

## Registration Abuse Policies

### TRANSCRIPTION

Friday 9 January 2009 15:00 UTC

**Note: The following is the output of transcribing from an audio recording of the Registration Abuse Policies meeting on Friday 9 January 2009, at 15:00 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-20090109.mp3>

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

(Liz): Okay, it's (Liz). How would the group like to begin today? One thing is we need to see if we're going to meet more than just this once, which I presume whether this is a convenient time and date for ongoing meetings?

(James): Well I don't know that that's possible if the drafting report is due January 15; is that correct?

(Liz): Well I think that certainly is what the Council asked. But I don't think in light of the time to organize that that may be feasible. So I suspect - I mean, tell me what you think but I suspect that if we cannot make that commitment that we should just let the Council know when we think we could make the commitment and proceed accordingly.

If you think we can that's super. But I don't think we should feel that it's essential given (unintelligible) organizing if we just can't. So tell me, you know, of course - see what the group thinks. And I don't know if

you also want to select a Chair for this group as well. But that's my thoughts anyway.

Kristina: This is Kristina. I have pretty limited time in the next week. So I could at best contribute two to three hours of drafting if that. So I'm inclined to say that we should just be realistic now and let the Council know that the 15th isn't going to happen.

(Mike): Yes, I think that's not a big deal; we can do that any time before our January 29 meeting. We probably aren't going to have a motion ready for that meeting I'm guessing? But it's possible I suppose. If we were going to have it ready for the 29th meeting we'd need to have it done by the 22nd.

(James): And when is the February meeting, (Mike)?

Mike: It would be three weeks after the 29th so around the 19th or so.

(Liz): Yeah and I need to check on that because then we've got Mexico right after so I'm not sure if there actually is a...

(Mike): I think there is a meeting.

(Liz): Okay.

(Mike): I can check with the GNSO calendar real quick but...

(Liz): That's what I'm doing. It takes me a while to get there.

(Mike): February 19. Yeah, I have it on my calendar.

(Liz): Okay.

(Mike): So ideally we will have a motion ready for that meeting certainly so that we can continue talking on this and having, you know, discussions or Council time on it in Mexico City.

(Liz): So would the group like me to just send a communiqué to the Council that following this call that we've met and that we are targeting having a motion for the Council to consider out next meeting on the 19th of February?

(James): I'm down with that.

Christina: Yeah, I believe so.

(Liz): Okay, I'll take that as a to do. Now would the group like to select a leader?

(James): Is that a requirement or an option with a drafting group?

(Liz): I think it's an option.

(Mike): I don't think we necessarily need one. I'm fine with you moderating...

(Liz): Sure.

(Mike): ...(Liz).

(Liz): Okay.

Kristina: Yeah, it worked out well not having one for the domain (tasting) one.

(Liz): That's true. It's a nice small group, too. Okay. Well why don't we proceed that way unless anyone else - does anyone have any other thoughts about that?

(James): No, I think that's a good plan.

(Liz): Okay dokey. So what would be a helpful way to get started here?

(James): I'm sorry, (Liz)?

(Liz): Yes.

(James): Just one other point then if we are not shooting for the 15th - I'm sorry, this is (James). If we're not shooting for the 15th then we can - then I'm flexible on the schedule so we could, you know, throw open the doors for a different time slot to meet. The only reason I was pushing for Friday and Monday of next week was because I thought we were shooting for the 15th.

(Mike): Well does this time work for everybody on the call to just have a weekly call for the next few weeks?

(James): Yeah, it works for me.

Man: Sure.

Kristina: Yeah.

(Mike): Cool, for me too.

(Liz): Okay dokey. My word of the day I guess.

Kristina: Did this time work for (Olga) generally or did she just had a conflict for this meeting?

(Mike): I don't know.

Kristina: Do we know?

(Liz): That's a good question. I'll reach out to her and find out.

Kristina: All right.

(Mike): Presumably there'll be an appointee from the (NCUC) at least I imagine, maybe from the (ISC).

(Liz): Yeah and I'm actually surprised not to have an (ALAC) rep because I think they're interested in this. I did send a little note to (Alan) but I didn't hear back from him.

(Mike): Okay.

(Liz): So I'll follow up on that too. I know Glen was urging the ISPs and (NCUC)s to offer a participant so I'll definitely follow up on that as well.

Okay should we move to the substance now or are there any other preliminaries to discuss?

(James): Ready, set, go.

(Liz): Ready, set, go. Okay well let me mention one thing that may or may not be relevant in those interests to the group, which is that in the last few days I have had a couple of conversations with (Steve Crocker) and (Dave Piscatello) and the (S-SEC) is working on a very short paper having to do with abuse - registration abuse contact information for registrars and resellers essentially raising a concern that it's difficult to - often to find and reach contact information for registrars and resellers when there is a concern about registration abuse to report a situation or request an investigation of some sort and that they emphasized the value of having such a contact so that, you know, because turnaround is often a real key issue with regard to say phishing attacks and those kinds of things.

