

**Registration Abuse Policies Working Group  
TRANSCRIPTION  
Monday 24 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 24 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-20100524.mp3>

On page:

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

Present for the teleconference:

Greg Aaron - Registry stakeholder group - Working Group Chair

Mike O'Connor - CBUC - Acting as Interim Chair

James Bladel - Godaddy Registrar stakeholder group

Berry Cobb - CBUC

Faisal Shah - MarkMonitor

Fred Felman - MarkMonitor

Rod Rasmussen - individual

Martin Sutton - CBUC

ICANN Staff

Margie Milam

Gisella Gruber-White

Glen de Saint Gery

Marika Konings

Apologies:

none

Coordinator: The call is now recorded. Please go ahead.

Man: Thank you. This is the Registration Abuse Policy Working Group meeting for May 24, 2010. This is Greg Aaron. And Marika is driving today so she's taking in the call from the road. Why don't we begin with roll call please?

Gisella Gruber-White: With pleasure. Good morning, good afternoon to everyone. On today's call we have Greg Aaron, Faisal Shah, Mike O'Connor, Berry Cobb, James Bladel, Fred Felman, Rod Rasmussen, Martin Sutton. From staff we have

Margie Milam, Marika Konings, myself Gisella Gruber-White, and I don't have apologies noted for today's call. Thank you. Over to you Greg.

Greg Aaron: Thank you Gisella. Okay. Well first order of business is did everyone get the invitation to the last poll? Did anyone not see that? Okay. That's open. Marika says that some people have filled that out but not all so a friendly reminder to do that preferably today if at all possible. And then Marika will compile the results and post those up to the list. So again, if at all possible, do it today. It is open through tomorrow though.

What we'll do today is go through the various edits to the report. We had added in all the language we worked on in last week's call and then there've been some additional submissions. So Marika put up a draft quite recently and we're going to look at that today and we'll go through the changes.

So if you've got a red line up on the screen, we'll go to that. And the first is on the bottom of Page 4. And Berry added a comment. And Berry - the part that Berry's highlighted is the bit about sometimes whether it's pre-creation or creation or post-creation is sometimes not applicable or useful when considering whether the abuse is in scope for policy making or not.

Berry's comment was if these distinctions are not applicable, then why do we make the distinction between registration versus use?

Well the statement as it currently says is sometimes not applicable. Berry, do you want to tell us - this has been in the report for a long time so what's the sticking point for you?

Berry Cobb: Well really it's just - it seems to conflict with what we've done as a working group. As we went - as we identified each abuse then we went through it and categorized them as pre-registration, registration, use and I forgot the other category. Maybe there's only three.

But, so I - my - it's really not contention. I'm just kind of making the point that it's conflicts with what we actually did and that's the reason why I put the comment there.

Greg Aaron: How does it conflict with what we did exactly?

Berry Cobb: Well, I mean because it says that making these distinctions are sometimes not applicable or useful when considering if an abuse is in scope for policy making. But it is applicable because we did that.

Greg Aaron: Well what we did is...

Berry Cobb: Right?

Greg Aaron: Well what we did is we decided whether it was a registration issue or not. In some cases we decided that if a topic was not a registration issue and so we discarded it as not being relevant. So I'm still wrestling with what you mentioned.

Berry Cobb: It's not that important. Again I just, you know, we say that it's not applicable for making these distinctions but we did make these distinctions when we identified the varying abuses. So it's not critical. We can move on.

Greg Aaron: Okay. All right. Thank you Berry. Okay. The next edit was at the top of page...

James Bladel: Greg?

Greg Aaron: Yes. Go ahead.

James Bladel: I'm sorry. This is James. I was just going to add that I see Berry's point with this is that it is somewhat of a contradictory statement. And as the person or the interest group that was on the minority side of deciding the use versus abuse issues, you know, I think that this was probably some compromised

language that, you know, doesn't fit with a lot of our recommendations of some of the different categories. And I think I see what Berry's getting at.

Greg Aaron: Okay. Help me understand where the conflict exists so we can see if we need to tweak any language. Do you have like an example maybe?

James Bladel: Yes. I was just struggling to come up with one of those. But, you know, if - looking at it from the perspective that there is no - in all cases there is no scope whatsoever for ICANN in non-registration issues. I think that this was more of a compromise approach that says that there are, you know, some cases where registration abuse can occur throughout the lifecycle.

And I think that, you know, we used some qualifying terms here like sometimes not applicable or useful. And I think that it was - that was offered to kind of throw a blanket around all the different viewpoints on this issue.

And now that we have arrived at that and we're going back and taking a look at this compromised language, it doesn't, you know, it doesn't fit well now and it didn't fit well probably when we came up with it, but I think it's what we have to try and bridge a lot of different opinions on this point.

Greg Aaron: I think I remember how this came about. What we did is we came up with our laundry list of issues, you know, cybersquatting and gripe sites and all those things. And then we tried to fit them into the three categories. And we figured out that that just didn't work very well because that - when it happened wasn't so much the issue, right. I think that was - I think that's how it came about. Is - so yes...

((Crosstalk))

James Bladel: That sounds familiar.

Greg Aaron: ...is he saying some ways it's an artifact.

James Bladel: Right. Right.

Greg Aaron: So, what do we do with it?

James Bladel: Well one approach would be maybe Berry and I could go off and come up with something different for that bullet point that kind of describes everything we've discussed here that continues to preserve its relevance in the final report. I don't know.

Man: Yes.

((Crosstalk))

James Bladel: I just volunteered you Berry. I don't know if that's fair but...

Berry Cobb: I - yes, no that's fair. I brought up the comment. I mean I guess if I were to offer up just a quick suggestion, I don't know about the exact language, but just to make it more clear that we did go down that road but then we didn't, and we went with just as a registration or use. Again it was just confusing to me. I'm not really trying to discount the statement or anything, but it just kind of seemed a little bit contradictory, so.

Greg Aaron: Well I guess an example would be if you create a domain name that's mygoogle.com, there might be a potential cybersquatting issue there right? And that's a main creation issue. But it also involves a registration issue potentially because it could be a cybersquatting, right?

