

**Registration Abuse Policies Working Group
TRANSCRIPTION
Monday 18 January 2010 at 15:00 UTC**

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<http://audio.icann.org/gnso/gnso-rap-20100118.mp3>

On page:

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

Present for the teleconference:

Greg Aaron - Registry stakeholder group - Working Group Chair

James Bladel - Godaddy Registrar stakeholder group

Berry Cobb – CBUC

Mike O'Connor – CBUC

Rod Rasmussen – individual

**** Faisal Shah – MarkMonitor ****

Martin Sutton – CBUC

ICANN Staff

Margie Milam

Gisella Gruber-White

Apologies:

Marika Konings

Glen de Saint Gery

Coordinator: The recording has started.

Greg Aaron: Thank you. This is the Registration Abuse Policy Working Group Meeting for 18 January 2010. This is Greg Aaron speaking. And why don't we begin with our roll call.

Gisella Gruber-White: Good morning, good afternoon to everyone. On today's call we have Greg Aaron, Mikey O'Connor, Faisal Shah, James Bladel, Berry Cobb, Martin Sutton, Rod Rasmussen. And from staff we have Margie Milam and myself, Gisella Gruber-White.

I don't have any apologies to date except for Marika who is on her way to the US. And if I could just remind everyone to please state their names before speaking. Thank you.

Greg Aaron: Thank you Gisella. Okay our agenda for today is to talk about our schedule since we have about four weeks left until we publish the paper.

From here on out because time is short we are going to be focusing on the recommendation sections of the paper of course some of which are drafted and are in flux. Some of them we know require some additional work.

Drafts of the background sections and so forth are of course out in the master document. And those sections can be marked up as you feel is needed. I think James for example did some markup at the end of last week and sent that up to the list.

So on those recommendations on the background sections please submit your comments as soon as possible.

Marika will be incorporating those. And we need to know if there's anything that's - that needs to be discussed in the calls or further on the list.

What we're going to start doing is, by the way if - please put your phone on mute -- I hear some background noise -- if you're not speaking.

What we're going to be doing is some straw polling on the recommendations. We are going to use an online polling mechanism to do that.

And the idea is to kind of figure out where the group is as a whole. It's also a formal mechanism to find out whether anyone would like to draft a - not a minority statement but an alternate view on any particular recommendation.

After we figure that out and see if we need to do any editing then we'll go through a second round of online polling.

And that second round will not be straw polling. That will be where the members of the group actually kind of put in your votes for where you particularly stand on recommendations. And that's going to be our official measuring mechanism.

So in the final report when you see a recommendation and a consensus level noted, we'll also have notes about who voted or provided support for which recommendations and so forth.

Marika is going to try to kick off the first round of polling later this week. She's at a staff retreat at the ICANN headquarters in Marina del Rey.

But she and I were talking last week about putting up all the recommendations that currently exist in the paper, okay. And that's going to include anything that we iron out over the next day or two.

So then you'll get a mail. You'll be able to login at your leisure. It will have a few working days where you can go in and work your way through that set, write any alternate views or edits that you would like to see.

Those will include friendly edits or friendly what you call them, friendly amendments. So when you see that, please do fill that out. It's going to be very important.

We want to see if there's any places where we can up levels of consensus by making edits perhaps.

I sent out around a note also the other day saying that if you're going to make edits to background sections and so forth it needs to be done basically within the next ten days.

At a certain point we do have to basically close down work on certain things just so we can rationally wrap things up.

We don't want to start trying to revisit issues if we think as a group we've kind of reached the end of the process on something.

So the earlier you put in your comments, the better for the group as a whole. So again, this is - we're getting towards last call on these text sections as much as is possible.

We have a meeting next week on the 25th. Next week is also kind of a drop dead deadline for final edits.

We have a meeting on the 1st and then a meeting on the 8th where we need to wrap up any final work. So does anybody have any questions or comments about the schedule?

Okay. What'll then happen is the paper gets published by the 12th. It goes to the council. There's the ICANN meeting in Nairobi.

I will not be there. My company has decided to significantly cut back its participation in the meeting due to security concerns.

Is there anyone on the call who's planning on going to Nairobi?

Mikey O'Connor: I am going. This is Mikey.

Greg Aaron: Okay.

Rod Rasmussen: I am going as well. This is Rod.

Greg Aaron: Rod. Rod and James are as well.

Martin Sutton: And Martin. I'm going as well.

Greg Aaron: Okay.

Martin Sutton: I hope to anyway.

Greg Aaron: Okay good. Did you hear about the incident last week in Nairobi?

Rod Rasmussen: Yes, yes, yes.

Man: Yes.

Rod Rasmussen: Yes, the uprising?

Man: Everybody's...

Greg Aaron: Okay. So, well protests and leading to some violence unfortunately. All right, and then after Nairobi at some point we'll start a, the public comment period.

Marika told me that the standard comment period is 20 days. So that would be open for 20 days. So that would be open for 20 days.

And during that time everyone in the community including stakeholder groups can submit their comments.

We'll then digest those, see what changes we want to make to the paper and then we publish the final report.

I'm assuming we can do that before the next ICANN meeting which would be Brussels in mid to late June if not before that.

So maybe later this month we start - we probably won't have any meetings. We'll have a meeting in Kenya. Hopefully the remote participation will work better than it did in Seoul.

We won't have any meetings during public comment period. And then maybe we have biweekly meetings or meetings as needed to digest that public comment and do whatever we feel we need to do.

So that's the outlook. I see hands from James and Mikey.

James Bladel: Yes Greg with respect to the typical length of the 20 days for public comment, I think for something of this length I can foresee that it will probably request an extension and be granted one.

So perhaps if we can get that out of the way initially and just release it for a longer comment period I think that might save us some scrambling at the end of the 20 days. Just that's my opinion.

