

GNSO Protection of the Rights of Others (PRO) Working Group Teleconference

16 May 2007

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The audio recording is available at:

<http://gnsso-audio.icann.org/pro-wg-20070516.mp3>

on page

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

Attendance:

Kristina Rosette - IPC Chair of the working group

Peter Olson - IPC

Lance Griffin - IPC

Kelly Smith - IPC

Margie Milam - Registrar/IPC

Mike Rodenbaugh - CBUC

Jeff Neuman - gTLD Registries c.

Michael Palage - gTLD Registries c.

Jon Nevett - Registrar c

Tim Ruiz - Registrar c

Avri Doria - Nominating Committee appointee to the GNSO Council

Eun-Joo Min - WIPO

ICANN Staff:

Liz Williams - Senior Policy Counsellor - absent apologies

Glen de Saint Géry - GNSO Secretariat

Coordinator: Thank you all for standing by. At this time the recording has started, you may go ahead.

Glen de Saint Géry: And we have on the call Avri Doria...

Coordinator: Excuse me, Peter Olson joined.

Glen de Saint Géry: Victoria McEvedy, Jon Nevelt, Michael Palage, Lance Griffin, Kristina Rosette, Jeff Neuman, Margie Milam, Mike Rodenbaugh, Kelly Smith, and Peter Olson.

Kristina Rosette: All right.

Welcome everyone, I've just realized I have (unintelligible) so at this certain point, I'm going to have to jump off the call very briefly.

What I am hoping to do today, and I'm really, really hoping that we can get this rather (easily), although that might be optimistic, is the order in which I'd like to do things is first, I want to go through and make sure that we've got definitions that we agree on.

Second, we are then going to turn to the proposal, we're going to go through (Ken) first. We will go through the - then we will go through the proposed list that Kelly circulated last night, that I believe contained some additional suggestion.

We'll include Margie's and then Mike, I believe, Mike R., I believe you posted a couple new ones, so we'll do those now.

What I would like to do is really just kind of, to the extent that we can - if we identify quickly that we've got agreement, (decide to move on), if not, and we can - a couple of words, get through agreement - the next order of business and then third to go through, to, you know, to the extent that we find ourselves in a position where we're with kind of support versus alternative, then that's what we will do.

And I apologize because I realize that I had met you but hadn't posted earlier the definition of best practices. So in the document that I've just posted the list which may or may not had made its way to you includes a proposed definition given that no one's had a chance to see it yet, we're going to talk about that one last.

But for purposes of working from a document of definition, we're going to start with the document that Kelly posted last evening.

The first definition there is Charter Eligibility Dispute Resolution Policy, and Margie, I believe that you had initially - that when you had initially drafted the source of this was the ICANN glossary, is that right?

Margie?

All right...

Margie Milam: Sorry, sorry (unintelligible) mute.

Yeah, I looked at a couple of ICANN sites...

Kristina Rosette: Okay.

Margie Milam: ...so you can get the information.

Kristina Rosette: While we have you off mute, can you just run through the definitions that you pooled from the ICANN site so that we can - I mean, in terms of there's a glossary, or there were some other document that had definition, so we know that in running through them.

Margie Milam: So, I don't know if have that simple. I can send an email later today on it, but...

Kristina Rosette: Okay, all right. All right.

Jeff Neuman: This is Jeff Neuman, and that definition of charter eligibility, can you just take out the word sponsor or take out (biz), either one.

Kristina Rosette: We will take out (biz). Because I think all the rest are travel.

Jeff Neuman: Yeah.

Kristina Rosette: The definition as proposed, revised, including Jeff's recent request, is the Charter Eligibility Dispute Resolution Policy followed by certain sponsor TLD such as (.ero, .coop).

Jeff Neuman: So actually, what I would do is I would keep, I would take the sponsors because other TLDs that are un-sponsored have charters, or have eligibility dispute resolution policy.

Kristina Rosette: Which one, do you know?

Jeff Neuman: (Biz), (pro), I believe name.

Man: Yeah, that would be it Jeff. I think those are the only three.

Kristina Rosette: All right. Then let's just take out sponsored. It will add - if we add - if we take out sponsored and add pro and name back in, does that work, does that satisfy your objection?

Jeff Neuman: Yes, such as (biz), yeah sure.

Kristina Rosette: Okay.

So as revised, it reads, "The Charter Eligibility Dispute Resolution Policy followed by certain TLDs such as (.biz, .ero, .coop, .museum, .travel, .pro, and .name) provides mechanism for challenging a domain name registration on the grounds that the registrant does not meet the eligibility requirement set forth in the TLD charter."

Is that still accurate? I'm taking out sponsor there as well.

Period.

"Any person or entity may bring such a challenge under the CEDRP."

Agreement?

Objections?

All right.

I think given what we've got to do, unless somebody feels strongly about it otherwise, that I'm, you know, when I raise that question and they're silent, I'm going to take that as agreement. I'm going to wait a couple of minutes, because I know that there are people trying to get on and off mute, and they may not be able to do that easily. So kind of - with that caveat, silence will go agreement for purposes of this call.

All right, we have agreement on our first point, very happy.

Second, defensive registration.

Man: Kristina?

Kristina Rosette: Yes.

Man: Is there a - what's the most recent document we're looking at?

Kristina Rosette: The one that Kelly - actually, Kelly had circulated one yesterday and I circulated one right before the call. I don't know how long it takes those documents to filter through. So the only difference between Kelly's document and my document is the addition of the definition of best practices or a proposed definition of best practices.

Woman: Okay. So we can give the latest document you've sent out.

Kristina Rosette: Absolutely.

Woman: Okay, great. Thanks.

Kristina Rosette: Yes.

Man: I just received that.

Kristina Rosette: Okay, all right.

I just didn't - I didn't want to hold things up. So we'll circle back to best practices at the end so that people can have more time to take a look at what I put there.

All right. Defensive registration - defensive registrations are domain-name registrations by holder to prior right, and we have an alternative either solely or primarily for the purpose of preventing third parties from registering string and include names identical to or similar to their prior right.

Margie, would you be okay with this if we change solely to primarily?
And I'll wait for her to get off mute.

Margie Milam: Yeah, that's fine.

Kristina Rosette: Okay.

With that revision, is this definition acceptable to everyone.

Man: Yes.

Kristina Rosette: All right.

Man: Yes.

Kristina Rosette: All right.

First come, first served - first come, first served is an allocation policy adopted by a new TLD registry where domain name registration is awarded to the first registrant that successfully submits a valid registration request for the requested string to the registry to its registrar. That looks like something that came from an ICANN site. But does anyone not agree to this definition?

Woman: I actually made that one up, I couldn't find first come, first served anywhere.

Kristina Rosette: All right.

It's very good, I like that.

Jon Nevett: Should it be string or name?

Woman: Excuse me?

Jon Nevett: Should it be string or name for the requested - are they synonymous in your eyes?

Woman: Yeah, I think they are synonymous.

Jon Nevett: Yeah.

Kristina Rosette: Okay.

Michael Palage: And put it - this is Palage.

John, string is probably the good term to use because - especially with IDNs where, you know...

Jon Nevett: Okay.

Michael Palage: ...it really is a string and not a name. So I think string actually is the best use there.

Kristina Rosette: All right. We'll keep it with string and we will consider agreed upon, moving on.

Man: Well, you could take out the word new TLD, or just new...

Kristina Rosette: Okay.

Man: ...if all registries operate after the launch period, it's always first come, first served.

Kristina Rosette: All right.

IP Claim services, and I will just state at the outset that Jeff, the alternative definition was based in large part on the definition that you have put forth in connection with our questionnaire, in case you haven't noticed.

And I - these are both pretty long and I can read them both. Or if everybody has a document in front of - does everybody have a document in front of them?

Man: Yes.

Man: Yes.

Man: Yes.

Kristina Rosette: All right.

So in the hope that - well, you all have it in front of you, you probably read it, I'm hoping you're reading it right now. Does anyone want to make - does anyone see any word changes that need to be made in either one of these definitions for them to be accurate is the first question?

And the next question would be, subject to those changes, is there a preference - which definition do people prefer?

Man: Can I ask that? I would hope you guys would give me deference on this one - since we're the only registry that's actually done this.

Kristina Rosette: Well, of course not - of course, you know, that's fine.

Man: So I would prefer the second one because the claim service have several parts, it wasn't just taking a claim, it was - the notice provision was very important part of the claim service. So I would go for the alternative.

Kristina Rosette: All right.

Does anybody disagree with that definition?

Woman: Can I ask a question about the second one? The parenthetical in the middle about new level which is used IP claim process, so that - is that part of a definition that stays there? I'm just curious.

Kristina Rosette: I mean, I was hoping to, if only because I wasn't sure whether anyone else was using anything that they might themselves be calling an I Claim - IP Claim process.

And also, given that we're talking about an - given that we're talking about a (certified) right that I thought it would be helpful to identify the rights that were considered "prior" by the registry that has done this before.

Woman: Okay, thank you. Just wanted to know.

Kristina Rosette: Okay. All right.

Moving on, (land rush).

Man: (Unintelligible) excuse me Kristina, this is - agreed on the alternative, is that...

Kristina Rosette: Yes, we did. I'm sorry. I should have said that because I didn't hear any objections.

Man: I would just add - it's hard to describe what it is but it says - currently, it says the filing ensures that any potential applicant for a domain registration, should it be domain name registration? Or is that fine as it is?

Kristina Rosette: (Finally, we have an) IP Claim does not automatically entitle the holder of that claim to registration of the domain name corresponding to the claim, I'm not sure.

Man: Rather the filing ensures that any potential applicant for a domain registration.

Kristina Rosette: Okay. Yeah, that should be domain name.

Man: Just a minor.

Kristina Rosette: All right.

Object to that revision?

We have agreement? Excellent.

Next would be (land rush).

Woman: I made this one up too.

Kristina Rosette: Okay.

Jon Nevett: This is Jon, Margie.

Kristina Rosette: All right.

Does any one not agree to this definition?

All right.

Name string notification. And I don't know if maybe we want to - well, whatever we call it, I think we need to be consistent. And I think it shows up on one of the proposals.

So, I guess as an initial matter, does anyone have any changes that they think need to be made to this definition?

Man: The only question I have is (unintelligible) is the only one that implemented it, right?

Kristina Rosette: Uh-huh.

Man: So wasn't it notifying them, are they registration and not an application?

Kristina Rosette: Yeah, it was actually - I talked to those guys yesterday because I couldn't find a whole lot of information about the service and I wanted to get more on it. So it can be notified as a registration...

Man: Right, because there's no way for a registry get notified prior to...

Kristina Rosette: Right.

Man: ...actually doing a registration.

Peter Olson: No, no, this is - this is Peter (in accounting).

