

**Registration Abuse Policies Working Group
TRANSCRIPTION
Monday 03 May 2010 at 14:00 UTC**

Note: The following is the output of transcribing from an audio recording of the Registration Abuse Policies Working Group meeting on Monday 03 May 2010, at 14:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but **should not be treated as an authoritative record. The audio is also available at:**

<http://audio.icann.org/gnso/gnso-rap-20100503.mp3>

On page:

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

Present for the teleconference:

Greg Aaron - Registry stakeholder group - Working Group Chair

James Bladel - Godaddy Registrar stakeholder group

Berry Cobb – CBUC

Faisal Shah – MarkMonitor

Fred Felman – MarkMonitor

Wendy Seltzer -NCSG

Mike O'Connor – CBUC

Philip Corwin – CBUC

Rod Rasmussen – individual (last 20min of the call)

ICANN Staff

Margie Milam

Glen de Saint Géry

Marika Konings

Apologies:

none

Coordinator: I would like to remind all participants today's conference is being recorded. If you have any objections you may disconnect at this time. You may begin.

Gisella Gruber-White: Good morning, good afternoon to everyone on today's RAP call on Monday, the 3rd of May. We have Greg Aaron, Mike O'Connor, Faisal Shah, James Bladel, Berry Cobb, Fred Felman, from staff we have Margie Milam, Marika Konings, and myself, Gisella Gruber-White. I don't have any apologies. If I could please remind everyone to state their names when speaking for transcript purposes. Thank you. Over to you Greg.

Greg Aaron: Thank you very much Gisella. Rod Rasmussen mentioned to me that he is on the road and that's probably why he's not with us today, so let's consider those to be regrets. So anyway thank you everyone. Today we're going to first follow up on our action items from last week and then we'll move on to the latest comments.

The action items were as follows. We have two slamming recommendations and those went up to the list and we should discuss those and I saw a little - there's a little bit of back and forth on the list it looked like. So those recommendations were as follows. Let me put them in the notes window.

Berry Cobb: I think Marika is ahead of you.

Greg Aaron: Yes, there they are. Okay thank you Marika. Okay so the first one is recommend nothing at this time because it's out of scope. Recommendation 3 is monitor for abuse and designate a team to conduct research and create education for awareness. And then there's some additional background text which I guess my first question is that just additional text or is that actually part of the recommendation?

Mike O'Connor: Greg this is Mikey. I've pushed the revised version of that up to the list that we might want to - I think (McFerry) was okay with that revision.

Berry Cobb: Yeah - sorry this is Berry, emailed on 4-27.

Greg Aaron: Okay so you want to read your recommended version for number 3?

Mike O'Connor: Yeah actually I have to scroll back real quick because the way I...

Berry Cobb: I've got it right here Mikey if you want.

Mike O'Connor: Yeah because I must have used formatting stuff that didn't come through so Berry if you could get - what I did is chopped a whole lot out of it and reworded it. So go ahead.

Berry Cobb: Slimdown, the RAPWG recommends that GNSO monitor for this abuse in the generic space and conduct research to determine the nature and extent of the problem. The working group believes this issue warrants formal review but understands that the lack of credible data to substantiate does not warrant a PDP at this time.

Mike O'Connor: Period.

Berry Cobb: Period, sorry, yes.

Greg Aaron: Okay. So can we throw up the complete?

Berry Cobb: Yeah give me just a second, I'll paste it.

Greg Aaron: In the chat bar there?

Berry Cobb: Yeah give me just a second. Let me get through some of the formatting.

Greg Aaron: And Phillip Corwin has joined us by the way. Hi Phil.

Man: Phil who? Corwin? I've heard of that man. What a happy stranger on our call. Great to have you back Phil.

Phillip Corwin: I've been on some recent calls.

Man: Oh have you? Cool.

Phillip Corwin: Oh yeah.

Berry Cobb: Almost there and pasting now. Pasted.

Mike O'Connor: This is Mikey, just to highlight sort of what I did, I struck out the phrase designated team ICANN staff and I added the determine the nature and extent of the problem on the first sentence and dropped create education for awareness phrase. And then in the second sentence I just tweaked it a little bit. I said the work group believes that this issue warrants formal review rather than definition.

But understands that the lack of credible data to substantiate it does not warrant a PDP and then I added at this time. And then I struck the last couple of sentences, just to give you a sense of the change there. It's too bad that strikethrough didn't come through. I'm sorry about that, I'll file it away for later.

Greg Aaron: Okay this is Greg, I have a question. So is formal review confusing or extraneous? We're clear we're not asking for a like a formal issues report I think because we're not asking for a PDP but we need to be very clear for the council exactly what we're asking for.

Mike O'Connor: This is Mikey. I think the intent here is to back off from initial report because when we get the initial report we are on the road to PDP. But strongly encourage some research on this. And so, you know, I would be okay with the notion of saying working group believes this issue warrants review, take out the word formal if that would solve the problem that you've got.

But I think that the key thing here is that the intent is not to let it just slide by but to have somebody somewhere somehow take a look and see if we can figure out how much of this is going on because we just don't have enough information right now to formulate a PDP. This is our classic chicken and egg problem of which comes first, the PDP or the data and we're sort of lobbying for some data.

Greg Aaron: Okay. (Wendy) has joined the call by the way. This is great. I just put up a slightly revised version in the chat window, I'm curious what you think about it. Let's go to Berry and then James please.

Berry Cobb: Actually my comment is relevant to the word that - or the word that we're going to be using to call this. If we're using it, we're calling it slamming right now, there's another option that James had created but I'll continue it after we've finalized Recommendation 3 here.

Greg Aaron: Okay James?

