

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working
Group call
Wednesday, 31 August 2016 at 16:00 UTC**

Note: 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-rpm-review-31aug16-en.mp3>

Attendance of the call is posted on agenda wiki page: <https://community.icann.org/x/GBSsAw>

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Coordinator: The recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to the Review of all Rights Protection Mechanisms, RPMs, an all gTLD PDP Working Group call taking place on the 31st of August 2016.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you are only on the audio bridge, could you please let yourselves be known now?

Jon Nevett: Jon Nevett is on the audio, not on Adobe.

Terri Agnew: Thank you, Jon. Noted. Hearing no further names, I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this, I'll turn it back over to our chair for today's meeting, J. Scott Evans.
Please begin.

J. Scott Evans: Good afternoon, good morning, good evening everyone. This is J. Scott Evans. As you can see, our first item on the agenda today is to discuss the cochairs' proposal that was circulated yesterday in memorandum form regarding a way forward with respect to basically our work and subteams and, in specific, the subteam that we had begun to formulate a call - a couple of calls ago with regards to the possibility of exploring - someone - we were getting some echo.

Terri Agnew: And, J. Scott, this is Terri. We're trying to isolate the line. But just as a reminder to everyone to please mute when not speaking.

J. Scott Evans: So, as I was saying and so the chairs got together and discuss this and we put together a memorandum that was circulated yesterday that sort of explains our thinking with regards to some of the discussions we had last week. Specifically, I think we phrased it as the threshold issue question which sort of got - for want of better parlance calls it the broken rule and explained our thinking with regards to that as a threshold issue with regards to any issues we might explore during our work.

And also specifically in regards to the subteam that we had started putting together with regards to the possibility of voluntary online mediation with regards to the PDDRP. So with that I want to open the floor to discussion on this so we can make sure that everyone has a discussion.

I think if you didn't review it I think it - to give it an executive summary I think the cochairs review the situation and thought that applying a broken rule or you have to demonstrate that something isn't working before we can explore whether there should be any changes or refinements to an RPM was more limiting than our charter had envisioned for our work.

And so, you know, that's one of the things we were thinking that it was probably a little bit far too limiting to apply that threshold rule to everything. And with regards to the online voluntary mediation option, a couple of points.

One, applying the fact that we don't think there should be a have to show it's broken rule before we explore possibility of some sort of adaptation or clarification or revision to an RPM specifically with regards to that subteam there were a couple of points.

One, we did take a Doodle poll and there was a three to one margin in favor of further exploration of the possibility of offering a voluntary online mediation option. I think as we have emphasized during the call the last two calls and in the memo itself that in no way presupposes that that option would be added or recommended. It was the opportunity to explore that option and to give more information to the group, not to come up with the details mediation plan that would be implemented.

Our conclusion is that something would be done by, A, recommendation implementation team after we make our recommendations that are idea is just to take any additional information considering, you know, the possibilities of what it would be and what it might help with and put that out to the committee in a more informative manner so that the group could make some decisions with regards to that.

So I hope that I've done it justice. If I haven't, if they - Phil, as another cochair, has any other additional information he'd like to add or if I've mischaracterized anything or summarized it just a little bit too high level, I apologize, and would operate to Phil to jump in here if he has any comments. If not...

Phil Corwin: Yes, J. Scott...

J. Scott Evans: Oh, go ahead, Phil.

Phil Corwin: Yes, I'll be very brief. I'd rather hear some of the working group members and then respond more fully. But I agree, we decided a broken rule that we could only look at making adjustments to an RPM that's broken, which as we go through the dictionary meaning means not working at all or really dysfunctional, doesn't comport with the responsibilities we've been given under the charter which is really much more to look at do we have the right policy framework or should we add or modify, add to it or modify it?

Are these RPMs as effective as they can be or are there ways to make them more effective? And on the subteam, the cochairs agreed that we have not made any decision to recommend adding mediation to the PDDRP. Would like the subteam to look into not full implementation details but simply are there precedents for that? What are the pluses and minuses so that the working group can make a more informed decision on that? So I'll stop there and let's hear from some members.

J. Scott Evans: Okay, I see that Jeff Neuman has raised his hand. And then the next hand I have raised is Susan Kawaguchi. So Jeff, we'll turn to you.

Jeff Neuman: Thanks. Can you guys hear me okay?

J. Scott Evans: I can.

Jeff Neuman: Great. So with all due respect to the cochairs, I do not believe you wrote a memo on the right topic. The rule was, if it ain't - nobody asked you to look at whether if it ain't broke fix it. What we asked and what the point was, was you need to have a problem that you are trying to address before going to a solution in that at which there's no problem.