The whole idea is that the domain name does not get registered...

Kristina Rosette: Okay, we're talking about two different things then. I think we need to clarify and the definition, if we're going to have one definition that talks about current practice and then add, you know, and have an add-on about, you know, for purposes of the proposal submitted at (NX) whatever, you know...

Avri Doria: This is Avri.

Kristina Rosette: Yes.

Avri Doria: I would caution as against if we're going to use different definition than one that's commonly accepted, then I would recommend that we change the term at least slightly...

Kristina Rosette: Okay.

Avri Doria: ...because otherwise we build an ambiguity forever.

Kristina Rosette: All right.

Why don't we do this then?

Peter, you use name string in your proposal, is that right?

Peter Olson: Yeah.

Kristina Rosette: Okay.

And that name so used name (watch). So for purposes of talking about what they did, which was limited to a registration, let's use name (watch) for that, and we'll just call it name (watch) service, and I'll make (clear it's) used by .name.

It will basically track the language of what's in here, although it will indicate that it can be notified as a registration...

Man: But.

Kristina Rosette: ...to register a new domain which includes the (watch) name and then the modification for yours will be application. Does that work for everyone?

Man: Yes.

Man: Do you want to indicate that it's - I'm trying to think of whether, it's an application or is maybe built-in application prior to registration but maybe it's built-in, never mind. I'll withdraw.

Kristina Rosette: All right.

Ken Stubbs: And then four - this is Ken for the definition here for Peter's - his definition - it's an application by a registry...

Kristina Rosette: Right.

Ken Stubbs: ...it's an application that the registry receives, right so...

Kristina Rosette: Of an - a registration...

Ken Stubbs: So that...

Kristina Rosette: Is it an application to a - well it actually isn't technically - is there an application to a registry technically?

Man: Yes. To a registry, yeah.

Kristina Rosette: Well, no, no, I was talking about Jeff. Is it technically considered an application to the registry, even though it's coming by the registrar?

Jeff Neuman: Once the registrar - if it's available, it's a registration.

Man: Put it this way Jeff. I'm trying to see if I could get (unintelligible).

I think what Peter is talking about and perhaps I could shed some light here, what Peter is talking about is where an application comes in through a registrar or to the registry, and gets written to the database. So within the registry database and it's not available for registration.

However, as happens in (.cat), before that name gets, if you will, turned live, i.e. put in to the zone file, there is a separate verification process that takes place to see whether they comply with the charter of (.cat).

So in that situation, has a contract occurred between the registrant, registrar and registry, I would say, yes, because the name is in the database, there's money been taken associated with it.

Now, depending upon what the registry does when it finds that that person is non-compliant, the more probable being - okay, you were non-compliant, you wasted our time, we're keeping your X dollars, or whether there's some refund or something like that.

But there is some type of - there is a legal existence or a legal set of rights that have been generated once there is something written into the database.

Kristina Rosette: All right.

Man: And I think that - Peter, is that what you're talking about, where something gets written to the database, but it's not yet turned live in appearing in the zone file.

Peter Olson: Yes, that is a very (unintelligible) if you get a right which is not protected yet but which has started on the date of registration but a lot of things have to happen.

Also in Denmark, when you apply for domain name, you have to kind of (confirm) that it - that you comply with the rules. You have to click a box. So there's a period of limbo.

Man: But not to get to technical on (mic)...

Man: Go ahead.

Man: ...(please), it's a different database, it doesn't get in to the shared registry database until it's actually a registration. There could be - there are separate database.

Kristina Rosette: All right. Can I ask that in the interest of moving forward, I think there's an agreement in principle that once we can get the technical details of the definition down and I guess this will be (true for both in that) that they would be agreeable.

So I guess Peter and Mike P., if I can ask you guys to coordinate off - you know, on this or off after the call, to come up with something that is acceptable to both of you. It is both acceptable to Peter and technically correct.

Man: No problem.

Kristina Rosette: Okay, perfect. All right. So we'll keep an eye off for that so they can - follow up (or to collaborate). All right.

Prior right - but I guess the threshold question is one that Tim has raised and that I frankly have raised for a different reason, namely what is it that we want to call this thing and that once we call - decide what term we want to use, how do we design them?

And I guess what I would do is just a preliminary matter, does anyone have any suggestions other than legal rights or prior rights, that could be used.

Man: Well, (I'll just tell you) on a concept, and I don't know where this fits in. But in both definitions, you say prior rights are rights recognized by the registry...

Kristina Rosette: Uh-huh.

Man: ...they were recognized by the TLD, I would change those two, those are rights that are alleged by intellectual property - by a rights holder, it's not something that's recognized by the registry.

And I think that's an important distinction especially with some of the emails that are flying around lately.

Kristina Rosette: Right.

Man: No, this is recognized by the registry because we're not experts, if allegations made by third parties that they own certain rights or have certain rights.

Kristina Rosette: Right.

I guess what I was trying to get at here, and where I assume Margie was trying to get at, is that, what we're talking about is the kind of group of legal right that the TLD has said, "Okay, if you claim to have, you know, A, B, or C, depending upon how - the registry have defined it, you're eligible to participate in this mechanism."

So I understand what you're saying. I'm just wondering whether...

(Tim): Kristina, this is (Tim).

Kristina Rosette: Yeah.

(Tim): You know, I think there's - prior right as it's kind of described here, it's probably correct in the way that it's being used in most of the

recommendations that are being made because that's obviously what the intent is. And the principle that I wanted to include, I use the term legal rights...

Kristina Rosette: Right.

(Tim): ...because my intent was much broader than that.

So I guess, whether I agree or not with the recommendations, the definition of prior right - it probably fits the way it's being used. But my point was that I felt that the statement of work - talking about broader lengths and that's why it used legal rights and why I used that term in my particular principle, so.

But I don't know if there needs to be a long debate about defining prior right. Ultimately I would be interested in the definition of the term legal rights as (council) but...

Kristina Rosette: I don't think there was one, to be honest with you (Tim). I think that was kind of, you know, finding the word to fit in there, because I wasn't - I mean, I wasn't involved in this specific drafting but I was involved in kind of the lead up to it and given that the - it's my understanding that legal rights was really not - that in fact part of the reason that one of the things in (Task 1) is that we're supposed to have a - with definition is because they didn't really know what to call it.

But anyway, I see your point and I think, you know, I think it's a good one to - we'll circle back to that in a minute.

Peter Olson: This is Peter (coming in), I think that both operations are too narrow. I think that there is all kinds of - prior rights that ought to be included in this, in particular organizations, and non-profit and international organizations and stuff like that.

Kristina Rosette: Well, that's a whole different debate. So Peter - I mean one thing we can do is in the alternative definition, you know, continue on with that including but not limited to list.

Peter Olson: Right.

Kristina Rosette: So what do you want to put in there?

Peter Olson: Well, I do it at least like if someone points out what they do with the EU was - certainly geographical and the organizational ones, as I recall, I'm clicking around right now on the EU, (you're in site) trying to find out.

Kristina Rosette: Right.

Well see, that's exactly my point, is that prior right was the term used by (.eu). So if we're going to use that term, people are going to assume that we mean the same scope as that view whether or not that is what we assume or not.

So that's why I was raising the question, "Do we call it legal right, do we call it prior right?"

Man: I - in that context, I think we should not call it prior rights, because it's not meant to be the same thing as (.eu).

Kristina Rosette: Right.

Man: I agree that we should call it legal right just to keep consistent with the scope of work as well and plus it may not necessarily need to be prior rights, if we start talking about after the (fact mechanism). I like the alternative better as well for that reason because of other definition.

Kristina Rosette: All right. So let's change it to legal rights and it's going to be Capital R - Capital L, Capital R.

Are those legal rights - yeah...

Woman: (You're going to say legal rights and not legal rights)...

Kristina Rosette: I know. That's - so that's the next problem.

Woman: By the way, while we're (at this), can I ask a (dumb) question. And I'm sure that all of you know the answer. But in reading through all of these, several times, people have said that of course the regular words, regular names are accepted.

But I don't see that there and I don't know is it something that's just understood by everyone that reads this other than me or does it need to be defined somewhere.

Kristina Rosette: I'm sorry, regular names, I'm not sure...

Woman: In other words, regular words the dictionary or all of those things that might be marked but weren't to be included. And I don't see those

standing out. Is that something that's just presumed or does that need to be defined also?

Man: Are those, even though you call them regular words, I'm sure that someone will claim a legal right on all of those words.

Woman: Exactly. And that was just it. We had talked in earlier conversations that while, you know, the legal rights would be protected on trademarks, et cetera, that that would not include those dictionary words, or at least that's what I had understood.

But in any case, whether we're dealing with whether with whether it's existing or not, is that something that needs to be defined, to be talked about or is it just sort of something that's known? And this is where I'm showing - on, you know, details of IP law and terminology.

Kristina Rosette: Well I mean, you know, the problem is that we haven't even come close to having - you know, (Jim) is the only one, as far as I know, if I'm understanding it correctly, just come up with principles that even delve into that area.

((Crosstalk))

Woman: ...we had talked about it earlier and maybe I misunderstood at the time but everyone has sort of - at least I thought people - oh yeah, yeah, those are different. You know, those are - we understand that. We mean, you know, trademarks that aren't dictionary words.

Man: Well, we can't use dictionary words because everything is in the dictionary pretty much, even yahoo is in the dictionary as an uncultivated, or boorish person, (unintelligible).

Woman: Yeah well, it's been that for a long time.

Man: So...

Woman: It's dictionary word.

Woman: So - but anyhow, we were just dealing with - okay, and maybe that's not the right thing. But we're revealing with that as a concept through some of the conversation. And so, I'm wondering, it doesn't need to be defined.

Kristina Rosette: Maybe you want to put it - I'm sorry go ahead.

(Tim): This is (Tim) - I'm sorry Kristina.

Kristina Rosette: No, go ahead.

(Tim): I guess I find it hard to believe that we'll reach agreement on that. But I - from my - I guess would request that there'll be - I'm sure there will be an opportunity for - I don't know minority report, (or whatever) you want to call it, if the - if concept like that or principle like that are going to be agreed upon by the group that - in, you know, rough consensus. And I guess that's probably (and those) we could hope for.

Woman: Okay.

I mean, if that's the case, then I certainly will join you in such a minority report so I just (thought) - I just had misunderstood something for much earlier in the process and they apologize for misunderstanding.

Kristina Rosette: Okay, all right.

But getting back to your point about legal rights, are those legal rights?

Does anybody have any suggestions about those?

Man: Well, can we take out the second legal right because - I mean, are we just talking about legal rights, because one could argue, they're not all "legal rights"

Woman: Well...

