

**Registration Abuse Policies Working Group
TRANSCRIPTION
Monday 20 July 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 20 July 2009, 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-20090720.mp3>

On page:

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

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Present for the teleconference:

Greg Aaron - Registry C. - Working Group Chair

James Bladel - Godaddy Registrar C.

Mike Rodenbaugh - CBUC

George Kirikos - CBUC

Martin Sutton - CBUC

Philip Corwin - CBUC

Mike O'Connor - CBUC

Berry Cobb - CBUC

Frederick Felman - Registrar

Faisal Shah - IPC

Rod Rasmussen – individual

Andrew Steingruebl (joined after roll call)

Jeremy Hitchcock (joined after roll call)

Gretchen Olive (joined after roll call)

Beau Brendler (joined via Adobe)

ICANN Staff

Margie Milam

Marika Konings

Glen de Saint Géry - GNSO Secretariat

Gisella Gruber-White

Apologies:

Roland Perry

Evan Leibovitch

Nacho Amadoz - Registry C.

Absent:

Michael Young - Afilias

Richard Tindal - Registrar

Greg Ogorek -

Jeff Neuman - Registry constituency

Robert Hutchinson -

Coordinator: Thank you. The recordings have been started

Gisella Gruber-White: Thank you Nicola. Greg if - would you like me to do a quick roll call?

Greg Aaron: Well sounds like some people are having trouble getting into the conference line.

Gisella Gruber-White: Okay I'll let the operator know.

Greg Aaron: Let's see, James is waiting.

Man: Hello?

Martin Hi, it's Martin here.

James Bladel: James here joining.

Martin Hi James.

Greg Aaron: Okay good. Sounds like we've got the operator letting people in. So let's...

Martin: Gradually.

Greg Aaron: ...go ahead and take our roll call then.

Gisella Gruber-White: Good afternoon everyone. On today's call we have Greg Aaron, George Kirikos, Faisal Shah, Mike O'Connor, Berry Cobb, Rod Rasmussen, Mike Rodenbaugh, James Bladel, Martin Sutton, Fred Felman, and from staff we've got Marika Konings, Margie Milam, Glen DeSaintgery, and Gisella Gruber-White, myself. Thank you.

Greg Aaron: Okay. And I see a couple of folks are in the conference call but not in Adobe. If you can get into Adobe, that would be great.

Gisella Gruber-White: Philip Corwin has just joined as well.

Greg Aaron: Berry I know you can't join Adobe today because you're on the road. Okay let's get started. Our agenda is as follows. We're going to talk about the WHOIS query to the council, then we'll get updates from our existing subgroups and cybersquatting groups, the uniformity and contracts group, the malware and botnet topic and then we'll continue working our way through our list of issues.

So the first question is the WHOIS query to the council. I put a draft out a week ago to the list. There was one comment which was from Faisel. As background, the working group methods that are incorporated into our charter say that if we have a recommendation to the council, we're supposed to kick it - basically kick it up to them. And we have discussed this a little bit in the past - this particular issue. What I'd like to do today is fine tune this letter, and then we should record everyone's point of view on it. So we'll actually attach names to it.

I mean basically what came out of last week's discussion was that we did want to make a recommendation. And that's what I heard. And we are allowed to do - in fact the working group methods actually say we're - we have a question we're supposed to make a recommendation to the council. They'll consider it and they may or may not agree on it, so I've - so we'll kick it upstairs and see what they say. Faisel did you want to make some recommendations to the letter?

Faisel Shah: Well I guess - yes I mean I guess my whole point on the letter was that - I mean I thought it was good. I think it was well developed. I think it was - had some good history on it. I guess the only issue I had was that I thought it was - it should be a less leading.

I mean like I said in my email (less) - we should basically ask the GNSO for a recommendation on how we move forward but not basically say that we don't want to discuss it or that we, you know, the group is reluctant to really get into the WHOIS issues in our group.

So I think - there were a few places in there that needed to be tweaked, but other than that I think, you know, I think these goals that we're trying to achieve is, you know, I'm agreeable with.

Greg Aaron: Marika I see your hand.

Marika Konings: Yes. No I just wanted to point out that Liz Gasster also point - sent a message to the list pointing out what the current status us of the WHOIS activities. And in that she noted that there's currently no policy going on. The only work that's being done is on costing out and assessing the feasibility of the studies that were identified.

And once that has been done, the council will need to take a decision as to which studies, if any, they will go further with. But there's - just company clarify, there's currently no policy work going on on WHOIS.

Greg Aaron: Correct. And that - our letter is consistent with that status, is it not?

Marika Konings: I think you do mention somewhere that you don't want to conflict with any of the policy work going on, so that could be the only way of - I'm trying to find what that was, but - so just - basically just to clarify to the group that there is no other policy work going on apart from the studies that we're looking at. So...

Man: Yes it's in the third paragraph. It says WHOIS is a topic within the GNSO policy making scope and area around which there are abuse and compliance issues. So it does sort of mention that Marika, as you mentioned.

Greg Aaron: Okay. Mike Rodenbaugh?

Mike Rodenbaugh: Hey Greg. So I don't know, I'm really (wiki) on this letter all the way down to your however after your Parts A and B. I'm not sure that I heard people say that WHOIS should be a central topic of discussion or that we do research on the topic. I guess I'm just - want to try to say it -- I'm not sure this is really necessary.

If we do send something like this to the council we can expect to really not hear anything back from the council for at least a month, given that our next meeting is this week I believe, and it obviously will not be on the agenda for that meeting...

Greg Aaron: Yes.

Mike Rodenbaugh: ...and the next meeting after that won't be for three weeks.

So I- I'm just not sure what the point of this is. I mean (unintelligible) folks on the call that do believe that WHOIS should be a central topic of discussion and that we do research. I just don't feel like I heard those people.

I thought that we had reached that consensus around the notion that WHOIS is certainly an element of many forms of regulation of use, that we would point that out as we're going through our checklist, and certainly we could make recommendations that, you know, WHOIS be more accurate or whatever in connection with our final report.

Greg Aaron: Yes.

Mike Rodenbaugh: Am I off base? Does anybody think that we agreed to something different or that other people felt substantially different than what I just said?

Greg Aaron: I mean I think that was what our discussion what. Fred had posted to the list saying that he thought WHOIS should be a central topic of discussion and should involve research by this group. So, you know, if somebody feels that way we have to, you know, acknowledge it.

Mike Rodenbaugh: Please - is that right Fred? I just don't recall Fred really saying that, but maybe I'm - I just missed it and I'm wrong.

Fred Felman: I didn't see - no I didn't say it exactly that way. I said that I thought that registration abuse - excuse me, WHOIS abuse was central to the other registration abuses that we - that we're examining and that can't ignore WHOIS' contribution to the abuse that we're seeing.

Mike Rodenbaugh: (Unintelligible) feel like that's consistent with...

Fred Felman: I agree with you.

Mike Rodenbaugh: ...what I just - okay. So I mean I think we're - we all kind of agree down to that however. Is that right, Fred?

Fred Felman: That is right.

Greg Aaron: Okay. I - Fred, I was trying to accurately state what you had said. You had said, "I would recommend that we include it as a type of registration abuse and gather more facts around (it)." So that's - I took that to mean it needs to be a major topic, but if I was wrong, no problem. Okay so if we have some agreement, then the question is how do we word this, and we need to do some wordsmithing.

Now to be clear, what we would be doing in this letter is we would be saying to the council is, "This is what we think should be done, "okay? And that's Points A and B. Maybe we need to wordsmith those a little bit.

Now if the feeling is unanimous, then we can take out that sentence about - that follows that -- WHOIS should be a central topic of discussion, et cetera.

Mike Rodenbaugh: I'd say we just leave it pretty much as is until the end of your Point B, and then we say something like, "Is this consistent with the council's charter to the working group," you know, basically a yes or no question.

Man: Yes.