Let's just say you create a domain name made of random letters and numbers. That's happening at the time of creation but does not involve cybersquatting issues, right. So yes, the use versus whatever.

I am a little reticent to go off and - I would like you guys to work on some language right now actually. I'm just reticent to string this out further when we're trying to close the report.

Berry Cobb: Right.

Greg Aaron: So if you guys want to try to take a crack at it while we continue?

James Bladel: Yes. I can do that.

Berry Cobb: Sure.

Greg Aaron: Good. All right. Okay. Let's move on top of Page 6, malicious uses of domain names. It looks like Faisal changed learning done in fast flux working group to information gleaned in. I was hoping that some learning had been done in that group having been there through it.

Faisal Shah: I wasn't sure exactly what that meant. Learning done I don't think is proper English but maybe I'm - I grew up in Puerto Rico so maybe I just don't know.

Greg Aaron: It is grammatically correct. I can say that, not a biggie though. So anyway, moving on Page 8, we've got a note that the table - this is the summary table of recommendations. And we have a note that it's summary only and that people should look in the body of the report for the exact language. And what Berry says we should make this stand out. So we'll work with Marika to see what we can do about that.

Berry Cobb: Yes Greg that - my - just real quick, my point here was to make sure that the reader catches that bullet, because as I alluded to in my email when I sent this out, I read through some of the summary recommendations and from my perspective, I kind of felt like I got confused about some of the content of those recommendations.

And I'd offered up the suggestion that maybe we even simplify the summary even more than what we have here so that we force the reader to go down through the contents of the document.

I mean I understand what - some people don't have time to read the entire document, thus the necessity for an executive summary. But I - having read through this again in its entirety, I really think it's important that we try to force the readers to go through the details of each section. And that would really illuminate why we came up with the recommendations that we did.

So, again, I just kind of felt that some parts of the summary tables were - could lead to confusion. And if the reader just reads the summary, they may get the wrong takeaway about some of the efforts here.

Greg Aaron: Yes. We - and we do want to have people go into the details because some of these are nuanced and so on. Marika had suggested that we really did need a summary here. But maybe what we can do is in each one of these, we'll put in a note saying please see Page X for full recommendation and back and so on.

So that'll be a pointer into the body of the report to the reader. How about that? Those cross-references I think could really help. And we'll make those prominent for each recommendation. How about that?

Berry Cobb: That sounds good.

Greg Aaron: Okay. All right. So anyway we have the recommendations, summaries, and the next edit of substance are in the scope section. Okay. So let's go to Section 4.2 which is on Page 20. And Berry has a comment here. Now - and Berry's comment was right now the text says registration issues are related to core domain name related activities. And Berry's suggestion was remove the word issues.

Now the reason why the word issue's there is when people off in the community often see the word registration, they take that sometimes to mean a domain creation. And what we're trying to emphasize here is that we're talking about a sphere of activities, not a particular kind of transaction or what have you.

So I think that that word is actually very helpful. And then later on, I think on the next page, we say, you know, registration is not synonymous with a domain create. So can - Berry are you okay - I think it's a useful word.

Berry Cobb: This is Berry. What about this, registration as a phase of the domain name lifecycle or the scope of registration. Again, when I read the word issues and then I read through that bulleted list, I don't see any issues about registration. I see the scope of registration. And so when I read the 4.2 definitions of registration and use...

Man: Okay.

Berry Cobb: ...so again it's just kind of a confusion thing on my part. But if anybody else sees where I'm going fine, but if not then we can move on.

Greg Aaron: Issue as a noun can refer to two things. One it can be a topic or it can be a problem. Are you taking it one way versus the other?

Berry Cobb: Yes I guess my interpretation I'm more inclined to take it as a problem as opposed to a noun, but that's just my read on it.

Greg Aaron: Actually I think it might work either - no matter how you take it, I think it might work either way.

Berry Cobb: That's fine. We can move on.

Greg Aaron: Oh all right. Okay. All right. So then on the next page, Page 21...



Faisal Shah: Greg?

Greg Aaron: Yes.

Faisal Shah: Greg this is Faisal. In my email, I think we kind of skipped over this. Maybe we didn't. In the recommendations for the gripe sites, I had three - I had separating the three recommendations. Are we going to get to that later or are we going to deal with it?

Greg Aaron: Yes. Let's tackle that one when we get to the gripe site section of the paper.

Faisal Shah: No problem.

Greg Aaron: Yes. Please, please bring that up as we scroll down through that. Okay. So anyway, the next edit is on the next page, Page 21, and Berry put in a comment which is referring back to the...

Berry Cobb: It's a repeat.

Greg Aaron: ...pre-domain creation thing there. So, we'll let Berry and James work on the language. Okay. And then Berry has another note which is Number 6. The text reads as follows, "in contrast domain name use issues concern whether a registrant does with his or her domain after the domain is created. The purpose of the registrant puts the domain to and/or the services the registrant operates on it. These use issues are often independent of or do not involve any registration issues." Okay. So Berry, can you explain your comments.

Berry Cobb: Greg, yes, the main point for this one is first and foremost was the use of the word issues. I'll move past that one. The last sentence of this paragraph talks about the distinction and we can move on because there's a couple of paragraphs that I appended towards the end that kind of discusses the counterpoint to that.

Greg Aaron: Okay. All right. Well let's keep scrolling down then to Page 25. Okay. And we have that first sentence and it says, "the RAP therefore approached each proposed abuse on its list by determining what registration issue exists if any in considering if or how it had any inherent relation to a domain name for a registration process."

And what this is referring to is we looked at some issues like paper click advertising and things. And we determined that there was not a registration issue involved. And so we kind of had those - we looked at it and we put it aside.

Berry Cobb: Right. Greg, this is Berry. We can cancel this one if we're going to restructure some of those previous statements that kind of denoted the conflicting. I was just using this as a reference point to - this kind of shows what we really did within the working group.

Greg Aaron: Right. Okay. Now, then Berry's added some text after that because - Berry would you like to speak to the additions on Page 25?