James Bladel: Hi Greg, James speaking. And I'm not trying to belabor a point here or make this recommendation language too cumbersome, but I'm concerned that when we say we want the GNSO to conduct research, I think that they only have one way to do that which is to form an issues report, you know, kick off a working group.

I think, you know, what we're saying perhaps could benefit from some clarification if we were to say, you know, recommend the GNSO issue a call for volunteers for interested individuals and organizations to conduct research and just kind of leave some flexibility into that recommendation that the research would be conducted, you know, not necessarily by staff and not part of an issues report or a working group but just that it was more of an informal and volunteer led effort.

Greg Aaron: This is Greg, thank you James. You do raise a process point which is worthy of discussion. I mean, one way to research is to do an issues report. The other way is for a working group to do it like we've been doing on a number of topics.

The problem - one of the problems I see here is we are coming to this topic so late that we've run out of time and if it's something we were interested in we should have been doing this already and to recommend that another

group get together is just - I don't know what issues that raises. So that's my piece. Other thoughts?

I mean, again we have - we come back to this question of clarity. What are we asking the council to do? Are we asking that another working group be constituted to look at this issue because is that the only way the GNSO looks to do research? Or are we asking that an issues report be done but that's on a certain track, that's basically on a PDP track. Or are we asking that some research be done out of band basically? But can such research be done out of band by a group of volunteers? Should that be done?

Berry Cobb: This is Berry, I'd like to answer the question with a question that hopefully, I mean, if we look at the current studies that are going on for the who is, they are funded somehow but as I understand it there is no formal working group that's driving those studies. They are contracted out by the GNSO and paid to have those studies done.

Is that a route that is pursuable that somehow the GNSO funds the study, they call for some contracting company to actually go do the research and provide the data? You know, I guess the bottom line is, you know, in terms of any kind of recommendation we put forward or who does it is, you know, I just - I don't - I think that this warrants enough that we don't drop it altogether, we've got to get somebody to go get some kind of data on it.

Greg Aaron: Okay let's go to Marika.

Marika Konings: This is Marika. I mean, Berry already raised this issue I wanted to bring up as well and this is the who is studies where staff actually has been directed by the GNSO to assess feasibility and cost for studies in the area. That would be another approach that could be considered that, you know, you request GNSO to direct (bath) to investigate, you know, what the cost would be and whether such a study would be feasible.

Or maybe reach out to other organizations to see, you know, if they have any data or information on this. Or an alternative is to work with members in the community to try to get data together.

I mean, there are different ways that could be explored. And of course, I mean, knowing that directing staff to do so will, you know, take time and resources and at the end of the day we can of course come back with this cost thing. there's the question is well will the council be willing to front studies, you know, that have a price tag attached to them.

Greg Aaron: I'm a little concerned about that because there's discussion about funding shortages for the who is studies which are frankly very important.

Marika Konings: Well just, you know, I think it's more a question that it needs to be budgeted for the next fiscal year and that's why certain requests have come in. I think it's not the question of budget shortages, it's just something, you know, indeed looking forward and building the budget, you know, those building blocks need to be accounted for.

And I think it's wise to use our GNSO council to put in a request saying look, don't forget that we are looking at these studies and we're getting - we're not ready to tell you how much we need but we want you to take a provision out there so that when the time comes and we are ready to decide and we have all the information we need there are funds available to move ahead and decide it.

Greg Aaron: Okay thank you Marika. Let's go to Mikey.

Mike O'Connor: Thanks Greg, this is Mikey. I have a one word change suggestion that might wiggle through this little conundrum. What if we changed the phrase to say sponsor research instead of conduct research? And by sponsor we leave it open that it could include either monetary sponsoring or just leadership

sponsoring and then leave it to the GNSO to figure out how they want to do that.

Greg Aaron: Okay, all right. All right, one suggestion which would be it does not warrant an issues report or PDP at this time.

Mike O'Connor: This is Mikey, I'm okay with that.

Greg Aaron: Okay.

James Bladel: Greg this is James.

Greg Aaron: Yes?

James Bladel: Yeah I just wanted to respond to some of the thoughts about including this in who is studies. And while I think that might be appropriate I wanted to point out that the target topics and hypotheses that would be tested by who is studies were the result of a lengthy and sometimes controversial process.

And I would just caution this group about casually adding to that topic list because that was the result of a very large community effort that went on for I think a couple of months. I was a part of that effort, I think some other folks on this group were as well.

So I would just be cautious about adding to that to do list especially considering that the whole batch is as we mentioned underfunded at this point so while I may personally feel like this is a germane topic to shoehorn in there I'm hesitant to reopen that discussion.

Greg Aaron: Okay thank you. Okay, we now have recommendations for two - I'm sorry, we have language for two recommendations. I propose that we put those out to the list and measure consensus levels. I don't want to spend too much more

time on this topic in the calls. We have a lot of other things to do and this one is getting shoehorned in. So any objections to that course of action?

Marika Konings: Can you just confirm then the two recommendations is the one where, you know, the no action taken and the one that is now up as a note? Because I just want to make sure that I got the language right there are the end with the change you proposed.

Greg Aaron: Okay, yeah the note - your note says the RAP recommends the GNSO monitor for this abuse in the generic space -- I think that should be (GPLD) space -- and sponsor research to determine the nature and extent of the problem. The working group believes this issue warrants review but notes there is not enough data at this time to warrant an issues report or PDP yet. So yes that would be the language.

James Bladel: At this time and yet are somewhat redundant. Can we strike the yet, just say at this time?

Mike O'Connor: I was going to say that too, thanks James, it's Mikey.

