

**Registration Abuse Policies Working Group
TRANSCRIPTION**

Monday 27 April 09 14:30 UTC

Note: The following is the output of transcribing from an audio recording of the Registration Abuse Policies Working Group meeting on Monday 27 April 2009, at 14:30 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gnso-rap-20090427.mp3>

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

Present:

Greg Aaron - Registry C. - Working Group Chair
Nacho Amadoz - Registry C.
James Bladel - Godaddy Registrar C.
Richard Tindal - Registrar C.
Mike Rodenbaugh - CBUC
Phil Corwin - CBUC
George Kirikos - CBUC
Mike O'Connor - CBUC
Martin Sutton - CBUC
Faisal Shah - MarkMonitor IPC
Roland Perry
Barry A. Cob
Gregg Ogorik - Cyveillance
Beau Brendler - ALAC
Gretchen Olive

ICANN Staff
Margie Milam
Marika Konings
Glen de Saint G ry - GNSO Secretariat

Absent Apologies:
Rod Rasmussen - Individual
Jeremy Hitchcock - SSAC
Guanghao Li - cnNIC

(Greg Aaron): Marika if you would, could you do a roll call?

Marika Konings: Yes I will. Today is the 27 of April the (RAP) Working Group call. On the call we have (Greg Aaron), chair of the group, Barry Cob, Roland Perry, George Kirikos, Nacho Amadoz, Michael O'Connor), Faisal

Shah, Mike Rodenbaugh, Philip Corwin, Beau Brendler. And for staff we have Margie Milam and myself, Marika Konings.

(Greg Aaron): Okay. And is there anyone on Adobe that isn't logged into the call yet? I think - I see (James Bladel).

(James Bladel): Yes, I just joined, sorry.

(Greg Aaron): Okay, and I think (Martin Sutton) says he's having a little trouble on his conference line but he is on Connect.

Okay, well hopefully they'll be able to join us in both meetings. Now that we've done our roll call what we're going to do today is we'll do our basic housekeeping, we'll roll into the definition of abuse and Marika has put the latest document up in Adobe Connect. It's also on the group Wiki. We'll see how far we get on that and then when there's time we may also start to work a little bit on a question.

Marika, the housekeeping note I had was SOIs. To find out if there's anybody who hasn't yet submitted one.

Marika Konings: I need to check back but I think one outstanding one is (Jeff Neuman). I think he hasn't sent anything, but he might have submitted for other working groups so (I'll verify) with him if those are correct.

And I just need to check for delays. I think most people send their statement of interest after receiving the reminder. I think (Martin Sutton's) actually one of the ones who didn't send one in either yet.

But after this call I'll double check and send a note to those that haven't submitted to remind them. I don't know if you want to give them a deadline of some kind or...

(Greg Aaron): Yes we should since we've already asked for those probably the middle of last week. We'll just pursue those folks offline.

(Markia Konings): Okay.

(Greg Aaron): As you said. Okay that'd be...

Marika Konings: But I have to say I think most responded to the reminder and have submitted and they're all posted on the Wiki. If you go to the main page at the bottom on the newest domestic numbers, there's a link that takes you to the statements of interest. And maybe just put a you know a request here as well, if anything changes during the course of the working group, please provide your update to me and I can update the Wiki accordingly to show any changes.

(Greg Aaron): Okay, thank you so much.

Okay, let's move into our definition of abuse. And you'll - again you'll see that in the document that Marika prepared for us it's on screen. Or you can get it off of the Wiki.

Since that's been up for the last couple of weeks there's been relatively little discussion of it on the board. (Mike O'Connor) said basically he liked it and (George) and (Rolland) had a little bit of conversation about it. But otherwise relatively little discussion. So I'd like to know is that because you like it or not?

So first I want to open up, for those of you who have not yet expressed an opinion is there anything about this definition that you would like to see changed? Or does it raise any questions? I'd like to open that up to the group. (Barry)?

Barry Cob: Sorry, I was just agreeing with the definition. I liked it once we have the predicate or enabler prerequisite term used and defined.

(Greg Aaron): Okay. (James)?

(James Bladel): Also indicating agreement with it and with (Barry's) statement about the predicate.

(Greg Aaron): Okay. (Richard)?

(Richard): Yeah, I think it looks good, but once we get into some actual potential cases of abuse I think it will be - you know what I'm looking forward to doing is as we look at some actual case studies maybe we'll come back and modify this definition. Because it's a little - to me at the moment it's a little academic. I want to see some actual potential examples.

(Greg Aaron): Okay. (George)?

(George Kirikos): Yeah, I just to agree with the last comment that we should go around after we've reviewed the various examples of abuse and see whether the definition works or not.