In other words, what we didn't say, what nobody said as well, the PDDRP isn't broken, don't fix it; don't make changes. The topic that was brought up

was is there something in the existing policy for which there is a problem that the policy does not address for which we need to address?

If you cannot find a problem for which you are trying to find a solution then you should not be looking at it. It's very different than talking about whether there is - whether something's broken. Nobody ever said that PDDRP was broken.

But when we talked about looking at like an issue of online mediation, for example, the question first is, what is the problem we are trying to address with having online mediation? That's what we need to have, a clear problem statement. Same thing will apply when we get to the UDRP. Do we have an issue or a problem that we are trying to address?

If we do have an issue or a problem that we are trying to address, then by all means address it; address it however you all or we all think is appropriate. But if we don't have a problem and we just come up with a good idea going hmm, I think the UDRP would benefit from having, I don't know, panelists from Brazil, more panelists from Brazil be involved in solving these UDRP cases. Well, okay, maybe a lot of people would like to see that happen.

But what's the problem we're trying to address? If we do not have a problem, we should not be trying to find a solution. So that is what was brought up. It has nothing to do with if it ain't broke don't fix it. So while I appreciate the memo completely it looked at the wrong issue. Thank you.

J. Scott Evans: Thanks Jeff. Susan.

Susan Kawaguchi: Thanks, J. Scott. So actually I have a question first. On the PDDRP, once we move forward, you know, and onto the next topic will the working group have an opportunity to go back and revisit this before our final report?

J. Scott Evans: Susan, I think you must have missed past calls. We have put a pin in most every topic because we are seeking some additional information from both the providers and the community. And those questions are going out at the end of this week.

And so I said that I mentioned before, and I think it's in our minutes, that the chairs had made the decision that we would put in all these topics and we've got additional information with regards to anything we would revisit it.

And with regards to any solution that might come up with a subteam or other, we will always be able to revisit it and have to come to consensus on our final report.

Susan Kawaguchi: Right, okay.

J. Scott Evans: Does that answer your question?

Susan Kawaguchi: Yes, that does answer my question. So with the PDDRP, and I keep messing up all these acronyms, I think it's a different situation than the UDRP in Jeff's example. And I do think that, you know, maybe we shouldn't spend a tremendous amount of resources and time envisioning better ways of or solutions to add to the PDDRP. But I don't think we should block work either or stop, you know, not move forward with the work because the PDDRP - and we've looked at that along with the PIC whatever it is.

You know, I think we're too early on for entities to actually use these RPMs. And because the new gTLDs, yes they've been rolling out for quite a while now but we haven't seen - we are now seeing a pattern of abuse where previously it was a one-off abuse. It's like okay, we really hate what this registry did and we don't think this is fair. And there could be some action here. But let's see if they sort of clean up their act and move forward as a responsible registry.

So now I am - at least for Facebook I'm seeing a pattern of abuse by a couple of different registries at least. And so now is the time for us as a company to evaluate the use of these new RPMs.

UDRP I've been filing since 2000. There's tons of examples and history and, you know, everybody understands the UDRP. But so I don't want to discount any work and any advice we could provide. And maybe it won't rise to a level of a recommendation.

But I think it should be noted that there was a discussion and let those that want to work on a subteam come up with possible solutions without really identifying the problem since no one has used these yet. I see these being used in the next year probably pretty frequently.

J. Scott Evans: Okay, thank you so much for that. Jeff, is that a new hand or are you going to respond to what Susan just said...

Jeff Neuman: Yes.

J. Scott Evans: ...or are you raising additional points?

Jeff Neuman: I want to respond to what Susan said.

J. Scott Evans: Okay. Go ahead.

Jeff Neuman: Okay thanks. So what Susan said is important. So Susan said that she's noticing a pattern of abuse to which she would like to see addressed or the Facebook would like to see addressed. I think that's critical. And if that's the case then that is what this group should be working on. Let's document those problems, document that pattern of abuse and then let's see what could help address those problems.

But just creating an online mediation subgroup to work on because people think it's a good idea, that's not the point. And I thought Jorge - I'm sorry pronounced that wrong, there was a comment in the chat that said that there is other - there's other abuses. So let's document those abuses. Let's do that, then we have the list of problems and then we figure out what the solution is. That's exactly the point.

But if we just create this online mediation team to look at how we can, I don't know, lessen costs or I don't know, it's so up in the air. It makes no sense. So...

J. Scott Evans: Okay.

Jeff Neuman: ...Susan, great point.