Greg Aaron: Sure. Okay. Marika if you could be so kind, can you send out Recommendation 1 and then this one is - this new one is new language for Recommendation 3? And if you could send that to the list and then the members should reply to it with their preference and we'll see where we are.

Marika Konings: This is Marika. Another question I have is whether, you know, once we've gone through all the comments and all the changes whether you want to run another poll on the different recommendations? I mean, if this - I presume this is an initial testing of the water to see where people fit. (Unintelligible) as well to do another formal survey.

Greg Aaron: We don't know yet or it may only be on certain ones if we make changes to them.

Marika Konings: Okay.

Greg Aaron: Let's run this one up the flagpole and see where people are. So let's call this a first measurement of the consensus level. Okay, any other notes on this topic before we leave it?

Berry Cobb: Greg this is Berry. Just real quick, there was contention about what we call this and I think you had mentioned in the past that slamming was used in the telecom industry. James had proposed a different term which was titled alternative (PLD) shakedown. Any thoughts or concerns about using that or should we just continue to call it slamming for now?

Man: It's definitely more colorful.

Mike O'Connor: Yeah I like it, this is Mikey.

Man: I like the proposed one as well, shakedown. We'll put some Grateful Dead stickers around it or something.

Man: Shakedown breakdown, you know. It's all good.

Man: That's all I have, thank you.

Greg Aaron: I haven't thought about it. I don't know, we'll figure it out. All right, so note to figure out the title sir. All right, the next action item is (Wendy) was to suggest language for the UDRP section regarding balance review and she sent around a note about that so let's put that up.

Marika Konings: This is Marika. I don't recall seeing that email. If you need to put it up on Adobe Connect could you forward it to me?

Greg Aaron: Yeah let me - I'm trying to find it in my mail right now actually.

Mike O'Connor: I don't think it hit the list, this is Mikey. I'm looking and it's not there.

Woman: Really, the list? (Unintelligible) I thought.

Greg Aaron: I saw something from (Wendy).

(Wendy): I will paste it into the chat.

Greg Aaron: It was on Friday the 30th.

Mike O'Connor: Nothing.

Greg Aaron: Okay. (Wendy) copied it to the DT list but I'm wondering if there's...

Marika Konings: This is Marika, I'm just looking at the mailing archives and there's no email from (Wendy) there so (Wendy) did you send it from an alternative email address? Maybe not, I don't see you registered to the list. That sometimes causes problems.

Greg Aaron: It was sent from (Wendy) at filter.com.

(Wendy): That's usually where I'm subscribed.

Marika Konings: Well if you could just forward me the email I can look into it and try to figure out what happened there.

(Wendy): Thanks Marika, I shall.

Greg Aaron: Yeah I'm forwarding it to Marika and the list right now because (Wendy) had also copied me on that. So you should have it shortly.

Marika Konings: I received it, I just want to convert it to PDF and I'll post it up.

Man: You know, this business of being able to exchange messages instantaneously all over the world and this Internet thing, I think that's going to catch on.

Greg Aaron: That's a killer application.

Man: It's pretty exciting.

Marika Konings: There it is.

Greg Aaron: Okay there we go, thank you, thank you Marika. Okay so (Wendy) do you want to walk us through that?

(Wendy): Sure, it's just a recognition that we had heard lots of - we heard several public comments that suggested the references to cyber squatting be balanced and the report itself referred to need for various kinds of review at the UDRP.

So we suggested that where we say the WG recommends initiation of a policy development process by requesting an issues report to investigate the current state of the UDRP and consider revisions if appropriate rather than specifically revisions to address cyber squatting. And then the effort should consider UDRP has addressed the problem of cyber squatting and additionally in fairness to non-cyber squatting registrants and then the final suggestion was simply a grammatical change.

Greg Aaron: Okay this is Greg, so this would be a change to the recommendation language and that would necessitate a new taking of consensus level votes. Now the other thing we would need to do is put probably some text in the body of the report noting that we saw some threads in the public comments about this. So we - I think we should certainly do that because it's just - it's background so the question is, is that enough or do we need to change the language of the recommendation itself? So what do folks think?

(Wendy): This is (Wendy) and I would favor changing the language of the recommendation like this because the body of the report did speak to both sides and yet the recommendation only said review how effective the UDRP is against cyber squatting and not any of the other concerns that the body had already raised.

Greg Aaron: Okay, I understand, thank you. Phil has his hand up.

Phillip Corwin: Yeah I just - I wanted to support (Wendy)'s recommendation and our comment letter from the ICA took this approach for a couple of reasons. One, it's kind of redundant to say, you know, revise the UDRP as it addresses cyber squatting. UDRP is all about an administrative remedy for allegations of cyber squatting so it's kind of redundant to say it.

As a practical we and Go Daddy and other commentators said that, you know, once you open up the UDRP really you put the whole thing in play again. And I think you're going to find a lot of willingness on the part of folks who represent registrants to address - to support changes that assist complainants so long as the approach to revising the UDRP is balanced and takes into - I don't see how you could consider that strengthening protections for complainants without considering how to better protect legitimate registrants against abusive charges.

And the last thing I'd say is ICA has been calling for PDP on UDRP reform for well over a year, and maintaining that's a better approach than having different rules for incumbent top level domains and new top level domains. And after ten years of UDRP practice it's pretty clear to a lot of people what's working and what isn't and what issues should be addressed.

So overall we just don't think as a practical matter or as a matter of fairness it's - you should recommend just approaching this from one perspective

because once you open up UDRP the whole debate is going to be about the proper balance and revisions.