Man: For example, if you're claiming that you should - because you own ABC.com, your claim that you should own ABC.(NATLD) that may not be a legal basis for that, but there may be a - other right basis for it.

Woman: As if - and then I would make that argument because I don't have trademark rights in ABC...

((Crosstalk))

Man: What's that?

Woman: So I would make that argument, I would make the argument at my, you know, right at ABC.com translates into a right that ABC., you know, XYZ because I don't have trademark rights in ABC that I can rely on.

Man: Many third parties have tried making that argument.

Woman: All right.

Kristina Rosette: Well, I mean, given that part of this is kind of retrospective in the sense that, you know, a big part of what we've been doing is looking at what has been done before and from that kind of deriving kind of baseline best practices, to the extent that we can.

I would kind of prefer that we keep it with legal rights simply because it doesn't mean that in the future people can't go beyond that. I mean, to me, I'm talking - I view this as kind of a floor, not the ceiling.

Does that make sense?

Man: Yeah. But even what's been done before (unintelligible) I believe you could claim business aims and other things that may not necessarily be a "legally recognized"

Kristina Rosette: No. Actually, everything that (.eu) included was considered a legal right with - in one or more of the EU member countries, which is why they had such a long list.

Peter Olson: Yeah, this is Peter - can you hear me...

((Crosstalk))

Man: Sorry Peter.

Woman: Yeah.

Peter Olson: Okay, great. I'm glad you can hear me again. I was out for a while.

It's correct what Kristina said, it had to be recognized in one country.

Kristina Rosette: So basically, everything that's been used has been a legal right of some type, it's just what type.

Man: Okay.

But I - I still don't believe it should be recognized by the TLD.

Kristina Rosette: No, I know, I know, I know. I'm trying to come up with different words.

Man: How about accepted by the TLD?

Man: I wouldn't even call it accepted, it's basically, those that are alleged by a third party.

Victoria McEvedy: What about - can I just - sorry it's Victoria speaking. What about if we (inserted) - it might be - this might be a silly suggestion, but what if we inserted legal right over (nature recognized) to make sure that it's category rather than - does that in any way clarify or not particularly?

Woman: No, I think it - what about permitted by as providing the basis...

Man: Well, do we even have to - the problem is - as a registry operator, we don't recognize rights, we don't permit rights, we just put - allow people to make allegations of rights. It's a challenge.

Victoria McEvedy: That's correct. And that falls under the - there's a list of categories of rights that are, you know, recognized most in this area. So I wonder if that might just not clarify it?

Kristina Rosette: I'm not sure I followed the ultimate suggestion or...

Victoria McEvedy: Okay.

Kristina Rosette: I understand what you're saying, I'm not - what I'm not clear on...

((Crosstalk))

Victoria McEvedy: Well, I mean, the thing is - I mean, okay, I mean, I'm probably not helping.

But the thing is, I mean, you know, the concern here is that there's a suggestion that the registry has some rights, you know, has some legal standing to deny or accept, (that they decision) a recognition, grant the legal right or is concerning of legal rights or what have you, I mean, that's part of the concern.

Man: Okay.

Victoria McEvedy: So if you just, you know, I - if we just talk from the language to suggest that it's a category that I - and categories recognize as opposed to that the rights themselves are recognized and therefore granted by the registries. I just thought that might clarify it slightly.

Kristina Rosette: And what about if we also - and that's a good idea Victoria. What about if we also take out (the whole bit) about the TLD in itself so that it would take - read something along the lines of legal rights, are those categories - and again, a legal right, I don't know, on which the owner or claimant of that right, basis its participation in.

Victoria McEvedy: Yes, (unintelligible).

Kristina Rosette: Okay. So I got to remember...

Man: Good idea. I'm just saying those relevant legal rights, for example...

Man: You don't even have to use the word legal in a definition. You could just say are those rights...

Kristina Rosette: Okay.

So as revised, and I - I'm scribbling all over the place. So I have someone else been taking (this on the two).

Legal rights are those categories of rights that provide the owners or claimants of such rights. So - on which - okay, on which the owners or claimants of such rights - owner or claimant of such rights bases its participation in a process or mechanism, yada, yada, yada.

Victoria McEvedy: It's better.

Kristina Rosette: Okay.

Victoria McEvedy: And I think we could think about that. But I mean, that's the - I think it's better.

Man: Yeah.

Man: So we're going to get rid of the entitled (in the priority) or superior legislation, right?

Kristina Rosette: I don't know, we haven't agreed on that yet.

But before we move on to that, I do want to make sure that we have, is there any other category of rights that people want to make sure are listed in the definition?

Man: Well, isn't that just whatever the - and you're still talking about sunrise, right, so just get up what the sunrise rules recognize.

Kristina Rosette: No, not necessarily. This could apply to IP claims as well. And in fact, that was part of the reason the definition was kind of taking out of the - why registration was taken out of it, you know, this is why the alternative - doesn't include - so it would also kind of IP claims.

Man: Yeah, I just - that's going to work - where I had a problem, I might be alone on that, but that this complies - that somehow those rights that - probably give a little more thought, but...

Kristina Rosette: All right.

Do we have anybody - does anybody want to fill anything else in that blank? So I just put in business names, just to kind of round it out a little.

Man: Probably, if (unintelligible) way it would be a lot of other things.

Kristina Rosette: Well, I mean, we're only...

((Crosstalk))

Kristina Rosette: ...we're only going (here on ITOs), that's just a whole another conversation.

Man: ...and I guess to clarify what I was trying to get at that, as long as its definition, at least - should make it clear that, that these rights we're talking about are those established by the mechanism that's being used, and that they are not somehow, you know, otherwise established outside of that mechanism.

Example, you know, someone might had - might be a trademark holder, the mechanism might recognize trademark holders that's having these rights being described here, but this shouldn't imply that somehow they have - that outside of that mechanism, they've given legal rights to have priority or superior rights to register at the moment and have that by...

Kristina Rosette: Right.

It's basically a basis for participation, is what I'm trying to - the point I was trying to make in the definition, which I think is - had a - is consistent with what you're saying, or at least I think it is.

Man: Yeah, but we're taking out - I guess, that - you may just need to see it because you've taken out recognized by the TLD, but - you may just need to see it...

Kristina Rosette: All right. So we'll come back to this.

Man: ...concept doesn't get lost...

Kristina Rosette: All right. We'll come back.

But getting back to the broader question, is there a preference for the original definition, the alternative definition?

Victoria McEvedy: I can even take - I prefer the original myself. I didn't particularly like the - well, I don't particularly like, by discouraging or preventing registration of domain names (unintelligible) rights. I mean, and (unintelligible) even correct.

Kristina Rosette: Well basically, what I've got there goes is directly tied to the definition of rights protection mechanism.

So whatever we define rights protection mechanism (if we need) just going to carry back, so...

((Crosstalk))

Kristina Rosette: ...I mean, we can circle back to that in a minute.

Victoria McEvedy: Okay.

I just don't know that that works actually, or is meaningful in this definition. But I just put a flag down on it.

Kristina Rosette: All right.

Man: And on - and I shouldn't even say this because it's probably, to my benefit, to my interest, the - you know, the number of - actually domain names that by their - the nature of their existence violate or abuse (yet inside rights is good and small), which is one of my whole points, that you know, just because the registration comes into existence doesn't automatically create a violation or abuse of identified right in the majority of cases, perhaps, you know, the registration of (Xfund.something) may do that, but for the vast majority of other trademarks, that's not really the case.

Kristina Rosette: Right. Well this kind of goes back to the language in the containment of work that talks about, you know, applicants for new gTLDs then required to implement measures, that screwed registration of domain names that infringe intellectual property rights reserved specific names, et cetera.

And that language and I think somebody pointed that out earlier in the week, Mike, maybe, Mike Palage, that that language actually can date back to the original language used by ICANN in 2000, (something went wrong), in terms of requiring registry applicants to identify what types of rights protection mechanisms they would use and how they would

provide mechanisms that would, you know, that will be intent to prevent abuses of the rights of others.

That's where that language comes from. I understand what you're saying. But, you know, kind of tracing back to what the intent was here...

Victoria McEvedy: I mean certainly, I don't know, yeah, I mean, I just think, you know, from - sitting from a trade - European trademark law perspective, you know, they have a specific meaning under the EU legislation and I suppose, you know, that's what it (counters) to me and it's appropriate, you know, just basically it is just either registered or recognized unregistered rights, et cetera.

So it just doesn't seem to - by discouraging or preventing (stuff in hand) because that's just not what those, you know, I know what you're saying that they need to, you know, that's the principal, it is also being dealt within the border issues here, but I don't think they're appropriate in the definition of prior rights.

They were species of intellect, they were species of (IP rights), aren't they?

Kristina Rosette: Well yeah, but the whole point is that, the rights come into play because that's how the owner of it bases its participation...

Victoria McEvedy: Okay.

Kristina Rosette: ...and whatever its mechanism.

Victoria McEvedy: Well, I mean - okay, but I mean, you could say - I mean, in the sense the negative - I mean, in the sense they're right - you know, that's - it will allow others to - allow you to prevent others doing things, but I think the definition will just need to be reworked...

Kristina Rosette: All right. Can you take the lead on that Victoria, and circulate something after the call?

Victoria McEvedy: Yes.

Kristina Rosette: All right, thank you.

All right. Getting back, I guess, do we have any agreement or preference for either definition, the original or the alternative?

Do we want to wait until Victoria circulates a revised definition?

We really need to move on, so I need somebody to say something.

Man: Well, I think we should wait. But I will just (implore) that the new definition does not have sunrise in it because there are other mechanisms.

Kristina Rosette: Right, right.

All right. So we'll hold off - rights protection mechanism, definition, and obviously you would need to substitute in legal rights for all references, prior rights.

Victoria McEvedy: (Really, right).

Kristina Rosette: Because we just defined, prior to what we just said, the prior rights aren't going to be called prior rights anymore.

Victoria McEvedy: I missed the entire line (three).

Kristina Rosette: Yeah, there was a decision made. The consensus of the group was that they didn't want to use prior rights because it already has a specific meaning in the EU context and nobody could come up with another word so we default it to legal. But if you have a suggestion, I'm open to it.

Victoria McEvedy: Okay.

Kristina Rosette: All right.

Preferences as to either definition, the original and the alternative. I mean, I think the problem with the original one is that it's narrow - it's too narrow and dealing only with sunrise.

So that would need to be changed if we went with the original. Is there any one who cannot agree with the alternative definition? Let me put that.

Jon Nevett: Can I just ask a clarifying question, this is Jon. When you've heard of the registrar accreditation agreement, what specifically are you referring to there?

Kristina Rosette: This - I think it's - what is it - 3779. This kind of goes back to the statement of work, when it was drafted, it was basically intended to

make clear that anything that we're talking about is in addition to the protection that are technically afforded under that, kind of wrote the agreement in the - what was it...