Berry Cobb: Yes. This is Berry. Thank you Greg. Basically, you know, there are a few of us within the working group that feel there is no distinction between registration abuse and use abuse.

And having talked with a couple on the BC, I just wanted to make sure that we brought in delineation that, you know, that we still think that there is no distinction and that furthermore I think that I wanted to draw language with a note that we in the working group all - pretty much agree that we're not going to get it solved here.

And so that was the idea of the note section that - and I had just put unanimous consensus there. That's not accurate, because we haven't really polled on this, but the intent again was that, you know, I wanted to draw

attention to the fact that there's pretty big disagreement about the scope issue and that, you know, the G - we need to draw attention to the GNSO that we - they need to figure out a way to handle this.

Greg Aaron: Okay. I have a question. The text says distinctions between registration and use. And then - but then on - just a moment ago you said there is no difference between registration abuse and use abuse. Aren't those two different things?

Berry Cobb: I'm sorry. Yes. I'll clean that out. I should put abuses after those words in the first sentence.

Greg Aaron: All right. Okay. Let's see - no distinction. I think what we're going to have to do is work on this text a little bit to make it more clear that it is a minority opinion.

Now also what we've done is - well let me put it this way. Hadn't we agreed that there is a - that the uses of domain names are different than - I mean registration issues and use issues can be teased apart. That was something we all agreed to in the working group.

Berry Cobb: There - yes, there are distinctions in the lifecycle, yes.

Greg Aaron: Well for instance, if you're using a domain for FTP, we - that is not a registration use. That is not a registration issue is it?

Berry Cobb: If you're asking me, I don't believe so, no.

Greg Aaron: Right. That would just be a pure use. The issue is when the uses intersect with registration issues, an example being UDRP where the string itself is a problem if it's infringing upon a trademark, right? So what we have to be clear of here is we're saying that there are differences between registration issues and use issues.

But what you're saying is if there's an abuse on a domain name or through or using a domain name, ICANN can regulate it and make binding policy on it. Is that the core?

Berry Cobb: This is Berry. I'm keying off of the word - the text that I have there in bold which is a phrase offered up by Mike Rodenbaugh and which to me again points to the heart of the debate. And I think we're starting to venture down the road of the debate again when we've already agreed that we're not going to solve it here.

Greg Aaron: Right.

Berry Cobb: I'm - I am open to modifying this so that it shows that yes, this is a minority statement and that again we just - we're not going to solve it here.

Greg Aaron: Yes. I'm not trying to open the debate again because we've had it many, many times. I'm just trying to point the reader to which issue specifically we're talking about here.

The addition of the words - the word abuse in the first sentence, registration abuse and use abuse helps. Now, I don't think the sentence about UDRP is necessarily accurate. It says UDRP is one of the most prevalent examples where ICANN policy scope ventures into the realm of domain use.

Man: Excuse me Greg. Can you tell me what section you're reading from because I'm having trouble finding this text.

Greg Aaron: It's on Page 25. If you look down in the footer, it says Page 25, the middle of the page and...

Berry Cobb: The footer doesn't show up on the Adobe Connect. I was having...

((Crosstalk))

Greg Aaron: Oh okay.

Berry Cobb: ...questions...

Greg Aaron: Oh okay. I was looking in - I pulled up the Word version. So let's scroll down. What we - what you need to do is find Berry's comments. It's comment Number 7. It's BAC7.

Man: BAC7. In the Word document or in the window?

Greg Aaron: Actually it shows up differently in Adobe Connect.

Man: So if we...

((Crosstalk))

Greg Aaron: Verse is the Word version I have on my desktop. Okay. So let's see...

Man: Version 24 that was posted on the wiki?

Greg Aaron: Okay. On - in your copy on the screen it would be Page 24.

Man: Oh.

Greg Aaron: Look in the middle of the page and you'll see a sentence. It's in bold face. And you can see the text has green highlighting around it. Can you - it's the paragraph that says to the contrary of aforementioned.

Man: Right paragraph.

Greg Aaron: Okay. Can you see it on the screen now?

Mike O'Connor: This is Mikey. Nothing like that on Page 24.

Greg Aaron: Okay. I see it on Page 24 in Adobe Connect.

Man: Yes. I see it right - I see it. It says though - note. Is that the one you're talking about Greg, giving the consistency of the (day)?

Mike O'Connor: It's the paragraph before it, not an edit. So it's just very faintly highlighted.

Greg Aaron: It's very faintly highlighted in green is how I'm seeing it. But it's new text but it's not showing up...

((Crosstalk))

Greg Aaron: ...as a red line for some reason. So anyway, that's where it is. Anyway, let's see. Where were we?

Berry Cobb: Greg you were talking about the UDRP sentence after the bold text.

Greg Aaron: Yes. And what we're saying - what we're not saying is that what the UDRP does do is it says we have a registration issue which is the registration of that string which infringes potentially on a trademark.

However, the UDRP does not - that's not the registration issue and that's why it's not a pol - and that's why it's a policy. What the UDRP says there we have some tests for that faith. So UDRP does not regulate the use. It's regulating the registration issue. It's using a use issue as a test of that faith.

I think that this sentence here is perhaps not precise enough in drawing that important distinction. I think we also - we use that as an example somewhere else in the paper. We might have to wordsmith this.

There are ICANN scope agreements where use of domains are listed and especially with respect to contributory liability is concerned. Where are these - what are the ICANN agreements where use of domains is listed?

Berry Cobb: One of the things that I had - this is Berry. One of the things that I had just come across was the latest advisory that's out for public comment. And it talks about the licensing of the domain to third parties and the use there.

But again, if you'll allow - give me till the end of the day to take this section of the paragraph and get it reworded after the bolded text, I'll probably wind up - I'm really what I wound up doing was kind of stealing from some other comments made in this area.

And I agree it does need to be cleaned up. If you'll allow and give me till the end of the day to get this straightened out and I'll push it out onto the list about modifying this paragraph so it's more concise and correct.

Greg Aaron: Okay. It's a big use of text. Why don't you take the rest of today on that? Okay. Thanks Berry. May I ask about the - with the contributory liability, are you saying that that's in registration? Was that from that advisory or was that from a contract?