(Greg Aaron): Okay. Anyone else?

(Beau Brendler): This is (Beau Brendler). I have to agree with the earlier comment about the need or the interest in some realized examples to work with or to analyze.

(Greg Aaron): Okay. (James)?

(James Bladel): Yeah, just a question for (Richard), (Beau) and (George). Is - do you feel that we can make a definition that's sufficiently water tight that you're just looking to test it against some real world examples or you actually are foreseeing that it might fall short in some areas?

I'm just curious is to what would be - what you're looking for to come out of that? I think it's a good idea, I just want to make sure that I'm understanding it correctly.

(George Kirikos): (George) here, it's the first part that needs to be water tight because otherwise it could be abused by various parties. Or misused.

(James Bladel): Okay, thank you.

(Greg Aaron): All right. So there's a desire amongst some to kind of road test the definition against some specific examples and see if it holds up or contains any deficiencies. Anyone - but - and by the way, we still have one open question which is the word. Should we use predicate or enabler or prerequisite?

I'd like to propose that we work on that word so we have a working definition at least and then we can - during the course of our work we'll talk about some specific examples. We can match it up against the

definition and if we find any deficiencies then we can work on the definition some more. But what I'd like to do is have something to go on for the moment at least. Does that sound okay?

So the question is do we use predicate or enabler or prerequisite? The - to recap the conversation about that the idea was that predicate is a highly technical term in logic evidently. It's not a term that is easily understood. A rough synonym might be prerequisite. In other words you can use something to carry out the abuse.

Let me try to think of an example. If you want to spam, for example, you need to get a list of names that you can send spam to. So how do you get lists of names to spam? There could be many different ways you could do that. But let's say we have a particular way of getting names like mining the (who is). Is that a - it would be a prerequisite or a tool to enable the abuse and mining the (who is) actually is against policy and I think most (TLDs).

So that would be an example. So do people understand the word predicate or is enabler or prerequisite an appropriate synonym?

(Mikey): This is (Mikey).

(Greg Aaron): Oh, (Richard) had his hand raised.

(Richard): So, I think I understand predicate and I guess that make sense to me, but I would think also that selling someone - to spam you have to have a computer. So I guess that if I - if (Dell) is selling me a computer it would be a predicate to spam as well using that definition. Would that be correct?

(Greg Aaron): Well, having a computer by itself does not cause harm. So I would think no.

(Richard): Well, I would think - getting a list of (that there) by itself does not cause any harm either, right?

(Greg Aaron): Okay. So (Mike), go ahead.

(Mike): I just want to pick on enabler. I think we want to drop that one out. I sort of dug into the definitions of that word and found it pretty unsatisfactory, and many of them coming from the - you know a different community.

So leaving the predicate, prerequisite debate to others I'd just like to lobby against enabler.

(Greg Aaron): Okay. (George)?

(George Kirikos): I just want to answer the question about the computer being predicate to spam. That's - it's caught by the first part of the definition, but it's not caught by the second part, because owning a computer isn't illegal or illegitimate or otherwise considered contrary to the intention. I think the definition is fine to have the word predicate. But it's not sufficient to just have the predicate you need something else which is part two.

(Greg Aaron): Okay. (Matcha) on the notes too said that predicate sounded precise to him. (Matcha), would you like to add anything?

Nacho Amadoz: Yeah, I think that - well, just what I said. The fact that it sounds (potential) should not prevent this because also the you know the definition is composed of two places and the first one is yes we need something to act illegally and we are doing it - we are not just supposing that everything that could be a predicate should be illegal.

And just allowing you to do something does not mean that it should be illegal. If - both conditions might be fulfilled.

(Greg Aaron): Okay, thank you. (Mike), you still have your hand raised. Anything else?

(Mike): Sorry, I will remove that.

(Greg Aaron): Okay, no problem. All right, so definitely not enabler. There's some support (drawing) around predicate. Is prerequisite a useful word?

Not hearing any takers on prerequisite. So for now should we use predicate in our definition then? And does it cover all the - okay, I see a check from (Mike). I see a check from (Matcha) and (James). (Fizel), (George), (James), (Martin). Okay, (Phil), (Rolland).

Let's see, (Phil) votes yes. (Barry) votes yet. (Rolland) and (Richard)? Yay or neigh? (Mike)?

(Richard): Yeah, I mean - this is (Richard). I'm okay for now, but again I really want to road test this definition because I'm still not exactly sure what predicate means.

(Greg Aaron): Okay. Fair enough. I think our assumption is we'll road test this and we have the ability to revisit it over time. But let's definitely call it a draft definition that we can road test.