Again I have a very preliminary draft but I did want to mention that they're discussing this not only the benefit of having a registration abuse contact but also some procedures potentially to ensure that operates in a consistent way, that contact information should be readily accessible, that the information should be published, the registrars should perhaps provide ICANN with their abuse contact information. There's a series of things here and working with the community to determine appropriate measure to safeguard against false complaints.

It's really focused on submitting complaints and what happens afterwards when complaints have been filed. So I wanted to bring that to your attention because they're not quite ready to publish it but it seems arguably related to this topic and I thought you'd want to

perhaps consider their - and obviously you need to see the document, which I think is in draft form.

But (Steve Crocker) did ask me to mention it to you and also offer that they'd be delighted to work cooperatively with the GNSO on the issues and concerns that they have related to just contacting registrars and resellers about potential abuse and then what happens after that. So...

(Greg): Hi, (Liz).

((Crosstalk))

(Liz): ...I'll just throw that out.

(Greg): This is (Greg). Yeah, I've talked with (Dave) a little bit about it. And what you said actually just brings up an interesting question that we'll need to consider if we figure out this charter. We use the term registration abuse in the context of phishing. And actually I don't know if phishing is a registration abuse or a domain use issue.

(Liz): I think that's a good point and I...

(Greg): And...

((Crosstalk))

(Greg): Yeah, but I bring this up because the Council resolution actually asked us to look at that distinction and consider it. And that's also because the recent issues report that came out said - had some language from

ICANN Council about that difference. So we have - part of our job will be to define terms and make some distinctions.

I've personally found that the issues report was not always as precise as it could be or probably should be about that. For example, it talked about registration abuse and then talked about, for instance, about info abuse policy, which is specifically about domain use only not about registration. So I want to raise that issue now so that we can keep it in mind.

(James): Good point, (Greg). (Liz), would (Steve) or the (SX) be willing to share a draft of this report with this group or...

(Liz): Yeah, I think so and I'll follow up with that. I just was sort of in real time just late yesterday so I'll check with them about when there will be something that can be shared because you guys obviously need to see this right away in order to factor it into your thinking. So that's another action item for me.

Kristina: You might want to stop telling us things.

((Crosstalk))

(Liz): It's my nature. It's more important for me that you know about it before you draft your charter and it gets approved and then after the fact someone says, wow, we really should have had the benefit of this beforehand, so that's what I'm trying to avoid.

(Mike): It seems to me like it is definitely related to what we're doing but it's really just one more input into the working group that we're...



(Liz): That's right, that's right, it's just one accent. But I think (Greg) raises a good point that does - in addition to sort of (definitionally) what is the scope of what is intended by this group.

(Greg): I wanted to ask (Mike), (Mike), when you raise this at Council could you tell us what you had in mind when you brought up the issue...

(Mike): Sure.

(Greg): ...and how you're thinking about it?

(Mike): Sure. Well as you know as part of the anti-phishing world and going after bad guys it's, you know, some registrars simply don't respond - don't seem to have any policies, don't seem to have any contacts in place to approach them about registration abuse or any sort of abuse for that matter, inconsistent contract provision between the registries and the registrars on this floor, which had caused some confusion and consternation.

And then of course (unintelligible) registrar agreements with registrants are also different. And so essentially what I believe and others believe is that there ought to be at least some minimum standard that must be in all of these agreements that, you know, to my mind right now means that registrars and registries at least have the ability to act because it's set out in their contracts that gives them that power from ICANN to act in response to any sort of abuse.

Because right now some of them say, oh, we just don't have the - we don't have that power. Go file a (UDRP) action and that's completely

insufficient. So what I'm looking for at the end of the day as I sit here now, as I've been thinking about this for a while, is minimum provisions in these agreements with respect to abusive behavior. Also essentially a process by which registries and registrars would have to respond to complaints in some way.

(Liz): (Mike), a clarification when you said with respect to abusive behavior and you're talking about registration abuse specifically, right, not all potential abuse on a Web site? I mean, you know, using a domain name, rather?

(Mike): Well, you know the bottom line is the process should be in place to where registrars have the ability to force their own terms of service. So what we're seeing a lot of actually is that registrars have terms of service and don't take any steps to enforce them. So it's kind of like they pretend that they are willing to deal with problems and that there are, you know, so called legitimate organizations yet then when you go and try to approach them with problems they're just not there; they do nothing.

(Greg): How does - so you're looking for a way to force parties to - you're looking for a way to make parties enforce their contracts?

(Mike): I'm looking for a way that they're at least empowered to take action and that they are required to consider and respond to complaints.