((Crosstalk))

Mike Rodenbaugh: ...and just - and leave it at that.

Greg Aaron: Okay so what's our question to the council then? Can...

Mike Rodenbaugh: Is our - is the working group's (rough) understanding consistent with the GNSO's charter of the working group, you know, something like that.

Greg Aaron: Okay.

Mike Rodenbaugh: If we didn't feel this is still necessary to go to council. I mean...

Greg Aaron: Well it would be an area that we would be excluding from our charter. It's not explicit right now.

Faisal Shah: Well Greg this is Faisal. If we're not - if there's no policy currently under way, why - I guess I'm confused as to why we can't develop certain policies around WHOIS in this group.

Greg Aaron: Well let's put it this way. There's been a lot of work around it so far over the last several years, and there is process on WHOIS underway. Our understanding, as far as I understand it, is that the council decided that this is a whole area that needed discussion and study and so they've basically

commissioned a set of questions and then they commissioned a set of studies, and then policy-making would take place at a point in the future.

Marika Konings: Greg, can I make a clarification?

Greg Aaron: Go ahead.

Marika Konings: Just want to clarify that as this is not a PDP working group, this group will not be able to make any policy recommendations at this stage. It can however make recommendations for policy development processes related to specific issues. So just to clarify that.

I mean if this group would decide that they feel that should be a policy development process on WHOIS or specific questions related to WHOIS, that is a recommendation this group could make for the council then to consider whether or not to initiate that PDP. But this group itself does not have the status to make actual policy changes or policy recommendations.

Greg Aaron: True.

Marika Konings: Just wanted to clarify that.

Greg Aaron: However, if we recommend one, we do have to go through the process of doing our research and telling them why we want to do it. In order to...

Marika Konings: But it first -- it would still need to be initiated by the council and follow the current policy development process. So have - start with the issues reports, create the working group, have initial report, have a public comment period, and go to a final report. It would still need to go through that process.

Even if this group would come up with probably specific recommendations in order to for it to policy, it would need to follow a policy development process. I

mean - I think Mike please correct me if I'm wrong here, but that's my understanding of the council process.

Mike Rodenbaugh: I think that's basically correct. I would just say that as what's happened with the domain (pasting) situation, the PDP that follows this group could be frankly just much shorter and quicker than other PDPs because a lot of the (other) background work would have already been done.

Faisal Shah: So basically we can make recommendations, right Marika?

Marika Konings: Well it depends - you can make recommendation, but they still would need to go through that process. So...

Faisal Shah: Okay.

Marika Konings: ...I think it's just for - to take - into account for this group as well how much time they want to spend on flushing out certain recommendations, take into account that we'll need to go through a separate process anyway.

So it might be as well that this group's says, "Well - it will take a lot of time for example to make specific considerations - recommendations on WHOIS," so, you know, it might be easier to say, "Okay these are the specific questions we think are suitable for policy development. So this is what we recommend," and then take into account that those would be further worked out.

Greg Aaron: And that's I think is the crux of the issue -- thinking about what topics need to be addressed and so forth. And the question to the council is haven't they already done that or not, because they came up with a whole list of questions that they wanted to study, and has that work already been done that or not? Are we duplicating work?

Mike Rodenbaugh: Well that's - I think hat we're - what I'm hearing from Fred and Faisal and myself is that we're basically agreeing with you and your statement of what is

rough consensus in this group, Greg. And so if that's correct, then why do we need to keep talking about this right now? Why don't we move on?

Greg Aaron: Are you saying we shouldn't kick the question to council?

Mike Rodenbaugh: I don't frankly see the point of doing that right now. Again, we won't have an answer for a month anyway. We're going to need to continue having calls in the meanwhile. If we agree that it is (not) - it's a "registration abuse" in and of itself but (is a factor) in a bunch of other abuses, which we will discuss as we discuss those other abuses, (then) let's just take that as our operating instruction and start talking about those abuses.

Mike O'Connor: This is Mikey.

Greg Aaron: Go ahead, Mike.

Mike O'Connor: What if we - instead of asking permission begged forgiveness? What if we wrote this note that said. "Here's the course that we're following. Dear council, if you disagree with this course, let us know but otherwise here's where we're headed."

Mike Rodenbaugh: Well that's fine. That's - that was my suggestion a few minutes ago also, you know, unless we just decided not to send anything to the council at this point. But I'm really fine either way. If you - if enough people think that we should get a check on this from the council, no problem. We can do it.

Greg Aaron: Okay.

Mike Rodenbaugh: So just don't expect an answer any time real soon.

Greg Aaron: Okay. And (Jeremy) had his hand raised.

(Jeremy): Oh just on the WHOIS side, I, you know, I'm kind of with Mike on this, where I don't know really know if this is going to be an area where even if we came up with some very novel or very interesting WHOIS recommendations, that either they would be well received that some process would work on them.

And I think that it's pretty well known that there's abuse in WHOIS. There is no verification process, there's no information that's checked. It's basically garbage in and garbage out, and I don't know other than saying, "Hey this is a problem," and simply stating it like that, if there's anything beyond that that we're actually going to be able to accomplish.

Greg Aaron: Okay. All right, so we have the proposal - one thing we can do is go ahead and ask the council formally to exclude WHOIS from the charter, and we also have Mike O'Connor's idea, which is to send them basically an FYI note saying that's the way we're proceeding. What we could do is - I mean does anyone have a preference?

Faisal Shah: Well here - Greg this is Faisal. I - when you say you're going to exclude it from the charter, I mean we aren't necessarily excluding it from the charter; we're discussing WHOIS in the context of other abuses though, right?

Greg Aaron: Right.

Faisal Shah: I wouldn't say that it's completely excluded. I mean I think there are discussions (or maybe) ideas that come up while we're discussing other registration abuse. I mean I may - I think - I don't know if - I may go even farther a little bit and say I think there is registration abuse on (the phone) in WHOIS, but I mean I would go on with Fred and Mike and say that, you know, as - to (accept) we're discussing it in the context of other abuse, that's fine. But I don't want to exclude it completely from the charter of this...

Greg Aaron: Oh yes. Yes. And I don't think anybody actually has said that it's not a registration abuse, right? But the idea was leave it off our list of abuses for major examination.

Okay so we have - we can make a recognition to the council and formally request that we exclude as per A and B, or we just send them an FYI and say, "This is what we're doing. If you have any questions about it, let us know." So what I'd like to do - Mike Rodenbaugh I see your hand up. Do you want to...

Mike Rodenbaugh: Oh no, I'm sorry. That's old; I'll take it down.

Greg Aaron: Okay. All right, well tell you what -- we have two courses of action that have been proposed and what I'd like to do is have a show of hands. The first one is to send - basically send this letter -- tweak it but basically send this letter and say we would like a formal consideration on this question by the council. The other alternative is to send them an FYI saying we're not going to be discussing it as a major topic, okay?

So let me - what I'm going to do is let me write down these two so you can see it online. Just give me a second.

James Bladel: Greg this is James. I would recommend that we use the agree/disagree to indicate which of those two courses of actions prefer as opposed to raising his hand. That can be ambiguous.

Greg Aaron: Right. Okay. Okay. What I'm going to do is I'm going to put some language into the window. A second. Okay there's the statement, and please use your agree or disagree feature in Adobe Connect. (Barry) what's on screen is as follows.

Recommend to council because of the past and present GNSO efforts, update the charter, leave WHOIS off of our list of registration abuses for

major examination, research, or recommendation-making, and include examples and background in its report when WHOIS is a factor in other abuse issues.

In other words, not try to make policy recommendations as - or recommend PDPs or et cetera, but definitely do include in the report when WHOIS issues are a factor in other abuse issues.

Berry Cobb: I guess I can't really say agree or disagree, but I'm for the - just the FYI option and consider it WHOIS - elements in our further discussions.

