

**ICANN Transcription – Abu Dhabi
GNSO-Non-Commercial Users Constituency (NCUC) Constituency Day Meeting
Part 1
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On page: <https://gnso.icann.org/en/group-activities/calendar>

Farzaneh Badii: Hello, everybody. Welcome to NCUC Constituency Day. And this is my first and last meeting in person chairing the NCUC Constituency Day. And it's been a pleasure to be NCUC Chair.

Now today we are going to – we are just going to do a round of introduction and then we will have a session on ICANN and contents regulation which we have presenters and we talk about – we talk about ICANN and content regulation and also we have a statement that – that statement might be adopted at the NCSG session but we will decide on that when we get to the end of the session.

Then we will have the CCT people coming to join us and discuss their work. And then we will have the NCUC Fellowship presentation by Claudio and Milton. And then we – well that would be at the end of the session. And we might not have any break. I just – I just – so now whatever we do let's do a round of introduction. I have invited Tim today for the ICANN content

regulation statement, and this is why he's here, he's not an NCUC member.
So go ahead.

Tim Smith: Am I presenting now or just saying...

((Crosstalk))

Tim Smith: Hi. I'm Tim Smith and I'm the General Manager of the Canadian International Pharmacy Association. And within ICANN a member of the Business Constituency.

Farzaneh Badii: So we are going to do a round of introduction. If that's not what you want to do then we won't but.

Claudio Lucena: Claudio Lucena, NCUC Fellow and Paraguay State University professor back in Brazil.

Haoran Huang: Hello. Haoran Huang from Beijing University (unintelligible) in telecommunication and master degree candidate, also doing the Work Stream 2 on Jurisdiction. Thank you.

Bruna Santos: Hi, I'm Bruna. I'm from the University of Brazil, NCUC member, also a Fellow.

Michael Oghia: Hi, my name is Michael. I live in Serbia and I'm a Fellow as well.

Stefania Milan: Good morning, everyone. My name is Stefania. I work at the University of Amsterdam. And I am an outgoing councilor for NCSG.

Man: Hi. I'm (unintelligible), I'm from the University of (unintelligible) in Brazil and also NCUC member.

Ines Hfaiedh: Good morning. This is Ines Hfaiedh, Executive Committee – NCUC Executive Committee representative for Africa.

(Zack Keber): Hi, this is (Zack Keber) from Pakistan, I am an NCUC member and participating in the Regional (30) Working Group and a number of cross community working groups. Thank you.

Tapani Tarvainen: Tapani Tarvainen, currently chair of NCSG for a few more days before I hand that over to Farzaneh.

Ayden Ferdeline: Hi, everyone. My name is Ayden Ferdeline, I represent the NCUC on the NCSG Policy Committee and I just wanted to make one small comment, kind of along the same lines which was thank you, Farzaneh, thank you for your service and for everything that you've done for us as Chair over the past 12 months. Thanks.

Vidushi Marda: Good morning, everyone. I'm Vidushi, I'm representing Article 19 and I'm an NCUC member as well.

Collin Kurre: Collin Kurre, also from Article 19, NCUC member.

Milton Mueller: Milton Mueller from Georgia Institute of Technology in Atlanta, USA, NCUC member.

Jeremy Malcolm: Jeremy Malcolm, I work for the Electronic Frontier Foundation. Also NCUC member.

Maryam Bakoshi: Maryam Bakoshi, NCUC member – I'm just joking, ICANN staff supporting NCUC.

Man: This is (unintelligible) from Afghanistan, Kabul University.

Farzaneh Badii: Okay great. So let's just start the presentation and the session on ICANN and content regulation. Jeremy is going to chair this segment so go ahead, Jeremy.

Jeremy Malcolm: Okay, so we have several presentations. Shall I begin with mine or – okay right. So there's been a lot of actually I think, Milton, would you prefer to open with your presentation? Sorry, I wasn't aware that we were going to be doing this.

Farzaneh Badii: (Unintelligible).

Milton Mueller: Okay, yes, so there's a lot of intersections between domain name policy, domain name regulation, which is what ICANN is supposed to do and various forms of content regulation. And there's a growing – well there's actually for maybe the last four or five years there's been an attempt to put ICANN into a position where it is broadening its mandate to regulate or connect content regulation to domain name regulation.

And what makes this issue somewhat more complicated that it might normally be is this reliance of ICANN on a contractual regime in which sometimes private actors are doing things because they want to do it and sometimes they're doing it because ICANN's contract compels them to, and sometimes they're doing it because the environment around ICANN is pressuring them to do it and so they're doing it via private action and maybe they don't really want to but they think they have to. So it gets pretty murky.

So as I understand it, we have – is it just Jeremy and me? Or is – Tim, okay, okay right, all right, that's why you're here. Okay. So we have some actually some really interesting issues related to what Tim does with the Canadian Pharmacy Association and the issue of sort of blockage of websites related to competitive pharmacy offerings. And Jeremy Malcolm of EFF has done a lot of work challenging what they call shadow regulation which is this sort of gray area between what the private actors are doing.

And I had prepared a statement on domain abuse and avoidance of content regulation and – are we also doing the paper here, we're bringing that up?

The Internet Governance Project has also produced a paper about the terms of service of registrars and how registrars do or do not use the content of a website as a cause for cancelling a domain.

So that's the general introduction. And now I think Jeremy should go first.

Jeremy Malcolm: Okay, thanks very much, Milton. So today I am announcing that EFF is launching a new sort of campaign addressed to stakeholders at ICANN and you can see the slide for that at the front of the room. Registrars don't pick up (unintelligible). We're also addressing this to registries and we're also addressing it to ICANN as a whole.