J. Scott Evans: Okay and I agree, Jeff, but I'm going to - you've spoken your mind on this and we know where you're coming from. But a couple of things that I want to clarify as chair first. We did ask the group the question. I agree that - I know and it's on the record that you disagree with how that question was asked in the poll.

And I saw that is going on in the chat box where there are several people say well the problem is nobody is using it and mediation may be a way to get the problems resolved. And I do believe that some of the providers mentioned mediation, to be fair.

Now I agree, and I see very clearly and I understand that you don't think that's a problem. But there is a group of people in this group that see that as a problem. And as chair, I have to recognize their positions as well. And when asked the question the group gave an answer.

Now I realize that you didn't like the way the question was asked but that just shows that those people who agree with you should respond to Doodle polls

because the only hard evidence the chairs have is that the majority of people want to explore this.

So, you know, I have to be fair and unbiased to everyone. And I'm going to let Phil speak at this point.

Phil Corwin: Yes, thank you J. Scott. Phil Corwin for the record. Very interesting discussion. And these are, you know, let me speak personally because the consensus views are the chairs we have and writing now. Number one, the PDDRP is the outlier in this whole process. It's the one RPM that hasn't been used so far and it's the one RPM for which there's only one kind of tangential question appended that relates to it appended to the charter.

All the other RPMs we are going to be looking at have very substantial records of being used. We have hard data on how many times they've been used, what the results have been. There are many, many questions that we are charged under the charter with at least looking at and considering whether we should inquire further into each and every one of those questions under our charter.

But whether the standard is broken or whether it's problematic, I don't see whether it's a problem solving much because I think just looking in the chat room there is good examples of subjectivity of that standard where people say, let's say about trademark clearinghouse. Is it a problem that only applies to exact matches? Is it a problem that claims notice is only are generated for 90 days? I think we will give very different opinions within this working group.

That rather than trying to decide on a problem standard or a broken standard or something like that let's look at the charter. The charter says we're required to, Number 1, to consider whether the policy framework is adequate or whether we have to modify it or add some other policy consideration.

Number 2, we are required to look at whether each RPM is as effective as it could be within the policy framework and if not propose ways to make it more effective. And Number 3, we have a list of questions submitted by the community on each of these RPMs other than the PDDRP and we are not required to make deep inquiry into each of those questions but we are required under the charter of when we get to each RPM to look at the list of questions and decide which ones we believe, by consensus, deserve further exploration. And we're also free to add additional questions if we think the community missed something important.

So we're operating at a very subjective area here. We have a lot of flexibility and some clear requirements under the charter. Having said all that, to reassure Susan, no issue - the recommendations no issue our final until we get to the final drafting, the final report midyear next year. Anything can be revisited in the light of new information or new experience until the final draft report and recommendations is locked down and agreed to by consensus within this RPM.

And by no means the chairs are agreed that by no means are we going to try to replicate the process by which these RPMs were created. We're going to look at the actual use and whether the policy framework is the right one and whether there is ways to make them more effective. So I don't know what else can be said on that but I think the main point I want to make is we need to look at the charter rather than adopting some other subjective - some other standard which in the end is going to be subjective anyway. Thank you.

J. Scott Evans: I hear more echo. This is J. Scott. I don't...

Phil Corwin: Someone needs to mute their phone, there's some...

((Crosstalk))

Phil Corwin: ...sign the conversation going on.

J. Scott Evans: ...trying to speak to us or if they're having a side conversation.

Terri Agnew: And this is Terri. We're trying to isolate the line again.

Greg Shatan: This is Greg Shatan. If you look above the word host in the left-hand side of the Adobe Connect often you'll see the name of the person. I saw Kurt Pritz's name showing up there, not to be accusatory but just where it says active speakers you'll often see that showing up, although not always, since my name doesn't seem to be there. Who knows. It's Adobe Connect.

J. Scott Evans: Be careful.

Greg Shatan: Product made by an amazing company.

J. Scott Evans: Okay. Does anyone else care to speak to this issue? Because I don't, as chair, want to waste anyone's time. And so I see in the public chat that there has been several people that said, well if the question had been asked now I would answer it differently. And so my question is whether we should send around another Doodle poll asking the question about exploring voluntary online mediation with regards to the PDDRP to see if that's something that we should expend energy on at this time.

Because I do not want a group to do a great deal of work that's just wasted work, that does not have the consensus of the group as something that should be explored. And I'm willing to ask that question again that we cannot continue to do this every time a group of people doesn't get the answer they want. So I am willing to suggest to the group and put it out to the group as a question whether that's something they all are in support of so that we can do this.