Berry Cobb: My take on what I read from the advisory. But again, let me get this cleaned up and I'll send it out on the list.

Greg Aaron: Okay.

Berry Cobb: Unfortunately I didn't get to share it with some of the people that I wanted to before posting it in this document.

Greg Aaron: Okay. All right. Well, you know, all right, we'll take this one offline. Okay.

Margie Milam: Greg it's Margie. I just have a question for Berry.

Greg Aaron: Please.

Margie Milam: Berry when you go back to the language, can you speak - look specifically to the word contributory liability because from a legal standpoint that has a specific meaning. And I'm pretty sure the contract and the advisory doesn't use that language. So I'd be really careful in when you revise it not to pick up that language.

I think you're referring to the part that says that if you've licensed your agreement - your domain to a third party, that you're liable for the, you know, any damages caused by that domain name. So I would just be careful to pick whatever, you know, be careful to pick the language typically from the advisory or from the contract itself.

Berry Cobb: Absolutely.

Greg Aaron: Okay. Thanks. Okay. So scrolling down, we see the next...

((Crosstalk))

Man: Who was that Greg? I - just my hand a. I'm not sure...

Greg Aaron: Yes.

Man: ...if this is a minority view and we've already cleared a minority view. Either can we vote on it or figure out if it's a minority view?

Greg Aaron: Well we haven't voted on it and that's kind of out the door. And it doesn't matter whether we vote on it or not because this group doesn't decide the scope of ICANN work. We discussed that before.



I mean what we're voting - what we're measuring consensus on are specific recommendations. And in some of those, you know, you - we have sections where people are saying, you know, we believe it's in scope or...

((Crosstalk))

Man: But it's just like the word minority then.

Greg Aaron: Where does it say minority?

Man: You said that use of that in the discussion.

Greg Aaron: I'm sorry, just now?

Man: Yes, just now. You had just a second ago said that it was a minority view and I'm just saying I don't agree with that.

Greg Aaron: I don't recall saying it but minority - the term minority view wouldn't be relevant here anyway, majority or minority. Okay. So anyway, if we can move on...

James Bladel: Greg?

Greg Aaron: Yes.

James Bladel: This is James. I was in the queue.

Greg Aaron: I'm sorry. Go ahead. I'm just looking at the...

James Bladel: Sure.

Greg Aaron: Go ahead.

James Bladel: Okay. So just wanted to put out there that, you know, we should be very cautious about leaning on a draft advisory that it is currently open for comment that could change. I just wanted to point out - point that out. But that's very much an influx document and, you know, we don't want to steer comments that were received on that in one direction or another. Thanks.

Greg Aaron: Okay. Thank you. Okay. So anyway, moving on, the cybersquatting section that contains the text we worked on and agreed to last week. And then around Page 28 we have our laundry list of the issues that people brought up over the years. There're a few edits there. I'm not - I don't think anybody had any particular issues until we get to reverse domain name hijacking.

What we had done is we had some proposed text that's been slotted in. It is on Page 28. Did anybody have any questions or comments about this bit?

Faisal Shah: Hey Greg. This is Faisal. I mean I just wanted to point out that the original draft was done by Berry. I then took a stab at it and then Phil took another stab at it. I think, from what I can tell, I don't think Berry has an issue with the ultimate text. I don't have an issue with the ultimate text.

But there was some text that was deleted from this. So, I don't know if somebody wanted to discuss it to put it back in or what you want to do with it.

Greg Aaron: I think what might be in here, and I'd have to go back and check. But I think what might be in here was Phil's version.

Faisal Shah: It said - it's actually Phil's version editing my version which I don't - like I said in my email, I don't have a problem with. But there was one paragraph that was in here below the last paragraph on 29. And that's - and that I had deleted it. And then I think that's what got incorporated into this draft. So that paragraph doesn't - isn't sitting in there.

Greg Aaron: Okay. What - do you have that paragraph? Do you want to...

((Crosstalk))

Greg Aaron: Do you want us to take a look at that paragraph for inclusion?

Faisal Shah: Yes. I have that paragraph. I don't know if you want me to like - do you want me it in draft?

Greg Aaron: Yes. That'd be great.

Faisal Shah: I can do that. My system is just going on. Hold on. I'm going to - I can't seem to paste it in so I'm going to have to send it via email or something to everybody.

Greg Aaron: Okay. Did - or what sometimes what's worked for me is if you paste it into Notepad first...

Faisal Shah: Okay.

Greg Aaron: ...and then copy and paste that. Sometimes it'll pick it up.

Faisal Shah: All right. Now both (Fred) and I are working on it. So this might take us a couple days.

Greg Aaron: Okay. We'll give you a minute.

Faisal Shah: Can you...

(Fred): We're - I can...

Faisal Shah: Like maybe you can put it back maybe.

Greg Aaron: Okay. There we go. Okay. You want to read it off?

Faisal Shah: Kudos goes to (Fred) by the way. All right. So, the above issue suggests examination of UDRP policy and rules and how they are executed and whether those lead to results are uniform and fair and are in keeping with the spirit and a letter of UDRP.

This might include examination to (unintelligible) provide a practices, but it should be contracted with ICANN if or how supplemental rules provider's use should be reviewed and how both from (unintelligible) ICANN can ensure uniformity and quality decisions.

Greg Aaron: Okay. So you want to include that in favor of the...

Faisal Shah: I actually had deleted it and I didn't know if you wanted to, you know, the group hadn't looked at it as whether it should come back in or not. So, I just wanted to make sure that we were comfortable with that.

Greg Aaron: Okay. Yes because I think what we're doing is if that's the reverse hijacking thing is the last thing on the laundry list. And it goes on for about a page or so. So I think what we were - what we could use here is basically a summary or a wrap up after that laundry list saying been involved with a bunch of different things and different phases. Not just the policy itself but also how you execute it basically.

So I think what we were shooting for here was some sort of a summary paragraph. I think that can be useful too - the all - to the readers just it's a question of what does it say.

Faisal Shah: I don't think it - it was a - it seems to me it was a summary of the RD&H not a summary of the whole section, right?