Greg Aaron: Do you need that for a particular group or just in general because it's a long paper with a lot of stuff in it?

James Bladel: It is a long paper. It has a lot of material. It touches on a variety of subjects that I know are prone to generate a lot of input and feedback.

And I'm sure that most of the constituencies will want to have some sort of response which also takes a little bit longer than 20 days.

So perhaps for planning purposes and for when we're filing the request for the public comment I would suggest getting a comment period a little bit longer than the standard.

Greg Aaron: Okay. Mikey?

Mikey O'Connor: Thanks Greg. It's Mikey. Are we planning to present anything to the council, any kind of a status report on how we're doing? And if so since you're not going to be there who's going to do that?

Greg Aaron: We, yes we've always planned on having two things happen in Nairobi. One would be an update to the council.

Now it's a, an initial report. So what that might basically consist of is a little PowerPoint presentation containing the high points including the recommendations as they currently stand.

And after we wrap-up the paper, Marika has volunteered to help us create that presentation. So it's an initial report. We give a status update on it. Unknown census initial report how far the council wants to get into the issues, especially since they might be revised.

I don't know, I know Marika will be there. I don't know if our council liaison Mike Rodenbaugh will be there but I'm assuming he will because he tends to go to all the meetings.

And then, you know, if anybody else wants to sit in on that section...

Man: Hello?

Mikey O'Connor: Did Greg just drop off?

Man: Sounds like Greg just dropped off.

Mikey O'Connor: Yes okay...

Man: We lost Greg.

Mikey O'Connor: Well he'll get back. I'll bet his - I bet he fell off the call.

Man: Who's got anything bad to say about Greg while he's...

Mikey O'Connor: Yes I was just thinking got such an opportunity.

Man: We should sign him up for lots more work here.

Mikey O'Connor: Yes.

Man: Yes there you go. Oh I hear you, officially volunteer to do the rest of it and we're all done, right?

Mikey O'Connor: Yes right. That's what I heard too, yes, yes, yes. So he's probably back in a minute or so.

Man: So weird I'm still talking. He must have went on inadvertent mute or something like that.

Greg Aaron: No, no.

Mikey O'Connor: Oh you're back.

Greg Aaron: That - I didn't touch my phone. Can you hear me now?

Man: Yes.

Mikey O'Connor: Yes. You're fine now.

Greg Aaron: I did not touch my phone.

Mikey O'Connor: Well that was something strange.

Greg Aaron: Where did you lose me?

Mikey O'Connor: Well...

Man: Lost you at where you are saying that if anyone wanted to volunteer to participate or show up for the presentation to the council.

Greg Aaron: Oh, okay sure. So we can talk about that now that we know that several of you will be there. And then we'll have - we're trying to get a separate meeting like we've done in the past where we just kind of have an open meeting for members of the community to come in, ask questions give input.

We can consider their input as we revise the report. I don't have a time yet from Glenn when that might be possible. So I don't know which day it would be.

James and Margie?

James Bladel: This is James. I'll let Margie go first.

Margie Milam: There's just - if you guys want a longer comment period just let - just tell, you know, tell us what period should be. I'm not sure that the timeframe is set in stone.

So if the group feels that, you know, 45 day or however long period is more appropriate just tell, you know, us and staff will make sure we post it for that amount of time.

Greg Aaron: Thank you. Yes the 20 days is kind of the standard. But we can do what we feel necessary. James do you want to go ahead?

James Bladel: Yes. Hey I'm going to be a little bit of a contrarian here and put this idea on the table.

At this point is there a whole lot of benefit to our charter and our mission to have another open meeting where we brainstorm about abuse issues with members of the community?

And I don't want to sound like a creep for saying that. But it sure sounds like an opportunity to revisit a lot of well worn material and reopen a lot of issues, some of which I think we struggled quite a bit to achieve a very delicate consensus balance on the wording.

And I don't know, I would just hate to for any of that to be duplicative. And I recognize that we want to encourage and be open to all types of participation at all points in the process. But at some point we have to be respectful for the work that we've already done.

So I just wanted to get that on to the table and, you know, stand back and allow others to poke me with sharp sticks for saying that.

Greg Aaron: Okay. Thank you James. Mikey why don't you go and then I'll go.

Mikey O'Connor: I love the opportunity to poke James with sharp sticks. And I'll take that any day.

I agree. I think that if we were to have an open meeting we might want to set a different expectation for that meeting and say that we are reporting out and explaining rather than taking input on in any substantive way.

But, you know, I think that there could be value to the community for people to ask questions and get clarifications.

But I would agree that we wouldn't want to think a whole lot of in the sort of other public policy arena that I hang out in the broadband arena. We would call that taking testimony.

You know, we're way beyond taking testimony that what we were doing now is giving people an opportunity to see the first, the initial report, ask questions about it so that they can better formulate their public comments but not, you know, not set the expectation that we're going to fold comments from that meeting into the draft that we're presenting because it's too late.

Greg Aaron: Yes. This is Greg. I would agree with that. I think the concept would be to present the recommendations and the findings of the paper.

Not in fact maybe it's the same presentation the - in slide show format that we give to council. It's saying here's what's in the paper.

It's not opening up those issues necessarily for further explication. I think the thought would be if you're - we're going to be heading into a public comment period. We're here to answer any questions.

People can certainly - I wouldn't be opposed to letting people orally give their feedback but only if they understand what the recommendations are and what we've already talked about.

I think the expectation setting is very important or it becomes kind of a waste of time.

I wouldn't mind having - I wouldn't mind being able to say yes we had an open meeting in Kenya. We let people give their opinions and then we open the public comment period.

And maybe we see what people say and incorporate that into the next draft. And of course what we incorporate into the next draft is ultimately up to us.

Mikey O'Connor: No, this is Mikey. I think I'd be cautious about taking testimony on the fly like that. I think that the way to set it might be more along the lines of the first part of what you said.