It looks like everybody is generally - (Greggo) says yay. So it looks like we have good consensus around this to use as a draft definition. Let's go with predicate and we'll note that this can be revisited over time as we look at specific examples.

Okay. Does anybody else have any questions or comments about the definition? Okay, not seeing or hearing anybody. So, okay, that's a good step. We've got something to work with now and that's very useful.

Okay good. Now I put a - now that we've got this definition...

(George Kirikos): It's (George), can I just add one thing?

(Greg Aaron): Yeah, go ahead.

(George Kirikos): For the second part is it possible - where it says if such purposes is disclosed, is it possible to maybe add, maybe not now but at a later date, if such purpose is disclosed or implied? Because some of these things were back in the 70s and 80s and they maybe would have been a technical description of a certain protocol but it might not have been explicitly disclosed. It might have been implicit.

(Greg Aaron): Hmm. That's a good question.

(George Kirikos): Just thought I'd toss it out. It might not be now but maybe we'll see later as we go through examples.

(Greg Aaron): Well, and see, I guess we're - well that brings up a few questions. In cases of ICANN policies or contracts I would think in most cases the intention would be explicit because it will be in the policy itself or it would have been in the development process.

(George Kirikos): Right. If we include the development process, like in the U.S. Constitution they often generally refer back to the Federalist Papers which were discussion of how the Constitution was arrived at. But if that can be implied from the discussion then that would be fine.

(Greg Aaron): Yeah. RFCs sometimes do that, sometimes don't.

(George Kirikos): Right. That's why I wanted to tighten that.

(Greg Aaron): Implied means not stated explicitly anywhere I guess. Now - like you say any policy kind of has some - you can often infer why it's that way. Do we want to get into theoreticals of it (Mike)?

(Mike): I guess the worry I've got about implied is that it goes back to (George's) earlier point. That's one that you could abuse if you're not careful.

(George Kirikos): I - (George) here again. Just that it says to the intention and design of a stated legitimate purpose and then comma, if such purpose is disclosed. So now you've been able to get the second half of that unless the purpose is explicit right now.

(Mike): Yeah, I can see that. Some people didn't when these policies were being developed in the 80s and 90s, they might not have been thinking ahead. Especially when people try to gain things you know 20 years later.

(Greg Aaron): Yeah, you know I get that too. I think it's a great idea, I just worry that at the same time someone could arrive at different conclusions than someone else with implied. You know one person could look at a conversation and say yeah, that was implied and another would say no it wasn't.

(George Kirikos): You know like back when the five day grace period was created it wasn't explicit anywhere, at least in the (that) policy it was intended for credit card charge backs. And so people could you know say that it's legitimate, but.

(Greg Aaron): I suppose it's true that any policy - a policy statement is usually pretty narrow and straightforward. It doesn't get into - policy discussion don't get in - when you state a policy it doesn't describe the entire history of the development of the policy.

(George Kirikos): Right.

(Greg Aaron): And when you have a policy it doesn't talk about all the implementations of that policy or how you - all the ways you can carry it out.

To use (George's) example, the U.S. Constitution says what the policies are, but it doesn't say all of the implications thereof. Or expressions thereof.

(Mike): So where does that - if we're following that analogy, then where would those implications be thrashed out?

(Greg Aaron): Well, does it - in the end does it come down to whether the purpose is legitimate or not? And how is that determined?

(Mike): Right. You know the nice thing about disclosed is that at least there's something to point at. Sort of for use to continue on with the legal analogy is it's legislated as opposed to implied which is just subject to interpretation. And one way to do that is to take it to the courts and then when the court decision is arrived at, it's disclosed.

(Greg Aaron): Well, in the (who is), well, I'm sorry, in the ad grace period example, you know we had a PDP to talk about (domain tasting) and so on and it seemed pretty clear that the ad grace period was created for a very specific reason and I don't know for sure but I'm assuming people discussed that during that PDP.

And it was pretty clear that it was - the registrars could recover from mistakes or deal with bad credit cards. It wasn't disclosed in part - you know in the contract or in a - in the process of creating the AGP, but - or maybe it was, I don't know. It probably was.

Because you - I think it was explicit - or disclosed. That group probably figured, yeah, it was talked about. That's what the ad grace period is for and they determined that there was a contrary use or an unintended use of that grace period.

(Mike): So the question then becomes is - I don't want to split hairs over this because I kind of like the idea as implied to be able to catch those changing events that (George) was describing. At the same time it makes me a little nervous to leave the process for resolving those disputes sort of undefined.

(Greg Aaron): Well, one thing it would probably behoove us and future groups to do is if we have an abuse - or something we think is an abuse, it certainly implies you have to go back and do your research into the history and see if there's any relevant background material about the purpose of the thing.