Greg Aaron: Well I think we were actually shooting for a summary of the whole section.

Faisal Shah: Okay. When you say...

((Crosstalk))

Greg Aaron: It was a...

Faisal Shah: ...talking about - I mean this - I thought this was done by Phil. Is this something that passed that he passed by you? I mean I guess I'm confused.

Greg Aaron: I can't remember who originally wrote it.

Faisal Shah: This is written by Phil Corwin. And it was done after - being as edits to my document. So this was really only related to RD&H. Are you now telling me that you looked at it and it was something that related to the entire section, well that's something I didn't - I mean I had - didn't know.

Greg Aaron: Oh yes. It's...

Berry Cobb: Greg. This is Berry.

Greg Aaron: Uh-huh. Go ahead Berry.

Berry Cobb: I just - yes, just to clarify. I had started out with a definition of reverse domain name hijacking. As Faisal had mentioned, he took a stab at it and created a version. And then Phil created his version off of Faisal's version. And then I submitted both versions to the list.

There wasn't any feedback at all from the group about which one or the other. And in my note I had said that I kind of was leaning more towards Phil's version. And I believe only Phil's version was incorporated and that didn't include the paragraph - this paragraph that Faisal is mentioning now.

Greg Aaron: Okay. All right. So as far as formatting, what the - the laundry list is a bulleted list. And the reverse hijacking is the last bullet on that list so it's indented. So I think what we had was in a paragraph that's back in line with the rest of the text, not part of the bulleted list. And it basically said all the above issues suggest examination of the policy and the rules and how they're executed.

And do you want to go with that language that was in the chat as basically our summary of all the laundry list and we just go ahead from there?

Faisal Shah: Greg I guess I don't understand because that section that comes below the reverse domain and hijacking section, there's a whole other section below that. So I'm - I mean which does the exact same thing which is summarizes again everything above. So I guess I'm confused as to what you're saying. Are you saying we're going to summarize it twice?

Greg Aaron: Well let's see. What we - let's see. What it says is basically this - the laundry list brings up the policy and the rules and their execution. And then it goes into a section about - which begins some members of the RAP WG felt the UDRP is a useful mechanism.

So that goes into the issues of the merits such as alternate - actually a lot of it's about alternate dispute protection mechanisms, right? The next page is about that. So, that seems to be a different topic.

I think what the purpose of that paragraph, what it seems to be doing is to say there are issues not just with the policy but also with the rules. How they're executed brings up a bunch of different things.

And then we go into the differences of opinion about the usefulness of the UDRP. So it's a - the paragraph that we're talking about is a factual statement that the above deals with several different things and drawing the reader's attention to that. Then there's discussion of various viewpoints. Does...

Faisal Shah: Yes. You know what Greg? I'm - it's fine with me.

Greg Aaron: Okay. Okay. So is everybody okay putting that paragraph in that Faisal had pasted into the chat? Are there any objections? Okay. If not, we'll move on. Okay. Then there is this section which discusses the WIPO comments. And this is beginning on Page 30, and I'd originally drafted this. And then there have been some edits to Number 3.

Can you - I was catching up with the comments over the weekend. Can you refresh my mind who made the latest edits to Number 3?

Faisal Shah: That was me, Faisal.

Greg Aaron: Okay. Can you talk about your edits?

Faisal Shah: Yes. You know, I reached out to WIPO and in a discussion we had I think they felt that they wanted at least what, you know, their position was in connection with the initial report. And I took - I got to my control and I edited it and I put it in here. It kind of reflects kind of where they're coming from.

Greg Aaron: So you went to WIPO?

Faisal Shah: Yes. Well I, you know, in discussions we've had - I've had on other stuff, the initial report came up and we talked about it. And this is what, you know, the language that they wanted to see some kind of language as to what their position was in there and I put it in there.

Greg Aaron: Okay. So you went to WIPO to discuss their public comment?

Faisal Shah: No. I went to WIPO to discuss - yes, I was talking to WIPO in connection with other stuff with other matters, and the initial public - and the initial draft came up and this is what - they had comments about it and I want to conclude it. So I wanted to include comments from WIPO. That's correct.

Greg Aaron: All right. That raises I think some issues. We decided not to go to WIPO because - or any other public commenter. But, anyway, let's see what your edits say. All right. WIPO's comments indicate that it was surprised that the UDRP mechanism itself was discussed in a report addressing registration authority conduct.

This report isn't just about registration authority conduct. Cybersquatting is something that's perpetrated by registrants. And what I was trying to point out was that WIPO is saying that cybersquatting is contributed to by registrars and registries and they should be somehow stopped from doing that or being held - or they should be held liable for it.

Now, and what my point was, that's something which needs to be pointed out because it's pretty unusual. I think it's a whole new area. What they're trying to - what they're bringing up is contributory infringement or liability. And my response to that is that that's something very different than the current legal basis of the UDRP which is that the registrants are responsible for their actions.

Faisal Shah: I guess Greg I might - I'm confused. It - I think it really says they're surprised that UDRP stuff was discussed and reported addressing registration authority conduct. I mean I - I mean I don't know what implications. You can draw a lot of implications from it but whether they were surprised or not, I mean if that's what - I mean if that's what their comments are, I'm not sure...

Greg Aaron: Right. And that I think actually addresses Number 2. They said why is UDRP even being discussed by this working group. And Number 2 says well because it's considered an ICANN consensus policy and it's to deal with cybersquatting. So are we reiterating that in Number 3? Is the point that you're trying to make that WIPO is questioning whether this should be discussed by the group or a different point?



Faisal Shah: I think what they're saying is that the - they don't think that the UDRP is a mechanism - I mean that this is about registration abuse. Again this is not WIPO. I mean and to some extent they don't understand why - and I think the ultimate argument is that they can't understand why the UDRP is being opened up in connection with this registration abuse working group comments.

Greg Aaron: Right. I - well Number 2 addresses that.

((Crosstalk))

Greg Aaron: Number 3 was about a new concept that WIPO introduced into the mix which was...

Faisal Shah: Right.