You know, we're explaining our report and answering questions to better inform your public comments. But please don't mix them here at any great lengths.

Make them in writing because those are the ones that we're going to look at and use. And to the extent that you need to set a context for that that's fine.

But recognize that we're probably not going to be taking a whole lot of the oral comments, that the written ones are the ones that really count.

Greg Aaron: Okay. So it sounds like maybe in principle, yes we have support for during the meeting. But the expectations need to be well expressed and tight.

The proposal would be to set forth the recommendations and explain what they are, to let people ask questions about them. But this is setting up the written public comment period. Is - does that make sense? Does that sound okay? Faisal?

Faisal Shah: Yes. I guess I'm a little unclear. I we're going to open up the comment period are we going to - and somebody - I mean and there'd probably be some, I would presume some good suggestions coming in through the comment period from some of the stakeholder groups.

And I mean I would think that we're going to incorporate those comments into the draft. So I guess I can see what Mikey's saying.

However I do think that we are going to be taking some of their comments and we are going to incorporating them (sic).

And I guess I don't want to send an expectation to people that whatever they say is not be considered by this working group. Does that make sense?

Mikey O'Connor: Hi. This is Mikey. Let me jump in on that. I having lived through a lot of public policy in other arenas, if I were running that meeting, what I would say to the people in the room is you're welcome to express any opinions you want.

But if you want to have us formally consider what your opinion is you have to write it down. There's no way that we can field questions in a testimony format at this stage in the process.

That happened in Seoul. And we did. But at this stage of the game we're now giving you an opportunity to ask us questions if there are things in the report that confuse you and then set the stage for your real comments which have to be in writing. And then absolutely for sure we're going to incorporate some of those suggestions in the final report.

It's not to say that we're not going to listen. It's just that the vehicle for getting the information to the working group partly because of the way that we work and partly because some of us won't be there and you know et cetera, et cetera. So...

Faisal Shah: You know, I don't have a problem with that. I think that sounds right.

Greg Aaron: Yes. This is Greg. I think that's very reasonable. And traditionally the stakeholder groups have always provided some written comments anyway on any working group.

I'm - so I'm assuming that they'll provide written comments in the comment period anyway.

So maybe what we've arrived at here is the best of both worlds. And I think limiting the scope sounds like a very good idea. So any other comments? It sounds like we have a plan for Nairobi.

Okay, if no other comments let's move on then.

Next on the list was we're supposed to be talking about the cyber squatting recommendation. So Martin, what is going on with the recommendation? Where do you feel we are?

Martin Sutton: Well first of all, I think thanks to those that have commented back, particularly James Faisal and a couple of others not on the call here.

But at the moment I'm just going through those to refine the background so it transfers some of the things that I commented on into the background if they're not already in there just to make sure that they're covered and redrafting that recommendation with some of the feedback.

I appreciate James' comments. It is rather prescriptive but I didn't want to miss some of the key points. I think Greg your approach in terms of rewording it would cover off most of that.

And just running through that I'll hopefully submit that either later on tonight or first thing in the morning for everybody's chance to review.

Greg Aaron: Okay. Thank you. Does anyone else have any comments on the work that's currently underway?

Martin is going to be revising a bit of the background section it looks like and then the recommendation itself based upon comments received thus far.

Let me just reiterate if anyone else has any comments on what they've seen on the list in the last week, please get them out to the list after this call today. Martin would need that.

James?

James Bladel: Yes thanks Greg. This is James speaking. And I wanted to thank Martin for putting that together. And also just to let everyone know that I put similar comments into the - attached to that language where it appears in the draft report.

So I don't remember which one came first, my comments on the list or the comments on the report. So please just treat them as equivalent. And if we fix it in one place then disregard it in the other. Thanks.

Greg Aaron: Okay, thank you. Okay so we have an action item for Martin. And I think whatever you come up with Martin may end up in the straw polling later this week then.

Martin Sutton: Yes okay.

Greg Aaron: Okay. Let's move to uniformity of contracts recommendations. And we saw a last minute update for Mikey. So Mikey you have the floor.

Mikey O'Connor: Thanks Greg. Does everybody have the draft that I sent to the list literally seven minutes before the meeting started?

Presuming that you do, if you could open that up I'll walk us through that real quick like. Basically there are two it's probably easier to read in the Word format. For some reason it didn't show up very nicely when I preloaded into the email. But either way is fine. It's the same stuff.

So the very first part is the prior language. It's just the two sentences that were the draft at the beginning of the last meeting.

And what I did on this is the first proposed revised U of C recommendation expands the first sentence. And this recommendation would stay with the U of C stuff.

And Berry I apologize for not giving you a chance to review this. I totally didn't realize that I was...

Berry Cobb: Not at all. You and I are on the same page. This is Berry.

Mikey O'Connor: Yes. Well anyway so what I did there is I was wondering did anybody inform PDP whether a minimum baseline of registration abuse provisions should be created for all in scope ICANN agreements. If created how such language would be structured.

I changed something. Oh I guess I just changed the - to the working group rather than to the U of C. I was looking at this and going why has this changed at all?

And oh and then the last part of the sentence James's comment, and if created how such language could be structured to address the most common registration abuses.

James raised the point which I agree with that every single registration abuse we could wind up in a sort of endless debate.

So those were the two changes to that, fairly minor changes. I view those as friendly amendments. I don't expect much controversy there.

Then the second sentence, several things happened. The next little paragraph says proposed, revised use recommendation.

And what we concluded on the call was that we would move this second recommendation to the malicious use chunk of the report that Greg had drafted.

And we would promote that chunk of a report to being a (meta) issue. And so I just recorded those action items mostly for report format or writers like Greg

and Marika and then wrote a quite a bit expanded recommendation sort of based on trying to synthesize the call.