Greg Aaron: Okay thank you Phil. All right so now that everyone has been able to see (Wendy)'s proposed change, I do want to give everybody on the list both those present today and those who are not an opportunity to comment on it. Since we're changing the recommendation we would need to sometime this month do a remeasuring of consensus levels just to be formal about it. So Marika that answers your question about polling. It sounds like we will definitely need to poll this one more time.

So let me put an action item for everybody to respond to this. If we don't get any particular objections to this language then this will be the language we'll measure consensus levels on one more time. Does that sound okay? Any objections? Okay (Fred) says no. (Fred) do you want to weigh in?

Fred Felman: Yeah I guess, you know, (Wendy) wasn't really involved with the drafting of any of the cyber squatting discussion, and we're now proposing a relatively dramatic change to the recommendation. And it just strikes me as odd that we're actually asking to change something, you know, this late in the game with someone who wasn't involved with the work.

Greg Aaron: Okay, this is Greg, I guess - well one of the reasons why we have public comment periods is to consider modifications to our work so it is I think keeping within the process. Your other question is (Wendy) wasn't involved. I don't know what to say about that. I mean, we had people weighing in on the initial recommendation who frankly didn't show up for meetings. Let's go to Berry and James.

Berry Cobb: Unfortunately I guess I just really have another question and it's kind of in the same court as (Fred) and Faisal as well and that's with respect to our - the recommendation relative to gripe sites. And I think that we were - we had

possibly talked about at least trying to get some sort of consistency with the UDRP decisions about gripe sites.

And I think that we maybe a couple of meetings ago we were talking about possibly folding that in with this recommendation about looking at the UDRP and I'm just wondering if the changes that (Wendy) has proposed here would change that in any way. Or was I dreaming because it's so silent?

Greg Aaron: Any comments on Berry's question? If not we'll go to James.

James Bladel: Yeah, sorry, I don't really have anything to add to Berry's comment but with regard to (Wendy)'s changes to the recommendation or proposed changes to the recommendation, I think that - and I'm speculating a little bit so maybe Faisal and (Fred) can help me out a little bit on this one.

But it seems like the proposal to delete the phrase to address cyber squatting is more impactful than the proposal to add the fairness language in the second bullet point or in the first bullet point. And so my support for (Wendy)'s proposals are mixed in that I agree with the proposal to add the fairness language but I would disagree with the attempt to narrow the scope of the UDRP review however futile that might be.

So I guess I would recommend that when we put this up to the list that we allow for, you know, we separate those and allow for consensus tests for each individually.

Greg Aaron: Okay thank you James. Let's go to Mikey.

Mike O'Connor: Thanks Greg, it's Mikey. You know, my recollection of why (Wendy) got this job is that she just described and summarized the conversation that we had on the call. I don't know that she necessarily took this as an advocacy kind of thing, it was more she was too slow off the branch and got caught with an action item.

So I don't know that there's a whole lot to read into the fact that (Wendy) drafted this. This was a conversation that was - because I remember it across the group and she just got to describe it.

(Wendy): Thank you, that was my intent.

Greg Aaron: This is Greg. Now I guess maybe one way to look at this is well what is the reason for being for the UDRP? Does it exist to address any other issues beyond cyber squatting? Phil made a mention for example that cyber squatting is the reason for being for the UDRP basically if I'm paraphrasing that correctly Phil.

Phillip Corwin: Well, I mean, the UDRP is an administrative process to address allegations of cyber squatting, you know, define the three part test of the UDRP. So I don't know what - it seems redundant and not to add anything to say revise the UDRP to address cyber squatting.

I'm just saying as a practical matter you can't - if there's a process to consider UDRP revision to better address certain abuses that are taking place, whether they're at the time of registration or thereafter, I think in any PDP it will be impossible to discuss them without discussing the whole of the UDRP and how it might impact those who believe they are not in violation but might be so charged. So I just don't know how you would undertake a UDRP reform effort and not consider the perspectives of both sides to the process.

And I think that's all (Wendy) is trying to do with this language to say that it should be balanced. I don't think anyone is trying to oppose changes that would address the real problem from the perspective of folks I represent. If the process can be made faster and less expensive and more effective the genuine cases of cyber squatting, we have no objections so long as other considerations are in the mix.

Greg Aaron: This is Greg. One of the things that the recommendation has always said is that it should examine how the UDRP has addressed the problem and any insufficiencies/inequalities associated with the process. My recollection is that inefficiencies and inequalities language was there to remind us that people have pointed out what they think are imbalances that need to be examined. So that language has always been there and everybody was okay with it.

Do we need to - are we talking about further emphasizing the need for balance or does the recommendation as it was written in the initial report already address this problem? I see Faisal's hand raised, why don't we go to Faisal.

Faisal Shah: You know, I - a couple of things. I just wanted to say that I agree with James that we should delete the term to address cyber squatting. I also think that if you're going to change recommendations at this point I think you have to have a pretty significant test to be able to do that, because I think we've discussed a lot of these recommendations ad nauseam over many, many months with a lot of people in the past and I recognize that other people may come in and want to make changes.

But I think to make a significant change at this point (unintelligible) a recommendation, and not simply add some information that we can actually put into the report I think has to have a test that should be implemented, some significant - it has to - either the recommendation is erroneous or there have to be some significant material that has to be added to it. I think at this point I don't think that any of the erroneous nor is there any significant information that's being added now to the recommendation that we want that we now have to change it.

So I think to some degree Greg we have to - there has to be some test to be able to go through these recommendations given the amount of work and time and effort that's been put into these recommendations over the past year. So that's what I think.

Greg Aaron: Okay, this is Greg. I'm kind of leaning towards to what Faisal said which is first we've gone through a lot to get to this language. Second, I'm thinking that the language already kind of addresses this issue.