Greg Aaron: Okay. Basically if you agree - if you agree with what's on the screen, that means send the - send to the council, make a recommendation. And if you disagree, then you're asking for the FYI option.

Berry Cobb: Disagree please.

Greg Aaron: Okay and George you had a question.

George Kirikos: So if we want to continue to make recommendation making, we should have disagree then. Like we're not going to research a study - let's say we wanted to verify WHOIS as one possible solution or recommendation and we'd have to vote disagree on this. Is that what you're saying?

Greg Aaron: The group is already - here's the thing George. The group is - has basically said it's not going to look at WHOIS as a major topic.

George Kirikos: Right. But as a possible minor topic amongst all the topics. Like for example I thought cybersquatting was (on the) scope because of the registration and use aspect -- that it's more of a use than a registration. If we're going to go that route that it is in scope, then I don't see why WHOIS shouldn't also be in scope. Just using the same logic that was used for the cybersquatting scope issue.

Greg Aaron: I guess part of the question is, cybersquatting hasn't received the same amount of attention over the years, and there are no current study questions or PDPs or anything else going on with it. However WHOIS is different. Okay. So let's see votes from Mikey.

Mike O'Connor: Yes I can't get the gizmo to work so I'm in the disagree column but...

((Crosstalk))

Philip Corwin: I can't get my stuff to work, so I'm going to disagree as well.

Greg Aaron: Okay so that was Mike and Phil?

Mike O'Connor: It's Mikey.

Greg Aaron: Mikey.

((Crosstalk))

Greg Aaron: You were disagreeing? Okay so that leads with the FYI to council. Okay, so...

Mike Rodenbaugh: Greg, will you send around one more draft of that just for final (comments to the lists and...

Greg Aaron: Yes we'll have to rewrite a bit.

Mike Rodenbaugh: I mean basically it's just stopping after your Point B on rough consensus and saying this is, you know, is this consid - or we're not even asking a question. We're just saying, "We believe this is consistent with our charter. Let us know if you feel otherwise."

Greg Aaron: Yes, okay. All right, I'll take as an action item to update that. I'll send it out to the list, and I'll give everybody a couple of days to look at it and to send any additional updates.

Okay, good. Just a second. I need to write some stuff down and then we'll (move ahead). Fred, you had a question?

Fred Felman: I'm good. I was just going to point out that Faisel could not vote vis-à-vis he can't get onto the meeting.

Faisel Shah: Yes.

Greg Aaron: Okay. Faisel are you - how are you voting?

Faisel Shah: I voted on disagree.

Greg Aaron: Okay. I'm just writing down WHOIS here. (Burt) and (Andy), Greg, Fred, Faisel, (Gretchen), James, (Jeremy), Mike Rodenbaugh, Mike O'Connor, Phil and Rod. Did I leave anyone off the list?

George Kirikos: George. I voted disagree too.

Greg Aaron: George, okay. Thank you.

Berry Cobb: And (Barry).

Greg Aaron: And I'm sorry?

Berry Cobb: And Berry Cobb:

Greg Aaron: (Barry) and (Martin). Okay great. Unanimous then as far as I can tell. Is that correct? Okay let's move on then. Thank you.

Okay next question on the agenda is an update from the cybersquatting subgroup, which is (Fred, James, Michael Young, Paul), and (Phil). So I turn the - this one over to you guys. Can you give us an update?

Mike Rodenbaugh: Yes I can take that. It's Mike Rodenbaugh. So I just sent something around (unintelligible) ten minutes before the call. I'm sorry I sent it late. I was just in the midst of a little vacation right now.

I did send around a proposed draft, which you guys should have now, which basically takes the current definition from the UDRP and are considered by US Courts anyway under the Anti-cybersquatting Consumer Protection Act.

And I've pretty much delineated what comes from where in the email and proposed that given what this is (being) pretty widely (accepted) throughout the community as a definition, that we adopt it and move forward.

Greg Aaron: Okay so what we could do is we could put that material up on the wiki where everyone can take a look at it. Are you comfortable putting it up there?

Mike Rodenbaugh: Yes.

Greg Aaron: Okay.

Mike Rodenbaugh: I should also say, you know, as a matter of process, I sent it to the subgroup -- (unintelligible) you named everyone on there; I think there's six or seven people -- (a few weeks) weeks ago, and haven't had any response. So, you know, I don't normally assume that silence is assent, so anybody in the subgroup can certainly speak up now (unintelligible) in working group, but then we can cash this out.

Greg Aaron: Okay. I don't hear any.

James Bladel: Actually Greg this is James. I had my hand up, but...

Greg Aaron: Oh I'm sorry. Sorry I was in another view. Sorry. Go ahead.

James Bladel: That's okay. And I just wanted to mention that - in this particular case silence is asset, Mike. I didn't have any issues necessarily with the definition of the language that you submitted, and I think that was for the most part that was similar to the language of the June 22 document that's - that Fred had submitted to the wiki. Is that correct, Mike, or were there any substantial or material differences between those two?

Mike Rodenbaugh: I would say that what I added was a couple of lead topics that come from the ACPA statute that aren't otherwise (unintelligible). And I said point those out at the bottom.

James Bladel: Okay the key thing that I think - and the reason my hat was thrown into this ring when we were in Sydney was that the original wording seemed to be a bit (pressy) in that it was understanding intention and it also could have been construed to identify or include any sort of domain investment activities as abuse.

And I think that, you know, I just wanted to make sure that we had a little more substance around those, and we didn't catch a lot of babies in with the bath water that we're trying to get rid of. So I think that we're okay with that, but I see that there's some other folks with their hands raised that are also on this group so I'll leave it at that.

Greg Aaron: Okay. Fred?

Fred Felman: Yes. I actually agree with - I looked at Mike's definition. I thought it was a really good capture of cybersquatting -- a really good blend of ACPA and UDRP and represented what the community defines as that abuse, so I'm comfortable with it.

Greg Aaron: Okay. Phil?

Philip Corwin: Yes I had two questions on this for Mike and for general discussion. And Mike I apologize for not getting back sooner on this. It's been incredibly busy since you first sent this out.

But on the two - I mean up to the two additions, obviously it's taken straight from UDRP, so that's fine. On the first one, I guess smaller Roman numeral five, my question - well my - is this language exactly from the ACPA or is this kind of an interpretation of the ACPA?

Mike Rodenbaugh: It is pretty - I tried to be as exactly faithful as possible while, you know, changing it to you have provided for example. I don't know that language is in there. But yes I tried to keep it...

Philip Corwin: Yes.

Mike Rodenbaugh: ...as close a possible yet still read consistently with the rest.

Philip Corwin: All right. So, on small Roman numeral five. My question would be obviously (work as you) provided material (an misleading) false contact information upon application or you fail to maintain accurate information. It's fine up to there. (It - see), my question was on the (part that begins) with or your prior conduct indicates that - a pattern of such conduct.

Would that - I'm not sure how to read that. It seems to say that it might apply to a case where you haven't - where you have applied correct information and you haven't intentionally, you know, let it go bad. But somehow it's a link to prior conduct on other names. I'm just not how to - I'm not sure how to read that or clause.

Mike Rodenbaugh: Yes I mean frankly I'm not either. It at first reads - seems almost superfluous, but then I guess yes I think you really did nail it. It seems to

address the situation where the instant registration at issue has correct information, but there's still a prior pattern of providing false information.

Philip Corwin: Yes I'm not sure how to (couple) that. I mean what if someone had (been a bad actor and now they're complaint -- they're providing correct contact information, they're not letting it go bad. Why would that - why would any prior conduct, if there's no limitation to how far that goes back, be held against them if they're now conforming their information to requirements -- it's all correct?

Mike Rodenbaugh: I do see your point. I did not, you know, just come create this. It certainly is out of a statute. I'm frankly not aware of any case where that's been addressed by federal courts. It certainly doesn't mean it hasn't been addressed, but I - personally I would be comfortable removing that phrase, but I don't know if others would...