So if I goofed up I was doing this really under the gun. So feel free to change this.

But what I was - I carefully use the word investigation rather than working group because of the need to step outside of the normal policy making framework. And PDPs won't work here.

And I also highlighted the notion that in addition to policy changes we may be developing and promoting best practices to be undertaken to understand what innovations might be possible. That was a phrase that came out in the conversation and I thought was a nice one so I stole it.

Within the ICANN context was in there to draw a boundary around scope to address criminal, capital letter criminal, rather than just any old malicious use of domains.

We had a bit of a conversation about criminal and I decided that was a good further qualification scope so I stuck that in.

Several solutions were thrown out in the conversation and so I just wrote them down. I don't feel particularly strongly as to whether we need that sentence or not. But I didn't want to lose them.

And then I added one sentence at the end to get across this idea that we might want this to be something that can be invoked pretty quickly on an ongoing basis if something new pops up.

So there it is. That's the frenzied writing effort. The floor is back to you Greg and we can beat this up.

Greg Aaron: Okay. I suggest first let's go to the U of C recommendation. So the newest language is the working group recommends a formal PDP or issues reporter, however the right formulation is, to evaluate whether a minimum baseline of registration abuse provisions should be created for all in scope ICANN agreements and if created how such language would be structured to address the most common registration abuses?

Okay great so let's open that up to the floor. And I see Berry's hand.

Berry Cobb: Yes. This is Berry. Thanks Greg. My comments kind of go back to the great topic of use versus registration, registration abuse versus use abuse. So I'll just table that for a few minutes until we get past the recommendation part.

Greg Aaron: Okay. Okay, I'm going - this is Greg. I'm going to raise my hand.

Man: Go ahead Greg.

Greg Aaron: And then I'll turn the floor over to James. In the background section for U of C, do we talk about what a minimum baseline of registration abuse provisions is?

I don't understand what is being recommended here. Is it provisions that deal with existing abuses or future abuses or can be applied to all abuses?

I don't understand. I'm trying to look at it from the viewpoint of say a council member. And I don't understand what this would actually be?

Mikey O'Connor: This is Mikey. What if we instead said minimum set of registration abuse provisions? Would that clarify it?

Greg Aaron: No. The - when we've had a registration abuse in the past it's been dealt with specifically like if you are abusing the ad grace period there's a mechanism that kind of explains what the thresholds are for example.

Or if you don't provide accurate WHOIS information, there's a specific - there's specific language that addresses that and also specific language about how that might be cured or pursued.

Here it's incredibly general. And I don't know how it would be applied or how such a thing would even be created.

Mikey O'Connor: This is Mikey again. I think that this reads better in the context of background statements. Because the background tees up this recommendation by explaining how much variability there is in the contracts.

Remember that the context of all this is how uniform contracts are. And the recommendation is saying because they're not and that's all based - that's all up in the background, and because this is a problem and that's all up in the background, we need at least a minimum set of provisions to bring some uniformity through the contracts.

Greg Aaron: Maybe a way of looking at it is well which contracts are we talking about? Are we talking about registrar registrant agreements?

Mikey O'Connor: Well...

Greg Aaron: Or the RAA or...

Mikey O'Connor: All of the above. All ICANN in scope agreements -- RA, RRA, little RA, and big RA or whatever all of those are. But there's four of them that ICANN is a party to.

Greg Aaron: Okay. I see James's hand.

James Bladel: Thanks Greg. This is James speaking.

So good work Mikey. I should say that first and foremost. I think that this is a good, you know, encapsulation of the work there.

I wanted to get an idea out which was that it seems when you're calling for a PDP that looks - is going to take a look at all of these different agreements, I wonder it almost seems like you have two approaches available or two paths open to you.

One would be that you have a PDP to examine all of the agreements, sort of an umbrella PDP that can, you know, with a very minimal for I want to say generic set of language that it can take and see if it applies to all these different agreements or you can have a very specific PDP but it's going to have to be broken up per agreement.

Because I think that it's really a little too ambitious to attempt to go over each and every one of the agreements that are affected with a fine toothed comb and to get all of the affected stakeholders and parties together for each - for that one PDP.

Some just thinking just logistically about how to break this up one thought might be to slightly modify the language. And I don't have a proposed alternative yet. I'm still kind of writing on the fly here but something to the effect of whether or not (maybe) an abuse, baseline abuse provisions could be used to ensure that all parties to an ICANN governed agreement have the necessary discretion and flexibility and authority to act on abuse.

So rather than essentially selling out the recipe in each one of these agreements, here's what you should, and must, and can and will be doing to address abuse is to really just take a look at each agreement in the context of does it preserve and require what the different parties should be doing as far as abuse.

So I don't know if that rambling made any sense. But I think that the more language we want to insert than the fewer documents or the fewer agreements are going to have to be looked at and vice versa if we want to insert just kind of a blanket statement into a variety of documents that it can probably all fit under one PDP.

Mikey O'Connor: This is Mikey. I want to jump in here. It seems to me that okay, you know, if I were to put my project manager hat on I would say let's do an umbrella one first, and sort of map out the answers to those issues that you just raised James and then develop a little roadmap as to how to proceed in those specific agreements because I could see a couple of outcomes.

One would be that like you say, there is sort of a single statement that can be applied across the board or after a bunch of analysis it may turn out that different agreements need different things inserted in them or none of the above.

I mean one of the things about this recommendation is to evaluate whether this baseline would be inappropriate. And I do want to highlight those two words, insist on saying that they must be developed but basically to kind of carry on the work of the U of C team and dive in.

And my instinct says start broad, start at the high level, and then determine whether you need to get detail. But that's just my sort of instinct and first reaction.

James Bladel: Okay Mikey. And I see that. There's merit to that approach. And I think like Greg I'm trying to view this through the eyes of, you know, the council and make it as acceptable to them as possible for what it's calling for.