But the remarks I'll make this morning are going to be mainly about how registrars have been taking up the responsibility of censoring content. When we say that that's not their responsibility and why there are good reasons why it shouldn't be their responsibility, we have concerns when any private actor takes it upon itself to become a censor but especially when it's a company that forms part of the Internet's technical infrastructure, if you like, which registries and registrars do.

So does anyone – oh let's see if this can work. No. Am I – where do I need to point this?

((Crosstalk))

Jeremy Malcolm: Okay and I'm just going to use the keyboard. Turns out. Yes, something's wrong with the pointer. Oh there we go, okay. So does anyone recognize what this is? Specifically? This is actually the Charlottesville riots that happened back in August where neo Nazis were marching and counter-protestors clashed in Charlottesville. And so what happened in the very few days after that was that a neo Nazi Website, the Daily Stormer, got shut off the internet.

Now the Daily Stormer of course was a pile of garbage and we're glad in a lot of ways that it's gone, but we are not glad about the way that it happened because what happened actually set a very dangerous precedent for the suppression of speech of people who are not Nazis, people who may be minorities, people who may have views that are contrary to those of the government where they live, or just maybe controversial speech.

The way in which this Nazi speech was taken off the Internet will certainly have dangerous results for those of us who hate Nazis. So what happened was that first the Go Daddy, which was its original registrar, deleted it – or terminated service claiming a terms of service breach.

Then the Stormer jumped over to Google and Google did exactly the same thing and then also locked its domain name so that nobody else could – so that it couldn't transfer its domain name to anyone else, so essentially the domain was deleted to all intents and purposes.

And so effectively it's unable to obtain a domain name now, even when it tried to register another domain name then exactly the same thing would happen time and again so that effectively it was unable to obtain service. And companies were refusing service because they knew that if they didn't then they would be DDoSd and boycotted. And so – and not only did this happen for domain name companies but also to other Internet infrastructure companies. Oh, that's in the wrong order. Oh, my slides are on the wrong order. That's interesting.

There we go, Cloud Player, so Cloud Player, its content delivery network did exactly the same thing. And its CEO expressed reservations at the time about his ability to make a decision unilaterally that affected the Internet. His quote was, "Literally I woke up in a bad mood and decided someone shouldn't be allowed on the Internet; no one should have that power."

And it's worth noting that the same pressure that was brought on Cloud Player to drop the Daily Stormer as a customer is also being brought on it to drop other customers now such as copyright – sites accused of facilitating copyright infringement. And so they have a hard time now in saying why they shouldn't since they've already done it. And the same applies to the domain name registrars.

So here next is a diagram of the – what we call free speech weak links. So at the top is your speech, at the bottom is your audience, and in between are all of these intermediaries who can affect the delivery of the speech to the audience, so it includes the (web-hoster), certificate authority, upstream Internet providers, content delivery networks such as Cloud Player, search engines such as Google. Then we have the DNS layer where we have the registries and the registrars, the ISP, payment providers and other Internet platforms.

So at any of these points, censorship can be brought to bear to interfere with speech online. Now, we don't say that there should be no possibility for – to deal with speech on the Internet; if there is a legal problem with it, then of course it has to be addressed. But we say it should be addressed at the level closest to the publisher which normally would be their web host. And it certainly shouldn't be the DNS provider because there are – it's a very blunt instrument of censorship at that level. You can't just remove one unlawful article, one unlawful picture, you basically have to delete the whole thing. And there are consequences for lawful speech if it's done in that way.

The other thing is, you know, once you start deleting speech because it's by Nazis then where do you stop? Because every country has got something that they want to see deleted from the Internet that may not be unlawful elsewhere and that's why I had the rather out of place picture of Ataturk from the founder of the Turkish nation because anything that's published in Turkey that is considered to be dishonoring his memory is taken down.

And that's fine within Turkey but does the rest of the world want the Turkish government to be able to censor discussion of Atatürk for the entire world? Probably not, I mean, there are many examples that I could have given, Atatürk is just one of them like the, you know, criticism of the King of Thailand or material that promotes LGBT rights in Russia is censored. So we certainly don't want to come into the situation where an Internet company whose actions can affect the entire Internet can be influenced by parochial concerns outside of the rules of law.

We would say that there needs to be an adequate legal process to remove content from the internet and that it should be at the appropriate level such as the publisher of the content rather than the domain name registrar.

So as I indicated earlier, there are ways in which this can be done lawfully and appropriately. The Manila Principles on Intermediary Liability are a set of guidelines that EFF has published along with other civil society organizations from around the world including others in this room. And it's a set of principles about removing content from the Internet that's based on human rights norms.

Basically we said that content can be removed if there's a court order to remove it. And a company can also choose to remove content that's contrary to its terms of service, but if that happens there should be openness and transparency and accountability so for example there should be a process of appeal and that wasn't the case with the removal of the Daily Stormer.

Again, I want to reiterate, we don't really care about the Daily Stormer because that particular content was particularly odious, but we think that even so, just like if a, you know, a murder is accused of – or someone I accused of a terrible crime, the process that applies to them should be the same as if it's an innocent person finding themselves accused, and exactly the same should be the case with speech, there needs to be a process, there needs to be transparency and accountability.

And so we are asking registrars not to voluntarily put themselves in the position of censors and not to pick up the censor's pen.

So that's pretty much all I have to say. I would like to pass back over to Milton to give some more of his perspectives. Thanks.

Milton Mueller: Yes, I was going to have – what's that?

