

**Registration Abuse Policies Working Group
TRANSCRIPTION**

Monday 13 April 09 14:30 UTC

Note: The following is the output of transcribing from an audio recording of the Registration Abuse Policies Working Group meeting on Monday 13 April 2009, at 14:30 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gns0/gns0-rap-20090413.mp3>

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Present for the teleconference:

Greg Aaron - Registry C. - Working Group Chair
James Bladel - Godaddy Registrar C.
Richard Tindal - Registrar C.
James Bladel - Registrar C.
Mike Rodenbaugh - CBUC
Phil Corwin - CBUC
George Kirikos - CBUC
Mike O'Connor - CBUC
Faisal Shah - MarkMonitor IPC
Roland Perry
Barry A. Cob
Rod Rasmussen - Individual
Gregg Ogorik - Cyveillance

ICANN Staff

Margie Milam
Geof Bickers
Glen de Saint Géry - GNSO Secretariat

Absent Apologies:

Jeremy Hitchcock - SSAC
Guanghao Li - cnNIC
Marika Konings

Greg Aaron: Well, I've got a couple of minutes after, so why don't we get started.
Thank you everyone for coming. I'll be your host. This is Greg.

Glen Desaintgery: Greg, should I get the recording started, sorry?

Greg Aaron: Yes. Let's go ahead.

Coordinator: Excuse me, this is the operator. This is a reminder today's call is being recorded. If anyone has any objections you may disconnect at this time.

Sir, you may begin.

Greg Aaron: Okay, thank you. Glen has graciously joined us. Technically today is a day off in Europe. So thank you for being with us today, Glen.

Coordinator: Philip Corwin joined.

Greg Aaron: Glen, now that we're recording, would you like to take the role?

Glen Desaintgery: Yes, certainly I'll do that for you Greg. On the call we have Greg Aaron: who is the leader of the group, Roland Perry, (Barry Cob), George Kirikos, Mikey O'Connor, Rod Rasmussen, Philip Corwin, Mike Rodenbaugh, and for staff we have Margie Milam, (Geof Bickers), myself, Glen Desaintgery. And I just see that James Bladel has just joined us, as well.

Have I - and we've got Richard Tindal who is on the Adobe Connect and have I left off anybody?

Richard Tindal: Yeah, hey, this is Richard.

Glen Desaintgery: Okay. That's all thanks. Great.

Greg Aaron: Okay, so, on the call but not yet on, please try to connect to Adobe. We'll have a document up there that we'll be discussing today and as usually we can use Adobe to help manage the speaking queue.

So first a bit of - and then we have, by the way, from (Gwang Hali) and (Jeremy Hitchcock).

Glen Desaintgery: And Greg Ogorek has just joined us.

Greg Aaron: Hello Greg. So first a bit of housekeeping, the Statements of Interest have been due. And Glen, are - do we have any further statements that we need to collect?

Glen Desaintgery: Yes, we've still got a few outstanding. I received the one from (Barry Cobb) and I'll send them this out during the call of the statements still outstanding.

Greg Aaron: Okay, that would be wonderful. Thank you. What I'd like to do is post the ones that have been submitted so far. If you could arrange for them to be posed up to the Wiki, that would be great.

Glen Desaintgery: Okay.

Greg Aaron: And let's have a goal of getting the rest of them submitted this week. So I'll put an Action Item up for that.

Okay, now, our main work for today is to go through the document that Marika had compiled for us and it's up on Adobe Connect.

And the first part is the definition of abuse. Various versions that have been tossed around within this group are up there and they're lettered A through J. And then Marika has added one which is number - letter K. And that was a definition that was put together by the Whols issues GNSO Drafting Team.

So evidently that one has gone through some process in that group and that's what that group came up with. And it's actually I think a very interesting definition.

What I'd like to raise, actually, is I'd like to go through that definition since it's new to us and then talk about maybe its merits or deficiencies when we match it up against the other definitions that we posted.

So...

Mikey O'Connor: Greg, this is Mikey.

Greg Aaron: Go ahead.

Mikey O'Connor: I'm just queued up to get into Adobe. Other may be, as well.

Mike Rodenbaugh: Hey Greg, it's Mike Rodenbaugh.

Greg Aaron: Hi Mike.

Mike Rodenbaugh: Can you possibly just move - I'm on a laptop and like K is cut on my screen. I see A through J. Can you just move it up a little bit? Perfect.
Thanks.

Greg Aaron: Okay. I think we've okayed everybody to get into Adobe now. Can you see everything okay?

Mikey O'Connor: Yes, thank you.