(Greg): In my experience most the, if not all the registrars, seem to have stuff in their contracts, their registrar/registrant contracts about illegal use of the domains. They vary greatly as the issues report mentioned. But it looks like most or all of them have something in there. So you're

looking at, I mean, your main concern is registrars who choose not to do it and then you want some mechanism for measuring their responsiveness or something like that?

(Mike): Yes, similar to the Whois inaccuracy issues. You know, registrars are basically required to take some action within a certain amount of time in response to complaints for Whois inaccuracy, well that's just one small part of the abuse problem; I think they should be required to take action on the complaints of registration abuse at least.

And the bottom line is once they develop that sort of a process then it would behoove them to use it for other sorts of abuse complaints as well.

(Greg): Okay. When you talk about registration abuse what kinds of things does that involve?

(Mike): I don't know.

(Greg): I'm trying to define the problem...

(Mike): Sure, and...

((Crosstalk))

(Greg): ...we're trying to address.

(Mike): You haven't been part of the Council discussion on this point. I feel like it's - I don't understand the distinction. ICANN Council made that

distinction. I've asked them to explain it; they haven't done that. I frankly don't know what the difference is.

(Greg): Yeah, I go back to what ICANN Council said in the issue's report, which was well - and I guess we've had a couple of examples actually at ICANN in the past. We had the AGP limits process and that, I guess that was determined to be a registration abuse where people were abusing the ad grace period and registering and deleting large numbers of domains.

And so I guess that ended up having a determination that that was a registration abuse and then we ended up with the consensus policy at the end of the process.

(Mike): Sure, go back to (UDRP), though, right? That's also registration abuse yet clearly to prove a (UDRP) case you generally have to prove how the name is being used in bad faith.

(Greg): Well it's not used in bad faith I think it's the registration is in bad faith and I'm no expert in that area...

((Crosstalk))

Kristina: It's actually required that you prove both although you can prove use in bad faith through a showing of non-use under particular circumstances.

(Greg): So, yeah, that's pretty good. Yeah, I mean, if you register a name and then you try to sell it to somebody that's often an example of bad faith.

(Mike): Right.

(Greg): You're trying to hold the domain name hostage or, you know, basically. I mean, that's not a use of the domain but it's an example of bad faith. So it sounds like we don't have a good grasp of the - some distinctions that maybe need to be made.

I mean, if we're talking about registration uses and abuses that takes in a huge world of issues, everything from cyber-squatting to SPAM to phishing and all kinds of things; it seems like a big scope.

(Liz): So of course in the (RAA), you know, what it says is disputes concerning the registration of registered names as opposed to the use of such names including where policies take into account use of domain names. So absent that last phrase I think it's more stark; the registration - concerning the registration of registered names as opposed to the use of such names. But the subsequent phrase, "Including where policies take into account use of the domain names," is where I think some interpretation comes into play.

So the intention I think is, you know, registering a name that's say trademark infringing is registration abuse in that it's abuse in the registration of the name itself as opposed to what someone might do with the domain name after it's registered.

Kristina: See, this is where I have a problem and I think (Mike) and I - I don't want to put words in your mouth, (Mike), but I think you and I have the same problem and that is if, for example, and let's kind of stay away from some trademark because I think that, you know, I don't want to get into the whole like words have meanings, blah, blah, blah discussion.

But I have a real hard time with saying that where a name is registered by someone who, if the facts were known everyone would agree is a bad actor, is later used for a phishing scam. How do you then go back and say that that registration itself was not a bad act? I mean, that's where I really have a problem with trying to say well you can't take use into account at all because I just don't think that's realistic.

((Crosstalk))

Kristina: And I think that was relevant in a large part to the domain (tasting) issues in the sense that, yes, it was a registration abuse but it became a registration abuse because the names were dropped only after they were used.

(Mike): But they were registration abuse because a high volume of the names were blatant typo squats.

Kristina: Well...

(James): No I think it was just because of the volume of the names were tying up resources for registrations that were never meant to, you know, not done in good faith.

(Greg): And, I mean, part of the AGP issue was, as you know, it was creating enormous burdens for certain parties. You know, if you're running a registry for example you're required to process all of those registrations under a certain (SLA) and store those records and so forth. And that was one issue amongst money; it was also tying up registrar resources and it was tying up inventory and a whole host of other issues.

One of the issues that the fast flux working group wrestled with was intent. And what you're looking at is you have a domain name and something is going on on that domain name. You have to figure out whether it's illegal or not and whether the party is a bad actor more or less after the fact.

Now some domains that are running on fast flux networks actually are not criminal uses at all, they may be benign or they may actually be part of a highly volatile but legitimate hosting operation. And that group made - said, look, you have to know how the domain is being used. The use is key. That is the determination of whether or not it's an abusive or criminal problem. And that's what we're mainly concerned about when dealing with criminal use of fast flux.