And then in the end if you're - if you are going to go into policy process, the community through working group or some other process has to look at the thing and they make a call. And there's an ICANN process to determine whether there should be a policy or not, and if so what that policy is.

There is a - I want to call it a legislative process, or an - a constitutional interpretation process, but there is a process to determine whether a specific thing is abusive or not and get people's input on it.

(Mike): So the definition that we're using in that case could trigger one of those conversations, is that what you're thinking?

(Greg Aaron): Maybe. I see (Richard's) hand is raised.

(Richard): Yeah, I don't think I like the implied at the moment because - but I read too these are all (unintelligible). That we're saying - that the action has

to cause harm, that's (one). And then two, it's got to be like an illegal or illegitimate or contrary to the intention that it was designed, etcetera.

So in fact the way that it reads at the moment it doesn't even have to be illegal or illegitimate to be abuse under this definition (all right). It's just got to be - it's got to cause harm and it's got to be contrary to the stated purpose. So my feeling at the moment is that's pretty encompassing and I wouldn't want to add another piece there that says this implied purpose. Because I agree with whoever spoke a few moments ago that's a very subjective thing, I think.

(Greg Aaron): I'll throw my two cents in. I think (Richard's) comment makes a lot of sense. And illegitimate is another word that can be relied on. Maybe there is a question of who decides it's illegitimate. But like I said, maybe that's through PDP or something else.

Any other thoughts? I'd like to know and use the checkmarks or Xs, but is there support right now for leaving number two the way it is? Please indicate your thoughts. And (Phil) also has asked for the floor.

(Phil): Yeah, thanks. I just wanted to - under this definition, I'm not saying I disagree, I'm just think it's something we should focus on. It's possible that something could be considered abuse that was simply a predicate of harm but there was no actual harm yet and was not illegal or illegitimate, was simply considered contrary to an intention or stated legitimate purpose.

So I've just - that's kind of the lowest level that would trigger this. An action that was simply a predicate where harm had not yet occurred

and was neither - was not illegal or illegitimate was simply considered contrary to an intent or design of that purpose.

So I just put out to the group whether you know just to focus on whether that threshold that should be encompassed. I'm not saying it shouldn't, I'm just saying that's kind of the minimal definition of abuse that could occur under this proposal.

(Greg Aaron): Okay. (Rolland)?

(Rolland): Yeah, I'm just unhappy. I have no clarity on who it is. What person or organization is actually going to state what is a legitimate purpose. So I'm - I can't agree or disagree on this because I think I don't understand who's doing the (speaking) here.

(Greg Aaron): Okay. Well, in some cases it might already be clear I guess whether it's an abuse. If there's an existing policy on the topic. Other thoughts? (Mike Rodenbaugh) for example, do you want to bring in your legal mind?

(Mike Rodenbaugh): My legal mind is something a little slow this morning, (Greg). All right. I tend to agree with what's been said by (Phil) and others. At this point so far I haven't felt the need to speak.

(Greg Aaron): Okay, okay. All right. I'll throw out an example. Let's assume for the purpose of this conversation that everyone agrees that spam is an abuse. One of the predicates to spam might be mining the (who is). So one question is this group could say that mining the (who is) is a bad thing and measures to prevent mining of the (who is) should be considered by GNSO.

Or in that case we would be addressing an abuse in general and specifically we would be making a recommendation about one of the ways - one of its predicates. That would be an example.

You have to have agreement that spam is a problem worthy of being dealt with for example in that case. And (Rolland) asks - (Rolland) do you want to take the floor?

(Rolland): Well yes, I think actually using spam as an example is quite difficult because there's a lot of disagreements in this arena anyway.

But it's definitely the case that data protection law in Europe says that you can only use personal data under certain conditions and you can only gather it and process it under certain conditions. And it's perfectly clear that if you go around (displacing) Web sites and mining (who is) and doing whatever sorts of nonconsensual gathering of personal data in form of email addresses in order to use it to spam is - it's just simply against the law.

(Greg Aaron): In Europe. But there's another question which is in an ICANN context, you know there are contracts for example that say you are not supposed to use (who is) information for sending bulk unsolicited email. So that's an existing policy or contractual item.

So in the ICANN context it's not supposed to be done. And that's - I guess that's a contractual thing where the various jurisdictions may not necessarily matter.

(Phil): I mean it may matter. For example if some country came up with a law that specifically allowed people to mine the database, people in that country would be able to do it regardless of what ICANN said. Right?

(Greg Aaron): Yeah. And spam's probably not a great example either, that's for sure. That's the one I could come up with.

(Phil): I don't think we'd get very far if we start looking at choice of law types of issues. We're just going to get bogged down. I don't see why that's really relevant to what we're doing today anyway.

