerequisite to getting the right whether it's a conflict.

Man: Yeah. I would just go with (Peter's). I would just say the prior - the first one, pretty much as (Peter) said, except deleting a few words in here.

It would read prior rights on which a party bases its participation seeks to protect and an RPM must be validated in the event of a conflict concerning the validity of the right.

Man: Again, I - again that just recognizes one mechanism of Sunrise. If you say...

Man: Actually no. That would - even - that would be any sort of mechanism I would think.

Man: That's what I'm saying. There's no need nor should there be in an IP claims type system any validation of the rights, whether accomplished or not. The only time there should be validation should be when the person taking or using that RPM is giving preference of treatment either by a registration or maybe gets ahead in a queue or whatever it is.

It's a given preference of treatment that it shouldn't be validated and I disagree with the contents of only in the event of a conflict because then you're going to have people that are gambling as to whether there's going to be other that apply for or not.

And I don't think it's good. So let's say Coca-Cola decides not to participate in an RPM because it's just not interested in having a dot whatever registration but later finds out that someone in a Sunrise period or some preferential treatment was given their trademark. I think that's going to cause a lot of angst.

Man: No. Then there is a conflict.

Man: Right.

Kristina: Yeah, but that's an after the fact conflict.

Man: Yeah.

Kristina: And, you know, one of the things that I was trying to point out in one of the later principles is that, you know, you don't want a situation where it's just kind of clearly - if someone were to manually examine the record, they would see it was clearly false and that you would see - I mean I do think that if rights owners are going to want priority as registration, I do think it is incumbent on them to prove that they're entitled to it.

And maybe what we can do is - maybe this is one that we're just not going to get agreement on and we have to do kind of agreement and support or, you know, what alternative view.

Kelly Smith: (Christine), I have a question.

When we're talking about validation here, what are we talking about? I mean, are we talking about the registrant hasn't submit the trademark number or are we talking about the registry actively going and confirming all of that? Because, you know, maybe depending on what our definition is, you know, people might look at this differently.

Kristina: I was actually looking - what I had in mind was validation of prior right as we had defined it.

Kelly Smith: I think I had defined it as actually confirming.

Kristina: Right.

Kelly Smith: Okay. And are we saying that - I guess we need to be clear whether or not we're talking about all applications or just some applications because, you know, to address the concern about cost that was raised a little while ago, you know, clearly the .eu system involves a significant amount of cost on the registry side to implement their, you know, extensive validation.

And, you know, so I just want to be clear - whatever we decide, that it's either all or a portion that there's no misinterpretation as to whether, you know, every single application has to be validated.

Kristina: Correct.

Man: And that actually brings up another good point. There's no way for a registry because you want a reasonable cost. There's no way for a registry to know who's going to participate.

There's no way for a registry to know when there's going to be a conflict. So, you know, registry needs to build this business model on the fact and it's going to get paid by into the applicants.

Kristina: Right.

All right. I think this is one where we're not going to get agreement, but let me just make sure that, if I could take a poll, so to speak.

Mike R. and (Peter) and Kelly, I'm understanding you to say that the validation to be required only in the event of a conflict. Is that correct?

Kelly Smith: It's right for me, yeah.

Kristina: (Peter)?

(Peter): Yes. And I think that we're actually in agreement here with Jeff in the case that really that the - we're talking about the same thing. He just says that the conflict has nothing to do with the Sunrise process itself.

And I just kind of assumed that it's dead. But I kind of agree that there should be no validation at the Sunrise applications part. Just prior to registration, the actual registration of a domain name itself.

Man: If there's a conflict.

(Peter): Right.

Kristina: But how - but I mean - so - but let me - would you consider there to be conflict only if you had competing applications for the same name?

(Peter): Yeah.

Kristina: Is that what you consider a conflict?

Man: Yeah.

Man: Yes.

Man: Or the conflict with the - perhaps with the existing centralized database that we're talking about.

Woman: Uh-huh.

Man: That's, you know, as a registry that's impossible to administer. Again, my position is...

Man: Why is that harder than administering validation in all cases which has been the case before?

Man: Because it's easy to charge everyone upfront. It's not easy to build a system that only charges or to validate - only validate if there is some sort of eventual conflict and they can't do anything on the rolling basis. It needs everything as to be done after the full application periods over.

It means that registrars have to collect funds but only to refund funds, you know, or have a process by going back to the customer afterwards to collect funds only if there is a conflict...

Man: Correct.

Man: ...however it's defined.

I mean it introduces a lot of system complexities that...

Woman: Or it just going to make it more expensive.

Man: Very much more expensive.

Man: I don't know. It just doesn't sound like it to me. Otherwise, it sounds to me like you're taking a validation fee that's entirely unnecessary in the vast majority of cases.

Man: Well, I mean no offense, I don't...

((Crosstalk))

Jeff Neuman ...sensitive way but if you actually run a registry and built these mechanisms - I mean we've got to listen to the people that built the registry and it's not just needs to be everybody that, you know, built the registry and had some right protection mechanism and there's a ton of complexities involved in it.

And, you know, I know there's been perception out there that the registry is taking advantage but that's not the way it's been.