I mean, in my own experience it's hard to figure out sometimes ahead of time whether a domain has been registered by somebody who has bad intent, had to do that.

(Mike): It's hard sometimes but most of the time it's not hard at all.

(James): Bet your pardon, (Mike)?

(Mike): I just think most of the time when you get a complaint it's pretty obvious that it's a reasonable complaint.

(Greg): Well, in fact it's actually that is often not the case. That's - getting into that issue gets into a lot of things I don't even want to try to address on this call; I don't want to take up too much time. But I am skeptical of your statement.

(Mike): I appreciate that. I mean, it is a first thing that we're tasked to draft around though is basically - basically the Council has said that - or staff has said - I think this all comes from the staff report, right, this 9.1, 9.2, 9.3, (Liz)?

(Liz): Yeah, I think so.

(Mike): So basically they're saying that they provide the overview but we haven't analyzed how the provisions are implemented in practice and whether they're deemed effective in addressing abuse.

(Marika): It should be noted as well that - this is (Marika) - that the report doesn't look at those registrars and registries that don't have provisions to see how they address abuse maybe through other means not specifically abuse provisions but other provisions in their registration agreements. It would be interesting to see that as well. Because I cannot believe that kind of dot com that they don't do anything with complaints they get, for example.

Kristina: I have a - I'm embarrassed to ask this but what exactly - can someone read - does somebody have the language in front of them as to what our mission is?

(Liz): Yes.

((Crosstalk))



(Mike): It says the drafting team be formed to create a proposed charter for a working group to investigate the open issues documented in the issues report specifically three points. Do you want me to read those?

Kristina: Yeah, if you would. I don't have it in front of me and I want to make sure that I'm...

(Mike): It's review and evaluate findings, which I just read. So basically review what the staff has done and consider that it hasn't analyzed how the provisions are implemented in practice and whether they're deemed effective. So presumably we want to - the working group ought to do some outreach to registrars and others - well to everybody and get their opinions on those two points.

The second one, it's identify specific policy issues. So the Council would need to determine whether there are specific policy issues regarding registration abuse. Part of this determination it would be helpful to define the specific types of abuse of concern especially distinguishing between registration abuse and other types of abuse is relevant. So that's something the working group would do.

And then the third thing is: need for further research. I staff would recommend that the Council determine where further research may be needed. For example, is lack of uniformity a substantial problem? How effective are the current registration abuse provisions in addressing abuse in practice?

And then this was kind of thrown it at the end; I don't know where it came from but, is an initial review or analysis of the (UDRP) required? And that's basically it.

- (James): One of the things we're touching on now is that with respect to 9.2 would be helpful to define the specific types of abuse. I think we're saying it's essential to define specific types of abuse. So we need to have a better understanding of what we're talking about, what we're researching and what we plan to measure the efficacy of practices.
- (Mike): The problem is that - and you tell me, (James), but my understanding is that any data on this stuff is not going to be categorized between so-called registration abuse and other types of abuse? (Unintelligible) probably just has it all called abuse, right?
- (James): Well in the absence of a definition that's true. But if we were to be able to slice abuse down and say here's where registration abuse ends and here's where other types of abuse begin then we would be able to provide some data specific to those categories.
- (Mike): Right...
- (Greg): I also think that certain categories are very well understood and possibly even tracked, cyber-squatting, for example is very different than phishing.
- (James): Right.
- (Mike): Yep. Well if you think a lot of - that registrars generally divide that or are willing to divide it in providing data back to us that's fine. I just have a feeling we're going to have to take whatever we can get and deal with it ourselves. And I'm not actually...

((Crosstalk))

(Mike): ...we're going to get any data actually given my experience with the domain (tasting) group where we begged for it and got none from registrars.

Kristina: Well, we could do another (RFI) and that way the entire community can participate.

(Mike): Yep, we could do another one like that.

(James): And, (Mike), what I guess what I was getting at is that, you know, the response we get in terms of the type and the volume of data is probably going to depend on how the question is asked. If it's open ended or ambiguous then, yeah, we probably have a tougher time providing any sort of - any sort of substantial response to that.

(Liz): It's (Liz). I just want to offer an additional thought as you think about both research and (RFI) type, you know, broader discussions and trying to solicit more information we should think about whether the upcoming meeting in Mexico provides an opportunity for a broader discussion that would be useful. You know, we could set some time aside and make sure that there's a workshop or information gathering session if people think that's useful because we have the opportunity coming. So I'll just throw that out there too.

(Mike): I think we should try for that as well as make sure we're on the Council discussion agenda on the first weekend.

(Liz): But if we could do some work on the definitions maybe in advance then we could maybe share something about the meeting that would be clearer about what we'd be looking for that might...

(Greg): Yeah, I'd be in favor of all those things. The fast flux working group experience showed us that if we're not clear about what we're aiming for and don't do a good job of defining what we're looking at we end up wasting a lot of time.