Jeremy Malcolm: (Unintelligible).

Milton Mueller: I will go next because it's so closely related to what you said and then we'll go to – yes, Chris. So yes, we at the Internet Governance Project, if you could pull up that Website? We were also watching the situation around the Charlottesville and we did an analysis of the terms of service of the service providers who had cancelled the domain. And we found some very interesting things. And we decided to do a more detailed analysis and paper about it.

And I think Farzaneh and I both have copies of this paper here, it's called In Search of Amoral Registrars, Content Regulation and Domain Name Policy. So when you looked at the terms of service of Go Daddy, you discover that they canceled the domain of the Daily Stormer not based on a claim that inciting violence but simply they have a claim in their terms that says they can cancel in their own discretion any domain name that is used to support what they call quote, morally offensive activities. And we wondered how many registrars do this? And how many options do consumers have?

So we went through the list of ICANN registrars and of course there's actually thousands of registrars, although many of them – there's much fewer contracted parties, so single contracted party may have registered up to 500 registrars. So anyway we simply did an empirical analysis of how many of these registrars have clauses that give them the discretion to cancel a domain name.

And we found some interesting facts. So there's a table in here that sort of summarizes the data on Page 6 of the paper. Sure. And we found that of the 74 registrars that we studied, 26 of them have a morality clause similar to the one that Go Daddy used to cancel the Daily Stormer's domain. And that of those 26 registrars, they account for 100 million domain names, registered domain names which is like 57% of the total.

And then we also discovered that some of them have clauses that are the equivalent of a morality clause in that they sort of assert a broad right to take down domains that are based on things that the registrar doesn't like. And in fact one of the registrars has a clause that says, and I'll quote, "You agree that we may, in our sole discretion, delete or transfer your domain name at any time." So sole discretion, no reason, not even morally offensive, it's just total discretion.

Interestingly this registrar is actually DreamHost, which was one of the registrars that challenged the Trump administration when they tried to get all of these records of who had visited their Website because of one person's illegal activity. So DreamHost is not necessarily what we would call a bad actor but it's interesting that in these registrar contracts there's just these hugely broad assertions of discretionary authority over your domain name.

And so as, you know, defenders of the rights of Internet registrants, in the noncommercial sphere, we were concerned about this. So overall we found 24 registrars who relied on what we call the Rule of Law approach, that is they will only assert a contractual right to take down a domain if the activity is alleged to be illegal.

So we break it down by country, and one of the issues that we stress in here is the importance of competition in the market for registrars. So you know, based on kind of an economic analysis, if let's say there's perfect competition, what economists call perfect competition amongst registrars,

these discretionary clauses don't matter very much because you know, one registrar decides they don't like onions and they won't carry any content related to onions, then so what? You just pick another registrar. And it's very unlikely that all of the registrars will collude and decide the all onion-related content will be taken down.

So in effect a perfectly competitive market makes the registrars pay for their discrimination by loss of market share or loss of revenue. So that means – how competitive is the market for registrars? Well, overall if you just do the very gross aggregate analysis of the concentration of the market, it's pretty competitive globally.

But within particular regions, let's say it's very unlikely that I, for example, would be using a Chinese registrar simply because I couldn't read their Website and maybe many Chinese people would not be using Go Daddy or an American registrar, although it's more likely that they might be able to assuming the Website was not blocked for some reason.

But, you know, there's going to be limits on linguistic limits, territorial, legal limits, on who has access to the market. And so in some parts of the world I suspect that the market is not terribly competitive and there may be very few choices for people who are in those markets registering domain names.

And that might mean that they don't have much of an escape valve if they encounter a registrar who is asserting and using this right to make arbitrary decisions to take down a domain.

So we do not strictly strongly advocate this but we want to start a dialogue in ICANN about the concept of registrar neutrality, about maybe – maybe the RAA should commit registrars to not discriminate on the basis of content. Now there are some good reasons why you might want to allow a private actor to make these discriminations, or to regulate the content in their platform.

For example, if you're talking about Facebook, you know, they're trying to attract a very large audience or group of users if you will, and you know, if there's people posting pornography or you know, offensive kinds of speech then that will be an unpleasant environment for their customers so it's just sort of like a restaurant owner deciding that you have to wear a shirt if you're going to eat at the restaurant, right? There's nothing inherently wrong outside of their, you know, potentially monopoly power – there's nothing inherently wrong with a private platform provider discriminating.

But, registrars are not a platform provider in which there – there's some kind of connection between the content under a domain and the reputation and activities of the registrar. Nobody knew when they looked at the Daily Stormer Website that this was a Go Daddy or some other registrar that doesn't really have that same kind of connection; it's a much more infrastructural behind the scenes service. So we think that the case for giving this kind of discretionary power to registrars is pretty weak.

So anyway, the legal details and wording and everything about registrar neutrality requirement or clause would have to be studied in a lot more detail than we do in this paper. But we think it's useful to do that.

And in connection with that, we'll go into this after the third presentation, we've prepared a statement for NCUC that we would like to get support for on content regulation and domain name abuse which is slightly separate issue from what we're talking about here, although it's very closely connected. So there's this tendency when we talk about domain abuse, normally you and I are thinking of, you know, deceptive domains, domains that are deliberately registered to look like something that they're not, they might be used for phishing, they might be used for trademark violations, or they might be used for spam or other kinds of technical hacking, the distribution of malware and so on.

And so there's – of course there's a general agreement that ICANN should contribute to the fight against this kind of abuse of the domain name system. However, as frequently happens in ICANN, people latch onto something that everybody agrees on and they throw in other things.