Greg Aaron: So I think maybe we should focus on that because Number 2, they asked why is UDRP coming up? Why is it being discussed? And Number 2 explains that and our group's rationale. And how it's based - it was in scope.

So Number 3 is about a new concept that WIPO has introduced which is is that registrars and registries should be held accountable for contributory trademark infringement.

Faisal Shah: Yes. I'm not sure if I see that in this, but...

Greg Aaron: Okay. Well Number 3 originally said was WIPO's comments on the RAP WG frame cybersquatting not as an issue of registrant behavior but as an issue of registrar and registry behavior. All right, post position here and then it's comments regarding the PDDRP.

And my point there was saying this is something they've commented about and it's consistent. So we're not misunderstanding it. And their position is that

registrars and registries should either police domain registrations for trademark infringement or bear liability for the actions of infringing registrants by being held accountable for contributory trademark infringement.

So that's what - that's the new thing that WIPO is introducing. And then I said some members of the RAP WG which speaking for myself here, note that the legal basis of the UDRP is that registrants are responsible for their actions. And WIPO's theory is contributory infringement by registrars or registries is without a basis in law.

That is a - that is an opinion. So if somebody wants to add an opinion to that to balance it, we can do that.

Man: (Unintelligible).

Greg Aaron: Is there any interest in doing so? But what - what my purpose was in Number 3 was to say there is a new thing that was brought up in the public comments. It has to do with who is responsible for cybersquatting and who should help deal with it. I see James' hand.

James Bladel: Yes Greg. James speaking. And maybe I'm missing the point of this section, but I just wanted to comment that it seems unprecedented in the working groups that I've been in that we would give this much attention in the report to, you know, to something that was raised by a comment or that wasn't necessarily introduced by or discussed by the working group.

So I mean are we saying now that, you know, through their comments WIPO is a kind of a participant in this process? I'm just trying to get my mind around why we're devoting so much page space to what they're saying.

Fred Felman: Hey this is Fred. I think the problem - I think James you're right on is that - is it - there was some judgment of WIPO's comments occurring in this section.

So maybe we should just drop this section where we're analyzing what they're saying.

Greg Aaron: I'd be happy to trim it down. Number 3? I'd be happy to trim it down.

Faisal Shah: That's fine with me.

Greg Aaron: All right. Let me work on that. And I - James, I - what we're saying is this was a public comment and it was a very interesting one. It brings up a new principle which was - which by the way actually was not discussed by the group before. But it's coming from the public comments and it's totally new concept.

When a new concept is raised, that's potentially that significant, it's worthwhile noting it in the report. Now, the extent to which we do so and the extent to which we can even have any discussion, those are certainly other issues as you point out.

Okay. So we'll work on that one.

James Bladel: So Greg, I just - and I know that I think you would be, you know, I think it's your - it falls within your responsibility as Chair to get it included and, you know, put a spotlight on it. And I think you did a good job with that.

I just, you know, I just wanted to point out that we receive a lot of interesting and sometimes unusual and sometimes controversial or incendiary comments in a lot of the different working groups. And I just - I don't know that it's always the best use of a group's resources to solve them all.

You know, some of them for example are spam and some of them are really out in left field. And I just think we need to kind of saw them off at some point and say, you know, there's really not a lot of benefit for the group to continue to chase this one down.

I know that WIPO has some pretty strong opinions. And I just - I don't know that they're going to align with what the group is set out to do. They have interests as well and I think if they feel that the group - they feel very strongly about that, then they would send a representative to some of these groups.

Greg Aaron: Okay. Fair enough. Thank you. Okay. Anybody else?

James Bladel: Fred's in the queue.

Greg Aaron: No. His hand's down. Okay. Moving on then, we move through fake renewal notices. We have the new section on cross TLD registration scam. The - I think they got everything in there as desired. Were there any questions or omissions about that?

Berry Cobb: Greg this is Berry. So when I was reading through the red line, it looked like there was a lot that was edited out. And I was just curious about that.

Greg Aaron: Okay. There's - some of what's out is description of the issue because we moved that up to the issue definition section and focused that. We also added some links and so forth to some examples in the background section.

We focused on the fact that the practice may involve a WHOIS abuse, that the lists of registrants being obtained and spam, possibly in violation of WHOIS policies.

That's one of those areas where - that's a registration issue and so that's called out. Now, what's then cut are these little bulleted things about what is ICANN's role? Is it within scope? Those are now addressed up in the issues section above.

Some of them - I did some wordsmithing here. Some of them just didn't seem terribly useful. Like - and then the - there was a section about what action can

law enforcement take, such as does the extent of the issue warrant law enforcement attention.

I don't know, that didn't strike me as on point because we don't decide what to do based upon what law enforcement might or might not do. I mean that just didn't seem quite relevant.

((Crosstalk))

Greg Aaron: If there's anything that needs to be added back in, let's do it.

Berry Cobb: All right. This is Berry. I'll refer my comments until I see a clean version of this. But I was just curious because, you know, something like the scope test section I thought was useful at least in terms of I think the layout, the extent of this issue as well as, you know, some of the other wording for describing exactly what was going on with this scam. But that's kind of hard to read with all the red lined right now.

Greg Aaron: Okay. All right. And one of the things that it said was - in the scope test was does a shakedown involve a trademark or brand which - and it - that one wouldn't be a gaiting factor necessarily. So anyway yes, take a look at it. See what we've got.

Then we move through kiting, no changes there. Did we already go through gripe sites? We might have. Faisal?

Faisal Shah: No we haven't gotten to gripe site.

Greg Aaron: Yes. We want to go back and make sure we hit that. Let me search for it. Hang on a sec.

((Crosstalk))

Greg Aaron: Okay. Gripes sites is Section 5.3. We don't want to miss that. It's a rant - let me look on Adobe Connect. That's on Page 36. Okay. So let me turn it over to you.

Faisal Shah: Okay. So there were - I mean I guess the only thing - I think I sent that email out. Again I'm going back - I'm going to have an issue with pasting that comment. But my recommendation is to the point of I'm going to have to call and try again to do that.

But I think the breakdown is the three recommendations now. I think the first recommendation, like I said in my email, I think we - it - as it sets forth right now in this address document, you have unanimous consent, I would think everybody's kind of on board with that.