But let me - my position was, just so it's clear, that validation should be required for all applications in any situation whether it's preferential treatment given to a right holder but not otherwise.

That's what my position is. Anytime an applicant is given preference of treatment, that applicant should be validated.

Mike Rodenbaugh: Read that applications should pay more than in the other applicant.

Jeff Neuman That's - no, not necessarily. I mean it's - that will be part of the conflict, you know, when they're given the privilege of treatment.

Mike Rodenbaugh: Well, not necessarily in any sunrise you're talking about. Most sunrise applications as we seen the vast majority, I'm not challenged or not submit of duplicate application.

Jeff Neuman But look, look at -- no offense, Mike Palage, I know you're on the phone. Look at .info, .info did no validation whether there was a conflict or not. And he could probably tell you, upon review, whether there was another application or not, there was a problem there with the database with actual - the accuracy of it and nobody is going to be happy setting up a system where you only validate once they have whatever you called conflict.

If you got to do a Sunrise now, it needs to be validated or anything that...

Mike Rodenbaugh: No one's going to be happy. I mean the only people it sounds like they're not going to be happy is the registries because they're not going to be able to collect nearly as many fees...

((Crosstalk))

Mike Palage: Can I hop in here?

Let's - as the, if you will, the former chair of Working Group B who came up with the Sunrise concept, I will acknowledge it is less than a perfect system and over time has been subject to more and more (unintelligible). That being said, let me try to expand on some of the comments of Mike and, if you will, Jeff.

Jeff is right. The affiliate's original model basically took all the data in, there was no verification. As a result out of I believed the 50,000 names that were submitted upwards of 20,000 of them were non-compliant, and those were cancelled, okay?

Now, if you look at what happened in Moby in which I worked with them and in their implementation, what they did was they took in the data and what the data was done was run through a series of, if you will, algorithm to, if you will, identify potential non-compliance.

You know, was every application - you know, did someone sit there and say, "okay, here's application X, Y, and Z. We're going to go at this national registry and pull it back and then compliance."

That was not necessarily done with every application. As I said, there was a series of algorithms that were run to identify non-compliant or potentially non-compliant registration.

And the reason this process was done is it was a lot more cost effective than charging every trademark owner, if you will, a 100 Euros to have their trademarks right to validate it.

And if you look, if you will, the proof in the footing is the fact that there were the minimum amount of sunrise challenges that were in fact and, if you will, a very high majority were totally compliant.

So I submit to you that there - you can come up with a system where there is a verification process or checking, not one off like in .eu but you can have a verification process that can be done to hold the cost

down and again, in that situation, Mike, those costs were primarily outsourced to third parties.

So, you know, there is clearly an interest in the registry holding those costs down because for every dollar a trademark owner spends on, if you will, some type of premium service, it's probably one less dollar they're going to actually spend in a domain name registration.

So that's kind of what I think are the market realities.

Kristina: Can I - I'm just wondering, Mike Palage, and I guess those of you who don't - who aren't at the point where they could support validation across the board, later on in the principles, and this was actually something that was intended to kind of go to the .info concern and was actually, you know, frankly drawn on something that wasn't in the Summit Strategies Report, you know, towards the bottom of the chart and says regardless of other validation, all new gTLDs should institute measures to deter abuse of the RPMs and clearly false submissions.

These measures could be automated or conducted on an ad hoc basis on RPM submissions that are non-sensical or likely to be followed.

That is kind of based on, Mike, on how you described what Moby did. I mean it sounds if that's what they did here.

Mike Palage: Yes. That's what they did. They used a combination of algorithm. And again, some of this is well have to do with, if you will, common sense.

Clearly within the industry, there are certain registrars that cater to certain to certain trademark owners. And, you know, when you see

their submissions, they generally comply with, you know, to known registrants.

And if you see an upstart registrar who may have only been in business for say, six months, you know, has never attended in into meeting and all of a sudden, it's claiming to represent, you know, 50 or 100 of a global 2000 famous trademark owners, a little bell goes off that.

So, you know, that's the flexibility that I think I like in that language as opposed to something that is rigid like the .eu which was just the EU process which was disliked by so many people.

Kristina: All right.

Can we - where are we in terms of levels of agreement for this latter principle that I've just read? Is there anybody who would oppose it?

Jeff Neuman Yes. This is Jeff Neuman

Kristina: Okay.

Man: Jeff, could you just, in a sentence, your concerns again? You're in line with what I have said, correct?

Jeff Neuman For the most part, we're still talking about the prior rights and with the party basis participation and seeks to protect an RPM should be validated or which sentence are we on now?

Kristina: We're talking - we're actually moved kind of three down. Three down, yes, two down. So that it's on the second page, at least on mine it's on the second page. It begins "regardless of other validation, only gTLD should institute measures to deter abuse of the RPMs and clearly false submission."

Jeff Neuman I guess I'm okay with that. Sorry, I thought we were still on the other one.

Kristina: Okay.

Well, I think what we're going to do is we're going to leave it so that we have agreement on this one and I guess we'll just try and come up with some other language for the other ones, you know, and just come up with some couple of things to see where we are. We'll put it on the revise and revisit.