So there's a tendency now to define illegal content or even offensive content as domain abuse, in other words, it really has nothing to do with the domain name, it's the activities or content that are supported by the domain.

And there's a pressure to get ICANN to take some aggressive actions against this and to call copyright infringement and other kinds of illegal content or hate speech or things like this as domain abuse.

And the NCUC wants to establish a very strong line between what we call domain abuse and what we call illegal content, and we think ICANN should concern themselves with domain abuse and not with illegal content.

So let's go onto our next presenter.

Tim Smith: Thanks, Milton. And I'm going to give you an overview of the group that I work with and certainly based in the practicalities of what we do and what we observe as being online pharmacies. And hopefully that'll contribute to what you're working on.

So my name is Tim Smith. And I'm the General Manager of the Canadian International Pharmacy Association. We refer to ourselves at CIPA for simplicity. And we're a Canadian association of licensed pharmacies that sell prescription medications to individuals upon receipt of a prescription from their physician.

We dispense from our Canadian pharmacies, and also from licensed pharmacies in other countries and serve about 1 million people each year providing mostly maintenance medications for chronic conditions like

preventing blood clots, reducing cholesterol and blood pressure and treating diabetes, those types of things.

CIPA members do not sell controlled substances, narcotics, highly temperature sensitive products or any products containing pseudoephedrine.

And I'm pleased to tell you that having developed the model that we did, and doing the work that we do, we're now celebrating our 15th anniversary, so we've been in this business for 15 years and we've maintained a perfect safety record while filling over 38 million prescriptions for patients.

What emerged from the experience of US residents, who lived on our border and drove to Canada to purchase from Canada pharmacies, Canadian pharmacies in the last century is now a well-established distance carrier mail order model used by Americans and increasingly by people around the world.

You know this as online pharmacy, but it's important that you note that with CIPA members, the process is not just simply to locate the management on the Website, enter your payment information and magically the meds arrive.

Our standards of practice require that we receive a prescription from a physician, we obtain demographic and medical information, we have licensed pharmacists who oversee the dispensing and are available for consultation and we ensure patient privacy and confidentiality of personal records and contact information.

In fact, the model that we've developed basically provides our patients, who many of whom come back every 90 days for a refill, with the same personal relationship that they would have with their neighborhood pharmacy.

So having said all that, as you can appreciate, having a good reputation as Canadian, as licensed pharmacies, offering affordability and access to safe

medicines, could be something that less reputable businesses might want to capitalize on. And we certainly see that.

Websites masquerading as being Canadian and that even carry our CIPA certification mark and try to trade on our good name. As a result, we maintain resources at our website, it's cipa.com, to assist consumers.

We have a verification tool that allows a person to type in a domain name that they've found online and check to see if it's a CIPA member. And we also have a safe pharmacies page to display our full 65 member Website list.

We also maintain a beware of rogues page where we list the names of websites that carry a CIPA seal without our authorization. Through our ongoing surveillance we identify domains that are engaged in fraudulent activity, we post these to the Website – post the Website names of these so patients know to stay clear of those sites.

And we report this activity to the Canadian Anti-Fraud Center for their follow up. We also send our own cease and desist letters to infringing domain registrars and registrants.

While these resources were designed to assist customers, we have found that they are also useful for registrars. And some of whom have used our lists at our Website as a guide to weed out bad actors. And we – there are several registrars who use those resources. In addition to all our policies, practices, certification and efforts to educate consumers about how to find a safe online pharmacy, we were also involved in a panel discussion at RightsCon earlier this year, Jeremy was part of that panel as well, to discuss how access to affordable medications is an essential component of the fundamental human right to health.

This discussion led to the drafting of what we have come to call the Brussels Principles and we're hopeful that these can form the foundation of

requirements for safe online pharmacies. Interestingly, in June of this year, the United Nations Human Rights Council tabled a resolution for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health including access to essential medicines.

So what I've tried to do here is describe what I see and what we see as our model for domain acceptability and that is pharmacy regulation from where our members operate, meaning that a dispenser of prescription medications should be a licensed pharmacy where that business operates.

But also that self-regulation with high safety and privacy standards is important and that's what we have developed in our model both of these things addressing and reflecting the way in which people purchase medications online.

You know, we've been disruptive in a very traditional industry but we've been able to provide safety through our methods, safety for those who can't access medications where they live. So we believe that we have a good model.

We also know there are businesses that prey on the innocent public, place unacceptable health risks on patients by selling substandard or addictive medications and they should not be permitted to hold domains, we don't believe. Resources such as the wait list of CIPA members at our Website, exist today to help in DNS decisions – the health in DNS decisions. And that carefully developed set of requirements like the Brussels Principles, could be the base for acceptable use in the future.

So that's basically what I wanted to provide to you. And I hope it provides some insight and some information. And certainly I'll be happy to answer any questions.

Farzaneh Badii: Thank you very much, Tim. So we have a remote participant so now we can go to Q&A and have a discussion about this and also we can mention as we

discuss our statement which is going to be – oh it has been endorsed? Okay, great.

So this will be announced by Rafik at NCSG session, but just to mention we drafted a statement as NCUC that says that ICANN should not get involved with content regulation.

And but now we are open to questions and comments. I can see – so I think his question, okay but anyone in the room with a comment? No?

Milton Mueller: I want to say I have some hard copies of the paper here for anybody who wants, just raise your hand and I'll pass it to you.