Greg Aaron: Okay. All right. Let me read K just since it's new. Misuse is an action that causes actual harm, it is the predicate to such harm, it's illegal or illegitimate as considered contrary to intention and design of a stated legitimate purpose if such purpose is disclosed.

James Bladel, I see you have your hand up.

James Bladel: Yes, and just very quickly, I don't mean to split hairs, but do we want to take a look at the difference between the misuse - the definition of misuse versus the definition of abuse or are we treating those as equivalent? That's fine, I just wanted to clarify because I think their definition is for misuse.

Greg Aaron: Well, that's a good question. Let's start at the beginning of the definition then. The question is, could misuse or abuse - be equivalent with abuse or can they be substituted.

That's up to us. If you want to (unintelligible) let's try that on.

Mike Rodenbaugh: Are you saying that we should consider whether misuse and abuse should have different definitions?

Greg Aaron: No, no, I'm just saying maybe this is an interesting definition. So I want to work through it as through the wording and see how it matches up with all these other things that we have.

One of the things I'm thinking is if there is some continuity between what we're doing and what other groups are doing, that might be useful.

Then I'd like to raise a few things in this definition which might be useful for us. So that's one question; can we substitute abuse for misuse.

So it goes on to say it's an action that causes actual harm. I guess the word actual is in there to indicate that it's something real. Predicate to such harm; my understanding of the word predicate is that it is a way in which something is carried out or the logical precursor or something like that.

And this group gave an example of that and applied the Whois data, predicate to harmful action includes automated email harvesting, which gives - which enables spamming.

Or the main name registration by proxy/privacy services to aid wrongful activity. So using - somebody could use a proxy, privacy service in order to aid a wrongful activity of some sort.

Also misleading registrant data can be used to aid or abet some sort of a misuse. So I think that's what they're trying to get at when they say predicate.

The definition goes on to say it's illegal or illegitimate but otherwise considered contrary to intention and design of a stated legitimate purpose if such purpose is disclosed.

Okay, we have Faisal Shah joining.

Faisal Shah: Yes.

Greg Aaron: Richard, do you - you raised your hand.

Richard Tindal: What does illegitimate mean?

Greg Aaron: Good question. I think the last part where they say considering contrary to intention and design of a stated legitimate purpose has some applicability to what we're thinking about.

For example, we had a recent PDP about on the add grace period. And the add grace period was designed originally to let a registrar or recover from certain kinds of problems. For example, if a registrar used a fraudulent credit card, registrar could delete the name within five days and get the money back.

Or, you know, registrar could have some sort of registration mistake and they accidentally registered a name they didn't mean to. So I think they included this (unintelligible) intention section to cover things like that. That add grace period had a certain purpose to it which was legitimate.

In that PDP it was determined that domain tasting was a use of the AGP that was not intended; actually ended up - they determined had some harm associated with it. So I think that's why that was in the sentence.

Does that help - so anyway, that's their definition. I think it takes in a lot of the things we have in our list A through J. I'd like to open it up for discussion.

Richard?

Richard Tindal: Yes, on that point of illegitimate, so what you just said makes sense to me, but the word otherwise in that sentence seems to me to indicate that the word illegitimate in this sentence means something else, but I don't know what that other thing is.

Greg Aaron: Okay.

Mike Rodenbaugh: Richard, you're saying that you could define illegitimate basically as considered contrary to intention and desire to stated legitimate purpose.

Richard Tindal: Yeah, that makes sense to me, but if that's what illegitimate means and that's all it means, I think that's good, but I think this sentence is implying it means something more in there.

Greg Aaron: Well, let's say - well, one of the words is illegal, so that it would be a contrary to an established law. Illegitimate might be something which is harmful but not necessarily against the law.

Mikey O'Connor: This is Mikey.

Greg Aaron: Go ahead Mike.

Mikey O'Connor: I'm just wondering if that's not covered in the rest of the - you know, in the rest of the definition. What if we dropped illegitimate out of it, would we lose anything?

Greg Aaron: Well, what if there was an activity that is not otherwise addressed in another policy?

So in that case, if it wasn't illegal and wasn't addressed in another policy, it would not or could not be considered abusive. In other words, I think illegitimate may be there to not allow (big) loopholes.

Mikey O'Connor: This is Mikey again. Doesn't that get addressed by the harm and the predicate to harm part?

Nice airplane.

Greg Aaron: Oh, thank you. George has raised his hand.