(Greg Aaron): M-hmm. Yeah. (George)?

(George Kirikos): Yeah, I was just going to followup on that but (Mike) didn't really want us to. But you know if you have something let's say for example, pornography. Adult pornography that is legal in the United States. A hard core pornography, but it's say illegal in Iran.

Under this definition it causes actual harm according to some academics although it's a debate. It's definitely illegal in some countries and so under that definition it's considered abuse. Now what's to be done about it, it needs...

(Greg Aaron): Yeah. By the way (Gretchen) is now entering the meeting.

(Gretchen): Thanks (Greg).

(George Kirikos): It doesn't even need to be nudity. I'm talking about the King of Thailand or something like that.

(Greg Aaron): Yeah. Well this is - this gets into the crux of one of the problems we have to wrestle with which is every jurisdiction has different laws. Or even if they concerned - are at all concerned with a particular issue they'll define their laws around that differently.

One question is does it matter generally or in a particular case?
Because what I can't have and how it does its business is through contracts.

(George Kirikos): Right.

(Greg Aaron): Right? (Mike) - and (Mike), again you have some experience here. So jump in if you want to. But for instance, ICANN has created certain language that applies to registrants and registrars and other language that applies to registries. And that's binding on those folks no matter where they are.

(George Kirikos): Exactly.

(Greg Aaron): Like if you're a registrar, you usually have registrants in many, many different countries. And each of those countries has different laws. But if you're a registrant you're entering into a contract with your registrar and you're agreeing to be bound by the contract between you and your registrar.

So in some ways the laws of the local country might be an issue, but in general what's really an issue is the contract you've decided to enter into. Let me throw that out. (Matcha)?

Nacho Amadoz: Yes, I think we should take into account that we have to think about registration abuse and not only what is legal or illegal. Because what you said in other contracts with ICANN (talking about our source) our dot come registries, we have to abide by that contract.

But there's some (speech) that could be a (gain Hispanic and the European globe) that technically hadn't been contracted that (law does not disappear). And that law if enforceable over the contract. So perhaps we should (represent what is against the standard uses) on what we want to be a fair use of the registration policies and not what is legal or illegal.

(Greg Aaron): Okay. (Mike Rodenbaugh)?

(Mike): Yeah. It completely, just want to kind of echo what you were saying (Greg) and what I think (Matcha) was just saying. What we would have to do is look at the contractual relationship between the various parties in the chain. With almost without regard to what law we're talking about. Because we as an ICANN community basically create these policies that we expect everybody to abide by it (on a GPO domain). And nobody in the world has a right to own or operate a (GPO domain). It's a privilege that's given to ICANN and to a registry and to a registrar to a registrant. And that privilege comes with certain obligations that are set out in the contract.

So I really - I - everytime we start talking about one country's laws over another I just feel like we're going down a rat hole and we're never going to get out of. We don't need to worry about that. We need to worry about what should Global Standards do and how should those be developed.

(Greg Aaron): (George) just raised his hand?

(George Kirikos): Oh, I have to tend to disagree with that because the (dot tell) people for example, that registry is located in England and they explicitly made reference to (who is) policies being against you know the British law according to the Privacy Commissioner.

So these jurisdiction issues have already come up and probably will come up in the future.

(Mike): But there's nothing that we can do about them.

(Greg Aaron): And actually in - the (who is) question has been dealt with within the ICANN context. So ICANN actually has a process for examining and normalizing those (who is) issues if a local jurisdiction doesn't allow a registry or registrar to adhere specifically to the ICANN contract that's involved.

So ICANN actually came up with a process for dealing with the (who is) thing recognizing that some of these parties might run into issues. But again it was dealt with in an ICANN context.

(Mike): But the thing with the UDRP. I mean yeah, we try to accommodate differences in different countries' laws, but for our purposes I don't see what benefit we're getting by looking at country versus country.

(Greg Aaron): (Matcha)? You had your hand raised?

Nacho Amadoz: Oh yes. Coming back to (unintelligible) and again regarding the (who is) question we are out (there in) negotiations with our own (unintelligible). But again that is not domain name registration abuse in my opinion.

(Greg Aaron): Okay. Anyone else? Okay.

Now I'll throw in my two cents. I think we're talking about the ICANN context, of course this is an ICANN working group and that's what the GNS is about. I think ICANN is mainly about its contracts and contractual relationships and that's where we ought to put our focus.

So anyway we - let's go back to the question we had a few minutes ago which was can we work with number two as it currently is.

(George)? You raised your hand?