All right. The next one, if a new gTLD elects to use a sunrise process as its RPM, and this is where we get into kind of - if you're going to do this, these are the principles that you should follow type mechanism.

It should restrict eligible prior rights to those owned at least as early as, and I don't really know what - how to correctly describe the correct (state) here.

I don't know if it was - whether in the majority of cases the cutoff date has been used to then - the TLD application date or if it's the date of the negotiations with ICANN. Could someone help me out here, Jeff, Mike?

Mike Palage: I can help out there.

The - what affiliates did with the .info application was they used the date that their application was submitted.

Moby similarly used the date that their application was submitted however, the original sTLD process that was only supposed to take “a couple of months” actually ended up dragging out for about a year or more longer than originally intended.

So in response to that, there were some feedback from industry members within the mobile community saying, you know, “we’re kind of being disadvantage here” so they, if you will, accounted, they actually push back the - or push forward depending upon your perspective, the date allowing for more trademark owners to participate.

However, the date was, if you will, kept in advance of the influx of Benelux trademarks associated with the .eu launch. So that is what, as I said, has been historically done.

And I think what’s important to note here is the ability to try to keep up with the people trying to gain the sunrise process what we’re kind of coming to the end of the rope because affiliates had the date it was filed but now, you have all those Benelux registrations where you have some cyber squatters that have larger trademark portfolios in some corporations and that to me is one of the major limitations with the sunrise going forward. Sp hopefully, that information helps.

Jeff Neuman Yeah. And this is Jeff.

I think - I don't think there's a one size fits all here. Dot U.S. when we lost the sunrise, it didn't matter because it was easy to validate it. It just have to have to be a registration that was prior to the date that they submitted the application. It's much easier to do.

I also think that in certain sponsored TLDs or other smaller communities, it may be easier to do that you don't need to tie it to a date that's the application. I think .tell who's in the process of, you know, defining it, I think they're not going to go with their application date because, as Mike said, their sTLD process took two or three years or something like that, so to have the application data is just, you know, absurd.

So I think we're at another example where a one size doesn't fit all. I think the concept is that you should take a date to minimize, I guess, abusive registrations.

Man: Potential gain and I think it's what you're talking.

Kristina: Right. Yeah. I'm just trying to - I guess what I'm wondering is whether there are kind of language that will be broad enough so that you're not locked in to one of these things but would still give you flexibility if for example, you know, as you point out, ICANN is totally overwhelmed because some - you know, there are actually 50,000 new gTLD applications and it takes a while to get through them all.

But does anybody have suggestions of language we could use there?

(Peter): This is (Peter) in Copenhagen. I think there are two different aspects here.

The one aspect is that generic names which I think is what we're talking about with the gaming and everything. And I think that it's true that we have all these Benelux registrations now, but I think the .Moby show that from now on, we're going to have the registries taking these premium names and auction them off. Am I wrong about that?

Kristina: Can we stay on this, right, (Peter)?

(Peter): Sure. But I...

Man: I don't think we should assume that registries are going to follow the auction model. They may but I don't think for our process, we should assume that.

Man: And I think the point that (Peter) raises actually goes back to what Jeff and I been saying. We allow different registries to try different processes.

You know, again, I think one of the other options out there is for registry to use an RFP process to potentially out these, if you will, higher valued names or higher profile names in use earlier.

So again I just think being rigid here is probably what we do not - we want to stay away from being rigid and panging ourselves into our corner.

Man: Kristina, does that mean that we could have language in there that it should have a deed that's designed to just go back to the original language when we were talking about at the beginning?

The daily applications should be something that is designed to avoid -- where is it, the abuse of registrations, wherever we talked about that.

Kristina: All right.

Man: There you go. Intended to discourage abuse of registration, that's where we considered it.

Kristina: Right.

Can you read back because I think I'm just not following how you would think (unintelligible). Are you suggesting that we just dump that sub-point or that we revise it differently?

Man: I mean I'd just revise it. I mean the people think the point is important. It should say it should - I don't know how to take this sense. But the contest is that it should - the registry should restrict eligible prior rights in such a manner intended to discourage fees of registrations. Something like that. I don't know. It's hard on the spot.

Kristina: All right. We'll leave that one open.

All right. Then the next one is if a new gTLD elects to use a Sunrise process as its RPM and second level names are not awarded on a first come (unintelligible) then competing applicants should be provided with an opportunity to reach an allocation decision between/among themselves.

Who's laughing? Come on.

Man: Mike Palage.

Kristina: I'm not saying, you know, it could happen but...

Mike Palage: If that's - what happened there is - I just think that it looks nice - it's nice in the Ivory Towers but when you get down and you roll up your sleeves and you get down into the nitty-gritty of how these names are allocated, if something has value, people are going to come up with every which way to try to gain that system.

And I think the more rules we implement, these are just more opportunities for people to gain and under - the integrity of the process we're trying to do here.

I mean, just look at what the 200 or 300 trademark registrations per sex in the .eu launch. You know, then you're going to be having people that it will start brokering, you know. It just - no, it does not work.