((Crosstalk))

(Dora): My name is (Dora). I'm a Fellow. I just want to ask (unintelligible) question, so from what you presented, has there been a situation where you requested registries to take down a domain – a domain name because they were probably selling substance that were addictive drugs? And if there has been such a request was it successful? And would you consider that as a registrar trying to regulate content? Thank you.

Tim Smith: Sorry, could you – the second part of the question.

(Dora): I'm just saying that if there has been a situation or an instance where you requested a registrar to take down a domain name, and that was it. Would you consider that to be the registrar regulating content?

Tim Smith: Sorry, I'm still not...

((Crosstalk))

Tim Smith: Oh okay, all right. All right. Actually the work that we do when we find problem pharmacies or rogue pharmacies relates to our own trademark violation. So really our request is for them to remove the trademark, so we're not asking for the Website to be taken down, we're actually asking for the trademark be removed so that we aren't harmed by that.

But certainly in the surveillance that we do, we come across a lot of websites that are selling controlled substances and selling without a prescription which is a very dangerous thing as well.

And those are the ones that we believe are the worst of the worst and the ones that should not be permitted to have domains. But, you know, our role at this point is to protect our good name so we have actually not asked for the takedown of those. And that's an area that we could grow into for sure and it's an area that interests us.

David Cake: I kind of have a question that's following on from that if I may? So what about your Canadian International Pharmacy Association websites and do certain registrars take those down on third party requests and if so, like what sort of – are there particular registrars that do take them down and others that don't?

Tim Smith: We haven't had a situation where they have been taken down. We have had situations where they have been asked to be taken down by a third party. And that has not taken place. Again, we do have good relationships with the registrars that we deal with. And they are the types of registrars who would be coming to us to make sure that a – that if they received a list of domains from somebody that they would first come to our Website to make sure that sites were or were not members of our association.

Stephanie Perrin: Thank. Stephanie Perrin for the record. This is really interesting set of examples about content regulation. In the context of the RDS Working Group on coming up with a new Whois, one of the issues that I think ICANN has not addressed in the kind of detail that privacy advocates would like is coming up

with accreditation and authentication mechanisms for those who purport to be fighting spam and abuse.

So it seems to me it's very useful to have this distinguishing being done between the various kinds of abuse and a bright line drawn as we try to do in our paper between you know, content abuse and domain abuse.

Now, have you any thoughts on having just made the distinction between trademark abuse in your case and unlawful activity as to how ICANN could broker that? Because in my view, it's not their job to be running a law enforcement agency here. And unfortunately Public Safety Working Group tends to think that this is the only logical spot to come to discuss that kind of law enforcement activity. I mean, I'm not saying that the law enforcement agencies are giving up their power to ICANN, but the brokering is a real problem because of the confusion in these lists.

Got any thoughts on what we might suggest as a way of doing this? Because right now I'm trying to set up a framework for third party access to personal data under a proposed legally compliant Whois. And I'd like the law enforcement guys to go get a warrant under whatever their drug control acts are in whatever jurisdiction they're in. But I do recognize your global problem. Thanks. Hope that's a clear question and not a big run-on discussion.

Tim Smith: You'll tell me if it wasn't a clear question if I don't give you a clear answer. Certainly I probably can only speak best from the pharmacy point of view. And our position is that dispensing a prescription medication should be done with a list of requirements that are – that I've already touched on, certainly receiving a valid prescription. And we in turn go and verify that that is a valid prescription from a real doctor so we have a process in place to do all that.

But also that dispensing should only be done from a licensed pharmacy, a pharmacy that is licensed where it is located and that is in good standing with the pharmacy regulator where it operates. And of course, you know, in order

to be that type of a pharmacy, for that dispensing to be done from that – from a licensed pharmacy, and to be regulated from a regulator in a jurisdiction there's a whole list of things that that company needs to do right in order to keep people safe.

So I mean, we could go into a long, long list about what all those things are, but the – again, I would say on the pharmacy space, you know, there should be – if you're not a licensed pharmacy you shouldn't be in the pharmacy space.

Stephanie Perrin: Just a follow up if I may? Stephanie Perrin again for the record. So if you were, let me give you a hypothetical here, let's say there's a bunch of bogus pharmacies operating out of Turks and Caicos, let's pick on them, they're close. And you started to receive what you perceive to be bogus prescriptions coming from Turks and Caicos coming from non-doctors through non-pharmacies, how would you deal with that?

And just to further complicate if the non-doctors were in I don't know, Mexico, somewhere else in the Caribbean, so that you'd have two jurisdictions, the medical registration system in Mexico and the pharmacy registration system in Turks and Caicos.

It's not your job to law enforcement, I get that. But that is the problem with these things, you know? From a regulatory perspective, it's hard to figure out a fix.

Tim Smith: That's right. That's right. And you know, so again, you know, we certify our members and make sure that they meet all of the requirements of being a member. We also do inspections of all the dispensaries. I mentioned we dispense from Canadian pharmacies and from international pharmacies, so we actually go and visit all those places.

So that's what we do within the industry in order to make sure that everything is being done properly. Within the entire domain space, I'm not sure whether, you know, perhaps there is a certifier that could be at that level.

Stephanie Perrin: I'm willing to bet you're doing more than the regulators are doing if you go and visit.

Farzaneh Badii: Okay, thank you. Yes, you have a question?

Ron Andruff: I'm sorry, I'm jumping the queue. Ron Andruff for the record. But I think – I want to just bring something on the table for – particularly for Milton and Jeremy and Stephanie and others about the law.

And actually this is not my quote, it was Byron Holland that made this statement one time and it stuck in my head and he said, we're living in a digital world with analog laws.