I do think, and I have seen great support from that when we talk about issues in the future with regards to all of the RPMs that we discuss I think agreed

framework as we begin to discuss things, and I think Kathy had done this when she put out, as we went through some of the PDDRP question was to look at - we have issues that we have to consider that have been put to us by the community in our charter document in the annexes.

And so we have to look at those. That we may want to start asking the question of ourselves and get that question answered what problem are we solving, and get a consensus on that. And then once we get the answer to what problem are we solving then delve into what solution we believe might solve the problem. Okay?

I just put that out as a food for thought. I'm not asking for anyone, but with regards - I see Paul McGrady's hand is up so I want to call on him and then I think we should take a, we'll do - I'll ask the question again with regards to the new Doodle poll and you can use your little check marks to let me know. Paul.

Paul McGrady: Hi, Paul McGrady for the record. Thanks, J. Scott. I was about to - I just want to say essentially the same thing which is I think that we meant well by jumping out ahead in this mediation issue but I do think that instead of going back and asking again on whether or not we want to consider that I think finding out whether or not there are problems first make sense and then asking that question.

I do think we need to ask it in the event that we determined there are some flaws with this particular policy, that would be a good question to ask after that process. But I'm a little concerned with the double bite at the apple at this point so early on because essentially what we would be doing is double biting the apple prematurely again, right?

So I'd like for us to get through the substandard analysis on the policy and then ask the question again. Okay now we know what the problems are, do we want to talk about mediation or now we know there are no problems, do

we want to talk about mediation. That process flow make sense to me.

Thanks.

J. Scott Evans: Okay, well in the spirit of being Mr. compromise how about if we ask a Doodle poll about do you think nonuse of the PDDRP is a problem? And then if we get a positive response to that then we can move forward with mediation because we are you know that if it's a problem we've got an answer that says that they possible solution. But I don't know if we agreed on the problem first.

So in the spirit of that I've got several hands going up so I'm going to start and go down the list. Kristine Dorrain, you're our first up.

Kristine Dorrain: Hi, thanks. Kristine Dorrain, Amazon Registry. Yes, I think we're just missing a little step in there. So I think we have to identify a problem or many problems, that's fine, maybe there's one, maybe there's five, and then we have to get some data to make sure that those problems exist. Right now we have to two hypotheses that I noted in the chat.

One was a hypothesis that lack of use is a problem. Maybe, maybe not. Maybe the lack of use is wonderful things, we don't know. And someone has proposed that cost is a problem. Maybe that's a problem, maybe not. A PDDRP can be filed and completely resolved for the same cost as a UDRP or not.

So maybe the problem, maybe it's not. So I think we come up with what the problem is that then we have to get some data as to is this actually a problem comment not just a perceived problem or a hypothesis of a problem. Then once we know there's actual problems and we have data and Susan Kawaguchi has put some great data in the chat, which is a good place to start, then we identify a solution set.

So I think by saying hey, there's a hypothesis of a problem let's jump ahead to a solution, I don't think you've included all of those suggested - all of the

possible solutions. Maybe mediation is the right match for whatever problem we've identified. But maybe mediation isn't the right match. Maybe mediation solves a totally different problem.

So perhaps by going down the path of discussing mediation at this point when we only have hypotheses we are eliminating a really, really good solution that no one has even thought of yet because we are a jump ahead to discussing mediation.

So my proposal is that you start with identifying all possible problems, hypotheses, people's guesses, whatever, come up with some data to support those as problems. Come up with a solution set up a list, you know, like ever be through your idea on the wall. How could we solve these problems?

Then go into sort of a discussion of which problems would actually solve that or which solutions would actually solve that particular problem? That's the sort of a four-part process that I think if we apply that to sort of every single RPM and it doesn't have to be month of work, I think we get there and we'd get there in a much more linear data driven fashion. Thank you.

J. Scott Evans: Thanks, Kristine. I just to be fair, I think we did that with regard to the PDDRP. And the only thing that we identified that looked like a problem, perhaps it wasn't articulated as crisply as it should have been, was some people thought the lack of use, including some of the providers, was a problem.

And some people suggested that perhaps mediation might be a solution to that because it could be, could be, I know there are people who disagree, that mediation could be a lower-cost option. But I do think we did ask if there's a problem, that was one of the questions we asked when we went through that list of issues. And we decided with many, many things that weren't a problem except where we were going to put a pin in it if we got some additional

information from the community and from the providers when we asked our additional questions.

So perhaps we haven't been as crisp or as clean in identifying that process but I think we've done that so far. But that's - I'll turn to Jeff.

Jeff Neuman: Thanks, J. Scott. And thanks again. And I completely agree with Kristine. I also think that - so one quick comment if we re-ask the question if I could ask you to take out the word "online" before mediation, I think that's also causing an issue.