Philip Corwin: Yes, I just think it confuses things. Clearly I have no problem with someone in their registration has either provided material or misleading false contact information or they originally was correct but now they failed to - they've changed their contact information and they haven't updated it intentionally.

(Unintelligible) is this or clause that causes me concern, because it seems to sweep in prior conduct with no limitation how far you're looking back and applying that to a name where there may be no problem with the contact information.

Mike Rodenbaugh: And, you know, frankly I think there's enough other things that are probably going to be a factor in any bad registration that's going back and proving a prior pattern of false WHOIS' -- it's just not something that most grant owners would need to do. So...

Philip Corwin: Okay. And then my question on small Roman numeral six is on the second part of it where it gets into dilution the famous marks. In the US, the anti-

dilution statute is a pretty recent enactment. It's many years after the ACPA was enacted.

I'm not sure it was directly incorporated into the ACPA, but I'm not sure the context of the - the concept of dilution is - I'm not - I'm not of a trademark expert to know, but I'm questioning whether or not on a global basis the concept of dilution is uniformly accepted to a sufficient point where it should be part of our working definition. So it's a factual question about where dilution stands addition kind of global trademark practice.

Mike Rodenbaugh: I think, yes, you know, I think you do know that it's not universally accepted. It is - it has come out of US law. It is fairly new doctrine, you know, arising in the last ten years or so. So I think I tend to again agree with the gist of your point here that that may not need to be part of our definition.

Philip Corwin: Yes, I do. I think we ought to stick to definitions which are pretty well accepted on a global basis or at least, you know, in the major trademark registration countries.

Greg Aaron: Okay Phil do you have any other...

Philip Corwin: Yes, those are my comments. Just trying to get clarification on those points.

Greg Aaron: Okay.

Mike Rodenbaugh: So just to make sure we get it clear though, you would support removing the final clause of Roman numeral five and the - let's say the second half of the - of number six?

Philip Corwin: Yes, well the - or clause of number five I think confuses the whole matter. It looks at past conduct without limitation and could be read to apply to a case where there's no material and misleading false contact information.

And number six I don't know we should be floating the dilution concept if it's so new and fairly unique to the US and a few other jurisdictions, because it's not generally recognized in trademark practice.

Greg Aaron: Okay. Okay.

Philip Corwin: And obviously we're giving much up by that. I think we're just trying to - we're just staying within the consensus view of trademark policy.

Greg Aaron: Okay. I see George's hand raised.

George Kirikos: Oh yes I have similar concerns to Phil. Three specific - three total concerns. One broad concern is the fact that you want to have a globally acceptable definition, not one that just picks from one country -- in this case, the United States for the last two factors of V and VI.

Specifically on VI - sorry on V, that's going to overlap with the WHOIS discussion that we just had, but on VI, this came up in the IRT sessions. There are countries that don't have famous marks at all that don't recognize famous marks, and so you - the United States does, but if we're going to talk about this as a global definition, you could have a registry in China and you could have the registry in Ireland, and you could have the complainant in the United States. Which mark are they going to find to be famous -- the US mark, a Chinese mark, or a US mark?

And so then you say, "Well you have to be globally famous mark." And then you get into a big argument again. There was no globally - or globally famous mark list in other words.

Mike Rodenbaugh: Yes. I think I'm hearing that your comments George are essentially consistent with Phil's and would you be comfortable if we deleted those parts of those two sections?

George Kirikos: Which - okay just reading the first of VI -- multiple domain names which we know are identical or confusingly similar to marks of others that are distinctive at the time of registration? Okay, what does it mean to be distinctive at the time of registration?

Mike Rodenbaugh: Well that's specifically intended to ensure that - and so with trademark space there's a range of strength (unintelligible) marks if you will, from general, scant function of the mark so you're arbitrary. So like Exxon or, you know, made up words that can function as very strong trademarks. Those are arbitrary.

And then the next category down below arbitrary is distinctive, meaning that it has acquired distinctiveness in the minds of consumers as related to a particular source of goods or services.

George Kirikos: Oh.

Mike Rodenbaugh: ...as opposed to descriptive, which is something like - almost generic basically.

George Kirikos: Right. My concern about distinctive is that it's not as strong as the other, you know, where it's a coined term like, you know, Exxon. So somebody that (owns) multiple dictionary word definitions, are they caught - sorry, multiple dictionary domains, because almost every dictionary word, almost every acronym, every single letter, every, you know, almost every two-letter domain has some trademark. Is that going to be caught up by this definition, (as) some of those marks are distinctive?

Greg Aaron: This is Greg. I have the - I have a question on number four. I know the - I'm working my way through those (ors) in the latter half of that. So four basically says you're attempting to attract for gain people to your website or another online location by creating the likelihood of confusion. As (unintelligible) the

source sponsorship affiliation or endorsement of your website or location.
What does or (unintelligible) mean?

Mike Rodenbaugh: Well (unintelligible) (reading) that now. I think that that's a typo. I think that first or location is - should be stricken. I think (unintelligible) (concern) that real quick in the text of the UDRP but I think I just (unintelligible) typo error there.

Greg Aaron: Okay. Okay so basically the idea is you're creating a likelihood of confusion as to the source sponsorship affiliation or endorsement of your website or of a product of - or service on your website. Okay. Okay just trying to (unintelligible) that out there. Okay.

Mike Rodenbaugh: (Unintelligible) actually this is quoted here. I did not make a typo. It is quoted directly from the UDRP as stated on the ICANN webpage. So I think what it's intending to mean - an endorsement of your website or location. I guess I really don't know. I've never thought of that before. It seems to me an endorsement of your website or domain name maybe?

((Crosstalk))

George Kirikos: It could be one of the other services. Like there's 65,536 ports. You could have, you know, a chat room, you could have something other than a website.

Mike Rodenbaugh: Right. Yes, exactly.

((Crosstalk))

Greg Aaron: Does it mean physical location?

Mike Rodenbaugh: No.

Greg Aaron: Something, you know, you're selling something out of your store.

Mike Rodenbaugh: Again, I've never seen any discussion of what that means, so...

Greg Aaron: Okay well we'll chalk that one up as a question.

George Kirikos: Going back to VI, isn't every trademark by definition have to be distinctive?

Mike Rodenbaugh: Yes.

Man: Within its service area, right?

Mike Rodenbaugh: That's correct. In other words, it cannot be merely descriptive. It has to be distinctive, yes.

George Kirikos: Because then - okay then...

((Crosstalk))

George Kirikos: ...your registration or acquisition of multiple domain names, which you know are identical, are confusingly similar to marks, because of others that are distinctive. That means registered marks. So basically...

((Crosstalk))

George Kirikos: ...says that...

Mike Rodenbaugh: We're also - we're getting into the big difference between us law and some other countries' laws where there isn't an examination for distinctiveness. People can simply register by the act of registering.

George Kirikos: Right.

Mike Rodenbaugh: (Unintelligible) Italy, some other places. So...

George Kirikos: My concern is that every dictionary word is- has a registered mark of some sort. So CI collapses that if you own two domain names that are dictionary words, you're caught, you're you know, somehow a cybersquatter by this definition.

Mike Rodenbaugh: Well that's not necessarily true. Just because they're (unintelligible) doesn't mean that they're distinctive.

George Kirikos: No, no is every US mark distinctive?

Mike Rodenbaugh: Well and also, the - any US mark could always be challenged even if it is awarded...

George Kirikos: Well simple question. Is every US registered trademark - does it have to be distinctive?

Mike Rodenbaugh: In theory, yes.

George Kirikos: Okay.

((Crosstalk))

George Kirikos: So every US mark is distinctive, period. Every dictionary word has a US mark. You own two domain names that are dictionary words you're a cybersquatter in this - under this definition, correct?

Mike Rodenbaugh: No.

George Kirikos: Where did the logic fall apart then?