The second one is related to (captain mains in the thirty) as it relates to the offensive strains.

And I think I've provided a second recommendation trying to (unintelligible) the second recommendation is that the RAP WG recommends (unintelligible) investigations as to whether the registration and deceptive domain names can achieve (children)'s objectionable sites to the significant abuse problems and the most effective means to prevent registration of or properly (stances) of deceptive names.

I think that was the kind of language I had last time. I'd have to redo it, but so that's my - I think those are the recommendations.

Greg Aaron: Okay. So, was this in the note that you sent on Saturday?

Faisal Shah: Yes. And I'm going to - I'm trying to figure out how to get that language in here, in here. It's all right. Hold on a second. I'm trying to get it onto the window.

((Crosstalk))

Faisal Shah: So that would be the second recommendation.

Greg Aaron: Okay. Do you have text that you can show us of all three recommendations?

Faisal Shah: Okay. So the first recommendation and the third recommendation are already set forth in the graphic room, right, for the (unintelligible).

Greg Aaron: Okay.

Faisal Shah: I don't think there's any changes there. It's just whether or not there's a second recommendation for this sort of (thing).

Greg Aaron: Okay. So whether or not there's a second recommendation.

Faisal Shah: Right. For the first recommendation which is make no recommendations. The majority of RTW (unintelligible) member expressed a gripe site and offenses. Actually it's a change - a gripe site that you shared (unintelligible) it's not just a cybersquatter. You really have to use the (foot) for establishing consistent registration of use policies in this area and are creating a special protection for this kind of (unintelligible) offensive domain name (unintelligible).

Yes. You know what? I would say that unanimous - I thought that what we've had before was that the majority of RTW (unintelligible) members expressed a gripe site that means trademark shouldn't address in a contact that cybersquatting and media (unintelligible). So hopefully this establishes a system registration of use policies in this area.

That was, I think everybody is pretty much on board with that recommendation.

The second recommendation would be the one that I presented. And then the third recommendation, which is recommendation Number 2 to you, would be the two views that we have in front of us. Does that make sense?

Greg Aaron: I think I followed it. I think we were just running into a versioning...

Faisal Shah: Yes.

Greg Aaron: ...challenge here.

Faisal Shah: Yes because Greg I think it's three different things going on, right, there's the gripe site, there's the deceptive names and the offensive string. And I think we had - we had broken - I think we finally got the point where we had broken all three of those down.

Greg Aaron: Okay.

Faisal Shah: And so I guess maybe that's how we break it down because I think we'd get unanimous consent on the gripe site and then maybe we'll kind of deviate on the other two (unintelligible).

Greg Aaron: Okay. Well let's see. Let me scroll down here. All right. So we have one about gripe sites. And then there was this - we had a second one about offense strings. And then you're adding a third one which is about deceptive domain names to mislead children to objectionable sites.

All right. So our challenge is...

Faisal Shah: Yes.

Greg Aaron: ...we didn't get into a discussion of that one and we didn't get it into the poll.

Faisal Shah: Oh okay.



Greg Aaron: So that's the logistical challenge.

Faisal Shah: But I actually - but Greg I actually brought that up last week even before the poll was - I mean I'm sorry that it went out already but...

Greg Aaron: Right. Right.

((Crosstalk))

Greg Aaron: I mean we never got to - yes, we never got to discuss including it in the report. All right. Let me think here. One thing we could do is it's not online, but we could measure consensus just on the list on that second recommendation. Let me post that into the chat list again. Would be as follows.

Let's - since some people have already filled out the online poll, let's just post this one up to the list. And you can then vote in favor or not in favor or provide an alternative, alternate view.

All right. All right. I've got it on my to do list to post that up to the list.

Faisal Shah: Hey yes Greg and the other thing is, I mean on the first recommendation, I mean I haven't look - I mean I obviously haven't done the poll yet, but if you broke - I mean I don't know if it's broken up, but if you were to break up that recommendation more you might get unanimous consent, or maybe I'm crazy.

You basically said the gripe site should be addressed in the context of cybersquat media he proposed (unintelligible). You might get everybody to vote along with that. I mean I think everybody would.

Greg Aaron: Right. Right. We've got a version issue on both of them now. Okay. Let me go offline with Marika on that one. But it would basically say gripe sites - actually didn't we have a conversation about how gripe sites could just be considered under the UDRP section of the report?

Faisal Shah: Yes.

Greg Aaron: Right. And are - does that need to be polled on? Is that what we're doing?

Faisal Shah: Well I thought - I mean we have to...

((Crosstalk))

Greg Aaron: That it should be kicked over - I mean basically we're saying as far as gripe sites, our opinion is kick it over to the UDRP conversation.

Faisal Shah: Right. And you have a recommendation now which I think is somewhat problematic.

((Crosstalk))

Greg Aaron: Yes. Okay. All right. What we're going to have to do is we're going to have to kick both of those recommendations at the list so they're teased apart. All right. We'll pick that up then. Okay. All right. We'll take care of that.

And folks will have to weigh in on that one again as soon as possible. Okay, but we'll clean that up. Okay. So anything else on that section or are we good to go? Okay. It looks like we're okay to move ahead then.

So there really weren't any changes to tasting and kiting. There weren't any changes really to malicious use of domain names that I see in here. I don't think we have changes to uniforming of contracts. No changes to the meta-issues section which is Number 9.

We've got the public comments and then we've got the conclusion section which is at the end. And the conclusion section needs a little bit more work because Marika again is going to post the recommendations in order of levels of support received. And then basically the Council will need to take a look at those and decide what to do with them.

And then there's a conclude - there's also a paragraph about the registration versus use issue which I drafted. It basically says report goes into detail regarding the topic. The communities does not share uniform understanding of these issues and therefore there's disagreement, you know, with - about, you know, what ICANN's mission and the scope of consensus policy making is.

Those views are illustrated in the report. They cannot both be valid. And the Council and the ICANN Board may occasionally be called upon to make judgments about which view is correct.