Because there's different implications with having mediation and then having online mediation. So if you're going to re-ask the question, ask about mediation in general.

The other thing which I still am getting - I don't know how many times - I don't know how to do this. But I would love for us to just put aside whether PDDRP or sunrise or claims or whatever else we talk about and let's document, let's hard document the problems that Susan is talking about, the problems that other people are talking about. Let's get out there a list somewhere of these are the abuses that we think we are seeing now.

And I know that sort of a variation of what Kristine was saying, but I don't think we've done that. And I'd love to do that because then we can add that into say okay, we're seeing a problem of predatory pricing. Let's say that that's a problem. I'm not saying it is.

But then we can go, okay, predatory pricing is a problem. That's not even addressed by the PDDRP. That's not addressed by sunrise. That's not addressed by claims. What should we do to address that problem? And maybe come up with something completely new.

I just think we're being hamstrung by the existing RPMs without looking at what are these registries doing. I could tell you right now that I believe, and I don't have evidence and I would love to get it, but there are registries I believe, that downloaded, for example, the list of TMCH names and decided to put those names on a premium pricing list. And I think that is a problem.

I could tell you right now that increasing the price to that trademark owner for that is probably not something the PDDRP will address. But, we can work on, if we think it's an abuse, what would address that. How could we address it? That should be step one. Let's document these abuses that we see being done. Thank you.

J. Scott Evans: Thank you, Jeff. I think Susan Payne is next.

Rebecca Tushnet: So, hi, this is Rebecca Tushnet, could I get on the list? I'm on the phone.

J. Scott Evans: Okay, I'm sorry. I didn't know you were. Rebecca, I'll put you after Phil Corwin. Okay?

Rebecca Tushnet: Thank you.

J. Scott Evans: Susan.

Susan Payne: Thanks. J. Scott. Yes, it's Susan Payne here. I don't really need to say too much because actually it kind of got covered by the two previous speakers. But I was just going to talk to the PDDRP in particular and just say it would be really helpful, and I know we put this call out now for examples and data if, you know, examples of bad practices. And Susan has raised some on the chat. And it would be really useful to have more information about those because it seems to me we could be spending our time trying to create a solution to a perceived problem.

And then when we look at the examples of the abuse in question, none of them would even have been within scope of the PDDRP in any event. And I don't know that that's the case in relation to Susan's examples because I don't have the facts. But, you know, and mediation may not solve the problem that needs fixing.

So it's back to what Jeff was just saying. It would be, you know, we really need to work out what the problem is that needs fixing.

J. Scott Evans: Thank you very much, Susan. The one question I would ask of the group, and to contemplate as (Rebecca) and Phil speak, is does our charter allow us to amend the RPMs to solve new problems or is the question are they drafted or are there any changes that need to be made to make them address the problems they were designed to resolve? I just put that out to the group. Phil.

Phil Corwin: Yes, yes, J. Scott, let me speak to that before I say I was intending to say. In my personal view, because the charter allows us to look at whether the policy framework for the RPMs is adequate, it does allow us to say that the original drafting groups missed a problem and therefore - and that there should be a policy to address it and to propose some tweaking of existing RPM or even perhaps a new one to address that problem. I think that's within scope. Others may disagree. And I don't have anything particular in mind right now. But I think we have a lot of flexibility under the charter.

What I want to say was three things. Number 1, we don't know yet - I don't agree that asking a question right now whether or not we think - whether or not members think there's a problem with the PDDRP, I don't think we have enough information yet to ask that question.

If there are registries engaged in conduct that the PDDRP is targeted at and it's not being used because of some flaw in the PDDRP then there is a problem. But let's say that - and we've heard different opinions that, you know, that no registries have engaged in bad acts and compliance is doing a

good job and all of that. We just heard from Susan a few minutes ago that she's starting to see some practices that she thinks are abusive and fit within the framework.

But - and we don't have the data yet. I know the BC just got the survey question this week on whether BC members think there are abuses going on by registries that fit within the policy. But let's say after we collect all the data we decide that no registry has engaged in a prohibited act so far and there's no substantial barrier to using this if one begins to, in my reading of the charter, we're still not precluded from saying well all that being true, in retrospect is there some way this RPM could be made more effective? I believe that's clearly within our charge under the charter.

Second, I think, again, we have to look at the charter in determining what we're responsible for doing. And not make up different standards that may or may not comport with the charter. And, third, I do agree that the original question, and let me bring up my copy because it just disappeared from the share box, the original question for which the vote was 20 to 7 in favor, was at this stage of the PDDRP I support adding voluntary online mediation to the TM PDDRP.