And my third thought is we can certainly, you know, since we've gotten public comments on this stuff we can certainly add material into the text of the report to talk about that public feedback note that a lot of people said it needs to be balanced, etc. There's nothing preventing us from putting that on the record to highlight the public comment. So let's go to Mikey.

Mike O'Connor: This is Mikey the process guy and solo working group chair speaking. I think that the significant event that has happened is we got public comment. I think if people discover that public comments which in many cases take a lot of time and energy to prepare don't result in a change in the report sometimes then we've blown up a pretty important part of the bottom up consensus process at ICANN.

And so I would be careful about declaring that the public comments we got are not sufficiently significant to warrant changes to our recommendation since that's the whole point of the public comments.

Greg Aaron: So are you saying we got it wrong on the first, the initial report?

Mike O'Connor: You know, I'm really zeroed in on the process issue rather the content right now.

Greg Aaron: I guess the process issue is did we get it - did the public comments necessitate a change in the language or is the language enough that the public comments didn't say enough to warrant a change? There's a difference between ignoring public comment and saying that the recommendation did include enough language to address the balance issue I guess. Okay Faisal is that a new hand or an old hand?

Faisal Shah: It's an old hand, I'll take it down.

Greg Aaron: Okay. So anybody else? It sounds like we have some folks saying the recommendation is okay as is, we have some folks thinking that a change would be needed at least one change or two changes. And then I have also suggested that the language of the recommendation might be okay but we need to put more stuff on record in the body of the report. So where do we go from here?

First let me see a show of hands from people who feel strongly that the language needs to be changed, the language in the recommendation needs to be changed somehow. If you believe that the language needs to be changed somehow please use a check mark. If you believe that the language addresses the balance issue put an X.

Mike O'Connor: Greg just a clarifying question, this is Mikey. Is the text that (Wendy) modified the original recommendation? I just can't remember on too many working groups to keep this straight.

Greg Aaron: Do you need to post the original recommendation again?

Mike O'Connor: Well, you know, if (Wendy) was working on the original then I'm fine, I just don't remember.

(Wendy): My brackets were off what was in the draft final report.

Mike O'Connor: Okay thanks (Wendy).

Greg Aaron: So gain, and Phil I see your hand. Do you want to note anything else?

Phillip Corwin: I thought we were voting. In a way as a point of information, you've made several references to other language would speak to balance. It's not on the - can you tell us, can you cite that or quote it?

Greg Aaron: Well in the recommendation from the initial report it does say addressing any insufficiencies/inequalities associated with the process. And my personal understanding was that they're there to address some of the complaints people have had both complainants and respondents over the years.

Phillip Corwin: Yeah if that's all there is then I don't think that's sufficient to recommend a balanced process of UDRP reform going forward and so I would vote for (Wendy)'s language.

I would just say as a practical matter a recommendation for that type of balanced approach I think will be embraced by the community, whereas one that just says cyber squatting with no reference to a balanced approach is going to generate controversy and we're going to wind up with a balanced approach anyway.

Greg Aaron: Okay so let's go back to our polling. This is a straw poll. If you liked the original language as found in the initial report you put an X. If you believe some change is needed, and we'll get to what specifically the changes are in a minute, but if you believe change is needed please put up a check mark. Again if you want to go with the initial, use an X.

Man: Don't wait on me, I'm just going to abstain.

Greg Aaron: Okay.

Man: Coward.

Greg Aaron: So we have three checks and four Xs. Okay so we're kind of split. All right so is there any language that we can forge here that kind of reconciles things?

All right, let me ask this question. Does anybody object to the word balanced? Did anybody object to the fact - the suggestion that a review of the UDRP should be balanced?

I'm hearing lots of support for balance. That's kind of like voting against motherhood and apple pie if you're an American at least. Should we just put the word balanced in somehow? Mikey?

Mike O'Connor: I'm kind of riding along with James here. What if we split the difference and left the cyber squatting language in the first clause and, you know, sort of remove the delete? And so the first would say consider revisions to address cyber squatting if appropriate. And then leave (Wendy)'s language in for the first bullet.

James Bladel: Mike this is James, I'm fine with that. I think that's probably the least impactful change but I'm not taking a strong or strident position on either change at this point.

Greg Aaron: Okay so can we put the language up that Mikey has suggested? Can you do that little notes box? Yeah there you go, thank you. All right so Mikey does that read the way you wanted?

Mike O'Connor: Yes. And as I read it now on the screen I probably would have done what (Wendy) did simply because the phrase cyber squatting is repeated in the first bullet after being in the lead paragraph so I probably would have just taken that out of the language but either way is fine. I think that the intent here is let's leave the reference to cyber squatting in and also acknowledge the need for a balanced approach.

Greg Aaron: All right I'm going to also suggest some language. I'm going to put in the chat box, this is Greg, and what I did was I said the changes I made are basically to say to consider balanced revisions if appropriate. And then the rest of it I

think is as it was in the initial report I think. So Faisal when you say I think the addition is unnecessary, which addition are you referring to?

Faisal Shah: I'm referring to the fairness to (unintelligible) registrants because I think the insufficiency/inequalities associated or I think present enough - give the recommendation that I think everyone is looking for. I do not have a problem with that in balanced at the very top but I would add balanced and keep out the fairness (unintelligible) to date.

If that's what we're going to do, I mean, I would actually vote to not do anything at all at this point. Because I think again I'm going to go back to the thought that it has to be, I mean, I recognize Mikey's point of view that, you know, we did have the comment period and people can provide their comments but if he got it wrong Greg then I think that leads to change. But if we didn't it's pretty much got where we want to go with it.

But if you're going to do all the comment, all this work over the last year (unintelligible) before I think we should do anything. But, you know, that's my point.