(George Kirikos): If the question is if we're dealing with contracts where does it say, for example, that child pornography is anything in the ICANN contract? Like you're definitely going to come up with things that aren't in any ICANN contract that are illegal that have to be still considered abuse, I think, by most.

(Greg Aaron): I think - Well, the question is, is that an abuse, first and we'd have to look at that. And the second question after that is, is it within ICANN's scope to do something about. Those are both unknowns right now as far as our work is concerned.

(George Kirikos): I think we might be stuck because you know we'll have to go through the definitions - examples and come back to it. Things like

phishing. There's nothing in ICANN contracts about identity theft and all these things. They're going to come...

(Mike): (George) but there is things in the contract about illegal acts and malicious conduct.

(George Kirikos): Yeah, but those contracts don't say...

(Mike): In most of the contracts. All except for a couple.

(George Kirikos): (Unintelligible) net, org. The big ones.

(Mike): Net, yeah.

(Greg Aaron): We'll definitely get into that at some point because the group's been asked to look at the variances across existing contracts.

(Mike): Yeah.

(Greg Aaron): (Richard) has raised his hand.

(Richard): Yeah, getting off the national law issues back to what (Phil) said a few minutes ago. I think he's right and I think that the definition that we have now is too loose in that low case scenario.

So what (Phil) said was that the way it reads now something could just be a predicate to harm, that harm hasn't actually occurred, and it could just be being used in a way that's contrary to the stated, so.

But it's no harm, it's just a predicate to harm and it's just being used in a way contrary to its purpose and we're calling that abuse. So I think that's too low a threshold.

(Greg Aaron): Well, my reading of number one says that if it's abuse it has to be causing harm.

(Mike): Or be a predicate to that harm.

(Richard): To - that by all...

(Greg Aaron): Right. I mean...

(Mike): There has to be harm that is caused.

(Richard): And if we understand the predicate it means that harm doesn't have to have occurred, but that the predicate has enabled or facilitated in some way the potential for the harm.

So the way I read number one, it - you know if (Dell) sold me the computer then they are - there was a predicate action to me sending spam now by them selling me that computer.

(Greg Aaron): Is spam the abuse?

(Richard): Yes.

(Greg Aaron): Okay. So I mean spam in this case would be a known thing that does cause harm.

(Richard): Right. So I think the way the definition reads at the moment if I'm reading it correctly is that I've bought the computer from (Dell) and they gave me this computer, so it's a predicate to spam now. That's my understanding to predicate.

So the number one thing's been reached in the sense of the definition. And now if I use that computer in a way contrary to the intended purpose of the computer then abuse has happened.

So if I use that computer as a boat anchor, I've just caused abuse to this definition.

(Mike): You know you're assuming some policy that outlaws the use of computers for use as boat anchors.

(Richard): No, I'm not. I'm saying that one, so the number one thing met, do we agree on that? That's it's a predicate to spam if I buy the computer?

(Mike): Not necessarily. I think you're getting to the realm of ridiculous, frankly.

(Greg Aaron): Okay, I see (Phil's) hand raised.

(Phil): Yeah, I was just saying, maybe what we should be talking about since this is a registration abuse policy group is to - look, I don't think we want to be reaching actions like buying a computer. That's too far removed from the purpose of this group.

And so maybe we should be talking about a definition of registration abuse which would include as part of that definition is an action that one, occurred in the context of domain name registration, and then add

the other two on these. And that way you'll eliminate all the extraneous things like purchase of a computer that have nothing to do with the domain name registration process.

(Greg Aaron): Okay. I see (Richard), (Mike) and (Phil's) hands raised. Are those old or new?

(Richard): Mine's old.

(Mike): Mine is there because I was going to try to explain as I think (Richard) and I are looking at that first clause differently. It - there has to be harm that is shown and then yes - the activity that we think may or may not be abuse doesn't have to be the actual harmful activity. It can be something that leads up to it. But in the end there still has to be that harm.

So it's not that buying a computer could ever be illegal. It's using that computer to send spam that could be abusive.

(Richard): I agree with you, but I don't think that's what it says now. If I could go in and get a list of - if I get a list of email addresses from the (who is) myself, then is that a predicate to harm? I guess that's my question.

(Mike): Well, yes. I think it could be.

(Richard): But I haven't done anything with those addresses, I've just collected them.

(Mike): Right.

(Richard): But that's a predicate...

(Mike): But if you do that contrary to the intention of the purpose of the (who is) database, then you've committed abuse.

(Richard): Okay. I haven't done anything with them, I've just collected them. I'm interested in the data. I'm doing a data analysis of names. That's not contrary to the purpose, right?

(Mike): Right. If you're using them to market and send spam, then it is.

(Richard): Right.

(Greg Aaron): (Phil), do you have your hand raised.