So I think a lot of the problems that we face today, and I just would like – maybe some thoughts from you on this is that you know, here we are working with 1950s and 60s laws and, you know, that type of thing and various places where an Internet didn't exist.

And so all of a sudden we're applying –we're working on a legal structure that is antiquated relative to where we are and we're going so fast forward, you know, how would we ever close that gap? That's part of the problem, I think in this discussion, if I may. Thank you.

Jeremy Malcolm: Yes, so ICANN in a way is a response to the fact that we do have a global Internet and we have 196 or so countries trying to make their own laws for it. And so things like the UDRP are a way to have a global arbitration system for trademark disputes, but we don't have the same thing for any other sort of disputes like if we're looking at, you know, what kind of pharmacies can be

sold online and by whom, there is no global body to arbitrate that sort of thing.

And we're a little hesitant to suggest that there should be one as well because international bodies have to be accountable and they have to be transparent and very often we find that they're not. So the further away you get from elected governments the less accountability you tend to have.

So it's a difficult question but I think the model – the multistakeholder model is one way forward of developing these kind of international structures that can deal with the problem of applying – of the clash between national laws and a transnational Internet.

So I think in many ways the model that ICANN has trail-blazed is worth pursuing in other areas but we just have to do that really carefully and make sure that we're not, you know, putting some international unaccountable body in place.

Farzaneh Badii: Thank you. Also Roberto wants to make a comment.

Roberto Gaetano: Thank you. Roberto Gaetano for the record. Although I have roots in the user community, I wear the hat – uncomfortable hat of Chair of the Board of Public Interest Registry. And you have focused mostly on the registrars and that's correct because they are the primary link with the registrants and so they have primary response.

However, it happens more and more that when faced with difficult cases, the registrars that don't – that have not developed a policy, they dump the problem to the registry.

So the registry is in a more difficult position because while the registrar there's a flexibility from a registrant to choose a registrar and so they have some sort of choice. If you have a dotOrg name, then we have to deal with

that wherever the registrant and the registrars are in the world. So I'm very glad that the discussion took the direction of we need to have a framework of reference that is global and is digital and not antiquated.

Why I wanted to intervene in relationship with the pharmacy issue is that we had a lot of pressures for taking down pharmacy sites that were claimed to be illegal. The problem is that we abide with the rule of law and unless we have a court order, we don't take it down. However, there's a lot of pressure from we were accused also in some public forum of doing the interest of malware spreading and so on.

So this is probably the same situation that will happen if we go in that direction, for example, with sites – hate speech sites and so on. So it is a really complicated issue and I can assure you that there are some parts of the public interest policies that speak in one direction so towards an approach that will make it easier to take down, and somebody that is financing some consumer advocates and some other parts of the community that say also in the civil society that would like to have a more conservative approach.

Now the registry is in the middle of that and so we badly need to have a process within the ICANN stakeholder community that gives rules and we need it fast before some of the behaviors that Milton has observed and reported become the de facto (unintelligible) at that point, there's no room for making – for making some different.

So I really urge civil society and the user community to come up with proposals that have to be discussed necessarily with the contracted parties so that they will be feasible and compliant with the rules considering that as I said, that the registrar are bound in a certain jurisdiction whereas the registry operates by its nature worldwide and cannot have – and cannot have a standard, a sub-standard so a standard that is valid only on the local basis.

Last comment on this is our registry is based in the US, which means that when we're talking about the rule of law, we have to abide with the rule of the US with the jurisdiction of the US, and if something is illegal in the EU, for instance, there's nothing we can do about unless we operate a framework that has been agreed by all stakeholders and we have some rules that are built in the contracts. So that is a little bit the – and again, the registrars they may be in different jurisdictions and so there's more flexibility. But the registry has only one. Thank you.

Farzaneh Badii: Go ahead.

((Crosstalk))

Farzaneh Badii: Okay. Okay, Milton, go ahead.

Milton Mueller: So I think people should not jump too fast in terms of where we're going with this. We want to – we have certain principles that we are supporting here. You know, we're for freedom of expression, we want to maximize freedom of expression, we obviously also want to have effective tools against illegal and harmful activity and we also are in favor of a narrow ICANN mission.

We have floated the idea of registrar neutrality; we have also a statement about the definition of domain name abuse and having a more narrow definition. I think it's incumbent upon us to engage in the kind of dialogue that Roberto was suggesting with the contracted parties and find out more about their perspective and how our principles might be implemented with them being on the front lines as the contracted parties.

So I'm still kind of confused at what point do we want to deal specifically with this statement or do we want to continue a more general discussion? Madam Chairman?

Farzaneh Badii: Yes, well I decide and I let you know. I think we can go to the statement. It's just that there is a remote participant comment and it is – Maryam, go ahead please.

Maryam Bakoshi: Maryam Bakoshi for the record. So we've got a question from Gangadhar Panday, and he says in India there are lots of effort made to increase availability and reduce prices of generic drugs. Can something be done to support this effort using the pharmacy censorship as lots of OTC sales happen here.

((Crosstalk))

Maryam Bakoshi: In India there are lots of effort made to increase availability and reduce prices of generic drugs. Can something be done to support this effort using the pharmacy censorship as lots of OTC – over the counter - sales happen here.

Tim Smith: I'm a bit confused by the statement about censorship. And I'm not familiar with censorship in this regard.

Farzaneh Badii: Okay we can't take this question. We will ask Gangadhar to clarify it so we can talk about it later. So, yes, let's go to the statement we have drafted statement on domain abuse and avoidance of content regulation. Milton, do you want to go ahead and tell us what this is about and what it covers?