Greg Aaron: Okay so what I've done in my version is I simply added the word balanced to consider balanced revisions. Otherwise my suggestion is to leave the language as it is but include that word balance to get across the point that's been brought up in the public comments. So Phil I see Phil's hand up.

Phillip Corwin: Yeah, I think once you put in the word balanced the other language in fairness, I think balanced implies fairness so the other language becomes superfluous. And again, you know, the UDRP I think it's a little redundant to say cyber squatting because it's kind of like saying let's amend the drunk driving laws to better address, you know, driving under the influence.

But, you know, it's not a big objection and I think the word balance and I think does the trick to say that this group is recommending that the process going forward be fair and balanced. So I think that's fine without the other language.

Greg Aaron: Okay thank you Phil. Other comments?

Mike O'Connor: This is Mikey, I can support that language too.

Greg Aaron: Okay so again the idea here is we add the word balanced and that's it. We want to address the public comments. It seems that - it is something that everyone I'm hoping can agree to being reasonable - hopefully we're shooting for reasonableness. I think that's one thing everybody wants.

The other thing this does is it otherwise leaves the initial report language alone which we did spend a great deal of time on and was the result of a lot of consensus building. So would everybody be okay sending this version up for some polling as to consensus levels? Does this strike a balance that folks can agree upon?

Okay (Fred) checks yes. Berry checks yes. Mikey checks yes. Faisal checks yes. Phil checks yes. I'm okay with it. (Wendy) checks yes. And James checks yes.

Man: Way to go James.

Greg Aaron: Okay, all right. So we're just adding that word, that one word balance. Okay awesome. All right, the process works. All right, we will send that out for consensus polling this month just to make it official and give everybody one more chance to weigh in on it but I think we have a way forward. So thank you.

Okay, all right, good. I think those - we only have one more thing and I'm hoping we can do it quickly and that was James was going to look at the front

running and write up additions but that - those additions were to I believe the text of the report, not to recommendations. Was that correct?

James Bladel: Yes that was correct Greg, and I don't feel particularly strong about it. It was just more of a clarification that there were in the past services that could have been perceived as front running and that I just wanted to point out that those existed and that to my knowledge and I think everyone would agree that they don't exist anymore mainly due to the changes in that grace period. So I just kind of put together a sentence or two for the inclusion in the body of the report and not a change to a recommendation.

Greg Aaron: Okay thank you, all right. So that gets us through all the action items from last week and we can move on to evaluating new public comments. And the next one was from our friend Phillip Corwin. So if we can put that one up on the board I'd like to turn the floor over to Phil. And Phil if you could briefly summarize the positions in your statement.

Phillip Corwin: Do you want me to go through the whole executive summary here?

Greg Aaron: Well I think what we've been doing is hitting the high points. So tell us the high points on each recommendation and if there's anything new or different that comes into the public comments that wasn't discussed during the course of the working group or was not in the initial report, you should mention that also.

Phillip Corwin: Let me just - I wasn't expecting to have to do this. Let me just quickly go through the executive summary which is, you know, and see if anybody wants to get deeper into any of these points.

Speaking for the Internet Commerce Association what we stated here, we generally agreed with the definition of abuse that the group came up with. We thought it was important to differentiate with any registration and other

domain abuses. And this is part of our overall point we made over the years that there are limits to ICANN's authority.

ICANN is not the government of the Internet and there are certain things that people do with domains, illegal acts in particular that it's not ICANN's - while ICANN may be able to help law enforcement it's primarily a law enforcement or other national or international authority issue. So while it's difficult sometimes to draw the line, we think it should be drawn.

We agreed on a UDRP PDP as so far was broadly comprehensive. I think we discussed that with the balance language. On rights protection methods, we didn't oppose a PDP being regarded in conjunction with new TLDs and new rights protection mechanisms but thought that, you know, should be part of the UDRP PDP.

That eventually again our position has been that we want a uniform policy across all TLDs and I would think that rights holders would want that as well, they wouldn't want one set of rules for some GTLDs and different rules for others.

Yeah we supported having ICANN's compliance department look at this fake renewal notice issue. I know I got those recently in regard to some domains that I own and it's pretty misleading stuff and if you're not sophisticated you could be fooled by that.

We supported developing non-binding best practices to assist contract parties including account security management and here and another place I think the issue of domain theft is becoming a much more important issue for even professional domain registrants.

I don't know if it's on the uprise or we're just seeing it reported publicly more often but it's certainly something I'm hearing about a lot from the folks I

represent. And we think it could be addressed in some of these initiatives particularly things that registries and registrars can do to help prevent that.

We appreciated the report's observation that PPC modernization is not a registration abuse and that it's best to address by private sector actors so we are agreeing with the report there. And we did urge that any UDRP PDP consider the establishment of a cure period.

And this is very limited, minor, transient, and unintentional infringement caused by third party placement of PPC advertising links which recognizes that, you know, people own a portfolio of many domains, may sign up to have them monetized by, you know, PPC links of a certain category.

It's not practical feasible for them to review each and every domain they own on a daily basis to see what links are there. And at some times the ad provider inadvertently puts a link there that could be viewed as encouraging or tantamount to infringement and there ought to be an ability for the owner of the domain to correct that if it's brought to their attention.

And again the words minor, transient, and unintentional. We're not trying to excuse major, persistent, and intentional infringement. We're just saying that where somebody with an appearance of infringement from a PPC link that was caused by the ad provider and not intentionally by the domain owner, there should be some period in which that can be brought to their attention and they have the opportunity to cure it without losing their domain. And that's really something that's going to be brought up in any UDRP reform effort anyway.