(Mike): I do agree with that. You know, I just feel like we're really challenged at the outset to try to distinguish between different types of abuse because, as we discussed in the fast flux group and earlier today, it's just really hard to look at a registration at the time it's registered and know whether it's abusive. You just often don't know until it's used abusively so it's abused.

(James): (Liz), is it possible to require in the charter of a hypothetical (PDP) working group that they conduct certain types of research or that they...

(Liz): Well yeah, and that's something that we're looking at in the context of revamping the (PDP) as part of the GNSO improvements. There is going to be in the (PPS), you know, there are these two steering committees and the OSC, the Operations Steering Committee and the Policy Processing Steering Committee.

And in the Policy Process Steering Committee there are two work groups and one of those is going to look at the (PDP) and the Board in its approving the GNSO improvements report specifically highlighted this issue of data gathering research and scoping our definitions in

advance of launching what we think of as the (PDP) today for precisely these kinds of reasons.

So we could - we have the flexibility of doing what we think is right in this context either within a (PDP) or prior to the (PDP) and we'll be looking at that more holistically in this other working group so I'll give my advertisement that we encourage your participation in that working group if you have a particular interest in looking at that from a more holistic perspective.

But in this working group - or in this drafting team in terms of what we recommend I believe we have flexibility in proposing a sequence that makes sense to us whatever that is.

(Mike): Yep, and if the Council buys it then that'll be the working group's charter. But, I mean, the Council had decided that there will be a working group on this so it's our job to figure out what exactly that working group is chartered to do.

(James): Yeah, and (Mike) what I was trying to avoid was that we would only be allowed to recommend what types of data to be researched and then the ultimate (PDP) working group could then decide not to do that or...

((Crosstalk))

(Mike): You know, I mean, we're not supposed to - the working groups ought not be fighting their charters all the time.

(James): Right, and again this is fast flux experience speaking, so...

(Mike): Yeah, I know.

(Liz): Well, one thing about just to - about fast flux just briefly and where it's relevant here is I think it's helpful to think about the (PDP) as being I think a narrower - once you know kind of that everyone has agreed on what the goal is and everyone's aware of what the options for remedy are a drill down on which options best and why.

I think - this is my own opinion and it's in the formative stages. It seems to me that fast flux suffered a bit because we weren't at the stage where everyone was on the same page about what the goal was and we were just discussing - and I suggest in quotes - the options for remedy. It strikes me that when the (PDP) process today was created it was, you know, should we ask or require registrars to do X to solve Y problem or, you know, should registrars be required to do A, B or C in order to solve X problem.

And what we're wrestling with now and what we were wrestling with at the outset of the fast flux group is, you know, are we all agreed on what the goal is, what are the definitions? We understand there's a topic of concern but we don't have a specific policy recommendation yet that we're debating.

And that's the work before a (PDP), which could get done in a (PDP); I think the semantics here are not as important as this evolution from yes we think there's a problem out there like what (Mike) said about the inconsistencies in the language and the lack of uniformity and then how these complaints are handled but we don't have a detailed sense now of well what should the remedy - what are the remedies - we don't even have a sense of where (definitionally) the lines are drawn.

So this preliminary work should focus on that and getting enough definition and enough specificity so that a (PDP) could then begin to really answer the question of okay what ought to be done about this agreed problem.

(James): Yeah, and I think that's right, (Liz), because in the absence of that what happens is that the report that comes out of the (PDP) looks like a second echoing of the issues report and there's no solid ground to stand on in terms of any kind of recommendations.

(Liz): So the think that I think would get us over the hurdle here is to look at, okay, what are the preparatory steps that ought to happen before we're ready to have, you know, the details - what are we doing about it discussion. And I think we've identified some of those today, right, with trying to (definitionally) maybe categories what's included versus excluded and trying to do some research and data gathering around how, you know, the nature of the problem and how it's being handled today.

(Marika): This is (Marika). I think we still need to probably look at what the actual problem is. Is it that there are no consistent provisions? Is it the way provisions are handled? Is it that indeed the definition of reviews is not well understood? Because I think that's something as well that, you know, we didn't have the time and means to go (unintelligible) and the issues report there but some of the issues that the group will need to address is well what is the actual problem and why does that line - is it that, you know, that certain registrars don't have provisions or implementation?

Indeed, is there no contact information available where a registrant can go they can actually not file complaints that they have? They're not being timely addressed? So I think those are some issues that need to be looked at as well.

(Mike): (Marika)...

(Greg): Yeah, this is (Greg).

(Mike): There's about six or seven issues right there (Marika), that are all open issues and problem.

(Greg): Right and this is (Greg). Right now, I mean, just the scope is virtually unlimited. The scope (that is) currently defined could include, I mean, it could include fast flux, it could include cyber-squatting, it could include AGP abuses. I mean, the umbrella is so big right now it would cover anything.