Jon Nevett: Yeah, I would object to the use of the registrar accreditation agreement, in a term, because that's an agreement between registrars in ICANN, and there's a requirement in that agreement, as you refer to in 3779 that essentially in our service agreement, we need to have a certain provision with our end user customers.

But there's no third party beneficiary right that come out of the registrar accreditation agreement...

Kristina Rosette: Well, I'm with you 100% Jon, I'm just kind of tracking what the council gave us. I don't see where it is.

Woman: Yeah, I prefer the original as well.

Kristina Rosette: Because in (Task 2), we are told to determine whether to recommend the council best practices approach to providing any additional protection beyond the current registration agreement and EDRP policy. So that's where that traces back to.

Jon Nevett: Beyond what?

Kristina Rosette: Beyond the current registration agreement.

Jon Nevett: Okay. So that's a registration agreement with - did you say registrar accreditation agreement, or registration agreement?

Kristina Rosette: Well, it's the current registration agreement, but the language that goes into the current registration agreement is derived from registrar accreditation agreement.

Jon Nevett: Right.

But the reference, I wouldn't object to the reference in a registration agreement. I would object to the reference of the registrar accreditation agreement.

Kristina Rosette: All right.

Why don't we do this on - and I don't know if this is a good solution for you Jon, is I will just drop a footnote that, you know, there was some concern about, you know, that the statement of work referred to the law and that it was not clear whether what was really intended was, you know, the registrar accreditation agreement, which is the only place that - I don't know, I mean, what was...

((Crosstalk))

Jon Nevett: Kristina, there's a registration agreement between registrars and their customers.

Kristina Rosette: No, I'm aware of that, I'm aware of that.

Jon Nevett: Okay.

So - I'm not sure why we're pulling the end of registrar accreditation agreement, which again, is only an agreement between a registrar and ICANN, so...

Kristina Rosette: Because when Bruce Tonkin drafted what ultimately became the statement of work, it was his intention to consider the text of 3779 to be considered a right protection. And the only way that you actually get that into play is yes, obviously, through the registration agreement. But the requirement of including that language, or putting a variant of it, was from the registrar accreditation agreement.

Jon Nevett: No, I understood that as well, but I'll renew my objection and state that a footnote isn't sufficient.

(Tim): And I would - and another one, this is (Tim) - joining that objection.

Kristina Rosette: All right.

Let's put the tables around, let's change it to registration agreement and drop a footnote indicating that these are the words using the statement of work but that based on information provided by staff, that the relevant - the language that's implicated is actually 3779 or the registrar - registration agreement. Does that work for you guys?

Man: I'd have to see the wording of those. I didn't follow exactly what you were saying.

Kristina Rosette: So basically the footnote would say, this last sentence of - as the definition would read, rights protection mechanisms or in addition to

the protection of board through the UDRP and registration agreement.
And then there will be a footnote that says...

Man: Why do you need a footnote?

Kristina Rosette: Because there were - it marks the same way that the require - that UDRP applies to the registrant, I mean, that all of those requirements close on the registrar accreditation agreement.

Man: The UDRP is a consensus policy?

Kristina Rosette: Right.

(Tim): This is (Tim), I guess, I read, you know, rereading that paragraph from - email (unintelligible) what you are describing Kristina, you're referring to the registrar accreditation being - that is implying sort of the agreement because from the registry name holder which is then the - which was the registrant - the registration agreement.

Kristina Rosette: All right. Then let's just leave registration agreement - anything at this point - all right. Start up our position policy.

Jeff, this is your definition, I think, or very darn close to it.

Jeff Neuman: The alternative.

Kristina Rosette: Yes.

Any objections?

Jeff Neuman: (Three and again).

You know, if it's my definition, then probably not.

Kristina Rosette: Well, I tried to - and that - I tried to make it a little more generic and I just want you to read it because I may have dropped something inadvertently while doing that.

Jeff Neuman: Yeah, actually - okay, so the start up is available to - it's not available to the registrar. It's available - it's actually available to an applicant who - right, because if you're the registrant, you're not going to follow - because you got the name. It's available to the person who took advantage of the rights mechanism.

Kristina Rosette: Okay. So the legal rights owner.

Jeff Neuman: Yeah, although (stop) is really only referenced in the IP claim definition.

Kristina Rosette: Uh-huh.

Jeff Neuman: So I think you can refer back to an IP claim.

Kristina Rosette: Okay. So IP claim, all right. All right.

Sunrise period, again, I think Jeff, this alternative came from the definition, came in large part from the definition that you put forth in connection with the questionnaire.

Any objections to the alternative?

Jeff Neuman: you could - instead of the second line, first come first serve to registration process...

Kristina Rosette: Uh-huh.

Jeff Neuman: ...it could actually be batch. So you could just to the - I think it's the definition we use, right?

Kristina Rosette: Okay. So we'll just - before the (land rush). Okay.

Man: What - Jon, what's the purpose of the last sentence.

Kristina Rosette: Because different - I don't want there to be any assumptions that when we're talking about a sunrise process, we're talking about a specific registry sunrise process. And also to make clear that, you know, you don't have limit. But basically the registry can identify whatever right it wants. And we can take it out.

Man: Yeah, I mean, isn't that inferred just for the definition of prior rights, because we made the prior rights definition broader?

Kristina Rosette: (Sure).

Man: I think we could just take it out.

Kristina Rosette: So the last sentence or the last two sentences?

Man: Probably the last two sentences.

Kristina Rosette: All right. Any objection to that?

Going once, going twice, it's gone. All right.

EDRP, I think is - this definitely is taken from the ICANN Web site. So we're going to keep it unless someone else can get a new definition on the site in the next 24 hours.

Validation agent - and this should be claimed by an applicant, a domain name applicant. But with that change, does anyone else have any other changes they want to make?

Man: Just the way we use validation agent, some of the proposals is that it may not be the registry that appoints the validation agent, raising their proposal for a centralized - so you can take - just stop it as a validation agent is the person authorized to validate.

Kristina Rosette: That's perfect, all right.

All right. And then of course we have to change prior rights to legal rights. I'm hoping you can come up with something better Victoria, because I just - it sounds weird.

All right. You're okay with that.

Then validation of prior right, we have two definitions here.

The second one is really just varies in the sense that's intended to be broader than just sunrise.

Woman: I like the alternative better.

Kristina Rosette: All right.

Any changes to the alternative definition?

All right. Agreement.

Validation of registrant, basically validation...

Victoria McEvedy: Well actually - I think some - I think sorry - interpreting.

Kristina Rosette: No, it's okay.

Victoria McEvedy: I don't really like either of these. I think I need to be a little more vague because again, the validation agent, to concern the current rights of valid and of subsisting, because if I don't do this, I mean, that's just going a little bit too far.

You know, all I do is say that these are, you know, they don't like, for example, I mean they just say that look, it's very superficial exercise, is it not? Would they basically say, you know, it looks to us on, you know, a standardized evidence that they're - that they can show a registration or a claim to an unregistered right that's recognize in law.

Kristina Rosette: Can you - I'm sorry to cut you off - but would we - if I - documented as the valid - would that satisfy the concern?

Man: I see what she say, I don't think that does solve it.

Victoria McEvedy: I don't think so either.

You know, because I mean, the - could be, you know, that trademark could be invalidated, could be - could even be in the middle of invalidity for savings at the time of the validation.

You know, and, you know, it's just a superficial documentary exercise and I think we just need to clarify that, and I don't think that it does that.

Man: Well, isn't it really just concerning at the basis by which one of the largest prior rights is accurate?

Victoria McEvedy: No.

Man: Well yeah, because if your basis - I have a trademark registration in the United States, the validation needs to confirm, yes. You do have a trademark registration in the United States.

Victoria McEvedy: Maybe if one - just - maybe a better word than accurate might be - I see what you're saying. I mean, for registered mark, you're just confirming the fact of registration, right?

Man: Or you could say that the basis for the prior rights actually exist.

Victoria McEvedy: Well, again, I don't really like that. You know, like I said the registration could be a subject of challenge at that point, right?

Man: But the basis for your claim exists whether it's valid or invalid the basis is there.

Victoria McEvedy: It's just a creation of wording.

Man: Yeah.

Victoria McEvedy: Can I just sort of think about this?

Kristina Rosette: Sure.

All right, I'll put that in your "To do list" as well, Victoria.

All right.

Validation of prior rights, all right.

Circling back to best practices.

Man: (Well, it's just)...

Kristina Rosette: Yeah?

Man: The validate, are we taking out validation of registrar?

Kristina Rosette: I'm sorry. I completely forgot about that. I'm in such a hurry to actually get the substance, but I forgot about it. Oh, my god.

Man: And shouldn't that really be - validation it's really authentication, isn't it?

Kristina Rosette: Yeah, for all of these actually now that I think about it.

Victoria McEvedy: Yeah, I like the word authentication too.

Kristina Rosette: All right.

So for everything, everywhere we use validations, should we use authentication?

Victoria McEvedy: Yeah, I think that's good - it's really good.

Kristina Rosette: All right.

Well then, doesn't that maybe solve the problem?

Victoria McEvedy: Yeah.

Kristina Rosette: In the sense that authentication prior rights is a process performed by the authentication agents. They confirm that the claim prior rights are authentic or are documented as being authentic or something like that.

Victoria McEvedy: I think it nearly solves (it).

Kristina Rosette: All right.

Victoria McEvedy: ...(it may) solve it entirely...

Kristina Rosette: All right.

All right. Validation, authentication of registrant other than that change, is there any other change that somebody wants to make to that?

All right, so we're agreed.

All right, back to best practices. And I frankly just completely made this out, so...

Man: Well before...

Kristina Rosette: Yeah?

Man: ...also I think we talked on the last call by having some definition of abusive registration?

Kristina Rosette: We did and I think Mike had put one forward that came from some (WIPO) reports somewhere in - someone, maybe that was even you had an objection to it but I haven't seen a new definition.

Man: Yeah - and it's not an object to do, it just was really narrow and that trademark stresses. I think it came from the UDRP or it came from - maybe it came from (WIPO) but about the UDRP and it really didn't - it was really focused on trademarks.

Victoria McEvedy: Well, in a definition of that too. It would have to be based on the UDRP, wouldn't it? Given that we are in a mechanism for determining what's abusive? The - of mechanism?

Man: Well, I think - and Mike R. could talk about this. I think some of the mechanisms were to go beyond the UDRP.

Victoria McEvedy: Okay, all right.

I mean, okay.

Kristina Rosette: Hey, Victoria?

You're involved with (Nominet), right?

Victoria McEvedy: Yeah, yeah. And (LCU), yeah.