Man: Perhaps cyber squatting amongst trademark owners.

Kristina: Well, (Peter), wasn't that something that you proposed at least in a different variance?

(Peter): One more time? I heard the last part of it but not the first part of it.

Kristina: Well, I mean isn't just what you had - isn't this a variation of something that you have also proposed at one point that if there are multiple claimants that they should have the opportunity to decide amongst themselves?

(Peter): Yes, exactly. Exactly. And it shouldn't be some kind of first come first serve or, you know, whoever got their first base should figure out - find it out themselves.

Kristina: How about - I realize that - Mike, you think I'm being idealistic here. But does anybody opposed this if we change "should be provided" with "maybe provided" which makes it optional?

Man: Well, I mean the problem I would have there is let's - okay. Let's use apple, let's take a commonly used word and phrase, apple. And let's just suppose that the record company and the computer company were still disputing their respective rights over that particular term.

Kristina: Right.

Man: The ability for those to, if you will, to say, okay, well, we're effectively going to take this term out because we have our respective trademark rights and we ourselves are going to, if you will, black hole this string from ever appearing and use as a second level domain in any new TLDs as opposed to say an apple farmer, (co-oper), or something.

Again, I'm just using this as an example. You know, that's the potential problem here, is you're allowing people that may qualify under their, you know, rights of others and may interfere with a legitimate fair use of that term.

Kristina: Let me just back up because I - what I'm talking about is that this point applies only if the gTLD wants to have a Sunrise process. If they don't want to have a Sunrise process, it's completely irrelevant.

Man: But let's say I want to do a Sunrise and there's five people who applied for united and I decided not to auction it out, let's see who's willing to pay the most.

Mike Palage: Or instead of auctioning it out, supposed what happened is the registry goes and says, who's actually going to use it, because unfortunately there's a lot of trademark owners that all they do is they redirect it to their com site, or worse yet, don't even allow it to resolve.

So to me, if I'm a registry wanting to build the brand and an identity, the question that I'm going to be asking is who's actually going to use this in commerce, and that's me.

You know, in that situation, the registry almost has the most important right to chose between the two competing applicants and the question they're going to be asking is who's actually going to use it.

Man: That's a good point.

(Peter): It's an interesting point. But I think that they in the most case, they'd be more interested in who's going to pay the most for it.

Mike Palage: No. No. No. No. (Peter), there - see, there I would tend to disagree with you. I think historically, if you look at the 2000 around there, if there was a lot of, if you will, lamb rush mentality, how can I get the 7 million names under management.

I think the case has been clearly demonstrated through the 2000 rounds as well as the 2004 round. There are not a lot of million record TLDs out there.

So, I think part of the, if you will, orientation or the thinking that registries are going about is how do I build a brand or an identity and in case that I've used repeatedly is dot edu. With only 7000 registration, they have the second largest number of pages indexed in Google per TLD, okay?

So the ability to build the brand or an identity or a community is critical and in doing that, making sure that those, if you will, the Class A real estate or those high profile names actually resolved and are utilized is a paramount important, not figuring out how to get \$10,000, you know, versus, you know, say \$100 or something like that. The long term business success is more based upon branding than it is the initial influx of cash.

And again, just one final point there is with more TLDs coming out, the ability to try to extort those ITs as demonstrated in connection with the dot name will further when they make that potential thinking or mindset.

(Peter): This is (Peter) in Copenhagen. Very interesting point. I haven't thought about it that way.

One thing I had thought about though is that if we really going to have so many new TLDs then the value of existing TLDs - the existing brands, as you think, they must also be, you know, subject to disappearing.

Mike Palage: I don't think disappearing. I think what they need to do is they need to provide some service or benefit to their community. And again, just looking at the .cat which I have to admit when I first saw that application files that was scratched in my head but .cat now has I believed the most pages index in Google for an sTLD.

So they're serving and clearly identified community. There's adoption and, you know, I think that's the important success not the number of registrations that appearing in own file but is the use by the people in the community that was intended to serve. And, you know, that's - I mean that's the key thing that we're looking at.

Kristina: And Mike, quick question for you.

Mike Palage: Yes.

Kristina: And I don't want to - I realized that we're now an hour and 35 minutes so don't want to keep everybody much longer.

From where you sit, what is the allocation method that - you know (unintelligible) that what allocation method do you personally think should be used where there is Sunrise process and competing application.

Man: It's a trick question for Mike, yeah. Sunrise.

Mike Palage: I guess it's a trick question from, and just in the interest of disclosure here, you know, .asia has asked me to assist in their Sunrise. And one of the things that word that I'm discussing with Edmon in .asia right

now is, you know, how to look at, if you will, building upon the purposes of the Sunrise but getting more names and use.

And just give me 90 seconds here, .moby with their premium names allocated upwards of 5,000 names. And the purpose behind that was to put those names and use and build goodwill to help promote the registry. The problem is over - almost one year after launched, 99.99% of those names has still not been allocated.

So one of the things that .asia is looking at doing is how do you get some of those names available in in-use sooner. And that sooner may mean even and in fact before the Sunrise process. You know, again, these are different things.