I think that question was flawed. I think it went too far. I think I agree with Jeff that limiting it to online mediation was a mistake. So I would not be - I don't think it would set a damaging precedent where we'd be required to retake Doodle polls every time someone had a problem with the results, to think about framing a more targeted question focused on whether working group members would favor the creation of a subteam to look at the possibility of adding mediation, whether it's on or offline.

And to look at whether there are precedents in other - maybe it's some of the ccTLDs, I think there are precedents, what the positives might be, what the negatives might be, just to give more guidance to the working group to look at the big question but not in any way prejudicing what the answer is going to be

on whether we would want to recommend adding a mediation - a voluntary mediation option to the PDDRP.

I also want to point out that there's another question outstanding which was incorrectly labeled Class Action at the beginning but more on - it's more of a joint action where trademark rights holders could join together and bring a combined action against a registry they thought was violating the policy. And we're waiting on feedback from the providers on that.

So we have a couple of things the PDDRP which we may want to recommend. We need more data. And I'm not opposed to reframing the Doodle question on whether a subteam to look at practicalities of mediation should be formed. And we could do that now or we could wait a few weeks and see what additional data and feedback we get back from the providers and from the SOs and ACs and then decide on that because we can commence getting into the TMCH and circle back to the PDDRP when we have some more data to work on.

We can switch back and forth between these things until we're satisfied. I'll stop there. I hope that was helpful. Thanks.

J. Scott Evans: Thank you, Phil. Rebecca.

Rebecca Tushnet: Thank you. So I'll try and be brief. I thought Kristine's comments were extremely helpful and I want to endorse them. I do have a question for J. Scott. You know, several times you've mentioned that providers in particular seem to support mediation. And I was wondering why in your opinion providers' opinion is particularly important versus other people who might be participating.

But before you answer that just one last comment. In terms of the scope of our charter, you know, I understand the desire to put stuff on the table and I'm not opposed to it in general. But I do want to emphasize that we've heard

a lot of about making the process more effective. But more effective than what? At saving trademark owners' money? At saving registries money? At protecting against infringement?

Some other goal? That seems to me predatory pricing has to be some other goal. So just when we get to that I encourage everybody to be really specific about what you want to be more effective at because I think words like "effective" or "helpful" can actually hide some very substantial policy judgments. So thank you.

J. Scott Evans: Thanks, Rebecca. Okay, to address your question, I'm sorry if by pointing out that we had heard some of that from the providers made anyone think or gave the opinion that I gave more weight or thought that their opinions were greater than anyone else's in this group. My point by bringing that up was we did hear that some groups that we have talked to both in this working group and those we have sought information from have mentioned this as a possible solution.

Not that for any reason of status in any way means that that is a better position or not a better position. I am completely agnostic. My only point was to point out that we had heard that message before and giving what I, in my memory believe was the - a credit to the group I thought I'd heard it from. So I'm in no way trying to say that providers somehow have more sway or should have more sway in our thinking.

So here's the proposal that I would put forth to the group. My proposal is that we ask the question do you think that the non-use of the PDDRP is a problem? Second question would be, is if so, do you believe a voluntary mediation procedure is an appropriate solution to that problem, or something to that effect. And answer those questions in a Doodle poll.

And if we get those answers then we can proceed with the subteam to provide us with additional information before we make a final decision on

whether to consider it. But that's just - I'm not in any way trying to impose my belief on anyone or in any way trying to suggest that that is the way we should forward. I put it out for discussion.

I see we have George Kirikos, Susan Payne and Darcy Southwell in the queue. I'm going to go to George.

George Kirikos: George Kirikos for the transcript. I disagree slightly with the proposed phrasing of the Doodle poll. It shouldn't be whether or not the PDDRP has been used is a problem; it's whether the costs of using the PDDRP are a problem and then subsequently whether online mediation would be the - something to mitigate that problem. Because whether or not the PDDRP has been used or not is not a problem in itself, it's just symptomatic of something else and so we need to know what that something else is and cost is obviously the leading - or one of the theories.

J. Scott Evans: Thanks, George. Susan.

Susan Payne: Thanks. Susan Payne here. I would phrase it slightly differently in that I think one of the things we should be asking is have you encountered a situation where the PDDRP would be appropriate but chose not to use it? And if so, had there been a mediation option would that have made a difference to your - to the steps you took? As in, you know, would a mediation have helped you?

J. Scott Evans: Thanks, Susan. Darcy.

Darcy Southwell: So I'm - this is Darcy for the record, Darcy Southwell. I'm just a little concerned we're talking about another survey. There is a survey out right now, if I'm not mistaken, to various stakeholder groups, correct?