(Mike): Well that really is the idea actually.

(Greg): And well, I don't know if...

((Crosstalk))

(Mike): Greg, look at (Afillius)'s views of registration policy, look at (Go Daddy), right? They're very thorough and unlimited in fact. Any sort of...

(Greg): Absolutely not, actually not, Mike. That spells out and excludes a lot of things; it does not include any registration issue such as AGP, use, it does not include cyber-squatting. It does not try to cover all legal



issues. It covers a specific set of the main name criminal abuses. That's limited and that might be, you know, and that's a scope that is spelled out and defined. Right now we're looking at an undefined infinite scope that takes in actually and covers some previous (PDP)s as well.

We have to figure out what we're really talking about here. I mean, right now it seems to me that we're trying to cover all civil and criminal legal problems that could possibly occur in any relationship to a domain name.

(Mike): Would you be comfortable just starting with the (Afillius) list?

(Greg): Well that's domain name usage. I don't know whether it's in scope or not. That's a question that's (unintelligible).

(James): And I would just say that, you know, I'm not speaking for all registrars or for - or even for (Go Daddy). But the initial proposals from affiliates were not resoundingly welcome necessarily.

Kristina: What do you mean by that? By the community or...

(James): By their client registrars so...

Kristina: Okay, that's helpful.

(James): Yeah, I'm sorry for being vague there. I'm trying to be nice but maybe (Greg) can explain. So I wouldn't necessarily say - hold that up and say that this is something that registries and registrars have agreed on, it's something that we support on principal but, you know, I wouldn't

hold that up as a one size fits all model or a definitive list of all the different types of abuse. That's all I need to say I guess.

(Greg): And I think that's very logical.

(Liz): I am a bit concerned, too, about if these things are outside the scope because they involve domain name use whether that would be in the scope for our work.

(Mike): Well maybe that's - it just seems to me like we're hammering on this concept that we really need to define what sort of abuse are in scope and what type of abuse are out of scope. And I guess that would be up to the working group to do as a first step. I don't think that's something we should do.

(Greg): Does it make - I guess I have a procedural question, which is...

(Liz): Mike, couldn't you say that we should - that a recommendation coming out of this group would be that a working group be formed in - I mean, my suggestion frankly is in advance of a (PDP) to make that determination. I mean that's something that this charter that you're being asked to develop could say.

I think what's a concern here is that it is so broad and so vague that what you want to avoid is you can't launch a (PDP) on something so broad and so vague or so ill, you know, undefined even that this group is wrestling with. So it seems like a very reasonable preparatory step for this group to recommend a charter for a working group or drafting group, however it's...

((Crosstalk))

(Mike): Part of that - I don't want to fall into the same trap that was a - with respect to domain names, which is that, you know, we did all this work, I mean, in the so called ad hoc group at the time and then we came back and we wanted to do something in response to that work and everyone so oh we've basically got to start over with the (PDP), step one. And...

(Liz): But it didn't start over. What it did was take the report, I mean, at least from my perspective it did in a way what a (PDP) is supposed to do which is - think of the ad hoc report as this research, this preliminary research that we're struggling with now or, you know, answering the questions, whatever the questions are and then the drafting team subsequently was okay based on all of this understanding now what's the right answer and how should it be imposed? It was a more tactical specific exploration about well what's the remedy? And that to me seems like exactly the right step...

(Mike): But you will recall - you will recall there was a big fight about process that we were successful on, fortunately. But, you know, (Chuck Golves) in particular was arguing that basically we were outside our process; we hadn't done anything right and we basically had to start over with the (PDP) after we'd already done all that work.

(Liz): Yeah, I wasn't around for that unfortunately so that's a bit of history I'm not familiar with. But nonetheless I think we have the flexibility here to define a process that makes sense, you know, given those experiences. That and fast flux, which I think sound like they're both

quite relevant where we have some difficult questions to answer or definitions to make.

We know that's not easy and it's going to take time and thought. Our recommendation could be very specific about how to undertake that. Same thing with the research and the - we could focus on the nature of the research, what the discussion in Mexico should look like and what should come out of that discussion in Mexico; we could be very specific about that.

And we could be specific about following that, launching a (PDP) based on those conclusions or regrouping.

(James): (Liz), this is (James). I was thinking that if we were to make those types of recommendations for a pre-(PDP) working group that that was the impetus for forming this group?

(Liz): It might be; this group could morph into that group. Right now you're being asked to draft a charter for the next step is how I see it.

(Mike): Right.

(Liz): So, you know, it does stand to reason that those interested enough to go through this agony - the fun we're having today, you know, would be committed to going through with the next step so that you all, you know, would be committed to the things you're recommending; absolutely. And you could even suggest that in your charter that this group be, you know, evolve into that with, you know, and welcome additional or however you want to address it.