Now, what I can tell you and this is some of the discussions .asia was having with the community in Chicago last week is they recognize that anytime a name is allocated that there needs to be some types of right protection mechanism to allow someone who feels that the rights are being infringe to come forward and object.

So, that - I guess the problem is it doesn't fit in the one same as Kristina. And as registry try different things in building and gaining brand acceptance and loyalty and use, you've got to be open.

And that's why I generally, on these calls, try to approach rigid constructs because the only one that benefit from rigid constructs are the people that are trying to gain the system.

Mike Rodenbaugh: Mike, so we can then start answer down to notice and take down?

Mike Palage: Well, put it this way, Mike, I'm sure we'll still be having that talk for a while but...

Kristina: It's going to go on the back of the t-shirt, the front of which says, it's questionnaire, not a survey.

All right. So, I think we're going to have to move on. And we have no agreement on that one. The horse is truly dead.

All right. Next, all prior rights should be protected in an RPM must be capable of being validated. Questions, objections, agreement?
Everybody still awake?

Man: Yes. I was at - isn't that group (unintelligible) with all the other stuff?

Kristina: Not really, because this to me is - this, when I drafted it, this was more kind of a scope point. In other words, if you can't validate a prior right, you can't really mean - if it's not capable of validating it, how are you going to claim it exists?

(Peter): I don't think anyone can say more to that one.

Kristina: It's (Peter), right? All right, we're going to put that as agreement and move on.

All right. Next, centralized database for validation of prior rights should be developed as a prior right would identify the prior rights on which they would rely in an RPM would submit the document required to validate such prior rights and would designate the RPM in which they desire to participate.

And I just kind of leave of that because where we were on the others, we're not going to get -- this next sentence is not - the last one is not going to get us anywhere.

The idea being that there should be some kind of centralized database with multiple providers that instead of for example, you know, trademark council and, you know, trademark owners and other owners that prior rights have into - have it every time that there's a new TLD launch, they're reading the rules, having to make sure, you know, make sure that their calendar in the right day of deadline since they can get the information, their registrars and, you know, which information do I need for this one, which information do I need for that one.

That it would just go into all, you know, one centralized -- well, actually multiple centralized repositories that were operated by multiple providers in which you could just basically submit your information, only have to submit it once, and then you could go on - go back for example and say, I want to participate in this one. I want to purchase in that one.

The closest analogy from a trademark perspective that I could give would be something along the lines of, you know, you've got your international registration under the majority of protocol and then you have the opportunity, you know, as time goes on to say, I want to extend protection for this country, I want to extend protection to that country, I don't need to resubmit my application again, the details that already there.

Mike Palage: This is Mike. I guess I'll go first unless there's anyone else.

Kristina: No, go ahead.

Mike Palage: Again, I just see this is the more trouble than it's worth. And in case and point, in connection with some actions I wish just taking - in connection with some (unintelligible) Sunrise named from over six years ago.

You know, one of the facts we just noticed was, you know, although the applicant had trademark rights at the time of their application so they were in compliance, the decided not to do the right in 15 and the registration was cancelled.

So part of this, if you will, database here, the simplicity of it is, is sort of go once, and then you're sort of, you're good to go. You have a path to get you into wherever you want to go.

The problem though is those passes may not be good for every park entrance for a couple of reasons. First, registrations may lapse.

Second, as Jeff could allude to .us, they explicitly prohibited designed market. It had only be if you will block text, correct, Jeff?

Jeff Neuman That's correct.

Mike Palage: Okay. Whereas affiliates movie and other registries have allowed, if you will, it will be must be identical to the text rule or material element of the mark.

So there are some of these, if you will, nuances in implementation that I really think undermined this idea of going and getting a one-stop verification and being able to, if you will, you know, easily migrate from registry to registry.

I think what has happened in my experience, it seem what is taking place from affiliates through the .us, through Moby, and now in connection with .asia, is I have seen the market response specifically the corporate-centric registrars such as mark monitors, CSC, VeriSign, DBMS, Melbourne.

Those companies have actually provided services where all of that information is stored, and the ability for the registry or the registrar to submit that in an orderly template actually has facilitated and increased the reliability and processing of the date.

And this in fact goes to some, if you will, the algorithm that I think, you know, .moby use to, if you will, scan the - to scan the applicant.

So in summary, I think the potential benefits of this approach are do not, if you will, counteract the negative and limitations associated with it. And I think that the market has already begun to respond via services offered by registrars to provide this type of service.

(Peter): This is (Peter). I wanted to make one point.

I think I've been outside of the loop at this one point before. But the idea was not that it would be a static centralized registry. The idea was that every time a New TLD would come up, you will have the opportunity to reuse the material that was already there.

In fact - they should, in fact, send you an email to make sure that you were aware of the fact that there was a new TLD coming and if you needed to do this, you can just reuse the same documentation, in particular the PDF of the trademark registration.

Kristina: And the other point that I forgot to mention is, and that we talked about in other conversations, is that the prior rights on or will be required to validate, you know, would be required to us from on an annual basis that, you know, if rights were kind of valid and (unintelligible) much the same way that, you know, for example, I got an email once a year from the various registrars where I have domain names registered name and they, you know, are saying it's time to confirm that your (unintelligible) data is accurate, click here, because I mean the people aren't going to gain it, but there's still going to be an affirmative obligation.