J. Scott Evans: Correct.

Darcy Southwell: And I believe that survey is to some extent asking - I can't - I don't have the questions in front of me but I believe that survey, to some extent, asking some of these questions, but maybe not all of these questions. And I think maybe the first question, J. Scott, that you, you know, articulated I am - I'm curious, I think it is appropriate to ask that question that is non-use an indicator of a problem?

But I also think that looking at some of the other problems is important but I'm worried - the survey you're talking about - we're going to survey people to death and now we're going to have three sources of information.

J. Scott Evans: Right, I agree. And let me be clear. I guess I'm not being clear - very clear today. When I said Doodle poll, I meant to this group, not to anyone outside this working group. We have for several weeks now looked at the PDDRP. We have taken in information from various sources. We have more to come, I agree. But we have at this point taken in information.

And my proposal is based on the information we've taken in to this group, this working group, is to offer the Doodle poll to them and have them, based on the information we've taken in, evaluate whether they believe it's a problem and then whether we should explore a possible solution. That is - I'm not - Darcy, suggesting in any way we do another poll out to the community.

Okay, I'm going to turn to Greg Shatan.

Greg Shatan: Thanks. Greg Shatan for the record. I don't want to take too long, but I just think we need to be careful about, you know, what question we're asking and what we're implying. I think we need to see kind of the question out in writing because I don't think the question is just about cost and I don't think the question is just about online mediation or, you know, the online version of mediation.

And, you know, of course a lot of this is hypothesizing since no one has brought a PDDRP and it's not clear whether anyone has gone through the process of even contemplating a PDDRP. For that matter, awareness of the PDDRP is, you know, one of the issues. So if we're - if the question is why isn't the PDDRP being used, there are a lot of potential reasons, not all of which are necessarily problems or if they are they have various different kinds of solutions.

But with this particular - if we want to ask about mediation in particular, you know, we should just ask about it and kind of avoid any kind of survey bias. Thanks.

J. Scott Evans: Thank you, Greg. Denise.

Denise Michel: Thank you, J. And thanks for this, I think a really productive discussion that has surfaced a number of really useful issues for the group to address. I would like to agree with Darcy and perhaps others that the survey that's still out there and being completed by various community members, I think will yield valuable information that should be factored into this discussion.

And so I'm - I would like to underscore that. And I'm wondering if it would be possible to put a pin in this discussion, get the remainder of the survey results, review that and then with that new information come back to this and related questions. Thanks.

J. Scott Evans: Thanks, Denise. Great minds because that was going to be my next possible suggestion is that we don't do any Doodle polling until we get this information back and at that time we ask this - whatever question we formulate - I see Phil's suggestion that we have a group come up with a formulation that everyone is comfortable with and then we do the Doodle poll.

But we do that after we get this information in so we address both Darcy's concern that we don't Doodle people to death and we get a consolidated

effort to look at what problems there may be and then we come back and if there are any issues identified after we get all that information assimilated we ask the Doodle poll and then we begin to work on those issues once we have all the information assimilated into one place.

Paul McGrady.

Paul McGrady: Paul McGrady for the record. So this is great because I was going to volunteer to be part of the solution and lead a small team offline to get the Doodle poll in shape, anybody who was concerned about how it's phrased and that kind of thing.

But it sounds like there's a different and better plan so I get all the credit for having been willing to be helpful but not actually having to do anything so that's terrific. Thanks.

J. Scott Evans: Okay. All right so I also see a suggestion, and I agree, that perhaps what we need to do at this point, Denise, is that a new hand?

Denise Michel: No, sorry old.

J. Scott Evans: Okay. Okay. Why don't - would it be outrageous if we put together a small group first while we wait on these results to come in, to consider the - a list of abuses that are occurring in the market. We've heard several of those discussed today. And put that together to present to the team as part of our information gathering. And we continue to - because I think our next call - we're supposed to be moving onto the TMCH. Now we can adjust our work schedule and come back as we get more information in and we will do that.

But I'm just suggesting is maybe, you know, we could put together a group of volunteers to identify and come up with a list of perceived problems that are out in the marketplace now. And then we can do the comparison of, okay, are these things - are the RPMs we have in place designed to - are helping to

solve those? And if not, why not? And is that a problem? And if so what's the solution? That could be one thing we do.

I know that with regards to some things we already know issues that are out there with regards to things and we've got some solutions we can ask different questions, but I wonder if that might not be a productive exercise as we move forward?

I see Jeff's hands gone up and I see Phil Corwin's hands go up. I'm going to call on Jeff.