And I would also point out that some of these agreements that are mentioned here are required by ICANN. But ICANN doesn't necessarily hand a

registration agreement to a registrar and say this is what you have to present to your registrars.

Because you have to have one that says you have to have one in force and put it to the registrant. And I think there's a couple of provisions that are specifically spelled out such as something about UDRP and other consensus policies.

But beyond that I think that registrars are free to add or expand upon that as they need to depending on their jurisdiction, their market, and stuff like that unless maybe Margie can correct me if I'm way off the reservation on the statement.

But so a lot of these agreements while they are - they're not necessarily written by ICANN or ICANN may not be a party to them, they just may be a more on the periphery.

Mikey O'Connor: Yes. And that's part of the reason why I think we need sort of a, you know, a first swipe that sort of lays out the options and lays out the path forward.

But, you know, I guess what I would need to do is start with the registrar registrant agreement just because, you know, it feels like it's a little bit too low in the level of detail.

But the first round would be to take a look at all of the agreements. First evaluate whether or not there even needs to be a minimum.

And if so sketch out in rough terms what that minimum should address and then take each kind of agreement and (return) once we got that sort of overarching (approach).

Greg Aaron: Okay, other thoughts?

Mikey O'Connor: Now again this time I will actually pay attention to what I volunteer to do. And I'm, you know, I'm happy to take another (unintelligible) to try and incorporate some of that, expand this unless you think that the language is okay as it stands?

Greg Aaron: Berry?

Berry Cobb: Thanks Greg. This is Berry. I guess I'll go ahead and kind of bring this topic up because it is within the recommendations that Mikey rewrote here.

The recommendations themselves I'm happy with the language. I guess I'm starting to get more and more stuck on the issue again between registration abuse versus use abuse.

And I think I'm kind of starting to see the Greg Aaron light now having read the section relative to use versus abuse.

And, I'm sorry, registration use versus use abuse or registration versus use. But in that section your - it outlines fairly clearly and I guess it kind of goes back to scope.

But it outlines the fact that not only is, you know, the registration realm versus the use realm in reference to scope a topic within the working group, but I guess now I'm starting to realize that it's a scope issue for ICANN in general.

So by the way I've read that section is as soon as the domain has been registered that pretty much limits the visibility or responsibility or scope definition of ICANN.

Is that a fair statement? So that ICANN is not structured or has the jurisdiction for lack of a better word, for anything that happens after the registration takes place?

James Bladel: This is James. Oh go ahead.

Greg Aaron: Oh this is Greg. In that material in the paper we are careful to say that registration issues can take place after the domain is created.

And those registration issues could be things like, you know, transfer issues, reallocation of the domain, you know, inaccurate WHOIS. Those things can pop up after the creation. And those are registration issues. So those are within scope.

But if it's a pure use issue, someone is using their domain, then that's where you start to be outside of ICANN's scope.

Berry Cobb: Okay. I guess, you know, understanding that a little bit clearer Greg, I can see why you were stating like when I included the term APB, which I'm going to offer up if that gets stricken out of the report and that last annex of the APB. Because now I clearly understand why you're saying that those, that APB example revolves around the use of the domain not the registration of a domain.

And now that that is a little bit clearer to me I still believe that there should be some sort of minimum baseline relative to registration abuse.

But now I have really no - and I know that this isn't a PDP and I don't need to have an idea. But personally I have no idea of what that minimum baseline would actually look like relative to just registration abuse.

I mean could it be something that it was - that it's a line since cyber squatting is definitely tagged as a registration abuse?

Would there be like a sub line item in this minimum baseline that specifically talks about cyber squatting and registration use and - verse I mean

registration abuse? So I don't know. I guess I'm just kind of at a quandary now. So I'll turn it over.

Mikey O'Connor: This is Mikey.

Greg Aaron: Okay.

Mikey O'Connor: I - I'm sorry.

Greg Aaron: Mikey why don't you - this is Greg. Why don't you go ahead. And then we'll go to James and then Margie.

Mikey O'Connor: I just want to respond to Berry's comment. I think that's part of the reason why we need this first round project to be pretty broad to nail down some of those definitions and get some of those issues better understood.

We just didn't have time in that subgroup to get this deep. And now that we've gotten this deep what we need to do is drive a stake in the ground and say that there needs to be one more round of that exploratory kind of conversation before we start drafting the specific language if it's even required.

Greg Aaron: Okay. James?

James Bladel: Yes I can go ahead and defer to Margie. Oops it looks like she put her hand down.

Yes two things. This is James speaking. First thing is that I wanted to re-emphasize what Greg had mentioned earlier.

There is language in the report that says that the registration issues don't end at registration, that they can be ongoing throughout the lifecycle of the domain name.

And the second thing is, you know, with regard to what Berry was saying as far as the abuse guideline provisions or minimum baseline provisions, I think there's still something valuable that we can work through that with that recommendation.

And I think it may be something that to the effect of, you know, requiring that registrars for example, have an abuse team, have abuse procedures, have a contact for reports of abuse, that they have some basic monitoring and mitigation tools and some demonstrable ability that they're using them.

So I don't think it's necessarily a prescription or a recipe to, you know, in abuse type X you will do Y, in abuse type A you will do B.

I think it's much more, much broader and I think more useful to say that you will have these procedures and act upon them as necessary.

So I think there's still something that we can include to that effect.

Greg Aaron: Okay, other thoughts?

Margie Milam: Greg it's Margie. Actually I decided to put my hand back up. I actually agreed with pretty much everything that you said and James said.

The one thing I kind of wanted to highlight on the scope issue and the uniform of contracts issue is, you know, because the way the RAA is set up, and I'm talking now specifically about the registrant registration agreement, James is right that ICANN typically doesn't say you have to use these exact words.