((Crosstalk))

Tim Smith: Thank you very much. Have a great meeting.

Milton Mueller: The statement, okay, so yes you may have seen a lot of events this week about domain abuse and this is generally an attempt by the ICANN establishment, registrars, to – and registries to flag, identify and take effective actions against various forms of cybercrime that involve the use of domains.

However, in these discussions we've noticed a tendency to broaden the definition of domain abuse to things like illegal and sometimes even quote, undesirable, content on web pages.

And we just wanted to throw a marker down here with this statement to make it very clear that we want a discussion and definition of domain abuse that is not equating any form of illegal activity or undesirable on the Internet with domain abuse.

I mean, in some sense almost everything on the Internet is connected to a domain somehow at some point, but that doesn't mean that everything that happens that's bad on the Internet is domain abuse. And if you adopt that definition I think you're going to see a massive expansion of the mission of ICANN in a way that would be undesirable.

So we came up with this one page statement, it's been discussed on the list. We have made some minor editorial changes and definite improvements thanks to Stefania today, but no substantive changes really. And we've also forwarded it to the Policy Committee of the entire stakeholder group so that it will become a stakeholder group policy statement as well.

So you probably have seen the link to this. I can recirculate it on the NCUC list if people want me to. I think I'll do that right now. What? In Adobe, I'm not in Adobe, I...

((Crosstalk))

Farzaneh Badii: ...by the way I suggest that everyone connects to Adobe because we want to include remote participants as well and it's nice to interact with them when they're not here.

Milton Mueller: Okay, I'll put it in Adobe. Where is it? Just like so many windows. (Unintelligible) schedule. Stefania, are you on Adobe? You'll put it in there, okay, while I get it.

Farzaneh Badii: Okay, so it's now in the Adobe. Milton, do you have other comments?

Milton Mueller: I do not, I mean...

Farzaneh Badii: Okay so I actually want to call on Tatiana because she's our – about domain abuse and content regulation and what we stand for at ICANN on this.

Tatiana Tropina: So do you want me to provide kind of the essence because I was on the Anti Abuse Panel yesterday but I believe that our stand is much broader than our position, that what was stated at the Anti Abuse Panel. So like I will not be repeating my statement, but basically all that stands for is in general sum it up, ICANN is not an Internet police especially ICANN is not a content police. ICANN is not a police of abusing Internet. And so probably is not industry.

But what shouldn't happen in any case even if some registrars are policing themselves or trying to regulate content or whatever, under no circumstances should ICANN either get involved with these provider platform for negotiation of the new framework or anyhow coordinate such efforts.

ICANN could deal with abuse within its very narrow defined mission. The problem here is that in addition to ICANN mission we have RAA. And it does refer to what is illegal under the applicable law. The problem in this sense the definition of abuse is very broad. And every constituency understands it differently.

So if you talk, for example, to Intellectual Property Constituency they will tell you copyright abuse is under the ICANN remit and here is a big war. So we stand here firmly that ICANN can deal only with the abuse that is related to the technical side of the Internet, to the security, stability and resiliency of the

framework that copyright abuse, child abuse images, any other content-related abuse is not ICANN remit and there should be no regulation and no activity in this field.

And moreover what really was striking for me yesterday on the panel where I wasn't prepared – I mean, I was prepared to reply to this but no one actually (unintelligible) me before because it was not discussed during the preparation of the panel, is the rule of the registrars so ICANN in terms of prevention of the abuse.

So I believe that we have to add here as well to our position as NCUC maybe this is a point to discuss for the future that industry and ICANN is not a focal point, is not rightly placed to be – to take any kind of preemptive actions because even if you do something with the technical abuse you have to verify the data, you have to avoid false positive.

There is a big gray area in between getting data about abuse and actually taking actions. And the actions mostly should be taken by law enforcement agencies. So I believe that I can't shape it in words right now because I think this has to be carefully worded for the future discussions. But I think that we have to think how to address the point if there would be any further movement to making ICANN as a body that is engaged in any kind of preemptive strikes or prevention of abuse. Thank you.

Farzaneh Badii: Niels, go ahead.

Niels ten Oever: Thank you very much first of all, Tatiana, for making that excellent statement yesterday and also thanks to the Internet Governance Policy Project for doing great research on it. I have a clarification question and that is for a while we have seen RPZ, Response Policy Zones, as a practical measure to combat abuse but it's also been used for censorship.

And exactly for this reason or one of the reasons, this has not been standardized in the IETF but it has been very widely used by registries and registrars, which makes it a completely black box for us and same our lists like Spamhaus and everyone here who has run their own mail server, knows that you regularly get your IP address put on a thing and then people don't get your email and everything is just horrible and just running your own mail server is just a pain because you often get blacklisted by Gmail and you don't know how to get yourself off of these lists.

So this actually forces towards centralization of once decentralized and distributed Internet, which is of course bad. So my – after this long-winded introduction, my question is the development of DAARP, the Domain Abuse Activity Reporting Project of ICANN, potentially could give us some insight in abuse which I think on the one hand would be great because then at least it would be more than black box. On the other hand, I also see how this could lead down the road of now we got the numbers, now we need to do something. So how do we feel and think about this research? Thank you.

Tatiana Tropina: Well, first of all, I mean, it's apparent that it is a compilation of sources, right, this Domain Abuse Activity Reporting Project, it's not the one on the ICANN site, so it's just collection of whatever. I think that in this sense ICANN is a consumer of data. ICANN can consume data to see the trends in industry, in abuse and policy if ICANN believes that there are no false positives and whatever, ICANN can consume data and see the trend, make some conclusions for itself.