(James): Okay.

(Liz): So actually I think we just came up with like four things that we could put in a charter, right, the - working on the scope and the definitions; how about recommending that Council participates in that - staff and Council; that might be helpful to help think through it. Secondly the research; thirdly the planning for a robust and targeted open session in Mexico, and fourth, evolving this team to a pre-(PDP) working group.

(Mike): It sounds like an okay outline to me. I would refer back to when (Marika) started ripping off a list of problems; I'd like to see those work their way in somehow to the charter as well.

(James): Yeah, those seem to be subcategories of the definition and research...

(Mike): Yep.

((Crosstalk))

Kristina: And also maybe, you know, the topic for the Mexico - first three.

(Mike): Well all right then, (Liz). Go to work.

(Liz): Yeah, I mean, go you guys; I'm really busy now. Why don't (Marika) and I take a first stab at writing that up early next week and distributing it to this group for - in preparation for another call next Friday?

(Mike): ...sense to me.

(Marika): That's good.

- (Liz): Are we missing anything? Anything - I mean, we came up with that pretty fast so...
- (Mike): So there's this one issue about is it an initial review or analysis of the (UDRP) required. I don't know where that came from; I don't know that that's really part of all of this. I suggest we just leave that out going forward?
- Kristina: I would actually agree because that is going to be such a gigantic undertaking that the group will never finish.
- (James): Maybe we can - maybe we can water that down to a true/false question of is the (UDRP) - does it change the definition of registration abuse versus use abuse. But, yeah, I agree, we don't want a review of the (UDRP) but maybe we just need to put some boundaries over how it affects the definition.
- (Marika): And this is (Marika). I think that was how that indeed ended up here, it's (specifically) how it relates to the work we're doing and how that relates to (UDRP). I don't think it's indeed the objective to have a complete review of that policy but it's more how the two might relate together.
- (Mike): Okay. Well they clearly are interrelated but I think the goal of this - at least my goal of this is to be broader than cyber-squatting.
- (Liz): But (UDRP) isn't limited to cyber-squatting, right?
- (Mike): It is, yes.

Kristina: Well, yeah, back to the letter.

(Liz): Okay.

Kristina: (Liz), can I make two suggestions...

(Liz): Sure.

Kristina: ...if I may? I think the idea of having a session in Mexico City is fantastic. I would strongly recommend to the extent that we can avoid it that it be held during the week and that at best Sunday afternoon. But I think if we try - if we schedule it for Saturday I think we're really limiting the number of people who will be able to participate just by virtue of who's in transit and who's already there and so and so forth.

(Liz): Okay so confirming, you think it's better to do it during the week?

Kristina: I would say definitely not on Saturday. I would be amenable, you know, to being persuaded that Sunday would work. But, you know, I'd be interested in what everyone else thinks as well.

(Mike): I think we definitely want an open workshop during the week but we also want some Council time on the weekend.

(Liz): So we will have this charter drafted by then and we will have a vote on that charter if we're targeting, you know, the 16th of February date.

(Mike): I just want...

(Liz): And so it does make sense, I mean, at minimum there will be - Avri will put an update on this matter on the Council schedule for Saturday or Sunday. And I've - I mean, I think it's very reasonable to say could it please be Sunday, just that update where the Council can discuss what you've put forward and whatever they've decided, right, prior to then.

(Mike): Yeah, I guess, right, we will have already had our discussion and you're right, we probably don't...

((Crosstalk))

(Liz): So it's going to be in the update mode at minimum and it's going to be on the calendar I would say at minimum. And we could just, you know, ask for it to be on Sunday but obviously there's a lot of contention for Sunday for exactly the reason you say, Kristina, if everybody wants to push things to Sunday.

(Mike): Well what would be cool is if we could have an open workshop but we could also have a working group kickoff meeting.

(Liz): Yeah, that's a good idea or at least take advantage of who's going to be there. I'd like to try the offer - make sure we do it in such a way that we can offer telecom section...

(Mike): Oh absolutely. Fortunately Mexico City, the time zones are...

(Liz): Yeah, time zones are much better.

(Mike): Yeah, well for most people anyway.



(Liz): Yeah, okay. So, Kristina, you had the session in Mexico was a strong yes and then just doing it - trying to do it not on Saturday; anything else?

Kristina: Yeah, I think at one point it wasn't clear to me the context in which we were talking about encouraging Council to participate? Are we talking about with regard to the drafting of the charter? Because my point is that there's, you know, obviously the whole point of this GNSO improvement is to move the policy development out of the Council and that to the extent that we can have a much broader at least in the charter or whatever it is that we're generating here, recognize that I think we're just going to avoid a whole lot of time spent fighting or hearing tirades about policies that shouldn't be done at the Council level.