(Phil): Well, I think to read this definition the way (Mike) is interpreting it, I think you need to - it would have to read or is a predicate of such actual harm. You would need another word in there to say that real harm has to have been created to read it the way that he's saying that he reads it.

(Mike): I think that - if that helps clarify it by saying such actual harm in the second clause, I would be fine with that.

(Greg Aaron): That proposal was to say a predicate of such actual harm? Is that correct?

(Mike): Yes. Or actual and substantial harm to copy the phrase.

(Greg Aaron): Okay. Other thoughts?

(Mikey): (Mikey) here. I just point to (Fizel) comment in the (cap) that may be material.

(Greg Aaron): Or predicate act, I'm sorry - (Fizel) said or a predicate act that is material to such harm.

(Mike): I like that.

(Mikey): And maybe leave the actual harm motion in as well so predicate is such.

(Mike): Actual and substantial harm.

(Mikey): Yeah.

(Greg Aaron): Okay. Okay, so I'm going to put that in the comments. It would be or a predicate act that is material such actual and substantial harm.

How does that work?

(Mikey): I like that.

(Greg Aaron): Does that kind of close up the language in a way that people are comfortable with? Let me pull your feelings about that phrase, or a predicate act that is material to such actual and substantial harm. If you could use the (checks) or the Xs to indicate your feelings about that.

See, 11 and - (Richard) has a question.

(Richard): Sorry, I meant to raise my hand. Now that you mention it, let me ask a question. So the addition of the word actual now means that harm has happened - it had to have happened. Is that correct?

(Mikey): Yeah, I think so. This is (Mikey).

(Richard): Okay. I think that's all the concern that I had before.

(Greg Aaron): Okay.

(Richard): Turn my hand into a check.

(Greg Aaron): I see - I see 12 checks and no Xs. (Phil), (Rolland), you have any feelings about it?

(Rolland): Well, this is (Rolland) here. I'm not sure we actually need to repeat the actual and substantial because that's what such means.

(Greg Aaron): But does it hurt anything to repeat it?

(Rolland): No, it doesn't hurt, I suppose. But that's why I'm not voting for or against it really.

(Greg Aaron): Okay. Perhaps not elegant, is what you're saying?

(Rolland): I think what I'm saying that with a definition that just gets longer and longer and longer repeating things so that does no damage to repeat which just makes it more difficult to understand if you come to (unintelligible).

(Greg Aaron): Okay. All right. Well, it looks like we have no (demerits). So let's - now (George) are you suggesting something else?

(George Kirikos): Oh yeah, the only thing you really added, just to followup on the last speaker, was the word material so you could use that as an adjective or as a material predicate act. (That's that term.)

(Greg Aaron): Well, if you use actual and substantial then substantial takes care of material.

(George Kirikos): Well, the actual and substantial harm is referring to the harm. The word material is in relation to predicate. The material predicate act.

(Greg Aaron): The act?

(George Kirikos): Well, yeah. The material is only modifying the word predicate act.

(Mikey): Yeah, that's right. This is (Mikey). I agree with that that the material refers to something different than the actual and substantial.

(Greg Aaron): So (George), how would the whole phrase read? Could you put it in the chat?

(George Kirikos): Okay, it would be abuse is an action that causes actual and substantial harm. Now see how slow I type. Or is a material predicate of such harm.

(Greg Aaron): Oh, it says actual and substantial harm or is a material predicate of such harm.

Does - so you've removed the word actual.

(George Kirikos): Yes.

((Crosstalk))

(George Kirikos): The word actual is still there because it's referring to the harm.

(Greg Aaron): Yes.

(George Kirikos): The harm is the actual and substantial harm.

(Greg Aaron): Okay.

(George Kirikos): It's already on the first one.

(Greg Aaron): Okay, got it. Okay, so we have a couple of - we have a couple of options now. We have the one we just voted on which everybody felt good about. Let's now pull what (George) has posted. You think if - the question is is it superior?

So use of check box if you think that the version that (George) just posted is a better alternative.

Okay, looks like there's agreement. See 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 checks. (Richard) has raised his hand.

(Richard): I'm being roughed around the (edge) for again on whether the predicate has - if harm has actually occurred. Because I'm looking at

(George's) definition here and it's not clear to me that there's been actual harm. That something that which is materially a predicate to potential harm has happened.

So what is the case there.

(George Kirikos): The word (fact) is capturing that, I believe. The word such would include the words actual and substantial harm.

(Richard): (The words) actual or substantial harm or is a material or is a material predicate of such harm. So harm has happened for sure, huh?

(Mikey): And the harm is actual and substantial.

(George Kirikos): Right.