Kristina Rosette: Okay, can you - I had thought at one point they had actually pull together a definition of abusive registration?

Victoria McEvedy: They do have a definition absolutely, yeah.

Kristina Rosette: Would you mind checking what that is and posting that?

Victoria McEvedy: Sure.

Kristina Rosette: That would be great.

Victoria McEvedy: Sure.

Kristina Rosette: All right.

((Crosstalk))

Kristina Rosette: All right, best practices.

And I'll just read it, in case you haven't had a chance to read it yet.

Best practices. For purposes of the (PRO WG) final report, are those methods, processes or features that are believed by the workgroup to be more effective in achieving both the overall purposes of (RPM) generally and some types of RPMs, best practices should not be in flexible. It should be revised as necessary through reflecting circumstances.

It is the intention of the working group that given its limited charter that a party's decision not to adapt any or all of the working group's best practices must not resolve in the imposition of legal liability.

(Tim), does that last bit satisfy your concern that you had raised earlier eventually?

(Tim): I'm not sure it completely does. There's that is - I mean it shouldn't if not just we go liability but, you know, shouldn't bring them under breach of their agreement with ICANN or reflect in other ways on the registry as, you know, in some negative light. And I don't know how they're doing that but it just seems that it needs to be much broader.

Jon Nevett: My concern about - this is Jon. My concern about this kind of definition, it sounds like what we're trying to do is limit the generally-accepted definition of what a best practice is at least that's my take of it. And my concern is that, this definition will get lost in the documents somewhere and then people will have in their own minds what their preconceived notion of the best practices and the requirements and obligation of the best practice. And we're not referred to this limiting definition.

Man: Yeah, exactly. And that's why in the very first caller to, my concern was a bit that we didn't use the term best practices because there has, you

know, with pretty established definition in history. And that instead you do something like, you suggested guidelines.

Man: Or you could - it's more like a form...

Man: And there's a best practices in existence and it's called best practices and even if it's not required, and the registry doesn't follow it, immediately can imply, you know, negative connotations on the registry that doesn't decide not to follow whether all of this.

Avri Doria: Yeah, this is Avri- I tend to agree with that and that's the same thing that - four of us not overloading terms that if - there are people in the group that are uncomfortable with that being a best practice that can be seen as creating an obligation. To follow it, then we need to call it something else otherwise, it's an overloaded term and we get tied by ambiguities and assumptions.

Kristina Rosette: But isn't that reflected to some extent in some of the principles in the sense that whether not something is a best practice is reflected in the level of support for the principle?

Does that make sense? In other words, if there's agreement then than would seem to me that it's the best practice and maybe we don't need to define it at all. But if there's only support or there it's an alternative view, then it shouldn't necessarily be considered the best practice.

Michael Palage: Christine, this is Mike Palage.

Kristina Rosette: Yes.

Michael Palage: I guess my concern and I tried to articulate that in the email I sent just prior to the start of the call was - my concern here is we have a lot of warriors on this call, a lot of them and we're wordsmiths in here. And instead of trying to look at the problems that exist, we're wordsmithing policies that and principles that are only going to be used as swords to beat up people later on and not necessarily achieve the problem that we're looking to solve.

And again, I think as Jeff articulated back in connection with the 2000 round where there was the "IPC inquisition" that the applicants had to go through.

I think we're not focused on really trying to solve the problems but these wordsmith-ing and I think that's just the concern that I think a lot of people have here. And again, I just want to get that on the record I've submitted to the list but it's just the concern that I see. You know, we're really - anyway, I'm done.

Man: So what if we try to give another word because I kind of like - being a - I kind of like the idea or a model being developed, you know, that future registries instead of spending hundreds of thousands of dollars, hiring IP attorneys to come up with some new mechanism. I actually like the fact that developing models.

I agree with (Tim) and others saying best practices is not really the right word. If you call it form or model practices or something that - it basically (unintelligible) out there in order to for someone to just drop into their proposal so they don't have to spend all the money figuring something out.

Woman: I see your point, and maybe I can certainly...

((Crosstalk))

Woman: ...issue.

Victoria McEvedy: Sorry.

Kristina Rosette: No, go ahead. Go ahead, Victoria.

Victoria McEvedy: I just completely agree with it. I mean the (unintelligible) throughout the process is, I think (unintelligible). I just totally agree with it.

And I think, you know, we'll just remove so much a value from the work that we're trying to do here if we take - if we don't try and do the best we can to...

Kristina Rosette: Well, my only concern with that - again, this is kind of an interpretation thing. I mean I think that coming from being a model implies, you know, a greater obligation. I mean the other thing is do we even need a definition of it, if the answer to that is no, let's move on.

Victoria McEvedy: Can I just ask you question?

Kristina Rosette: Sure.

Victoria McEvedy: Just so I can be clear and I don't mean to, you know, just from my own clarification, who is, I mean where is the resistance to a model? I mean as long as people can explain the departure. I mean, at what point - where's - I don't see this as liability for anybody. I mean as long

as people are able to justify departure, there are reasons for departure, I mean it's not going to be mandatory so with - is there opportunity - or you're mentioning there as one?

Kristina Rosette: I'm going defer it to (Tim) and others who objected to calling things best practices.

(Tim): I guess I'm not - correspond to the model either. I mean, again, it implies that, you know, (for your) model registry, this is what you do. My concern is that, not every registry is the same. We don't know exactly what forms of new gTLDs are going to be applied for and then coming into existence.

And we certainly can't imagine that that we - that this group - here today and think of every possible application for protective right mechanisms that they could possibly be. And so I don't want to - one thing imply that registry who don't use this model or whatever we call it. Or somehow, you know, not responsible or - registries and also don't want - creativity on their part.

And you know, I completely agree with Jeff having some a good recommendations and suggestions that could be followed with - for many. But for others, we certainly don't want to imply that - their creativity and coming up with better ideas down the road.

Woman: Can you call them templates? I mean templates are things well - we use all the time - from every time it doesn't work.

Man: How about accredited?

I guess and then I agree with Tim. I guess the point I'm looking for (Ed), this is not an offense to the IP attorneys on the call. But you guys are paying to deal with. And if there was a way that I can propose a registry tomorrow, you know, because I don't like dealing with sunrise mechanisms or anything like that.

If I could just pick, you know, if there's ten things that have been accredited as useful pre-launched mechanisms or prior right mechanisms, and I could choose one off the shelf and just drop it in, not have to deal with anyone.

I'd like to do that but I also do want the flexibility if I could think of something different and better to do that. I mean think that it's kind of like the concept that we're talking about accredited registries, right? That if someone wanted to propose a new registry but they and there are ten entities accredited back end registry operator that the new applicants wouldn't have to deal with the technical evaluation as harshly if they take one of the ten accredited or 20 accredited registry operators.

That's why I said accredited but that might not be the right term either.

Victoria McEvedy: I mean, are there, I mean, in terms of like, just, you know, Kristina mentioned earlier, and I know it's something that they use and try to harmonize in Europe in the legislation. I mean, you know, we could put like, you know, we can head like a menu, like an ala carte menu, you know. Like, I mean, do we - you know, where there might be suggested floors, you know, and then suggested feelings that people could pick and choose a combination or. I mean, I guess, you know, I'll give you that thought we're doing anyway. But I mean, you know, do

we have any interest in putting in some floors like in saying these are minimums - are they minimum?

Kristina Rosette: Well, I think that's, you know, that's what I have tried to do and I don't want to necessarily speak for, you know, all the IT players on the call but I, my clients will be doing cartwheels down the hallway if I could say, "Oh, there's a new registry and they'll pick the sunrise model and everybody knows what that mean."

I mean, I don't think there's anybody who would disagree to that. You know, and in fact, you know, unfortunately although everybody seems to agree on that point, maybe we should have that as a principle. You know, where we break down is what it needs to look like.

(Tim): This is (Tim).

Maybe the possible solution will be that we don't try to define the term but instead we just describe a more intended use for these recommendations and principles. You know, on the preface of the report and let the council decide what.

Kristina Rosette: So they're basically - the working group prefers not, you know. However, I can make it more - but that basically we prefer not remove the term best practices. But that instead, you know, we have suggested some baseline feature.

((Crosstalk))

Man: ...couldn't agree on the term best practices and what we...

Kristina Rosette: Right.

Victoria McEvedy: Well we could say these options and, you know, there could be a recommendation that people, you know, select the combination of them. Like one from here and then other from here sort of saying like, you know, I don't know if we've got. I mean, I don't know - it would work.

Kristina Rosette: Right.

And this I think is something that we've talk about. You know, very generally but we can never get down to the details of it that, you know, for example, we're going to say everybody should use Sunrise or everybody should use IP claim or everybody should use some other process that has yet to be developed.

But if you are going to use a Sunrise, this is what it should look like. And it seems to be that we've agreement on that. It's just trying to get the actual flushing out of what it should look like that everything falls apart.

Man: One correction. That is not what it should look like, it's what it may look like.

Man: Again, something I had articulated on Monday. If the market comes up with something that works, people will adapt that we don't need to mandate that we don't need to put it forward in principle. And if applicants coming forward, you know, come and look at these notes and say "Ah" you know, and all they need to do is cite instead of using templates, best practices, whatever I applicants can say, we're going,

you know, we're using new level as out back end provider and we're going to implement the stop proceeding they used in connection with (.biz). Or we're going to use start up procedure that they implemented for (.travel).

You know, instead of worrying about principles, you know, let the note and the information speak for itself. Applicants will know what would be positively viewed or negatively viewed. And that's they don't referring something or don't dictate it. Then that tells them that they're probably going to have a little more potential scrutiny in that area but it's not prohibited. If they think they have a better way of slicing bread, let them propose it. That's all about - that's what innovation is all about.

Woman: Okay. But, I mean that's just the status quo, isn't it?

Man: Well, the status quo if you look at the RFP criteria is you just had to explain. You know, what you were going to do. So a smart applicant as Jeff said would be, you know, I'm going to use Widget Box X as used by these ICANN accredited registrar. I'm going to do the same thing that they did.

Victoria McEvedy: Okay, but the status quo in the same set, they are number making - out there. People know what they are, right? And, you know, people are just, you know, everybody is thinking, you know, everybody is making their individual decision based on - and there's an opposition - would be beneficial.

Man: I see the IDN group use the word outcomes report and then they just had a list of outcomes with areas of agreement. I don't know if that's helpful.

Kristina Rosette: Well, that's basically what was going to happen to, you know, these principles that we ultimately agree on as well as the results of the questionnaire. Well, as of now the results of the questionnaire, that's actually another item we still need to discuss.