Jeff Neuman: Thanks, J. Scott. Yes, I think I completely agree with you. And I think just something you said about not wanting to like, you know, we're supposed to be addressing and moving on to TMCH. I actually think that this discussion will - and this group will help us in those discussions as well because it may be possible that some of the abuses we see can be addressed by changes to things in the TMCH. And so I think it's a great idea and I'm happy to volunteer for that group.

J. Scott Evans: Okay. Phil Corwin.

Phil Corwin: Yes, thanks, Phil for the record. Yes, I have no problem with forming a group to kind of list abuses particularly the ones that may not have been targeted originally by the RPMs. I do suspect based on some of the things that have been said in this discussion which has been mainly on process today, I think that's useful that we get clear on our process going forward before we get into really the heart of our job, but I think a lot of them are probably going to relate to price - registry pricing at both ends of the spectrum.

One is going to be if Jeff is right and some registries downloaded the whole TMCH list and took those registered marks to mark, you know, to price them as premium, is that at variance with the policy of encouraging sunrise registrations to prevent abusive registrations?

And the other end, we know there are registries that have given domains away for free or for just pennies and is that a problem? Does that make it too easy for not just trademark infringement but for people to get extremely low cost domains for other nefarious purposes?

So that's a little bit different than direct trademark infringement or the encouragement thereof. And we're going to have to decide at some point whether that's within the scope of our work. I suspect there may be some controversy on that but let's see the list of perceived abuses first. Thanks.

J. Scott Evans: Okay. Thanks, Phil. So here is the suggested - I see that Mary has already - as good as she is, she's fantastic, she's already noted that we're going to have a call for volunteers as - an action item from today's call so I would ask within the next week those that are interested in volunteering please volunteer for this list of abuses subteam.

In the meantime, we're going to send out the additional question that we've already agreed upon to the various groups and we are going to put a pin in all the discussions with regard to the PDDRP until such time as we receive those responses.

When we get those responses, we will assimilate those responses and then if we believe that there needs to be - if anything is identified we will do agreed upon Doodle poll to ask if this is a problem within this group, if we perceive on the information we've received, if this is a problem and if we have suggested solutions whether that would be a solution or if there should be a great that should just consider whether there should be a solution.

And we can sort of make that the way we work as we go forward. Is - by a show of arrows, checkmarks, is that a way to move forward? I see Denise agrees. Caroline, you haven't changed so I'm going to say Darcy agrees. Just

let me look down. I have to scroll down to see. It looks like those people that are responding are responding in the positive.

So I think that that's the way we should go forward. I see that we have a hand up. I'm going to look to David Maher.

David Maher: That was a mistake, sorry.

J. Scott Evans: Okay. Are you just saying you agree?

David Maher: Yes.

J. Scott Evans: Okay. I don't see any red. So that's what we'll do at this point. Where we're going to take up next time, and you're all getting a long weekend to do it, so I would ask that everyone review the analytics working group on the TMCH report so that we can have a good discussion of it and how we can use that in our work or whether we should use it or whether there's additional things we need to look for and those kinds of things. And that's where we will begin our discussion next week.

If I could ask a member of staff just to remind the group of the time of our call next Wednesday? Oh, it's going to be at 1700 UTC next Wednesday, which is September 7. So if everyone will mark their calendars. I think we've got a way forward.

I do believe - I know it's frustrating in ICANN-land when we talk about process but I do believe - we haven't really delved into the meatiest and work yet. And that is the reason Phil wisely chose to start with the PDDRP so that we could sort of work through the growing pains of coming up with a process with working with something that wasn't as controversial.

And I think we flushed out some things today that will be very helpful in organizing us as we go forward. So I think personally today was very

valuable. I really want to thank everyone who took the time to speak up and stress their points today. We are glad to hear from everyone and I hope that more of you will feel emboldened and empowered to speak up to us and let us know what your viewpoint is because that's how we come to a true and robust consensus is by making sure we hear from everyone.

And with that thought I'm going to allow the closing comments to come from my cochair, Phil Corwin.

Phil Corwin: Yes, J. Scott, I endorse everything you just said and I just want to observe and I'm very happy that we were able to have a process discussion on which there was strongly held views and it was conducted in a very civil and mutually respectful manner. And I think that's to the credit of everyone who spoke today and it's a good sign for this working group as we get into what will be probably more difficult issues going forward. So thanks, everyone, for staying on the subject and not making anything personal. It's really appreciated.

J. Scott Evans: Okay with that I'm going to give everyone about 59 to 35 seconds of their life back. Thank you all for attending. Good evening, good afternoon or good morning to each of you from wherever you may be and thanks for your work today. Bye.

Terri Agnew: Once again, the meeting has been adjourned.

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