Man: You're probably - what we're trying to do is create something at the worldwide - the world has never been able to basically create the global trademark database.

That seems a little bit...

Mike Palage: Monumental.

Man: Yeah. And political. I'm not sure the countries of the world have never been able (unintelligible) to agreed more worldwide database yet we're going to be one.

Margie Milam: Can I try in. This is Margie. As being actively involve in the Sunrise period, I see both sides on this. And I think, you know, although yes, we do provide it for our customers, sometimes it's incredible hassle.

I mean, .eu was just a nightmare trying to organize and participate in here on and the (Mark Monitor) side. And I'm sure all our competitors would say the same thing.

So, I see some value on this. But maybe a voluntary thing as opposed to a mandatory thing because - and maybe if, John, if you're on the line, you might comment, because I believe network solutions and other registrars are simply just don't participate in the Sunrise because it is so complex.

And if there were, an easier way of providing information during the Sunrise, period, maybe they won't participate, you know.

And so I see some merit if it's a voluntary thing as opposed to mandatory thing and, you know, anything that is more standardize. From my perspective, it's a little bit better because then I don't have to come up with unique procedures for every, you know, TLD launched that goes forward.

(Peter): That was the whole idea. That was - that you do, once and for all, put it out somewhere and make it standardized such as the registry could just wholly information. Actually, they just got an email when the Sunrise was finished. They just got an email of all the prior rights.

Man: (Peter), I guess my response is if there is this, if you will, or large influx of TLDs numbering. Let's say, 10, 20, 50. What will happen is

someone will come forward with the solution that will provide this because having done this with (Affilius) and Moby, and now with Asia looking for the cheapest solution for registry to get through launch and to get in the steady state operation is one of their driving priorities. So, if there is an economic model, I think the market will bring it forward.

My concern is these groups somehow propose or dictate that a business opportunity be created. If there's money to be made and it will benefit, somebody will come forward and will offer that services to registries.

Kristina: Yeah, but, you know, why don't we give ICANN the first bite of the apple so they can, you know...

Man: ICANN won't touch this with (unintelligible).

Kristina: No, but I mean, you know, in much the same way that you had (unintelligible) kind of outsourced to PwC, I don't see why you couldn't theoretically.

Man: Unless there is a dramatic change in the Board and the staff which I don't see happening. I just find it highly unlikely that they would want to even open up these Pandora's Box and have their name associated with it.

Kristina: All right. Well, why don't we do this in the interest of brevity and sanity? Let's - I think maybe what we should do is move this, as well as some of the other kind of proposal into - at the auxiliary section that Avri proposed - Avri proposed rather in the sense of, you know, maybe we could just put this in in the kind of additional proposals that were, you

know, put forth by working group members, and that, you know, the council may wish to explore further and (unintelligible).

I mean, I do think that, you know, given that people have really come up with some ideas that at least from not being so involve in ICANN historically that, you know, from where I see it at least, I think it's a great idea.

I realized that they're all kinds of perhaps additional structures or other types of obstacles that will prevent it from happening. But I think to a certain extent we have an obligation to throw it out there.

It doesn't have to be practice. It has to be kind of, oh by the way, here are some other information that, you know, came out during the course of the working group. No reason to pass it on. Do as what you will.

Is that all right?

Man: Sure.

I guess I'm struggling is why we're taking it out as a principle.

((Crosstalk))

Man: I haven't heard any thing real arguments why it's a bad idea. I only heard arguments that, well, politically it may be touchy and, you know, it's a big idea.

Kristina: Well, do we have - I mean, am I correct in thinking that we don't have agreement on this point in its current form?

Man: As I said, I would - I have concerns. And I would have trouble supporting this recommendation as it currently as written.

Kristina: All right. Why don't we...

Man: ...so you would support it.

Man: Maybe you and I - you and I have to have a call. Maybe we can - after this, maybe we could come to some agreement on that.

Man: You know, it's hard to support any kind of working without someone looking at the feasibility of any these stuffs. And that's my biggest issue. I mean, I love the worldwide database as a registry. It will be easy to implement but...

Man: What's the harm of proposing the idea and then looking at the feasibility? I mean obviously, we can't do that this week, so.

Man: Because I don't want it to hold up any processes. I mean, it's a long term nice to have.

Man: Correct.

Man: I but just - it just hold up any New TLD from coming out. And remember, our purpose here is to provide advice to the New TLD committee so that they can incorporate it and they can eventually being incorporate it in RFP.

I just - I mean, it's nice to have but I just don't see how it's feasible.
The world hasn't ever been able to do it. I'm not sure how we will.

Man: Well, it will be voluntary for those who want to register in this upcoming Sunrise period.

Woman: And we don't even have to be limited in Sunrise. If we - it could be IP claim. It could be frankly any rights protection mechanism.

Man: Right.

Woman: That required factual information.