All right, so let's just take a sit back here because I'm not really quite sure - I understand what everybody is saying. But what I'm having difficulty doing is translating it either into a "principle" or it's just kind of a blank statement that say, you know, new TLD applicant. I don't know, maybe we can come up with as joint statement that, you know, all parties to the process would benefit from the availability of - I guess approve, what did (Margie), say approve RPN models? What's her language?

Man: How about approved RPM models because obviously those registries that have already gone live, they've been approved by ICANN and accepted by the community.

Woman: Accepted by the community. I think might be a little over...

Man: Well, I'm just saying, they've been, you know, approved practices. You know, stop as an approved practices as used by new starting connection with .biz.

Sunrise is an approved practice as used by affiliates in connection with the launch of .info.

The premium main challenge process is an approved process as used by Moby. And then what happened is - you're not giving any preferential right.

((Crosstalk))

Woman: So you're talking prior accepted practice?

Man: Yeah. You know, applicants should be encouraged, you know, in their proposal to, you know, if you will identify, you know, prior accepted practice or at the bidder or to, you know, propose their own.

Victoria McEvedy: But we're supposed to be doing that for them because that's the status quo. We're supposed to be helping that by - we're supposed - all the existing rounds and sort of saying, you know, we recommend future, you know, I mean that's the whole purpose of the group.

Woman: What is that what you say when you say consider prior successful practice? You're not saying they have to but you're saying, you know, there's a set of things that worked in the past, you're encouraged to consider that, you know.

Victoria McEvedy: I mean I - I mean certainly think from that particularly, you know, a sort of non, you know, non-commercial users point of view. I mean, I think everybody would have been far more certainly hear about what's (slide) to in play because more thoughts can go into protecting the rights of non-commercial users and things once we know exactly what we're working, I mean, what we're working around or like, you know, if there are five options then the five that we're working around (in a way).

I think the status quo is that just utilize (assets) that's been adopted. I think we're supposed to be kind of (progressive) a little further.

((Crosstalk))

Woman: All right. I'm frankly...

((Crosstalk))

Woman: So what is the consensus of - what is the direction that everybody wants to head in? I mean, you know, should we start with that (Margie's) kind of approved model RPM proposal and go from there?

((Crosstalk))

Woman: Does anyone think that we shouldn't do that?

All right. Let's just do that.

Margie, are you - I know that you are in an airport in (Brooklyn). I don't know if she's still on.

Are you on?

All right. I'll just go ahead and read it for her.

((Crosstalk))

Margie Milam: Yeah. I'm sorry. I'm just about ready to board. So if you could read it that'd be great.

James Peterson: Okay. Sure. Absolutely.

Approved model RPM should be available at the registry (still) discretion to select what standardizes the sunrise procedures across the registry, registrar to minimize the cost implementation and eliminate the need for ICANN to scrutinize this aspect of an application during the new TLD process.

A registry applicant of - ICANN sunrise period, must not be prejudiced in any way that - not to use an approved model RPM.

And this is purely voluntary standard that - the new TLDs more efficient. So the list of approved RPMs could be updated from time to time.

((Crosstalk))

(Peter): This is (Peter) in Copenhagen. I kind of...

((Crosstalk))

Woman: And (Peter) and then (Peter) posted an alternative.

(Peter) do you want to go ahead and lead that one out to everyone?

(Peter): Yes. It is very much based on margins proposal. I agree totally with it. I just think that the (slant) with respect to the registry here is not

necessary. I think that we can do it in a more open way. I think that everyone will benefit a matter of fact that it's not up to registry but rather it's up to the fact that we all wanted (unintelligible)...

((Crosstalk))

(Peter): ... as a major factor, unless there are good reasons why it shouldn't be there.

And so my proposal is based on margarines -- margins, I'm sorry, that approved model RPM to be developed later should be utilized by the new registry unless there are reasonable grounds for none use in the particular registry.

Such use of a standardized RPM will minimize the cost of implementation for all interested parties and would eliminate the need for ICANN to scrutinize this aspect in an application during the new TLD process.

(The least approved) models RPMs would be updated from time to time.

(Tim): This is Tim.

We're (definitely) asking for (whether) you agree with that or not.

Woman: Sure.

(Tim): I think I would agree with Margie (unintelligible) I've seen it (unintelligible) and I can't.

With respect to you, I couldn't hear anything in that that I would disagree with.

So with (Peter)'s conclusion, it turns it around. So probably based (unintelligible) complete opposite where it requires the industry to do something unless they can prove it as a need to.

That was (we need) the whole concept that probably we're going to forward here with it, it would be that the registry and the discretion, you know, based on your intended business model.

(Jeff): This is (Jeff). I agree more towards Margie. I would just remove sunrise out of there and replace it with other - another term because it's not just sunrise.

Woman: Right.

(Jeff): And I would also take out the "minimize the cost of implementation" because that may help you to case depending (unintelligible) approved model (work).

(Unintelligible) lead cost to a registry is actually doing nothing. But - so I would just - we don't a rationale; we just need what it is.

So it's (unintelligible) available to a registry with their full discretion without justifying it or without having any other qualifying language.

Woman: All right. The one thing I feel I mean, I'm not going to get involved in this mandatory or not.

But what I don't think I'm comfortable doing at this point is saying that it would eliminate the need for ICANN to scrutinize this aspect of an application.

I'm comfortable saying "and may eliminate", but I'm also saying comfortable saying "reduces". But I'm not comfortable saying "eliminate".

Man: Why not? (Unintelligible) in a approved process, why not?

Woman: Because there might be some unique feature about the registry that would suggest that not withstanding the fact it's an approved model that it may not actually work.

And it maybe that the ICANN staff are really the first people to see that.

All right. Let's just take a voice vote.

People who favor Margie's proposal in terms of the discussion element for the registry or I guess let's just go to the list.

Avri, which proposal do you favor?

All right. She's probably on mute.

Victoria?

(Victoria): I'm afraid that I am (unintelligible) I haven't (unintelligible) I'm afraid or that (same thing).

And I'm not sure. Sorry. That's not really helpful.

Woman: All right. All right.

(Peter) did post them. I know that sometimes I think you had delays with the posting (come in to review).

So you should get it eventually.

Jon Nevett?

Jon Nevett: This is Jon. Sorry.

Woman: Which proposal in terms of the level of registry discretion, (Peter)'s or Margie's?

Jon Nevett: Margie's.

Woman: All right.

Mike Palage?

Mike Palage: Margie's.

Woman: All right.

Lance?

(Lance): (Peter)'s.

Woman: All right.

(Jeff) Neumann?

Jeff Neumann: Margie's.

Woman: Margie I'm assuming. He's routing for Margie's.

Mike Rodenbaugh?

Mike Rodenbaugh: (Peter)'s.

Woman: All right.

Kelly?

(Kelly): (Peter)'s.

Woman: All right.

Avri?

(Avri): Margie's.

Woman: All right.

Well, it kind of depends on how (unintelligible) votes.

(Tim): This is Tim.

Woman: Oh I'm sorry. Tim, I didn't get you in my list. I apologize. I'll add you in my name list.

I'm assuming you're voting for Margie. Is that right?

Margie (unintelligible). Margie herself.

But is there anyone who (unintelligible) I didn't just read off?

All right.

Well it looks as if we're going to say that Margie's statement has support. I think we can both characterize as being supported. But I don't think we can characterize either one in (signing) agreement.

Does anyone disagree with that characterization?

All right. Moving on.

Man: (Unintelligible) you would say both of them have support and this (unintelligible).

Woman: Well, I guess that it kind of depends. I mean, you know, I prefer (Peter)'s model and I think you know I have the issue about, you know, that eliminate issue in both of them.

So that's six for Margie and one, two, three, four...

Man: But if I can hear Kristine, one of the things, you know, if we're going to start counting votes, you know, if you look at what has done been today in the entire new gTLD process, we've not taken a vote.

In the reserved names working group, we didn't take a vote.

You know, if you look at what LLC report said, taking votes are not constructive towards developing consensus.

((Crosstalk))

Woman: We're not looking for consensus here.

((Crosstalk))

Woman: We're looking for what we have agreement on and what they support for.

((Crosstalk))

Woman: And I don't think you can say regardless that at this point, there is no agreement on either one. And frankly I do see that there will be agreement either one.

So to me, it seems to be a more efficient use of everyone's time to rely on that (unintelligible) poll with the sole purpose to say both have support, neither have agreement, then let's move on.

Man: You're the chair.

Woman: All right.

I mean, I just think that, you know, I see your point Mike about not voting and not giving (unintelligible) you know, counting the numbers. But I think what you've got is a split. I think you can say that either one has agreement.

I mean, it was not on the definition (unintelligible). I mean, even if Victoria were to say that she preferred (Peter)'s, it's still kind of a seven, you know, seven to four which is I don't (unintelligible) (my mouth is terrific). I don't even know what that is. 1/3 or 2/3? I mean, fine. You know, we'll call an agreement.

That's really (scary) at this point. I just want to move on.

All right. Moving on to Tim's principles.

Tim, I'm going to have you walk through this please - are you available.

Man: (I'm sorry. I'm sorry).

Woman: All right.

Man: (Unintelligible) was on mute.

Woman: All right.

If you could walk through all your principles so we can gauge the level of support please.

Man: Okay.

(Doing this) is a futile effort. But...

For the first principle, I've probably changed some because we (unintelligible) I'd have to have my own definition of legal rights because I don't -- it's not (unintelligible) right (unintelligible). But they're currently defined now in the definition.

And it says that applicants or registrant have legal rights meaning that all registrants have the right to register domain names. And the gTLD operators should not consider the legal rights of IP holders for excluding the legal right so others to register in use of domain names.

And just to try to explain that further on the (unintelligible) I did. You know, these ties into the idea that many of the labels that are registered by IP holders or restricted IP holders during the registry protection mechanism are very common in nature or generic as I called it. And that is (descriptively) legitimate uses for those strings by others who may not necessarily own a trademark even though if someone else might (unintelligible).

So their rights to that domain name should not be considered secondary to the rights of IP holders in those types of strings.

Woman: If I'm understanding this correctly, it would seem to me that taken to its logical conclusion, this principle says that you really don't have right to protection mechanism.

Am I understanding that correctly?

Man: No, I disagree with you.

Man: I don't agree with that.

And I give you this example (unintelligible) before, I mean, you know, apple and (unintelligible).

I think (unintelligible) would certainly have making good arguments for having you know, (full lights) to the use of that term. They've basically invented it.

Apple on the other is a very common word in the public domain that anyone should have an opportunity to put to use or Mike's example of golf.

But they shouldn't be reserved first and only to IP holders to exclusion consideration of others who might have perfectly legitimate rights to register use of that domain name.

Woman: I understand that and I guess when I'm kind of taking it a couple steps further in the sense that when I'm looking at this they're saying okay.