And finally we supported additional research and process to ensure that who is data is accessible and again urge the focus on fraudulent registrations that may be associated with domains.

So basically you go through all of these, I think we're in complete consensus in just building upon what the group has recommended other than there's some disagreement about whether there's a line between ICANN policy making scope and where it ends and where responsibility by government and intergovernmental authorities begins.

And we urge in some of these items that the issue of domain theft be particularly taken into account. And I hope that was helpful and if anybody wants to get into any of those points further I'd be glad to, you know, expound on them further.

Greg Aaron: Okay thank you very much Phil. Does anyone have any questions or comments for Phil?

Phillip Corwin: And I would note that we complimented all the members of the working group for the excellent work product so this was, you know, a very positive overall statement on the work done by this group.

Greg Aaron: Thank you, thank you Phil, that's much appreciated. Okay one last call for any questions for Phil.

Berry Cobb: Greg this is Berry. A question in relation to the domain name theft. We haven't actually classified that as a definition topic within our report, correct?

Greg Aaron: Domain hijacking for example?

Berry Cobb: So is that where that's lumped under is the hijacking section?

Greg Aaron: I don't think we even have a hijacking section. It's - the issue has been dealt with more under the transfer issues because it's either a transfer that's taken place inappropriately in which case there's a transfer dispute mechanism and some of the transfer working groups have dealt with the issue. And we kind of - because those groups have dealt with it we didn't get into the issue.

You also have these cases where, you know, a hacker will just get into someone's domain account and relabel a domain. But in my experience those are taken care of by the registrar and transfer dispute processes are there to be taken advantage of if necessary.

Berry Cobb: Okay thank you.

Greg Aaron: James?

James Bladel: I just wanted to add to that, Greg, is that the issue of hijacking is recognized as an associated vulnerability with our current inter registrar transfer policy. And that is something that we're addressing in the IR2PB working group as well as taking a look at the various dispute mechanisms and whether or not they're effective in addressing this problem and then proposing a new one as well, recommendations for a new one.

So if we have any mention of that or a section of that in this report, and I don't believe we do but if we wanted to add one I would just refer it to the work of the IR2P and move on.

Greg Aaron: Okay maybe we add a note about it in the report to cover that. Okay, anything else for Phil? If not, thanks again Phil for that summary and your comments and we'll move on to the next public comment which was from (Clark Walton) and it is the registrar stakeholder group position. And I can read those off or James if you want to since you're a registrar you can.

James Bladel: Sure, I can wing that. So I should mention that coming up with a position like this for the registrar stakeholder group is somewhat of a lengthy and involved process so, you know, as you might imagine registrars are a much more diverse and less unified in their business models and their positions on policies compared to other stakeholder groups such as for example the registry stakeholder group. I'll pick on you guys just for a little bit there Greg.

So, you know, we have a few items. We did not go through and catalog each recommendation but we just kind of picked some of the highlights where there was consensus on the registrar stakeholder group.

And I think the first one is, you know, touching on the scope issues, registration abuse versus use. I don't want to belabor that, it's there to be read but I think it echoes some of the comments or concerns raised in the ICA letter.

So, you know, again believing that there are limitations to what ICANN is able to practically affect and what they have the authority to affect and there are certain types of issues that ICANN should recognize its limited (remit) in those areas.

I'm having some scrolling trouble so bear with me for just a second here. with regard to the recommendation about rights protection mechanisms, I think we're being very cautious in saying that it's premature to recommend something that has not been fully baked by the PDP working group and has not been implemented or seen any real world experience. It is premature to recommend that those be examined for inclusion in incumbent GTLDs.

I think that's something that we would like to see at least the same body of experience with those new rights protection mechanisms that we have with existing rights protection mechanisms before we, you know, determine that one is better than the other whether they're appropriately moved into incumbent GTLDs.

The third item was the - this is the discussion about the minimum baseline uniformity of contracts. And, you know, I wasn't prepared to address this Greg so I apologize if I stumble through item number 3 but essentially the stakeholder group is opposed to this.

We think that as we mentioned in this and in the Go Daddy comments -- and I'm not going to subject everyone to rehearing a lot of the points I've made while we were developing these recommendations -- but that this will probably have the opposite effect of its intention, and would essentially precipitate a race to the bottom and a weak common denominator in terms of security and abuse practices.

Especially when you consider that exceeding the minimum baseline would involve additional expense and liability and function of risk and therefore that would be a competitive disadvantage to anyone that would want to exceed those.

So and I lost my cursor here, just a moment. And, you know, there's the - that's essentially the stakeholder group's position. There's a little disclaimer there at the bottom and that's it.

Greg Aaron: Okay.

James Bladel: I don't know if there's anything new or shocking in there. I would point out however that this topic is very - has been generating a lot of interest within the stakeholder group arriving at any kind of a consensus is sometimes challenge because the registrar stakeholder group is very large and comprised of folks from different businesses, different business models from all over the world so, you know, it is noteworthy that we were able to reach consensus on these points.

Greg Aaron: Okay thank you James. Are there any questions or comments for James? I'm not seeing any, last call then.

Rod Rasmussen: Hello this is Rod. Hello everybody. Can you hear me?

Greg Aaron: Yep.

Rod Rasmussen: Okay I was having problems before. Sorry, I converted my time improperly to as well as a meeting that's been going on for quite a while, I'm in Prague at the moment so I apologize for being late.

The - I just had a question James on what the rationale/legal basis was for this statement that if the registrars assume - some sort of minimum baseline is created how that creates excess liability for everybody else or anybody decides to see how that creates excess liability for ICANN.

And I'm an attorney and I don't understand how it creates anything more than what we already have today for anybody who decides to do more than nothing, minimum baseline being (unintelligible) right now.