(James): Yeah, I mean, they're, you know, frankly...

(Liz): I don't recall that...

((Crosstalk))

(Mike): ...at the Council level on this so far so I think we should just do our job, get the charter to the Council, the Council...

(Liz): I meant legal counsel...

Kristina: Oh, oh, oh, oh, okay, all right, okay.

(Liz): I meant legal counsel.

Kristina: Okay.

(Liz): You all were struggling with, you know, what was said in the report and what's meant...

Kristina: Right, right, right, right, right. No, you're right, absolutely right...

(Liz): Okay.

Kristina: ...legal counsel I think we need some guidance from them.

(Liz): Thanks. (Marika)'s reminding me on Jabber, that's - I wasn't sure what you meant, okay.

(Marika): I was struggling that at first as well and then I said, oh, she must mean legal counsel because they need to help with the definition part of it as well hopefully.

(Liz): You know, I was just thinking they might have helpful insight, that perhaps, you know, we can include them in the discussion.

Kristina: Well I'm, I mean, for what it's worth, I mean, I still - I'm in touch with a lot of the people who were actually involved in drafting the (UDRP) and I'm happy to ask them if they recall what the reasoning was for kind of going above and beyond registration to include use in the requirements of proof. I don't know whether that helps us or not and whether there was any - but more importantly whether there any discussion as to whether by including those requirements of use were they really going

beyond the scope of what - of, you know, the scope of ICANN's mission.

(Mike): I just - I feel like they had that debate back then; it's been resolved now for eight years.

Kristina: I'm not asking to open up the debate; I just want to know what the reasoning was; why did they, you know, presumably somebody at some point said well why are we including use, doesn't that go beyond scope. And they clearly arrived at the decision that they were going to include it. And I just think that to the extent that we are struggling with similar issues that it may be helpful to look at what they've already done.

(Liz): Yeah, it might help define, you know, help clarify where the distinction is.

(Greg): Yeah and that was a long time ago also. I think there's a better appreciation now of some of the problems. And there are also a lot of new problems that have come up over the last eight years. I mean, I've also heard that there are people who think that if (UDRP) had been formulated now it might happen and be defined very differently.

So, let's just keep, you know, I guess keep in mind that a lot has happened since then.

Kristina: Okay.

(Mike): Exactly, that's really why we're here today, if the (UDRP) was effective there would be a lot less impetus for this initiative.

(Liz): Okay, so let me just summarize here - we're close to the top of the hour. (Marika) and I are going to write up the sort of four point charter proposal. I'm going to let the Council know about the February deliverables. I'm going to check with (Olga) about Fridays and if that's okay for her. I'll follow up with hoping to get ISP and (NCUC) participation and maybe a (ALAC) participation as well. And I'll find out about releasing the - a draft of the (ALAC) paper to this group - I'm sorry, the (SX) paper to this group.

I'll also put in a hold internally on the room for Mexico.

(Marika): And maybe if we can give some homework to the group to maybe start thinking about what such a workshop could consist of and, you know, is there any experts that could be useful to participate in this meeting and maybe that could be something to discuss next week?

(Liz): And also I think the parameters of the research that we're envisioning being...

(Mike): And not just the public workshop but also a working group kickoff meeting.

(Liz): And a working group kickoff meeting.

(Mike): So this is all very one sided; that's a lot of to dos for you and none for us other than to review your draft charter early next week.

(Liz): I think it would be helpful if you all could think about the input - the research - the questions (Marika) rattled off. And I think it'll - once she

sends the - we send the draft out of what we just described if you all could comment on list and maybe do redline that would be wonderful because that'll really include the discussion along for Friday.

(Marika): And something that might be helpful as well as many of you are all active in other groups, if you're aware of any, you know, research that has already been undertaken in this area or that relates to these issues that might be helpful to share and might be something you might try to find out if there's anything done in other groups related to this matter that might be helpful.

(Mike): So are you talking about things the (mark monitor) brand jacking reports?

(Marika): I must say I'm not really familiar with the report but if there's useful data, that, you know, issues we're talking about like, you know, what are the actual problems, you know, do we have any data on, you know how big of a problem certain things are, you know, those kind of things.

(Mike): Sure, well, okay. There's tons of that about phishing and about cyber-squatting anyway.

(Liz): By the way I am going to - when (Margie) - you all are aware that (Margie Mylom) is starting the 20th or 21st of this month and she will probably be the staff person assigned to this issue.

(Marika): Oh.

Kristina: Makes sense.

(Liz): Yep, good expertise there to...

(Mike): Great. All right, well that's it for today then?

(Liz): Yeah, thank you all so much and look for our email...

(Mike): Thank you guys...

(Liz): ...next week.

(James): Thanks, (Liz).

(Greg): Thanks so much.

(Liz): Yeah, have a great weekend.

END