The contract will give you ideas of what has to be in the agreement. But I think the actual language is left to the registrar itself.

And so when you talk about the issue of like scope, it might end up - you might end up in a situation where the recommendation is, you know, that the registrant agreement should give the registrar the right to take action when faced with illegal activity.

Now that's a pretty broad statement. It doesn't mean that ICANN would be concerned about all aspects of illegality because that's outside of scope if it's purely content for example.

But just because there's a scope issue doesn't mean that there can't be a recommendation that might, you know, include a broad statement like you need to have, you know, the right to take action when illegal activity is, you know, taking place.

And so I just don't want to get too boxed up on in - on the scope issue because there's ways - there's different ways of addressing it too, you know. And that's something that that the group, the PDP could pursue. And we don't need to limit, you know, that right now.

Greg Aaron: Okay. Thank you Margie.

Berry Cobb: This is a very (into) kind of a counter question to that. So and this is just to help me understand the ICANN world more here.

So as - the second part of the U of C recommendation is stating that, you know, yes we've got all this work going on in the realm of registration abuses. But oh by the way in the use realm which is certainly, you know, I think where a lot of the pain that we feel out there today and I know in the use realm is probably something much more close to Rod as well, if we were to put forward a recommendation that the GNSO council's going to read that says yes we should also be taking a look at use abuses whether that's an issues report of PDP or best practices -- whatever the case is -- let's say the council

bites on that part, by what authority or scope does ICANN actually have to do anything about the use/abuse stuff?

And my point is or my ultimate question is is now I'm starting to question whether we either include it or not other than just stating that we recognize it's a problem out there?

Greg Aaron: This is Greg. I see Rod's hand raised.

Rod Rasmussen: Yes thanks. That was Rod. And Berry it was a good point. I think we got some of the things that James brought up just a minute ago get us a long ways towards my side of this issue I guess since we've defined it that way.

But is the setting up or dealing with abuse not necessarily saying how you have to deal with it or that you have to deal with it or that you have to have the ability to deal with it?

You know, that comes in - and what authority does that come under? Well it's whatever authority ICANN wants to claim.

And there's no international body out there saying ICANN you have a scope issue or control over this particular thing and ICANN you don't. It's basically whatever ICANN decides it wants to do and wherever people push back against it.

So what authority does ICANN have to run anything? It all comes from what this point is a series of agreements.

But, you know, an alternate route could be set up at any point by anybody and we have a different Internet. So it's kind of just a giant conglomeration of people deciding that yes, that's the way we're going to do things.

So I would think that if we can separate out, you know, the dealing with particular registration issues versus handling abuse issues that are deemed as use, and being less prescriptive about that but at least providing the framework for which and within to deal with that and the playing field for how to deal with that I think we're in good shape. That's my 2 cents.

Greg Aaron: So this is Greg. I've had my hand raised. And we've kind of slid over the malicious use mass issues.

And my personal view there is that the parties like the registries and the registrars, my conclusion is they're already empowered to take down domain names if they want to.

Question is do all of them do it or do it effectively or what or so on? And there are significant scope problems with requiring them to do those kinds of things.

And that's why we have the section in the paper about well here's what the contracts say about those kinds of things. Here's where various registries and registrars have derived their authority to take down domain names. And we have these indemnification issues.

I mean one problem for me is a lot of people make complaints. It's like there's a lot of crime on the Internet. What do you do about it? What's ICANN's role or what can it do?

For one thing that it comes down to for me is there are a very small number of parties who may be bad actors. And if you address them somehow you can deal with certain things. But I don't know on what basis we can do that.

I mean I don't think that ICANN can force registries and registrars to shut down domain names. That's what it comes down to -- seems to be clearly out of scope for use.

So what do you do to help the situation that way? I mean we all want to help the situation. So what -- I think we - we're at a quandary that people have been kind of trying to wrestle with for a while in the community.

What recommendations for best practices could help and what are those intersections with registration issues where policy could be made?

So I mean Rod on one hand there are nonbinding things like best practices. Are there recommendations for best practices that should be made?

Should - I mean should a recommendation about malicious use be, you know, all parties have very clear abuse policies or something like that?

Rod Rasmussen: Is that it question for me Greg?

Greg Aaron: No you and I'm also just throwing it out there in general.

Rod Rasmussen: Okay.

Greg Aaron: I mean we've kind of - we talked about the scope issues and so forth. But what are our recommendations in these areas? We have to get down to something concrete to put in the paper.

I'm going to throw that out in general. And I also see Mikey's hand raised.

Rod Rasmussen: Yes just my thoughts on having at least a base level. I think that there's - there should be something in policy. That's my opinion.

So but anyhow, how you do it, how you actually react to it all of that, I think that's what comes with the realm of practices.

But that you have at least something in place to deal with it, recognize it and maybe some definitions around it, because again, you know, you run into the same problem we're running into here with, you know, scope is that well what is it that I'm dealing with? Is it a registration issue? Is it not a registration issue -- those kinds of issues.

So if you don't define it somewhere it's actually in a contractor and some sort of policy statement then everything's gray.

Faisal Shah: This is Faisal. I agree with that.

Greg Aaron: Mikey your hand's still up.

Mikey O'Connor: Yes my hand is raised mostly in response to Berry's point that maybe we should drop this malicious use and abuse recommendation. And I just want to stand stoutly in opposition to that.

I really think that we're on the right track in this last five or ten minutes of conversation.

I think we're all wrestling with some complicated but very important issues that are really worthy of a formal look, no probably not a PDP because sort of another one of those things that's perhaps not going to result always in policy.

So that's why I worded the recommendation draft to say something other than a PDP. But boy, I'd hate to lose any recommendation at all about use of these. I think that would be a tragedy.

Greg Aaron: Okay. Anyone else?