George Kirikos: Yeah, I was just curious whether the operator between all these sentence fragments is "or". Because if it's misuse is an action that causes actual harm, or it's a predicate to such harm, or is illegal or illegitimate or is otherwise is considered contrary, that you can get some sort of weird permutations where it's an action that causes no harm, isn't the predicate to such harm, isn't illegal, isn't legitimate, but it's somehow considered contrary to the intention.

So you have something that somebody devices the novel loophole, but it's not causing any harm or isn't the predicate of any harm...

Greg Aaron: Well...

George Kirikos: But it's considered abuse.

Greg Aaron: I think the first sentence or the first part of the sentence establishes that any abuse does cause harm. There's no or associated with causing actual harm. Seems to apply to everything.

George Kirikos: But there should be an or between the first two segments and then and after that? And is illegal or it's otherwise considered contrary, so the first two segments seem to be like an or situation. Actual harm or predicate to harm and then and is illegal or illegitimate - I'm still not sure.

Greg Aaron: Okay. Anybody else?

Mikey O'Connor: This is Mikey.

Greg Aaron: Go ahead.

Mikey O'Connor: I think George raises a really good point. This sentence is so long and suffers from this kind of logical parsing problem. It might be good to either break it up into a few sentences or somehow rework it to make it clear.

Mike Rodenbaugh: It's Mike Rodenbaugh. I don't really agree with that. I think it's pretty clear, although it's a bit circular as we've been discussing it. I think your suggestion a little bit ago, Mike, is deleting the words or illegitimate and then I think this sentence actually reads quite well.

Greg Aaron: Okay. So Mike R., would you suggest any changes to the language?

Mike Rodenbaugh: I'd say take out those words or illegitimate since that's been defined in the next clause anyway. It's duplicative and confusing with that in there, I think. But if you take it out, seems to me it reads fine. I'd also eliminate the last comma. It's not necessary.

And then we've got so it would read a misuse is an action that causes harm, is the predicate to such harm, is illegal or is otherwise considered contrary to intention in design of a stated legitimate purpose if such purpose is disclosed.

I don't feel that that's too long and (unintelligible). It seems to be a good definition in my mind.

Greg Aaron: So you would remove the words or and illegitimate.

Mike Rodenbaugh: Yes, and the last comma.

Mikey O'Connor: And do we keep otherwise?

Mike Rodenbaugh: Well, I think so because it's sort of the catch-all. Obviously if something is illegal then it is contrary to the intention and design of anything that has been done.

Greg Aaron: I see George's hand.

George Kirikos: Another approach is to maybe break it up into subsections, like (unintelligible) misuse is an action that and then starting using A or number 1, causes actual harm, and then you can put an or an and

after that or is the predicate, or 2 is the predicate to such harm. You know, or/and, 3, is illegal or illegitimate or (we're moving) illegitimate.

And then you could break it up more logically. Like if you look at a lot of, you know, legislation is written or how the EDRP is written, they break it up into those subsections. But it's a lot easier to do a (test), for example, whether it passes, you know, one, two or three.

Greg Aaron: Okay. I see Richard.

Richard Tindal: Yeah, so I think the definition we're starting to get now is a good one, I think, but I think what's missing is the extent of harm.

So the way it reads at the moment as I read it, even if there was minor harm, if there was some actions, it wouldn't have to be illegal but it could be being used in a way that wasn't its disclosed intent, even if there was very minor harm, the current definition labels that abuse. And I don't think that's what we intend here.

So I think we need to have something that looks at the magnitude of harm or the balance of harm versus benefit which, you know, a number of people talked about last time.

Greg Aaron: My question is can we do that in the definition or does that wane of benefits and X take place during the discussion of a particular harm or particular of proposed abuse.

I see guest, is that...

Roland Perry: That's Roland. Can I just throw in here, when you talk about your legal, under which country's law are you talking illegal?

Greg Aaron: Well, I'm wondering then if the - of course, it varies greatly and sometimes there's - it's easy to get consensus on something like that and sometimes not.

I guess there's the question of if you have a general definition, then when you start talking about a particular case, one must decide whether, you know, you got consensus on that area of it being illegal or not. Or do you have to rely on the rest of the definition to decide whether it's illegitimate or the contrary to intention.

Mike Rodenbaugh here's a question for you. If we re - if we can't decide whether something is illegal or not or we have these jurisdictional issues, does the term illegitimate then give us something to work with or fall back upon?

Mike Rodenbaugh: I think it does. I think it's still a very good question Roland poses. Something we have to consider and further decide on, I think, or try to.

Greg Aaron: Okay. Mike O'Connor?