Mike Rodenbaugh: The logic falls apart because if you're using generic domain names for their - in their generic sense, then you'll be fine, but if you're using generic names - your generic - your supposedly generic domain names to refer to the distinctive marks and their goods and services, then you would be a cybersquatter.

George Kirikos: Well first this definition says your registration of the mark. Doesn't say anything about the use. And, you know, still it doesn't make any protection for generic marks in this definition (unintelligible).

Mike Rodenbaugh: It says...

George Kirikos: Notwithstanding or blah, blah, blah. I'd rather we stick to just the general definition of the UDRP and not try to, you know, expand the scope of it by (unintelligible).

Mike Rodenbaugh: But I think we understand your point is that you'd like to see six stricken entirely.

George Kirikos: Either that or strengthen to not create this, you know, interpretation, which is perfectly logical and valid. But if you register, you know, two dictionary words, those are, you know, identical to marks that are deemed to be distinctive, because they're registered trademarks in the US.

Mike Rodenbaugh: Okay. Well I guess what we - what I would ask is if you would come back with an alternative statement of it.

George Kirikos: I would rather strike it and then let someone else come up with a definition.

Mike Rodenbaugh: I'm sorry?

George Kirikos: I'd rather strike it and -- like it's not...

((Crosstalk))

Mike Rodenbaugh: Okay.

George Kirikos: ...(unintelligible).

Mike Rodenbaugh: ...thought you would rather do, so okay. I mean let's see if there's any other support for that. I don't know.

Greg Aaron: So this is all - this is also all new material I think. Is this...

Mike Rodenbaugh: Yes.

Greg Aaron: ...the first time a lot of people are seeing it?

Mike Rodenbaugh: Absolutely. People should have a chance to review it on the list and make comments.

Greg Aaron: Okay. Yes. Well what we could do is we have a template set up on the wiki, and you could slot the stuff into the appropriate headings based upon the discussion today and then that'll give everybody a chance to read it and react to it over the next couple of weeks between meetings. Does that sound okay?

Mike Rodenbaugh: Sounds reasonable to me.

Mike O'Connor: Yes this is Mikey. I - it sounds reasonable to me too but I do want to chime in behind George, since by George's definition I'm a heavy duty cybersquatter and never thought of myself as one before.

George Kirikos: Because the UDRP does have protections, it's a - you have - how to demonstrate your rights to a legitimate interest in the domain name. You could say, you know, it's a generic name domain, a generic word. You're using it in that scope, but...

Man: Oh yes...

Man: (Unintelligible)

Mike Rodenbaugh: ...so George you're making a good point. That is also contained in the ACPA. You have an absolute defense if you believe you're making a fair use of the name.

George Kirikos: Right. That's why we have to put in those protections when we - and we can't just pull up the, you know, the negative part of it, you know, you're a cybersquatter...

((Crosstalk))

George Kirikos: ...if...

((Crosstalk))

George Kirikos: You have put in those defenses.

Mike Rodenbaugh: You're absolutely right. It's just that we were tasked with defining what is cybersquatting. We weren't tasked to also say what are the defenses to cybersquatting. But obviously that is the next - has to be the next step. It has to be included in our report for it to be balanced.

Greg Aaron: Well these - let me ask a question. These are also - these are basically criteria. And one party, you know, a challenger might say you meet the definition, and then someone could come back and say, "Well actually I don't. I disagree with, you know, your challenge on these following points." And then doesn't an - in the UDRP at least, doesn't an arbitrator then make a judgment about those arguments?

Mike Rodenbaugh: Yes.

Mike O'Connor: This is Mikey. I think one of the advantages to the UDRP wording is that proscriptive. So a person can simply read the language and determine what to do, whereas if we leave this the way it stands without filling in the blanks, a person might not realize that it's perfectly all right to register a (unintelligible) word. And I think that's the point that George is really trying to get at.

Mike Rodenbaugh: I agree. I think that's a fair point. Maybe it would be helpful to add another section at the end of this document, which - basically it drops the defenses from the UDRP and the ACPA, and then that will be more balanced when people look at this. I can do that fairly quickly and send it around after this call.

George Kirikos: Why don't we just use the actual definition in the UDRP? Like assuming this we think doesn't want to rewrite the UDRP, why not just go with the accepted standard? (Unintelligible) still has his hand up.

Man: Do I have my hand up?

Man: No.

Man: No.

Greg Aaron: I see Phil's hand up.

Philip Corwin: Yes, just to clarify my understanding of what - I'm trying to (unintelligible) (have these parts) work together. The first part -- you were cybersquatting (if that's) straight from the UDRP. Then we're adding - everything after that is just examples of what can be bad faith. They all go to what's the second part of, you know, triple I in the UDRP.

And so you have to read them together, and I'm not sure this Roman numeral VI - it seems to create bad faith, you know, under circumstances which George and Mikey have already spoken to, that wouldn't really be cybersquatting where that additional information.

If it's a generic word, which is trademarked by a lot of different parties and they're not using it in a way which infringes any of their trademarks you're okay. So I'm just - it seems to create a bad faith criteria where bad faith may not exist, and I think it needs work to avoid that.

Mike Rodenbaugh: Well I would say that it is there. Greg if you move up - if you move the screen up to the top. So it is in there in little number two. You have no rights or legitimate interests in respect to the domain name. That's where you kind of say, "Hey this is (generic term), using it in its generic sense; therefore I have a legitimate interest in the name."

Philip Corwin: Yes, but if you have a right or legitimate interest, my concern is that just (reading) Roman numeral VI standing alone, it's - it seems to say that (in itself) can be bad faith without - I'm disturbed by saying that that is per se energy bad faith detached from the consideration of whether you have rights or legitimate interest.

So you could have a situation where you wouldn't be found guilty of cybersquatting and yet on a stand alone basis that Roman numeral VI seems to create a presumption of bad faith where there really is no bad faith because you do have a right or a legitimate interest. I just...

((Crosstalk))

Philip Corwin: I realize you wouldn't be found to be a cybersquatter. I'm still concerned about creating a stand alone definition of bad faith, which is detached from other factors that really have to weigh in as to whether you are acting in bad faith.

George Kirikos: George here. Also Section VI means that if you have two undeveloped dictionary words, those are not only registered in bad faith. Those are actually deemed to be used in bad faith? (Unintelligible) capture the and automatically, whereas, you know, you could have juice.com owned by Microsoft. It's redirected to Bing. You could have contests.com registered by Yahoo!, which was Paperclick. There's probably some registered trademark somewhere in the world or that generic domain name.

You know, even though you registered it in good faith, you might not have developed it. But by this standard, if, you know, something is distinctive, i.e., it's a registered mark somewhere and it, you know, say in the United States, it'll be taken to be registered and used in bad faith automatically without that two-part test. So that's why - another reason why it's strike VI.

((Crosstalk))

Mike Rodenbaugh: (Unintelligible) not being cybersquatter, so case closed.

Mike: This is Mike...

Mike Rodenbaugh: Bottom line I feel like your concerns are addressed here. If you have alternative language or statements that you want to make then let's see it.

George Kirikos: Well so far (unintelligible) people have spoken against the definition than have spoken in favor of it, so I think balance is the other way. I think more people support the UDRP definition, let's just go with that. This is, you know, an gTLD working group, so pulling out things from the ACPA - why don't we pull out things from, you know, the Canadian version of the UDRP or, you know, Japanese or Chinese? Why pick one country when you could have registries and...

((Crosstalk))

Mike Rodenbaugh: (Unintelligible) I'd say there's things in the nominate procedures that I'd like to incorporate in here too. Specifically you mentioned of (recidivism), but you know, I just had to start somewhere.

I'm open or I'm sure everybody on this (unintelligible) was open to any other suggestions, and we should hash out on a list and come to a consensus. And maybe there's going to be a minority (unintelligible). I don't know how many people feel one way or the other about what you - what you two are saying on the ACPA positions.