Man: The registry in this next round, and then that would work across all TLDs, across successive route. I think it would make it easier for all stakeholders basically. The fact is it is a big idea.

Woman: And on - actually, it was implemented by PwC. And their procedures were a heck a lot more complicated than most TLD launches because they went through country by country analysis to figure out what was involved.

You know, it's just going to be that extensive of a review, you know, and these other in this new launches but it definitely have the new implemented. And I think from a registry standpoint, it will simplify your processes. I don't see why you guys wouldn't think it's a good idea.

Man: So you're saying it has been implemented which then makes PwC the default provider of the service.

Woman: That's the only one they could do it. I mean, there's a lot of people they could do it. But I'm just pointing them as an example of someone who's actually done it. And they did it by analyzing the, you know, the rules and the - whatever the 30 EU countries that participated.

Woman: When you would need...

Man: But there's - what happens Margie is when you get application from developing countries or more specifically from certain countries where the trademark office occasionally get slowing up or over running needs to contact the internist to get the copies of the files or reconstruct this.

I mean, this is part of will I just...

Woman: Well, I think that's why I said mandatory versus voluntary because in some launch, this wouldn't make any sense. But in some it might make things a lot simpler.

((Crosstalk))

Kristina: All right, I have an idea. Why don't we continue this discussion on the list and I will kind of, you know, put together something that said unless someone else wants to take a stab at it that kind of encompasses a lot of the concerns or at least to the extent that we can kind of come up with more clear description in a way that it might eliminate some of the concerns.

Man: On this point....

Kristina: Okay.

Man: You could try. I'll wait till you see what you come up with.

Kristina: All right. Well, Mike (unintelligible) involve ICANN again after this.

The last one with the name was service redevelop. And that was kind of following along on a proposal that Peter has proposed about allowing people to create kind of on a subscription basis.

It essentially will be kind of an amalgamation of the .name, name string, and .biz IP claim in the sense that prior rights owners could subscribe to an annual watch service that would - in which they would receive notification when a third party was seeking to register a name that included the watch string.

And that would enter during the application the applicant of, you know, do you want the name, you know, ABC, and such and such company or such and such person has, you know, put a watch on this based on their ownership of the right below. But please confirm that you want to put this with the registration.

Jeff Neuman This is Jeff. With how - we were going to introduce something like that for .biz. It didn't pass well. The marketability was awful even for a large TLD like this. And so we didn't do it.

I would not support something about should be develop.

Woman: Okay.

Jeff Neuman Maybe but it's just not something attested well that people really want it.

Mike Palage: And (Christine), this is - I'm sorry, (Peter), go ahead.

(Peter): Go ahead. (Mike), go ahead.

Mike Palage: Thank you, (Peter).

The only thing I would say here, (Christine), is as I tried to articulate on the last point. If there is a problem and there is market driven solution, it will succeed.

And as Jeff said, it did not succeed the registry level, however, where the services do so - where they do exist, and where - I think they have been successful is at the registrar level.

The services again, mark monitor, CSC, (VeriSign), (DBMs), those types of services that they are providing to their client. That's where it's working.

And the ability to tweak those services based upon changes in the marketplace. I've discussed with registrars their ability of how they have tweaked their algorithm in response to domain name case testing where things were in and out and things like this.

You know, innovation - you know, we have to let innovation happen and let the market drive it, not try to dictate innovation through a policy development process.

(Peter): This is (Peter) in Copenhagen.

Jeff, the question was who didn't like this? Was it the trademark owners or the owners (unintelligible) prior right -- who didn't want to participate in it?

Jeff Neuman Yes. There's a market said he done people that got participated in the IP claim service of trademark - yeah, trademark owners, yeah.

(Peter): Okay. Because the feedback that I'm getting is that people would like it as long it is enforce the or didn't allow the domain name application to result as long as it went straight into a (UDRP) like provisions where as today, we got this (watch) notices but things are already there.

And then you have to go through the entire (UPRP). This was like kind of pre-empted (UDRP) much like what we have this opposition period within regular trademark.

Jeff Neuman Maybe you're taking \$6 domain and making it to a usually expensive process and automated tool that needs to be built in. It's very complex, very complex to put that it and expensive.

(Christine): All right. Well, I think this is one that maybe we should put at the end in other section.

All right. I think we've made tremendous progress. What I would like to do just to kind of recap...

Margie Milam: (Christine), it's Margie.

(Christine): Yes.

Margie Milam: Can I add along. I know it's kind of late.

(Christine): Sure.

Margie Milam: And I'd like to get thoughts on this.

(Christine): Sure.

Margie Milam: I'd like some sort of statement that if the registry chooses the center procedures that there's, you know, standard one that could be adapted across the board to minimize the cost of implementation. And it will be purely a registry and a sole discretion.

In other words, if they are starting from scratch and there's no - there's no preference as to how to do it, it would be really nice from a registrar standpoint if it, you know, they could go to this default line and concerns to and it's only if it's in our procedures, you know, in our, you know, TLD approach and if they don't have any preference for something else just kind of like if you started from scratch, you have nothing, you know, in mind, you know, use this procedure. I mean, it won't obviously have time to splash that out but it could be some - it could be developed later.