(Richard): Okay, so I'm good with that.

(Greg Aaron): Okay. All right it looks like we'll go with that then.

(George Kirikos): (Fear) it causes actual and total blindness or is a material predicate of such blindness, that blindness still has to be total blindness, for example.

(Richard): But - okay. And that's what the word predicate means? Because I like what - I thought what (Mike) had put in made it clear to me anyway. The words material predicate of such actual harm. To me that removed any doubt that it -

(George Kirikos): This refers back to such actual and substantial harm. That's what you know we could leave it there if you want, but then (Rolland) doesn't like the repetition. So, I mean it says what you think it says (Richard). Or at least in my - to me.

(Mikey): You can add the words back. It just makes it a little bit longer.

(George Kirikos): Right.

(Mikey): It would be identical.

(Greg Aaron): Yeah. Yeah, I think in all cases no matter what it is it has to be actual and substantial.

(Richard): Okay, that's good for me.

(Greg Aaron): Okay. We are coming up on an hour. I think we've got language now that we can move forward with. As we said earlier we can go back and revisit this definition should we find it to be inadequate. So we've got something we can work with now as we go forward.

Next week's meeting we need to do some planning ahead of time. I would like to continue to use the list as a way of discussing things because we only meet every other week, and I would like to keep some substantial dialogue going on there so we can get some work done in preparation for the next meetings.

The question is how to do that. I want everybody to get involved. I want everyone to have opinions. I want everybody to be using that list. So I think my challenge is to figure out how to best do that.

What I would propose is I think the next thing we might want to look at is the scope issue. Now we've got a definition of abuse. The question is before we go through all of our examples we might need to figure out some general guidelines about what is in scope and what is out of scope.

Some of our definitions - some of these individual abuses that we came up with for discussion probably are definitely within GNSO scope or ICANN scope. Some of them look like to me at least not. So I think before we get into those specific ones we should have an additional ruler about scope. And the scope issue is one of the main things we've been asked to look at in our charter.

I'll re-circulate the language I put in today's agenda. One is a quote from the charter about figuring out these scope issues. The second quote is from the issues report and it's - it is an opinion I believe written by the ICANN council about what's in scope and out of scope. And it gets into areas for policy making and so forth.

So look for that mail from me and I think it's going to raise some very fundamental issues for us to discuss. And between now and the next meeting what I would like to do is thrash around those a little bit, and (whittle out) the big questions that they raise so we can have a good conversation about those in the next call.

Any thoughts on this proposal?

(Mike): If (unintelligible) I would like to clarify where this quote came from in the issues report (unintelligible) council's quote. Either way I think it's a

little bit misleading at the end. I think it would just be a little bit wrong to me, but we can talk about that at the appropriate time.

(Greg Aaron): Yeah, and specifically the quote came from section 1.5.

(Mike): Right.

(Greg Aaron): Of the report. And Marika do you - was that provided by the legal staff?

Marika Konings: I would need to look back, but I think this specifically refers to a section the REA that would provide for consensus policies, I'm talking the registration of domain names. I mean it comes out of a bigger section. So again we need to look back and put the bit in context whether this is related to. But I can do that before the next call if that's okay.

(Greg Aaron): That would be great. Because what it seems to say is it seems to give guidance or refer specifically to some contracts and so forth. So we should figure out the origin of that language in the report.

(Mike): Yeah, and make sure that it's exactly accurate. Because I think the last sentence should say consideration of new consensus policies maybe, would not be within scope. But I think it's clearly within scope to address policy issues that are outside the picket fence. We just might not be able to impose them as contact requirements, but they still can be discussed as policy, that (constitutes) for example.

I just think the last sentence here doesn't really follow on the first couple of sentences.

Marika Konings: Yeah, (Mike) I think you're absolutely right. I think this last sentence just relates to the issue of consensus policies and I think there is, as we've discussed before, certain issues might fall and (need) within the picket fence and those are enforceable for contracts. But other issues can be discussed and other options could be explored there and best practices.

But again I can provide a clarification in writing so everyone can put it in the right context and we have the right (context) to discuss that further.

(Greg Aaron): Okay. All right. That's the kind of think we can do I think fruitfully on that list, to get you know, discuss the history, figure out what big questions these things raise, and then come into the next meeting to discuss those kinds of things.

Okay. All right, we're a little bit past our hour. I think we made some good progress today. We've got a definition that everybody gelled around so thank you for the very sharp comments you made today. And again I encourage you - let's definitely engage each other on that last on our off weeks and that will help us have some really good focused, useful conversations on our next call.

So thanks very much and look forward to seeing you on the list.

(Mike): Thanks (Greg).

(Greg Aaron): Goodbye everyone.

END