Mike O'Connor: This is Mikey. I think that we're at a point - originally what we asked that group to go do was the sort of flesh things out. I think we - on the last call what we were looking for was some examples and some clarification. Forgotten the term we used, but we had a (unintelligible) that we sent you all off to do.

And in defense of Rodenbaugh, he took a first crack at it, sent it out to a list, didn't get much of a nibble. And that's kind of what we're looking at. So I'm agreeing with you, Mike. I think this is a great first try. We need to beat it up on the list, take a look at other versions of it that might work better and, you know, revisit the whole document, see if it flows well, et cetera., et cetera. So...

Greg Aaron: Okay. Phil did you have a comment?

Philip Corwin: Yes and I'm not trying to prolong this, but I'd like - two other points I'd like to make about this for others to consider and then I think probably we should all just, you know, make further comments on this wiki and come back on this , you know, Roman numeral VI next time.

But the first is that to the extent that something is not a consensus point or there's significant controversy, since the language is that the following

circumstances, and particular but without limitation, since this is not an exclusive list, and anyone could argue that other things are evidence of bad faith, we probably should be - turn to keep it narrow where there - where we can reach consensus.

My other concern is that on things like ACPA - points at ACPA or nominate rules or anything else, to the extent they go beyond current definition in the UDRP or common practice among UDRP arbitrators -- NAPs and WIPO and other places -- I'm concerned that we might be getting into a policy creation area here if we get too expansive on what cybersquatting is.

And that might be beyond our scope, and I raise that in the context where there is considerable debate over in regard to the IRT report recommendations -- whether the URS is an implementation detail or is a major new policy. And I think we ought to try to steer clear of creating new policy in our work, because I think, you know, my position I would tend to be is that we get into a policy area that's a PDP issue.

Mike Rodenbaugh: Well I - I guess I disagree, but at this point we are just simply trying to define what it is then we can analyze what are the various options that might be used to deal with it. But as Marika said earlier, you know, we're not to the point of making policy recommendations. That's something that would happen in a furtherance of this group or in a separate group after we're done with our work.

George Kirikos: In a question for Mike.

Man: I agree with Mike.

George Kirikos: Maybe this could narrow it down. The UDRP has still said uses the words without limitation? So does VI and V add anything to the UDRP definition that doesn't already exist? If it doesn't add anything, then that means, you know,

sticking with the UDRP has the same effect. If it does add anything then that means then obviously it's a big change.

Mike Rodenbaugh: Yes, I guess at this point we could simply just be factual and say, "This is how it's defined in the UDRP. Everyone in the working group agrees with that. There are also these other elements from the ACPA. So many people (unintelligible) (their) support or whatever - however many people agree with it and another number of people disagree with it. We could also take revisions from nominate, do the same thing. And if anybody else has any other ideas, we would do the same things with those ideas as well. Does that make sense?

I just - I want to avoid arguing about this forever, because it's not critical that we come to consensus on an entire definition, including all the elements. It's just important that we document what the different factors are under the UDRP and under other different countries' laws.

Greg Aaron: I think one of the questions is does this definition become a recommendation. Is that your concern, George?

George Kirikos: Yes. Like what we could do is we could consider it to be a separate abuse. Maybe that's a way of handling it. And because for example on V where you're providing false WHOIS information, I think that's, you know, abusive and, you know, (unintelligible) debate with the WHOIS, but you know, I wouldn't mind if we document it

Same for VI. If we say, you know, there are certain kinds of abuse. If you know, to registrations of coined marks, you know, like Xerox or Exxon or whatever, and if you look at the Verizon lawsuits, they always list them - one example per letter of the alphabet for some of these serial cybersquatters. You know, I don't mind that, you know, documenting it.

But, you know, we might want to break it out so that to refine the level of support, because if we have a, you know, if we're going to support, you know, one definition then we have multiple levels of support within that definition, but if it becomes and either/or then it becomes much more problematic.

So we could have cybersquatting for example /AUDRP and then B, you know, nominate C, Japan, you know, people could pick their definitions of what they...

Mike Rodenbaugh: Okay well again I think that we're at the point where we should move these off the list so we can get through the other items on our agenda today.

Man: I agree.

Greg Aaron: Yes. All right so the action item is Mike and his group are going to slot the material into the wiki. Sounded like there was some agreement on tweaking particular things. It'll be up on the wiki where the entire group can take a look at it. Everyone should take a look and provide comments back on the list before our next meeting. Okay and Phil I see your - no, your hand's gone Phil? Okay.

Philip Corwin: No, no. I - one final thought. I understand what Mike's trying to get at here, but I think my suggestion would be - and I just want to float this for people to think about as we depart this issue -- is that rather than trying to incorporate something from US - something fairly new from US trademark law or something from nominate, we have just - six might be your regulation of acquisition of domain names either violates the relevant national law or the registry rules for the May register, which would kind of incorporate - would say, you know, "If you're subject to ACPA if you're in the US and you've done something intensely in violation of that law, that could be evidence of bad faith. If you've done something in violation of nominate rules, that could be evidence of bad faith."

But it - so kind of references the differences around the world without trying to incorporate different pieces that are accepted in one place and not accepted somewhere else. So just a thought there on how to - we might approach this.

George Kirikos: My only concern - George here. My only concern is that when you start saying we're - with reference to national law - the national laws are interpreted by courts. whereas if these abuse policies are ultimately going to be interpreted by registrars and registries, we don't want to be setting up the registries and registrars as final courts.

That, you know, they should be ones to implement decisions made by real courts, not by themselves. (Unintelligible) probably Phil shares my concern with that.

Philip Corwin: That's fine. That's something that we would get to later, though. It just - we don't need to get there right now -- the definitional stage.

Greg Aaron: Okay. All right well we have action times. Let's move on. It's ten after the hour. We have 20 more minutes left in our meeting. The next item is an update from the uniformity and contracts group, which is (Barry), Mikey, Mike Rodenbaugh, et cetera.

Mike O'Connor: (Barry) you want to do this one or do you...

Berry Cobb: Yes.

Mike O'Connor: ...or are you driving driving?...

Berry Cobb: I'm kind of multi-tasking, but I'll give it a quick stab. Basically last Monday Mikey and myself met to just informally kind of discuss the topic about uniformity. We started off the discussion. Came off from Marika's email that summarized the language that was listed in our charter as well as some findings from the issues report.

Basically the question that was on the table is, you know, is further research needed as it relates to uniformity. I think we all on the call understand that there is zero uniformity out there -- or if not zero, pretty close to zero -- in terms of uniformity of abuse languages and contracts, et cetera. The question on the table is, you know, about really what scope and overall effort of research that needs to be expended to further define that answer, which is the lack of uniformity.

So basically we started off talking about what we have to date. Again there was some research conducted by ICANN staff in the issues report that does a very good job of giving us the answer. You know, there is uniformity out there.

The second component is on the side. I've started collecting some research data basically of a number of the registrar/registrant agreements, and I was looking to try to quantitatively tag the various registrars out there as to what abuse provisions they have in their contracts, et cetera.

Right now I have about 93 registrars across 46 countries. and basically those countries that had more than 10 registrars I took the top ten per web hosting.info -- the top ten of the number of registrars - I'm sorry, registered domains.

So really the question becomes is - if we do find value in trying to quantitatively put some numbers around the lack of uniformity, then we should move forward with that. In terms of scope or continued scope in this research as how much further do we want to go down the rabbit hole. I think we've got an understanding about registry gTLD contracts and what abuse languages or provisions they may have in there. Do we also want to include contracts -- if we can even get to them -- from registry to registrar about abuse provisions, et cetera.

And let's see what else am I missing here? Kind of going off of a status email I sent. Oh the third area, which was listed in the charter, is basically to understand what activities are going on to date at the registry/registrar level and how they handle abuse cases -- whether they have any language listed in their contracts or not, how does a particular registrar handle a cybersquatting type issue or any of the other types of abuses that we've identified.