The point of that is ICANN is not a point of action, right? The point of action is a registrar, it is a registrar who has to, you know, do – get something done. And so between ICANN consuming data, right, taking any conclusion and so ICANN is an entity and the registrar is an entity. I don't believe that this is in ICANN remit to handle information to the registrar and say do this and that.

So I believe that there is disconnect here, you know, what ICANN can actually take, consume, take – make any conclusions and what registrar can do. I mean, based on this data, because they are two different entities. So ICANN is a consumer of data, a registrar is the one who has to take action. So I don't believe that ICANN should tell registrar which action to take; ICANN is just a consumer of data. They can handle the data to the registrar, okay fine, registrar consider data, okay fine. But it's not in the ICANN remit to decide what to do. So I don't believe in centralization in this sense.

Milton Mueller: So if you take a historical approach to this you know that, you know, statistics was like the background of the states and so the – maybe you're familiar with this story of the Doomsday book and where the Norman took over England, they required everybody to register in their book. And so I understand what your concern is that by collecting this data ICANN will establish a kind of centralized mechanism for analysis of effects of things.

However, I think it was very clear yesterday in the session that the registries and registrars are saying, okay, you've got data that shows X percent of registrations in this TLD are bad actors. But there is a whole bunch of steps that have to be made before you take any policy changes or policy modifications.

You know, you have to look at the material that's being circulated, for example, from a allegedly bad domain that's been flagged by Spamhaus or something, you have to see if it's illegal, if it's, you know, relayed from somewhere else, who's responsible, there's all kinds of steps that have to be made.

And we see in the CCT, which I think will be discussing further, that really illogical conclusions can be drawn from statistical data. So on the one hand I think it's – I don't see a lot of threat from DAAR itself particularly since ICANN is not collecting the actual data, it's not making the decisions, it's just integrating and compiling all of these RBLs. However, the RBLs are not as

uncontroversial as David Conrad suggested yesterday. And I think we have to be vigilant about that.

Tatiana Tropina: One moment. I think that also ICANN understand that data don't bring – doesn't bring you the answers, it brings you questions. So that's my intervention. I don't think it's going to be centralized.

Stephanie Perrin: Stephanie Perrin for the record. Niels, you weren't here when I made the earlier intervention in the pharmacy discussion. This is a huge issue from a privacy perspective but it is a – that's kind of the like the camel's nose under the tent, the real issue is competition. And as Jeremy just – I think it was Jeremy just said, like normally in a national environment your competition laws would prevent anticompetitive behavior in other words false reporting. There are no boundaries that I can see in terms of the anti-spam activity to stop anticompetitive behavior.

And there's this huge sliding scale of what is abuse and what winds up getting you on a list. As you point out, your mail server shows up there if somebody doesn't like you. And what's your remedy in a global environment? So in my view, I know most people here don't like the concept of regulation, but there has to be some kind of limits on this, and I don't see anything in ICANN's bylaws to actually govern this kind of anticompetitive behavior, certainly not from a privacy perspective, and yes, I think that in a prospective privacy framework that we may get as a response to the GDPR, that may solve the bad behavior towards the registrant's individual names, but it's not going to solve this broader problem of abuse in the anti-abuse area.

So I think we should be pushing for a very complete framework that would deal with this because the registries have a problem, the registrars have a problem, there's no money, you can't load this onto the registrars because they do not have the economic margins to try to make these discriminations themselves, they're going to have to go with a trusted reporter if such a system comes up.

Well what's the framework for the trusted reporter? You know, that is something that I think we are not spending enough time on. And this business of analog laws, we'd better fix this one rather quickly. Thank you.

Farzaneh Badii: Are there any more comments? We just – oh okay go ahead, Claudio.

Claudio Lucena: Just on the note that Stephanie is bringing and also on the thing that Niels mentioned, I'd like to make a comment on what Kathy Kleiman is bringing from the room that registrars are globally being called to act upon mere allegations of violation particularly from the intellectual property community.

And I think there is something interesting, I think we can see a pattern here that connects to what Milton and the people from – our fellows from SSAC showed us in the beginning, I have no idea anymore how many days we're here but it was the beginning of the meeting, when they showed a timeline of how fast or timeframe of the usability of the domain in the case of irregular – illegal use.

So I think that's pushing the people who are feeling harmed to say that they have to act as soon as possible and that can influence the timeframe. So the idea would be first thing, censorship, full censorship, it doesn't happen.

Second thing, automation, if it were available, it's not. So third step, bring it before a judicial order so they're trying to do it without any judicial intervention and I think that's something – that's food for thought for us.

Farzaneh Badii: Thank you very much. So we have a – I will take that – we won't have break then because I said no, no, no but go ahead, go ahead.

Man: Well now I'm keeping you from your break. But you know, these are really good points. And we don't really have to guess as to where this is going to lead because we've seen this before with the DMCA and we've seen this

before with the Right to be forgotten, that where intermediaries or platforms or – I guess those haven't applied to registrars yet.

But where they're given this sort of role of determining which content is legitimate and which isn't, they're going to error on the side of caution, on the side of deletion because that's the safer choice. And they're not equipped for the most part to make those kinds of determinations as to what's good and what's bad.

So there always has been a tendency towards deleting – when in doubt just delete it because the blowback from that is going to be less than potentially keeping harmful content up. So, yes, I think that's some of the same solutions that have been proposed to those human intervention following law are positive things to follow here.

Farzaneh Badii: Thank you very much. So we have a brief break for eight minutes, then we are going to have CCT Review Team here which just please be back on time.

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