And I'd stated it that way because they don't tend to make calls like - not so much on an abstract concept, but when a specific case comes up that requires a judgment call.

Now it's like a, you know, the Supreme Court of the United States doesn't make a call so much on a principle. They make the call on the principle when a specific instance requires it. So that's what this is trying to convey.

And then that would be the end of the report. And we've got a supporting material in the Appendices and that is it. Is there anything else that needs work or that you could like to comment on?

I'm magically making a last call on the document with the exceptions we discussed today. Berry's going to be working on that bit about the registration

and use material up near the top of the report. He's going to have that by the end of the day.

We're going to work on that WIPO bit and trim that down. And then we're working on those two recommendations that Faisal put up. And those will be on the list.

Were there any other bits that are still up for work? Berry?

Berry Cobb: Greg this is Berry. Thank you. I just posted into the chat window kind of the changes to the text that we had talked about where it was a little confusing about how we delineated what was in scope or wasn't in scope and offered that up to the group. It - that hopefully makes it a little bit clearer.

And the last sentence is just where it should be changed on Pages 4 and 5 and Page 21.

Greg Aaron: Okay. You want to read that out then?

Berry Cobb: Yes. The RAP WG attempted to make distinctions of abuse within the lifecycle such as pre-domain creation, domain creation and post-creation. However, this exercise was not useful in determining policy scope and as such the RAP WG only made the distinction between registration and use.

Greg Aaron: Okay. This is Greg. I have a question. Okay distinctions of abuse. What does distinctions of abuse mean?

Berry Cobb: Again, we identified a bunch of various abuses. And within - with what we've done as a working group, some were considered registrations and some were considered uses. That's what I'm trying to convey there.

Originally we went down the road of well this is pre-registration, registration, post-registration but we dropped that basically and we just basically weren't

delineating well this is within the realm of registration versus use, right, and hence while we have like a malicious use domain recommendation versus all the others.

Greg Aaron: I'm having...

Berry Cobb: All right. Well again, it maybe go back to Page 4 or 5 or Page 21 which is the original part of the text. Read that last sentence and then read this one and, you know, to me the second one seems a little bit more clear with what we did as opposed to what we have listed there.

Greg Aaron: Okay. Go back to Pages 4 and 5. Let me just see - it's going to take a minute to digest it myself. Would you - should we continue to work on this on list?

Berry Cobb: Sure. I can post it up to the list. I'll post the original text and then the revised text. I think, you know...

Greg Aaron: Okay.

Berry Cobb: I think ultimately it's still really saying the same thing. It's just trying to make it a little bit clearer that we didn't go down the road of delineating between actual, you know, pre-domain creation, domain creation and post-creation. We really just kind of created two buckets. It's either registration or use.

Greg Aaron: Okay. All right. So that's what you're shooting for. Okay. Got it. All right. Well let's work on it on the list. There are a few phrases in there that are kind of throwing me so let me - let's work together on that and we'll figure it out.

Okay. So there's that bit. There's the WIPO bit. Is - and then there are those two recommendations that Faisal has posted. Is there any other text that needs work? All right. Going, going once. Going twice. Going three times.

So other than those bits which we'll try to wrap up in the next day, the text of the report is now closed.

So, what we need to do in the next day is make sure everybody fills out the poll. I'm going to touch base with Marika. She'll determine who hasn't filled out the poll yet. We'll send them a reminder. Then later in the week she'll have a list of who polled which way on all the comments.

We'll need to work on those two recommendations that Faisal posted to make sure we've got everybody's names reflected correctly. Marika will issue a revised version and that'll have the results of the poll and so forth on there.

Hopefully we'll have that done no later than Wednesday. That'll give us a couple of times just to make sure that we've got all the names listed properly. And assuming no issues and everybody - is that - everybody will need to review it. But assuming no issues, then the report will be done.

So those are the next steps. I'll put that list of steps up to the list. And then what would happen is the Council gets this in advance of Brussels as planned. They have to read it. And there's going to be a Council slot on Sunday of the ICANN meeting. And it's scheduled for 30 minutes right now.

And it's for us to present the report and the recommendations. So it's only 30 minutes unfortunately. But what we'll have to do is create a PowerPoint like we did last time basically. So Marika will basically extract the recommendations, put them into some slides. We'll prepare that for the meeting.

So anybody who's going to be in Brussels, reserve that time on your calendar please. Please come if you can make it. And then I'm imagining that - then the Council will get our update and then they'll have to take this offline in Brussels. And maybe meetings afterwards they'll come through each of these recommendations, debate them and decide what they would like to do.

So I'm guessing that Brussels isn't the end of the line, but they'll have to do some additional meetings. And we'll, you know, you can track those by looking at the GNSO Web site.

So, as far as I know, now that we're done with the text, there wouldn't be a need for an additional call next week. And that's assuming we are on schedule for publishing this Friday.

So I guess our next get together would be that Sunday meeting of the Council. And then of course we definitely want to raise a glass to each other in Brussels. So we'll figure out on the list a time and we can get together and maybe not conflict with all the other meetings and celebrations going on. But I did promise you guys I would buy the first round of drinks.

And I'm looking forward to that because we've been meeting for 15 months. And during that time produced a very nuanced report. I think also a lot of what we did was in the best spirit of these working groups which is, you know, debating issues, you know, talking about the merits, doing it in a collegial fashion.

And I really want to thank everybody for the spirit in which you've participated. This was a lot of work. We had a lot of meetings and you guys stuck with it because you thought it was worthwhile. And I'm sure that these recommendations are going to be, you know, considered very, very closely by the Council. And I'm hoping that some good stuff comes out of it.

So, from the bottom of my heart, thanks and I'm looking forward to seeing a lot of you in Brussels. So, take care and we'll continue to talk until then.

Man: Thanks Greg.

Man: Thanks a lot...

((Crosstalk))

Man: Thank you Greg.

Man: Excellent work.

Man: Bye guys. Thanks a lot.

Greg Aaron: Okay you guys take care. We'll talk on the list. Bye-bye.

Berry Cobb: See you Greg.

Greg Aaron: Take care.

Woman: Hi Gisella? Hello Glen?

END