The takeaway out of this section is that perhaps in conjunction with some of the research that we would perform, you know, we've identified 20 or 20 or 26 or so abuse types, whether it's pre-registration registration, or use.

We take those and again quantitatively attach that with the research, but then out of that build some sort of questionnaire/survey that we could either engage the registry/registrar constituencies to help us complete the survey but basically asking them, you know, "What things are you guys doing, whether you have, you know, abuse policies in place or not," so that we get a better understanding of what's going on out there. There's definitely a lot more research and direction that we need to define there before we march forward.\

And then basically the last topic was, you know, how frequently should the subteam meet. If we do move forward with the research. There probably is a sizeable amount of effort, so how do we goal up the work effort there, and basically then how do we package this up and report back to the working group.

So that's kind of a high level survey. Again it was just Mikey and myself. Some time later this week or early next week I'd like to get the team together again just so that we can kind of finalize some direction and get some consensus on where we should be going. Thank you.

Mike O'Connor: This is Mikey. Just to add one thing -- one of the things we talked about -- and James Bladel I'm sort of talking to you on this one, but it's really the registry to registrar contract of course are not for the most part public.

But what I was curious about was whether the abuse portions of those contracts could somehow be extracted and shared with the working group. You think that's possible? You know, I know that getting the whole contract...

Greg Aaron: Hey Mikey this is Greg. I think that...

((Crosstalk))

Greg Aaron: ..the registry/registrar contracts or the gTLDs...

((Crosstalk))

Man: ...should be...

Greg Aaron: ...are public.

Man: ...available isn't it?

Mike O'Connor: Oh are they?

Mike Rodenbaugh: Yes, the...

((Crosstalk))

George Kirikos: ...usually.

Mike O'Connor: Okay never mind.

Greg Aaron: Yes. Yes - what - they're usually listed as an appendix in the ICANN contracts with the - that they post on the ICANN website. So you'll find a section under the document section of the ICANN website. And there, there are all of the registry ICANN contracts.

Mike O'Connor: So registry.

Greg Aaron: Yes. And then ICANN has put the - ICANN actually dictates the -- in a lot of them at least -- the wording of the registry/registrar contract. So it - the whole things' there.

Mike O'Connor: Ah, okay.

Greg Aaron: Now we'd have to check to see if that's true in every case, especially with sTLDs.

Mike O'Connor: Okay. I was always under the impression that registry/registrar contracts were negotiated.

Man: No.

((Crosstalk))

Mike O'Connor: Okay. Never mind.

Greg Aaron: But like I said, you guys would want to go into the ICANN site there. And I don't know if all the sTLDs are - there may be cases where there's some language that ICANN requires, but that may not be the entire contract that the registry has with the registrar. So it'd be something to check on.

George Kirikos: Well actually some of the...

((Crosstalk))

George Kirikos: ...sponsored ones don't have it. I'm looking at .jobs and it doesn't have it.

Greg Aaron: Yes.

Mike O'Connor: Yes, that was my impression as well is that the registry/registrar contacts aren't as available. And (Barry) I think was looking for some of those and also having a little trouble.

But we could (use) some help either finding them, or if they indeed aren't public, recruiting some registry/registrar support for the survey where they would extract the abuse provisions not revealing secret stuff.

Mike Rodenbaugh: George has just (sent) around a (leak) to .org, and I know for sure it also exists for .Asia, so that's a start anyway.

Greg Aaron: Margie, did you have something?

Margie Milam: Yes I just wanted to follow up. My understanding is they are all public and they're all standard. I can - I'll confirm that, but that's my understanding.

And what I can do is I can send a link - an email with links to the various contracts. Or if you want additional analysis I, you know, I'd already looked at those for some of the presentations that I put together and could, you know, could extract the abuse provisions from them and put them in a little summary if that's useful to the group.

Mike O'Connor: Well that's hugely useful.

Margie Milam: Okay. Okay well make that an action item for me and I'll take care of it.

Mike O'Connor: Terrific. Thanks a million.

Greg Aaron: Okay.

George Kirikos: George here. I was just going to add a (unintelligible) of comments that maybe we can get some of these non-English ones translated possibly by staff or Google translate, because of the more abusive registrants intentionally seek out registrars that are located in non-English speaking countries, and some of them might be a disproportionate amount of abuse coming from those registrars with non-English registration agreements.

Berry Cobb: This is (Barry). Thank you George. Yes in terms of what I had collected and in terms of the registrar contracts that I have seen now, I'd only pull the English ones, because I just couldn't do anything with non-English contracts.

George Kirikos: Right. Maybe we can get some staff support or just translate it with Google translate or something for free.

Margie Milam: Can I also comment? I believe as it's translated it's the same language. They translate off the English version. But again I'll confirm that

Mike Rodenbaugh: That's the RRAs but I think (Barry)'s talking about the registrant agreement - registrar/registant agreements.

George Kirikos: Right, where they don't have a non-English. Like let's say you have a Chinese registrar that only has an agreement in Chinese.

Margie Milam: Oh okay. Yes you're correct. In that situation it would be specific to that registrar. If you have - I guess we do have some translation capability that I can - I could look into whether we want to ask for some language to be translated, but it would be an entire contract because we won't know which section applies to regulation abuse. So it might take some time.

George Kirikos: Or maybe we could do a Google translate as a first pass, and then if we find that there is an abuse section, maybe they could just translate that one

section to be able to help to - the work group have a good definition as opposed to a machine generated translation for that one section.

Margie Milam: Yes that might work.

Man: (Unintelligible) a good approach.

Berry Cobb: So I do have a question for the entire working group in relation to this topic. Is there value in trying to quantitatively tag the registrar community out there in the registrar/registrar contracts about abuse language?

And my thought track about this was, starting with Godaddy as an example and reviewing all of their contracts for abuse language and literally dumping this into a spreadsheet that says, "Okay do they have any provisions for cybersquatting? Do they have any provisions for anti-phishing or spamming and et cetera," and putting a checkmark yes they do -- one for yes, a zero for no, and doing that for all of the 96 plus agreements that we've collected at this point and then trying to graph that out and getting some visual interpretation to that answer of lack of uniformity.

Would we agree that there's value in seeing that, because I think there is quite a deal - amount of effort there, or is this something that we already know the answer to, let's just kind of move on...

Marika Konings: This is Marika. If I can just comment, because I think we did some of that work in the issues report or we tried to sample some of those agreements. And I think what we concluded there as well that it might be important as well to look at how effective those provisions actually are and how they are being implemented.

Because in the end, you know, we might have a full list of who has provisions and for what issues, but if we cannot make an assessment of whether those are deemed effective in addressing abuse and how is that actually being

used if at all in addressing abuse, I'm not sure how valuable, you know, the complete overview will be.

Berry Cobb: Absolutely. And so the sister part to that effort is then the questionnaire/survey so that we can get a true understanding of what actions the community - or registrars and registries are really taking out there and then trying to - marrying them together.

Mike O'Connor: Yes, and this is Mikey. Remember that the focus of what we were looking at was not effectiveness but uniformity. And I think the question that (Barry)'s got on the table is a really important one. If we know that there is no uniformity efficiently well, maybe the qualitative analysis isn't worth the effort. My intuition on the call - and I was - (Barry) and I were on the phone was that this would be very interesting.

Marika Konings: I think we did already conclude from the issues report that there is no uniformity. But the other question is like, you know, would there be a need for uniformity? Would that help the community? Or I think some argued as well that, you know, it might help distinguish approaches or, you know, how do you define whether one is better over the other.

So I think there are a number of questions that - I think that the issues report did establish that there is no uniformity but I think, you know, some of the questions the group will need to ask is like, you know, first of all is there a need for uniformity. And if so, what would that uniformity look like and what are the elements, and how is that actually implemented in effect.