So if you say that everybody has got equal rights, then there's really - you either have everybody participate in the right to protection mechanism or you just don't have one.

((Crosstalk))

Woman: And maybe I'm misunderstanding that. But I'm just trying to kind of make sure that...

Man: But...

((Crosstalk))

Woman: What I'm trying to get is I'm reading, I want to have a principle and guideline that honestly if I read this and I haven't heard their explanation, I would have no idea what it is that you wanted that principle to translate into in terms of access.

And that's kind of where I'm trying to go with this.

((Crosstalk))

Man: And then I think it's because this would develop with the idea that we were developing principles, and obviously, what we're doing instead is developing policy recommendations.

But with that said, then you know, for example -- and perhaps this could be put into action in this that that it's multiple parties express interest that (in wholesale) that only one party expresses interest who has and they may have trademark rather than (unintelligible) within that. And they would certainly have priority to that but don't (unintelligible) interested.

But its multiple - its multiple parties expressed interest that those interests should be equally studied.

Woman: I would agree with that. I mean, I would support that. It's just should we (unintelligible) with some (wording) to that or is it -- sorry, we're already looking at a draw. Are we looking at existing (wording)?

Man: Yeah. I don't have. But that's not the existing (wording) but I could certainly redraft that principle to (unintelligible) to that.

Woman: That's something that might be able to incorporate (unintelligible). I don't know how to extend the definition.

(Unintelligible) probably not.

Woman: Well I mean you know, I think I've articulated what my concern is that words (unintelligible) themselves. You know, it's really the context I mean, a word that is generic from one thing is completely arbitrary for another one.

You know, I think you're basically saying - you said nobody, I mean, I just don't see how you end up with a situation where nobody is going to avail themselves of the right to protection mechanism because you're basically taking out all the words in the dictionary which is pretty much everybody.

If you're going to do that you really shouldn't be able to give people an advantage if they combine dictionary word. You take them out.

And then you take out in the spelling because for the same reason if somebody substitute and E for an I in a dictionary word with the idea of getting around it, I mean you know.

Woman: That's extending the principle that is there because those are no longer generic. And those are not transformed onwards. And perhaps, you know, you want to make it harder.

But in terms of talking about generic words, it's very different to take a generic before you start applying transform to it.

Woman: Well except for the fact you know, Avri, I mean, my guess is even if we were to just kind of (unintelligible) to stand in the corner of Pennsylvania and 13th and ask people what was the first thing they (unintelligible)...

((Crosstalk))

Woman: ... the word apple, they probably would not be talking about fruit.

Woman: Well you know, that's an example because you know in London there was this litigation to (unintelligible) like two months ago with Apple Computer (unintelligible) the base (unintelligible) company.

Woman: Right.

Woman: And they have the rights. The (bedos) have the right for the word.

Woman: Right.

((Crosstalk))

Woman: ... and I must give you one this week. And I'm sure if I walked around and talked to them with everybody about Apple, they would show a piece of fruit. I mean...

Woman: Okay. But you know, this is (unintelligible) I don't know about dropping the principles but of course you know, and most of the fitted situations, the contents, that was (unintelligible) or the you know, (unintelligible) because we don't have classes with strings, you know, like we do with registered marks.

I mean, the content could be determined with those. You know, if there are a number of people (killing out) for us, you know. I mean.

You know, we'd only be in fringing level. He was right, you know, to say if it was disputed or what have you, you know, it was going to be used in class and what they registered.

So there might be some way to come up with some thing that would you know, and effectively operate a bit like a class limitation.

Man: I mean, you know, I know a good example is Barbie. I mean, for most of the - when we hear that we think of the dolls that are (unintelligible) play with them with your kids that their daughters play with.

((Crosstalk))

Man: But I think Mattel - Mattel not too long ago lost a case in Canada against a -- I think it was (unintelligible).

But with this in terms Barbie, it might have been something else.

But because there was, you know, there is no danger of confusing similarity between the products and services being operated by both of those parties.

So really assumed in there that Mattel is the only one who will have ever have right to register any domain name Barbie Doll -- whatever.

Woman: Uh-huh.

Man: But it doesn't seem to be appropriate to me and that's what I'm trying to get across is that IP holders aren't the only who's right.

Man: And Mike, if I can get in the queue Kristine (unintelligible).

Woman: I honestly I'm kind of inclined to say that what I would like to see from Victoria and Tim is workable language and have everybody vote on it.

And if everybody is willing to spend the time on this in the next you know, I guess 24 hours, then it goes in the report.

But at this point we have an awful lot to cover and I (unintelligible) -- and I don't mean to say that it's not an important point. I'm just concerned that I'm not in the position to stay on the phone for another, you know, two hours. And I don't know if everybody else is as well...

Woman: I'm very happy to work on some language.

Woman: All right.

Man: And again Kristine -- this is Mike, just 30 seconds, I mean, what Tim is calling for basically what was put forth in the (stop) preceding where someone was able to register a name and if someone wanted to they could challenge.

And just like the UDRP, you don't win just because you have a trademark.

One of the three elements that one must establish is that the other party has no legitimate or fair use of the market. And I think that's what Tim is trying to drive home here is part of the imbalance in the right protection mechanism that have been rolled out recently do not take in that other leg of the UDRP triad.

Woman: I understand that. But unfortunately, the only way that you can is to look at the content. It's to look at how exactly we use. But you can't do in the right protection mechanism.

Man: But you know, that's not true because this would have stopped it. And Jeff has to drop off.

But what you're saying here and see this is why he always comes back to, you know, the use of sunrise.

What (unintelligible) is that by, you know, we they did is not acceptable or doesn't count.

But it did count. It was an approved protection mechanism.

If they use it in the rollout of a major gTLD, and you're kind of just brushing the side, the work that they did...

Woman: No I'm not. Not at all.

((Crosstalk))

Woman: I guess the (unintelligible) this is the language that I'm looking at doesn't come even close to what you just said.

That might be what it means, at least that's what's been intended, but it doesn't say that.

And I think we need to come up with something that makes clear what the scope is of that because I mean I have no, you know, personally, yeah I think IP claims are fair. But would I take away from (B1) that that what you mean or at least that's the direction it's going in. Absolutely not. You know.

So I guess I'm getting back to the fact that unless and until we have language that kind of encap - that a little bit more clearly and makes more clear with the boundary part of it. I mean and what base the true parameters are of it than, you know, part of it probably said that as a treatment when it does. Whereas I think we've been very careful with some of the other things that we done to put very specific limits on it, either by virtue of what it is or by the virtue of (the must) should may contrast. And this just doesn't have that. So, you know, I just think we need to move on.

Avri Doria: I have a question.

Kristina Rosette: Sure.

Avri Doria: I mean we put off talking about this for a long time until the very now. And now where's the point I think we don't have time to talk about it. And I don't quite understand that.

Kristina Rosette: First off, Avri, I haven't put anything off.

Avri Doria: Oh, okay. It just seems to me that it was that it was put off while we...

Kristina Rosette: No. Everybody has, you know, Avri, if you look at the agenda that circulated and you listen to the recording, I am the one running this call. So, I mean, I'm more than happy to talk about it but I need everybody to commit in that case of being willing to stay on the phone until we get through everything.

(John): This is (John). It's now what 3:40 Eastern Time. Where are we procedurally? You know, I have laid out a couple - probably six weeks ago what I thought is a vehicle for making - for avoiding this very problem that we're having that we're under the gun. And I'm not sure who well received it was by the group because we never really discuss it, but we've - from my perspective, I know I have 20 minutes left. So where are we going from here, where are we now and what we do in that time frame? And maybe - it makes sense to take a couple of minutes just to talk about ways that we could possibly get more time so that we could fully discuss these important issues.

Kristina Rosette: I don't think we can get more time. Everything from the point on has to be done in like 20 minutes or over the list in the next 24 hours or we identify what it is that, you know, we wanted to have more time for it.

In terms of kind of where we are based on my list...

(John): Well, you just said a contradictory thing. You just said, we can't have more time or we identify areas where we need more time.

Kristina Rosette: We identify areas where if we had more time, we might be able to make a better contribution to clarify.

(John): Okay.

Kristina Rosette: You know, we still got...

(Tim): This is (Tim). In regards to...

Kristina Rosette: Yes?

(Tim): ... the - my principles, which they were so much they were intended to be. I mean, it's clear that there - that when I going to get through - when I going to get that there's not likely to be any consensus or probably even agreement, what I will do is do my best at rewording those in a manner that you described.

It won't be perfect because they're not intended to be recommendations that can - that describe processes that can be implemented. They are what they're stated to be -- principles and guidelines, but I'll do my best to redo that at the end of the list. And then whatever happens happen and if nothing else so, you know, I would request that they'd be included as minority report.

Victoria McEvedy: Okay. And I'm very (able) to help, (Tim), as I can, if any help with it.

(Tim): Okay, thank you, Victoria.

Kristina Rosette: Where are we? We have, you know, (Tim)'s additional things.

(Tim), let me just ask you this and this might take care of I think 4 through 6, where are we all (unintelligible). I mean, are we on - and the point that, you know, we should just not deal with it at all or are we putting in an annex or what are doing? Because I think that can take care a lot of the issues that are still open, for example, that would take care of, you know, as practical matter, (Tim)'s Principle 4 through 6.

(John): You know, this is (John), I have a problem with that, putting something in an Annex because we don't have time under our schedule to get to it. I mean...

Kristina Rosette: I'm not saying that, I'm just saying that the - there was a significant level of comment about the desirability and the appropriateness about including (seem-related) principle at all.

And if that is in fact still the case, then that means that that would apply now only to the clinical principles that had been previously discussed and that we're still kind of in the chart because I wasn't entirely sure what was happening as well as (Tim).

I'm just saying that if we've got a general agreement that, you know, if the feeling among - and I think it was, you know, primarily the registrant and registry folks that, you know, we really don't want to be going down (fee road), then, you know, that's fine. But we're just trying to be efficient about it.

Na distributor just frankly, you know, my notes are not at all clear to where we left that so - I mean if someone has clear notes on that, you know, please speak up because we've got 16 minutes.

Woman: If you ask me Kristina if we ever reach agreement at that point, I think the answer is no.

Kristina Rosette: No, I know. No, I realized that but to me, there was a bigger concern and, you know, I frankly wasn't the one who raised so I'm not really sure I'm articulating it correctly but that there was a larger concern that, you know, fees are just somewhere that is not appropriate for us to be going and believe - if my notes are right and I know that Margie had expressed some concerns, (Tim) had expressed some concerns, Mike Palage, expressed some concerns, (John) and Jeff had expressed some concerns and Avri, you had concerns but for a different reason...

Avri Doria: Right. I basically, yeah. And the retrospect on the list, I just remembered, there are being many concern that hadn't been resolved.