Okay, so we have a recommendation about uniformity of contracts. Are we - and that's the one that Mikey put out about a minimum baseline. Are we making any changes to that?

We've got Mikey's proposals out there which is to evaluate PDP to evaluate whether a minimum baseline of registration abuse provision should be created for all in scope ICANN agreements and if created how such language would be structured to address the most common registration abuses.

We've had some discussion about how there are many different agreements for example. And that may present some issues. So we've got some language.

What we need to figure out is are we going to change this language and if so how or is this the one we're going to run up the flagpole in the straw polling?

Okay deafening silence. Let me restate the question a different way. Does anyone want to make a friendly amendment to this language or should we run this one up the flagpole in the polling later this week and let people mark it up and so on then?

Faisal Shah: This is Faisal. I think we should run this one up.

Greg Aaron: Okay, James? Thank you. Thank you Faisal. James?

James Bladel: Yes same. I would say very much the same thing. I think that we should put this one out. And if we can do so in such a way that it allows for friendly amendment that would be great, see what we get back.

Greg Aaron: Okay we'll do that then. And the ability to suggest edits and so forth will be part of the polling mechanism. Okay. So that's the first one.

The second one is about malicious use. And we had some discussion runs around that. By the - the malicious use section does need recommendations.

Now Mikey's proposed recommendations include - well it's an investigation to understand what innovations might be possible.

Might we be able to make that a little more specific?

For example on the indemnification point what might be the - a next step?

To ask ICANN if it can indemnify contracted parties for example? What are we - are we just kicking this down the road?

Mikey O'Connor: This is Mikey. The way I was writing this was to provide a pretty flexible container into which all of those issues got poured.

So, you know, I was purposefully writing it pretty squishy because, you know, we're treading into a couple of dimensions of new territory.

One, you know, this whole meta-issue thing where it's across a lot of different issues and working groups needs probably to get baked a bit.

And this idea that we're doing a concentrated ICANN conversation but not necessarily leading directly to policy is also sort of a new track through the wilderness.

So I was sort of consciously softening the edges of this one a bit to allow the group some room to maneuver when they're figuring out what they were going to do.

Greg Aaron: Okay.

Martin Sutton: Can I go Greg? It's Martin.

Greg Aaron: Go ahead Martin.

Martin Sutton: I'll just try to understand the question that you raised in terms of does it need to be more detailed or prescriptive?

And because I think I like the way Mikey's written that one and leaving it quite open. And therefore any work that may come off the back of that has quite a wide arena to look at and didn't (unintelligible) and just, you know, two or three specific.

So I just want clarification. What were you thinking of in terms of the questions that you posed?

Greg Aaron: Well this is Greg. One of the questions I'm thinking about is have we fulfilled for example, the requirements of the charter which said we were supposed to identify aspects which are within ICANN's mission to address and which can lead to establishing of policies that are binding on registry operators and registrars? In this case I don't know if we've done that sufficiently yet.

Martin Sutton: But then we ride up against the issue again which is best practice versus policy. So again I think perhaps - so my interpretation is the way that you - is suitable to meet the charter needs that perhaps that's because we've been looking at this and are closer to it than others looking in from the outside on the basis of just receiving a report.

But I think we'll always struggle if there's an insistence on policy changes, versus let's have a look at this explore the bigger picture and see where there might be more of a layered approach which could result in some policy that is probably more likely to rely on best practice techniques to begin with certainly...

Greg Aaron: Yes. And don't misunderstand me. When I look at the recommendation I see rapid takedown. And I don't know whether that we're talking about best practices that can be adopted or if we're talking about policies for rapid takedown. That is a distinction I think we can make now based upon our deliberations over the past months.

And then regarding WHOIS availability and content I'd like to talk about that separately here in a minute.

I think there are - I think we could do a better job of honing these because in some cases we know authority what's in scope and what's not I think. We just need to be a little more specific.

And recommendations for best practices and so forth are absolutely within the things we can do.

Martin Sutton: Okay.

Greg Aaron: But I don't think we should leave it so open ended that we're not being clear about what we've already discussed and have arrived at some conclusions about. That's all.

Mikey O'Connor: This is Mikey. Let me clarify the source of that list of four bullets in there which was just the call last week. Those are just the four ideas that came up on the call.

I would completely support the notion of expanding those, expanding the list, make some details, et cetera.

You know, I just want to make it clear that that was just the list that popped out, you know, really obliquely during the conversation last time.

And in fact I guess what I was sort of expecting -- and maybe this is where we're getting into trouble -- I was thinking that in the malicious use/abuse section that we would have a series of recommendations, not just this one, about things that could be explored to address them, and that this might be the kind of punch line recommendation that says given all these other recommendations that we've just made in this section we'd like to forward this list of recommendations and background material to this investigative group and let them carry forward and that this would be the one that launched that.

So one way to do this would be to take that solutions to include chunk out of this and expand them as separate recommendations that precede this as the final recommendation in that section. Does that address the question you've got Greg?

Greg Aaron: What we need to see are all of the recommendations related to malicious use together perhaps.

Mikey O'Connor: Yes I think that's right. And I was presuming those to be coming from somewhere else. So I didn't write those. I just wrote the one that fell out of the UFC recommendation.

Greg Aaron: Right. Maybe what we need to - I'm willing to take on the task of collecting all that and putting out a revised version of malicious use recommendations to incorporate - also to incorporate some of this material.

It's - what we perhaps have is we've got to get stuff from various points of the paper synced up a little better with some - also some cross-referencing.

Mikey O'Connor: Yes I think that's right. I think that's a great way forward.

Greg Aaron: I'll volunteer to work on that today.

Any objections? And Martin, I see your hand up.

Martin Sutton: Sorry I'll put that down. I would like to volunteer but I've got builders here at the moment and everything going on. So I won't be able to do it tonight and can work on it tomorrow.