Greg Aaron: Yes I think that's well put.

Mike O'Connor: Yes, and I, that's a good course correction for us. If that's an - (unintelligible) the sense of the group, then what we will tend to do is focus more on those kinds of questions in our subsequent call.

Greg Aaron: Yes. So those would be questions like - assuming there's no uniformity which seems to be the case, then what does that mean.

Mike O'Connor: Right. And is there value, you know, what are the pros and cons of establishing uniformity and what are the mechanisms for doing that. One of the concerns that I have is that we don't drive everybody to a lowest common denominator -- force them there.

Berry Cobb: Exactly, Mike.

Mike O'Connor: So if there's a mechanism where we can put in a minimum standard and allow plenty of flexibility and creativity to go beyond those standards, it's probably an approach that we'd prefer, but we haven't really gotten to that discussion in the subgroup.

Berry Cobb: And - exactly. And certainly one of my desires of - if we did march down the road of any of the quantitative researches, you know, trying to develop a baseline and/or really a best of breed, you know, who is the registrar out there or multiple registrars that have all of the abuse language and provisions in there contracts that fully execute against those provisions to either prevent and/or mitigate abuses.

You know, what does that best of breed look like? And I 'm not sure - we all have our hunches, but, you know, I don't know that anything has been formally produced in that regard.

Mike O'Connor: And I guess - this is Mikey again. I guess one of the questions to the group is we could probably either use either a registrar or a registry rep in this subgroup just so that we don't get hung up accidentally asking for something that's impossible. Does anybody want to join us?

James Bladel: Mikey this is James. I- we can talk offline; I can join.

Mike O'Connor: That'd be great.

Berry Cobb: Okay great. So that's about all we have for now, Greg.

Greg Aaron: Yes. There are people from registries - like (nachos) out with a bum leg this week. We can see if they are interested in helping. Now we should also go back to the charter question, which his really about the substance of the differences. The question in the charter is if registration abuses are current that might be better - I'm sorry, might be curtailed or better addressed if consistent policies were established.

And we're supposed to determine if and how abuse is dealt with in those registries and registrars that do not have policies, and identify how registration abuse provisions are implemented in practice or deemed effective in addressing registration abuse. I think that's a good encapsulation of the (sustantiative) issues that Mikey and other have pointed to - and Marika have pointed to.

Mike O'Connor: Now this is Mikey. You know, in order to really do the justice to that, I am still quite taken with (Barry)'s research approach, because I think we've proven that there is no uniformity, but I don't think we know as much as we could about the dimensions of that uniformity I guess.

And so I am still pretty keen on (Barry)'s research approach and wouldn't necessarily think that it's inconsistent with our other parts of the charter. But I'd like to get a sense of people, because as (Barry)'s pointed out and I will agree, it's a bunch of work.

Marika Konings : Well would it be an option maybe as a first start to - in each survey that the registrar and registry community become maybe their work with the different representatives and create a relatively straightforward survey using SurveyMonkey and try to see if we get some feedback in that way? That might helps us get started.

Mike O'Connor: There's one for the registry/registrar members and maybe the constituencies. Greg, James, what do you think? Is that a better approach?

Greg Aaron: I don't know actually.

Mike O'Connor: And one of the advantages to (Barry)'s approach is that he's got a boatload of data points already. It's no work for registrars or registries to - because we would do it. It's just a, you know, it's basically just sampling contracts and writing them down.

Marika Konings : But how would you assess like what they do in practice. I mean that idea for me...

((Crosstalk))

Marika Konings : ...for the survey would be to ask some more questions. Like, you know, do you deem...

Mike O'Connor: Oh, no, no, no.

Marika Konings : ...this effective in addressing some of (unintelligible)...

((Crosstalk))

Marika Konings : ...already broader. (I know) only look at the provisions, which, you know, some of that data is already captured as well in the issues report.

Mike O'Connor: This is only talking about what's in their contracts. It's not talking about what they do.

Marika Konings : But what - I don't - still don't understand what, you know, I think it's in nice to have probably an overview of all the contracts, but what do you feel is

missing from the sample or - that was already carried out as part of the issues report, which basically says, "Well there's," you know, "many have provisions but there's no uniformity." What additional information do you think you will find by capturing them all?

Mike O'Connor: I - this gets back to (Barry)'s point about taking a look at sort of the best practices. If it turns out that lots and lots and lots of registrars and registries have a given kind of abuse provision that might be a candidate for the best practices.

Marika Konings : But you still don't know whether that one is effective. It might just be that they've copy it from, you know, their competitor or someone they've been working with. So that would - that (hasn't been), you know, a question I'm asking -- it's nice to have the overview, but it doesn't give you any information on how effective they're actually are in practice, because it might be indeed that they've looked at other examples of contracts like, you know, what often happens -- they just take provisions and stick them into their contract. So...

Berry Cobb: (Unintelligible) so right, Marika. And so what we would look at possibly doing is let's say out of the research we've identified 15 different registrars that do have these provisions in their contracts, and then we actually even maybe somehow - confront's not the right word but approach them and develop some sort of dialogue.

You know, what - "How are you guys actually handling this," and then somehow trying to measure their effectiveness of having those in there. But, you know, right now we can only speculate who - what kind of registrars might, you know, be doing a good job. We just simply don't know.

So there's definitely two parts to that. Is - one is let's see what's out there from a contract perspective. Second part is let's approach these guys and - or these organizations and understand exactly what they are doing to - (Mary) to your point.

Greg Aaron: Okay this is Greg. We - we're at a couple minutes past the end of the meeting, so we should wrap up. I see James' hand was up and then we'll need to wrap, okay?

James Bladel: Yes Greg and I can take this offline. Just real quickly, I think it - the issues report fairly conclusively establishes that there's no uniformity in the contracts - the registration agreement, and that I think that it's an open question of whether uniformity is something that we desire or whether it is something that would take away from those registrars who are exercising discretion and hadn't made the investments in preventing abuse.

So I think that, you know, I'll just leave it at that, but this is - it's (unintelligible) tempting to say, but go get a lot more data and research on this. I think that - have to be very careful about what that possibly implies we would (then want) to use that for. So I think that we should probably take this offline into that separate group. Mikey and I would welcome being included in that.

Greg Aaron: Okay. My suggestion - this is Greg. My suggestion is that the group huddle and then come back with the recommendation for outreach. What do you want to ask and to whom.

Mike O'Connor: Yes that sounds like a great approach. And sorry folks that we didn't have some of those answers for you today, but clearly we need to work on that. And we will have them for you next time.

Greg Aaron: My appreciated. It's an important but complicated probably undertaking, so good to talk about it. So James you want to be added into that effort or that subgroup?

James Bladel: Yes please.

Greg Aaron: Okay. Did anyone else want to be? Okay. All right so we'll add James into that subgroup. Okay we're a little past our meeting point, so thanks for bearing with. Let's have the minutes note that (Bo Brenler) did join us late, and we've got a few takeaways for next week. I'll put those in the meeting minutes.

Rod Rasmussen says he needs to do some work on his wiki for domain names used for malware. He had to step away a few minutes ago, but he'll work on that for next time. And I want to respect your time, so if - unless anyone else has any questions or comments, I want to bring us to a conclusion for this time. Anything else?

Okay good. And next week one of the things we'll need to talk about is kind of overall scheduling and how we're progressing towards some dates that we need - we do need to discuss some deadlines and so forth. Council does require occasional updates from us as to progress and ETAs. So we'll put that on the agenda for next time.

Okay if nothing else, thanks everyone for your time. That was a very good discussion. I'm glad we're getting into, you know, into the meat of these topics. Please do continue to discuss on the list over the next two weeks. Please start putting material into the wikis, because that will eventually produce material for our initial report. And we will meet again two weeks from today.

Greg Aaron: Thanks everyone.

Mike O'Connor: Thanks so much, Greg.

Greg Aaron: Take care (everybody).

END