Kristina Rosette: Right.

So, you know, let's talk about that because frankly that would be an efficient way to deal with, you know, to make sure that we covered (Tim)'s principle even it only (improve at least) as well as, you know, a couple of things that had all ready previously been in the list.

So do we or do we not want to include principles that refer to or foreseeing to see?

Avri Doria: Well there's - I guess I'd like to bring an extra element into it which is sometimes we're talking about principle. In this case, we're talking about general principle.

In the case, your recommendations or the ones that we've been going through up to now, those were not really being called principle but were more in policy recommendations I thought.

And those two have had different value to make a general statement and in principle, may have a different wait than a policy recommendation that said, you should do this with the fees. You know, a statement that's generally like you should be ready to pay for a privilege is not quite the same as a policy thing -- this is what should happen, this is who should pay, this is who shouldn't pay. There's different wait in those. And I know it's not a lawyer speaking but a philosopher...

Kristina Rosette: Right. I know.

Avri Doria: ... but nonetheless such that, you know, there's a different waiting.

Kristina Rosette: No, I understand that. And, you know, perhaps I should been clear. I mean, you know, I'd always use that that the stuff (unintelligible) then dumped in this chart as, you know, not policy principle but to a certain extent almost kind of a distillation or, you know, conceptualization of certain, you know, best practices or whatever we might call them, you know, without getting this - this kind of specific implementation with ICANN do this either way.

Man: Avri, when is the next council meeting?

Avri Doria: The next council meeting is...

Man: Next Thursday.

Avri Doria: ... next week - yeah.

Victoria McEvedy: Avri?

Avri Doria: Yeah?

Victoria McEvedy: You'll have the next council meeting?

Avri Doria: Yeah. Someone (actually) but the next next Thursday, correct?

Victoria McEvedy: That's next Thursday, yes. And then the one after that is the 7th of June and that would be my community (chair lead).

Avri Doria: Yeah. We can set that.

Kristina Rosette: Yeah. Right.

Avri Doria: Or include (unintelligible).

Kristina Rosette: Well I mean what's the consensus of the group?

(Mike): Consensus about what Kristina?

Kristina Rosette: Where do you guys - I mean, where do you want to go with it?

(Mike): We need to ask for more time like (John) says, well, obviously we're not - we need to discuss principles, we need to ask for time to do that.

Kristina Rosette: I don't...

Man: I don't think time's an option, (Mike).

Kristina Rosette: Yeah. I don't think it is either.

Liz, are you on the call because I know that was part of the briefing we had kind of the...

Glen de Saint G ry: No. Liz has - Liz (excused off). She came back too late.

Kristina Rosette: Okay, fine.

Man: Well, let me issue this question or just out this forward for consideration and (Mike) has said someone who participated in the reserved names working group here aware of this as well.

In connection with the work regarding the geographical identifiers and controversial names, notwithstanding the final, if you will, body of text that was in the report, there was an intention that there would be a continuation of that work by the gTLD committee.

And again, they're, you know, they've all ready walked out time with the (draft) schedule in San Juan for other activities in this area.

So I think what we want to do at, you know, I think what we have to do is document the work that has been done so that if another group does want to carry it forward, i.e., the new gTLD process that were - can take place there.

And for any members of this group that may want to continue or see that work through, maybe perhaps they could participate in that broader, if you will, working group.

Man: Great.

Man: I don't know. As I said, that is just a suggestion I out there for consideration based upon what has been done by a previous working group that if you will did not exactly have the concrete exactly poured in the SEC in connection with its work.

Avri Doria: I mean that has something to do with the deadline if basically give us snapshot of where we are, the places where there has been some consensus, the places that are still - discussion, time run out, here's the snapshot of where we are and pass all of that information back to the new gTLD committee and, you know, like (Mike) said, they deal with it.

Man: Because I think...

Avri Doria: Like I think we, but they deal with it.

Man: And I think what's important here is, you know, Kristine, you've - Kristine had a very difficult job and as I said someone who chaired this similar working group five years ago, I understand how difficult it is.

So I think the importance there is that you just document what has been done. and that's what we did in Working Group B, we had a minority statement, a majority statement, different viewpoints were submitted and instead of necessarily saying what was the definitive of

right outcome, we just provided the snapshot of the different views within the group and we passed that on and, you know, that those viewpoints were, if you will, taken and, if you will, adapted by ICANN staff in connection with the 2000 proof concept RFP.

So I think from the integrity of the work, the positive work and - that has been done by the group, you know, we wouldn't want to try to rush something last minute. Let's just document what we have here.

Peter Olson: This is Peter in (unintelligible). I totally agree. I mean this - that - they were the divergence between me and Margie but in reality, we're - I'm 75% in agreement with what Margery said. I want to go - make this work.

So I think we should just note that there's some agreement and some disagreement and go - and then go forward with it.

(Tim): Yeah. And this is (Tim). I would agree with that. I prefer that than to just - like what I say in regards to the - fees pricing issues they're just not include anything about it as if it hadn't been discussed unless well that would be the plan approach.

(John): I agree as well. (John).

Kristina Rosette: All right. I'm trying to translate that into actually work product.

Avri Doria: I think its going to be that a lot of us assignments to write a little bit for operation (unintelligible) put this together where we have our disagreements, we have to be able to write about it. We can't expect you to be able to write it all on all the different positions.

Peter Olson: Right. Can we just accumulate all the different principles that have been proposed efficiency we haven't had chance to discuss those yet.

Kristina Rosette: Well but I think we have had chance to discuss some of them.

Peter Olson: Well another way of document.

Kristina Rosette: So I just - my initial question is, you know, can we, you know, does it make sense to spend the 50 minutes or whatever to go through what was the subject of yesterday's call or whatever day it was and see if that still hold because if it does, then, that's done. And then it's just a matter of making sure that we're delineating correctly what it is that has been agreed upon or stuff that does affect the group or however we want to call it.

Does that make sense, I mean doing that way?

Man: Some people weren't on that call and would want to see what we discussed on Monday, I think it was in writing and then, you know, take a more...

Kristina Rosette: So that's in circulating twice.

Avri Doria: And I know that that's my personal preference. I'd like to sort of see as a (sort of) - if we were to finish this process to see a coherent set of principle including the ones that we haven't had a chance to really work through yet.

And I guess always in my mind that would - and when we're talking on Monday, we were then going to come to this and figure out how they all balance.

And do, you know, if I - I don't think that we can get to the point where we have a coherent set and to say that the (some) that got discussed earlier are further along than the ones that came later and not trying to adjust the - a value judgment becoming later but the patents to come later that they just don't have the agreement at the ones we spend a lot of time talking about. And that sort of pressured it to (exam) within the waiting. And so I would actually prefer not to give them more priority over this.

Woman: Yeah. I mean I would agree with that.

Man: I do as well and it's I guess 3.54 now. So they don't really have much time anyway.

Woman: Yeah. I'm afraid I can't stand the call.

Kristina Rosette: I'm just trying to figure out how to do this in away that make sense. And honestly, we might want to.

All right. Does anyone have any suggestion as the best way to actually pull this together in terms of what we've done, what we haven't done, what we sort of decided on but haven't finally decided on. I mean - and I don't mean to - I just am not really quite sure how to present it in a way that frankly is coherent for that, you know, make sense.

Victoria McEvedy: Can I just ask a question. if someone going to throw all the bits and pieces into one document that we can start - that we can circulate and try and agree over the list, just for a (stuff) like we're looking all the different bits and pieces and we've got variations coming in and I mean - we haven't got - we just - could someone throw like the more into one place and then we try on the least agree or disagree or whatever?

Kristina Rosette: Sure. I mean there's the beginning of that all ready, you know, it's just be a matter of integrating I guess, you know.

And again, you know, as long as (Tim) doesn't have an objection with his principle getting out at this chart, I mean, that could go in there. My group (buzz) principles to go in there and then, you know, if there's - and its clear which one we've discussed and it's also clear which ones are completely new. So we can do that I, you know, I have to preference one way or the other.

Woman: They're not really completely new, they're just not discussed yet.

Kristina Rosette: Right. Right.

Woman: Right. And there's slight difference in there, I'm playing a lot for you all ready.

Victoria McEvedy: I mean I think we just want a draft, it's just that way - and then we can indicate whether the things are great or not and...

Woman: All right.

Man: Yeah.

Kristina Rosette: All right. Let me just make sure that I have this right.

Okay, so it looks of this, the definitions are actually close to be done.
Victoria?

Victoria McEvedy: Yeah. I've seen the new definition. It'll be early - it'll be first thing tomorrow morning, my time, right now.

Kristina Rosette: Right. Right. That's - no, that's fine. I'll now go ahead and make the revisions that we've talked about to circulate that so that's done obviously.

The next thing that I can do is take the kind of principle's chart and put (Tim) in it. And then if people want to come in on it, they can and then I will put basically, you know, will just jump that into the chart.

The only other question is that that open is what if anything should be said about the questionnaire, in other words, you know, do we intend to be drawing any (place and open).

And we never might intended this should be kind of a big - what (unintelligible) to see what's in that result to be done, what we do with them. But on the other hand, before we could go ahead and put them in the report, I want to make sure that nobody has any objection to that and to basically say that, you know, this wasn't a survey, the scope is not, you know, to simplify is not really large to make any within generalizations but hers what happen.

Does anyone have an objection to that being done?

Man: No. Right.

Woman: No, as long as we're careful to say this is just interesting information, you know.

Man: I think you should just also document exactly how long a survey was open. I think it was only a week and...

Kristina Rosette: Right. Yeah. I'm going to have to rely with some of the details so, okay. Well I just - I'm, you know, I've done a lot of the background stuff or all ready kind of written. So it's just rarely - this is just goes into the outcome of that.

Kelly, if you're still on the still, could you send me your - I mean on the call to determine your (chunk) about the language

Kelly Smith: Sure.

Kristina Rosette: ... that just the issue stuff where it stand right now.

(John): Kristina, this is (John), do we have some staff support to help you pull this together until that way that you're taking it on by yourself it seems like. I mean is Liz available to - isn't that a staff-type function that.

Avri Doria: I guess from these working groups, Liz is actually been collecting the reports from the working groups and to the new gTLD...

Kristina Rosette: Right.

Avri Doria: ... and I don't know that she has any assistant to help her with that.

Man: Would she does go as far as it can be done...

Man: What was that?

Man: ... 40 million doesn't go...

Woman: I don't think we're getting if off if you're going to some other ICANN.

Kristina Rosette: All right. Okay, well, I think we're done.

Woman: Great. Thank you, Kristina.

Man: Thank you, Kristina.

Woman: Thank you, bye-bye.

Kristina Rosette: Bye.

END