James Bladel: I think, you know, and I don't - and I'm not an attorney but I should mention that registrars who like my own employer who engage in very expensive and intensive anti-abuse efforts do so with an assumption of, you know, some degree of risk. The minimum baseline is part of an ICANN policy would essentially normalize what would be considered internal operating procedures or best practices.

So the concern is that if one registrar were to deviate from the minimum baseline policy or exceed it that would be - in the event that any of their actions translated into a lawsuit that would essentially give the complainant in that case the ammunition to go after and say you have deviated from what is considered an industry practice or an ICANN policy.

Even if the registrar contends that their internal policies were more comprehensive or more effective, it still would be I think a liability going into that kind of a situation saying that we are behaving differently than the rest of the industry or we're out of step with the rest of the industry on this area.

I think it's just - it would be, you know, an area of concern if any of their actions were to translate into a legal liability. And maybe the attorneys on this

- I know we have several on this call can explain it but I know that anytime someone deviates from other published industry standards I think they open themselves up to some additional risk.

Greg Aaron: This is Greg, I raised my hand. I think actually there are two issues there related to each other. Looking at the language, it says if a baseline of registration abuse provisions are mandated i.e. made required, then that means risk and that needs to be covered. And then the second one is you've got the baseline and then you deviate from it or if you have higher standards that creates some issues. Is that correct?

James Bladel: Yeah I think that this first part you mentioned, that mandating this would essentially require registrants - registrars, excuse me, to take risk where they may be avoiding them today, and that's the impetus behind this discussions about requiring a complementary degree of indemnification by ICANN that registrars would be somewhat protected from assuming those risks by ICANN if they were shown to be following ICANN's mandated processes.

Greg Aaron: Okay. I see (Wendy)'s hand.

(Wendy): Sure, I just wanted to offer up a bit of legal perspective that I think this is coming from tort law where often an industry standard can set the standard of care and then set duties to engage in activity up to that standard of care and deviation from that can then be construed as negligence. So without expressing an opinion whether that would happen here, I think that's the legal background.

Greg Aaron: Okay thank you (Wendy). Okay any other questions or comments on the registrar statement? If not we'll move on to the next one, thanks James. The next one is from (Paul McGrady), it is the IPC comments, intellectual property constituency. Is there anyone from IPC who wants to read these off? If not, I'll run through them.

Okay, all right. So the IPC says it supports the recommendations which received unanimous consensus, rough consensus, and/or strong support. In addition, they support an alternative recommendation. They would like to see the new rights protection mechanisms be applied in the current GTLD space so that was something we discussed and proposed recommendations.

And then the IPC suggests that the group support the following recommendations regarding deceptive domain names. And that language says about regarding the protection of children and that they recommend a PDP and issues report to investigate the most effective means to prevent registration of or improperly canceled deceptive domain names which mislead children to objectionable sites.

And their opinion is also that ICANN's agreements with registries and registrars explicitly state that registries and registrars are explicitly empowered but not obligated to develop reasonable policies internally with each contracted party designed to prevent the registration of deceptive or offensive strengths.

IPC suggests that the RAP adopt alternative recommendations regarding who is. One initiation of PDP, an issues report to investigate the connection if any between privacy and/or proxy services and to PDP an issues report to investigate the possibility of developing best practices and privacy and/or proxy services to prevent and address registration abuses in developing an accreditation and compliance program to enforce any such practices. And those are the comments.

So any notes or questions on that? I think the ones regarding who is are out of scope because we very explicitly stayed away from the accuracy and pricing and proxy issues because the GNSO council has already commissioned reports on those so it can do policy making on those once informed. So I think those are just out of scope. Any other questions, comments?

Rod Rasmussen: This is Rod, I don't know if they're out of scope but they're sure hard to be done so I think...

Greg Aaron: I think they're out of scope for our working group. We specifically excluded them from scope.

Rod Rasmussen: Right because someone else is already working on them.

Greg Aaron: Yeah because it's already underway elsewhere.

Rod Rasmussen: Yeah, I agree.

Greg Aaron: Yeah, that's what I'm saying. Okay any other comments, anything new or unusual in these comments? Okay if not, the next one is from the commercial and business users constituency. What we'll have to do is take that one up at the next meeting because we've run out of time today. And Berry would you be willing to tackle those next meeting?

Berry Cobb: Absolutely.

Greg Aaron: Okay. Our next meeting is on the 10th. There is a chance I might not be able to dial in because I'm traveling next week. Rod and I are going to be at the anti-phishing working group meeting in Brazil. I will attempt to log in but if I can't that means my plane is late or something so we'll make some contingency plans for that.

We have a couple of action items. I'll write those up and send those up to the list. And as always we do have a draft of the report out. Marika has done up the draft of the final report. That's there so we can make tweaks and changes to it and if you have any of those please redline them and then send those up to the list noting what you changed. That's mainly for changes to the

background materials and not to the recommendation text. Recommendation text will have to go through process for changes of course.

So any parting thoughts before we adjourn for today? We only have two more public comments to go through. We have the BC - actually just one actually, the BC and then that's it. So we'll hit that next week and then, you know, we'll be substantially done, we'll just have to do some last work on some open items.

So I think we're going to be fine as far as our schedule. We have three more meetings this month, the 10th, the 17th, the 24th, the 31st is a public holiday in the United States. I'm doubting we'll meet that day but I think we'll have enough time to wrap up things as planned. So if no more business for today we'll adjourn. Good work today, thanks for settling on that language regarding cyber squatting and we'll see you all next week.

Man: Thank you Greg, great job.

Marika Konings: Thank you.

Greg Aaron: Thank you everyone.

END