And I'd just like to hear, you know, what people think of that approach.

Kristina: I mean, I was, you know, that was originally what I was thinking just kind of the whole point of this exercise.

But, you know, I think even in some of the principles that we tried this report, for example, it's a new gTLD elects to use a Sunrise process as its RPM, you know, boom, boom, boom, we still haven't get any agreement on that.

So, you know, maybe what we should do is - and I should note that I don't need to say this is it in terms of principles. You know, this is just kind of what had been put forward. I am reluctant to discuss things only because I have a lot of questions about what you mean.

And I don't want - I wanted to make sure that he has an opportunity to explain before we kind of take a view on that. So, unless someone is acting on his behalf for purposes of the call which case we've got. And, you know, I would like to lead those for Wednesday.

And I do - I'm absolutely welcome to kind of any additional things that people would like to put forward. But I do think we need to kind of put it that anything that you've put forward at this point is either complete enough for the outset or the person who want to put forward is willing to spent the time question out because that, you know, by the end of our call on Wednesday, we've kind of got our list. And this is what we kind of got our list and this is what we've agreed on and this is what we haven't agreed on.

(Christine): Okay.

Is that okay? I mean I hate to put a huge burden on you. I just think...

((Crosstalk))

Margie Milam: No, no. I would just be curious on the - you know, if Jeff and Mike, if they see any merit or something like that or the thought just doesn't make any sense.

Kristina: I mean...

Mike Palage: If you want, I'll keep this to seconds. As I tried to explain with how (Afilius) has evolved to Sunrise with their launch with Moby's launch and now, user-launch.

And it's interesting to note that in that situation, both Moby and Asia are outsourcing their infrastructure back in with (Afilius).

So if in fact, there was something that worked right that was already can and could easily be, if you will, utilize of the shelf obviously there would have been an interest in the (Afilius) trying to offer that service.

However, each registry that I've been involve with has learned from past mistakes and, if you will, continuingly try to tweak and enhance the purpose of it.

So that to me is why I don't see, you know, I would have reservations with your approach because it basically would just leave the sunrise at a static state. And, you know, I think it's always important to innovate.

(Kristina): Okay, okay. How about you, Jeff? Is that some more...

Jeff Neuman I kind of torn on this one. I think in a number of respects, I think having some sort of - as a registry when you applied for any space, there's a

lot of pressure on you to come up with something that it's going to be accepted by the community at large.

If there - and again, as I said in the beginning, I don't think it's fair to judge a registry based on their choice of, you know, intellectual property protection model.

So in one respect, I think that would be great to have something that says, here's five approved models you can follow and you could choose anyone, and take it completely out of the registry's hand. But on the other hand, I see what Mike is saying too.

But I do need in the fact that it's, you know, if I was applying for a new TLD and I didn't even know where to start and you want to pay thousands of dollars or hundreds and thousands dollars to pay an attorney or the accounting firm to help to figure out the way that I think it would be useful to have some those models.

Margie Milam: Yeah. And from a registrar perspective, you know, I don't care whether the .info approach is not this approach. Just as along as I, you know, if it's possible so that I don't have to recreate the wheel every time, you know, the new Sunrise.

I mean, that's kind of the intent behind that. To have some saying that, you know, maybe if we - maybe it's like five of them. Five approaches, I mean, it's not specific enough that, you know, it requires any, you know. I mean, it has to be totally flexible whether you could choose that or not. And there's nothing wrong if they don't choose any of them.

But it was just be nice to have little more consistency especially if we're talking about, you know, many, many new TLDs being watched.

But I will try to put something on the list and see if I can, you know, get any kind of interest in it.

Kristina: Yeah, I know. I mean, you know, I think at least some kind of the trademark owner site. I mean, that would be fantastic that you don't have to kind of relearn the intricacies of each one every time.

I just don't - and I actually spend a lot of time thinking about if there anything that I can come up with that would be relatively non-controversial. And frankly what I came up with and what Kelly and (Peter) have added I think is kind of the limit of what is not controversial.

For example, you know, I don't know that there's even agreement as to whether or not you could restrict to Sunrise to, you know, if you're going to allow right owners to participate in the Sunrise based on, you know, trademark rights. It must be ownership of registration with national effects. I mean, I don't think you even have agreement on that, so unfortunately.

All right. Just to recap very quickly. I'm going to go ahead and make some revisions on this to circulate it. You are encourage to put forward a new proposals as long as you're willing to basically flesh them out, respond to questions, and be in a position to run through them kind of definitively on Wednesday.

Everybody please take a look at the definition. I'd like us to have kind of final definition and be in position on Wednesday where it really just everybody is waiting and it's really just a matter of kind of running through and formalizing that is clear based on the list.

And Avri, we didn't get your IDN thing. And we're now at two hours clock. I guess the other thing is that everybody could take a look that Avri circulated and weigh in as to whether or not, A, you have an objection to the kind of idea behind it; and B, if not, whether you think we should try and distill down to a principle; and C, if you think we should, what difference (unintelligible).

All right? Thank you everyone. I'll talk to you all on Wednesday.

Man: Thank you.

END