Greg Aaron: Okay. Well I'll take first crack at it today and put some material out to folks and then we can mark up from there. Let's see if we can synch Mikey's recommendation with some of those other things that are already there and I think probably lurking in the text.

We're at 15 after by the way. So we've got an action item there. I wanted to bring you up to date on the WHOIS access material that Mikey and Rod and I had gone to do a little research. And we also got some material from the ICANN compliance staff.

I got some feedback from Mikey and I need to confirm a couple of data points with (Rob). But we've got some text to send out to you I think today after Rod checks off on the last sanity check.

What we did was we had identified in the group that WHOIS access is one of those places where you get an intersection with registration issues.

We looked at the contractual obligations and looked at what the compliance staff said. And then what we did was we also went and did a lot of WHOIS lookups.

And basically where in this text that you'll be seeing is we took 50 registrars. We looked at the top 20 in terms of GTLD market share and then 15 random medium-sized registrars and 15 small registrars. And we did WHOIS lookups on their Web WHOIS and their Port 43 WHOIS. And the registrars are required to have both of those.

And we found it looks like at least four registrars who might be in violation of their existing obligations. And then we found about another 15 more where there are various kinds of issues that came up.

Some of them had 43 servers that were responsive only part of the time or were dropping queries.

Some registrars give different information on Port 43 than they do on their Web WHOIS which is kind of interesting.

For example, if you go to the registrar and look up a .com or .net name they have, those are those thin registries, they'll give for instance one kind of contact and one kind of contact information only.

To get the other two contacts we have to go to the Web WHOIS or vice versa. We also found registrars giving expiration dates that are different from what's in their registry or and so on.

So what we found is a - some interesting lack of consistency. And if you're a registrant or another kind of user like a security responder you will get different information depending on where or how you look it up which is interesting.

So consistency and uniformity and the basic data that's coming back is very unusual. We didn't look at the accuracy of the WHOIS. That's something else that the council's doing under separate studies.

The compliance staff sent material which has been up on the list. And they basically said, you know, they get reports in of issues, they talk with registrars. A lot of those issues are resolved before breach letters come out. That's kind of a last ditch thing it seems like. And they listed how many they've issued over the years.

So there's in the background there's constant discussion of those issues from a compliance standpoint.

So bottom-line is on basic WHOIS access there are some issues we think. Again, sometimes you can't get to the data and sometimes the data you get back depends on where or how you look it up.

And that may be impacting a number of things like your ability to figure out what your expiration date is with your renewals, your ability to do transfers if you're a registrar or a registrant.

And of course it has an impact upon malicious use of domain names because you can't get the data you're looking for and you can't figure out who to call.

So one of the things we know is going to happen in next year is the new affirmation of commitments requires ICANN to do a comprehensive review of WHOIS issues within the next year. So I guess that affirmation came out in September or something.

So the recommendation you'll see is that we need to look at these access issues in some sort of a formal fashion. And that would be the recommendation to the council. We have to get that text out to you.

Rod, are you going to be able to do your last review of it?

Rod Rasmussen: Yes, I should get that done today Greg.

Greg Aaron: Okay. We need to get it out to the group today so they can take a look at it.

That particular registrars we looked at would not be identified in the paper which is the - kind of our custom in other areas as well.

If anyone would like to understand more about which registrars were doing what, we can do that I think within the group. And we have some documentation including a spreadsheet of where we look the things up and some screenshots when we found unusual problems and those kinds of things.

So as you look at that material if you do have further questions we can share that information. But in the paper that we circulate we will not be - we're going to describe the problems and how many registrars were involved with it but we will not list the particular registrars names.

So we have to get that to you. I'm sorry it's taken so long but a fair amount of research was involved. And I hope you post any questions you have about it.

So any other comments from Mikey or Rod on that?

Mikey O'Connor: This is Mikey only to say that I didn't do hardly any work on this. And Greg did a fantastic amount as did Rod.

This is another one that's showing up in other places. You know, and as you say, it bears on I RTP. It bears on (Tedner). It's, you know, it's, you know, it's another one of these ones where I think it's a great foundation for a conversation that will probably take place pretty widely in ICANN, so just an (atta) boy more than anything else.

Greg Aaron: Okay. Thank you.

Rod Rasmussen: I don't have anything else to add there.

Greg Aaron: Okay thank you guys. Okay we're at 25 after. We've got a few action items coming out of this call today. Let me just run over them briefly.

We talked about having a longer than usual public comment period. So I'll write that down and I'll talk about that with Marika. If anyone has thoughts on exactly how long that should be let me know.

We talked about Nairobi and very carefully stating what the scope of the open meeting would be.

Martin is going to send these cyber, revised cyber squatting recommendations tonight or early tomorrow.

Malicious use recommendation I'm going to work on today. And I think that's about it. Those are the main pieces of work.

And then later this week, I don't know exactly what day, you'll see a note from Marika about the straw polling and where that will be available and exactly for how long. But we want to have it for a few working days so everybody can login.

And you'll see all those recommendations from throughout the paper as they stand at that time.

So when you see that mail come out, please do go to that poll. Please mark up or make recommendations for changes if you think they would be helpful. Otherwise you can indicate your support or alternate view you want to write up.

That straw polling is very important so please spend some time on it. And of course everyone is still assigned to read through any background sections in that paper that you haven't already read through and suggest markups. Thanks to James for his markups.

And I think that's about it. We're at the end of the meeting. Any last thoughts?

No? Okay. If not we'll reconvene next week. And thanks again.

We're getting very, very close. But I think our recommendations are also getting honed. And let's run them up the flagpole and let us know what you think. Thank you everyone.

Mikey O'Connor: Thanks Greg.

Greg Aaron: Okay, take care.

Man: Thanks Greg.

Martin Sutton: (Kudos) Greg.

END