Mikey O'Connor: I like the way this is going, but I do want to sort of take us back to George's notion of parsing this a bit and then tightening up the logic of it. Because I think that a lot of action that will flow out of this means that this has to be crystal clear and I think that's a good way to get to that.

Greg Aaron: Okay. All right, so maybe - I see a couple of other people's hands raised, but then maybe we can work on shoring this up or breaking it out. James Bladel:, I see your hand up.

James Bladel: Yes. Just going back to something Richard said about quantifying harm. I think we want to be careful not to catch up any sort of innovation where the harm might come to incumbent entities in the form of competition.

So any sort of disruptive technology or disruptive use of a system, we certainly wouldn't say that it was harming those industries that it was speaking to compete with.

Greg Aaron: Okay, so harm doesn't...

James Bladel: We'd have to make sure that we're not passing such a broad net so that harm incorporates a competitive advantage or disadvantage.

Greg Aaron: And I suppose in these situations you can't please all the people all the time. Somewhere out there on the internet there may be somebody who's not happy with anything.

Going also back to Richard's point, which is at some point during the work, you have to examine the harm, understand how much there is, whose being harmed and there is some sort of balancing once you get into the detail to understand exactly what you're talking about, okay.

And so, general, certainly your point at harm is not necessarily equal to competition or however you want to phrase it.

Richard?

Richard Tindal: Yeah. I just wanted to reiterate what James said.

When some -- when Goggle innovative and came up with their description technology, they really hound their competitors.

That's not the standard we're applying here in my mind.

Man: Okay, excellent, thank you.

Okay, Mike O'Connor had suggested we go through the definition -- this definition again and try to par some things out and we have this question of what do the ors mean.

So let's -- maybe we should start at the beginning of the definition.

Coordinator: Your line is in talk mode. To return to silent mode press star 6.

Man: Okay. So let's again -- misuse is an action that causes actual harm or abuse.

Should we substitute abuse for misuse?

Richard Tindal: I think for now we can.

Man: Okay, let's try that. Abuse is an action that causes actual harm.

Mikey O'Connor: This is Mikey.

Man: Go ahead, Mike.

Mikey O'Connor: I'd start with misuse is an action that colon or semicolon or something and then start doing -- this is really George's idea, not mine. I'm hoping that George will pick up here. He's better at this than me, but I think that the notion that George put forward is a good one where we basically let the first clause be without any content.

Man: Okay, so it could be abuse is an action that colon and then below that a bullet causes actual harm. So anything that is abuse must cause actual harm. Is that the idea?

Mikey O'Connor: I think it's what ends that. So if it says abuse is an action that colon causes actual harm comma or...

George Kirikos: Or is a predicate.

Mikey O'Connor: Yeah, or is the predicate. Way to go, George. You jump in here. I'll step out of this. You're better at this.

George Kirikos: What if I to be -- or is a predicate because you could have the case for the (unintelligible) situation where you've got 30 thousand demeaning in a virus but not actually point to cause actual harm unless some subsequent action is pursued. They need the or part for that and some of these are going to be ands so it's actually more tricky.

Man: Okay, so how would you suggest it read, George?

George Kirikos: Abuse is an action that 1, causes actual harm or is the predicate of such harm, comma. I think that part is easy but then...

Man: Okay.

George Kirikos: So the next part is going to be whether it's "or" or an "and".

Man: Okay, so it would be abuse is an action that colon, 1, causes actual harm or is the predicate to such harm and then 2, is illegal or illegitimate?

Richard Tindal: ...yes, this is illegal and then we would use the phrase under which who's country lies and then 3 is alive to save contrary to blah, blah, blah.

George Kirikos: And the question is between 1, 2, 3 do you have an "or" or an "and".

Richard Tindal: It could just be an "or".

George Kirikos: Or you can have an "or" between is it illegal, right?

Man: Well, something could be illegal but not causing harm in that case.

Richard Tindal: True -- well, I'm not sure if I agree with that.

Man: Well, we can say that the main spinning is illegal in Canada let's say, but it doesn't cause any harm.

Richard Tindal: But it's not illegal in Canada.

Man: Well. I am just...

Richard Tindal: If it's illegal then the legislature has made a determination that that activity causes harm; otherwise, they wouldn't pass the law.

Man: Well, we don't know that, do we?

George Kirikos: The main thing is free speech talking about the Thai emperor or whatever the Thai royal family illegal. Does it actual harm? Well, they might argue it does but...

Man: All right, Richard?

Richard Tindal: Could we use a different word than predicate? Because I real don't really know what it means and I think most people won't.

Man: It is an interesting concept. I'll go back to the -- to the Whols definition just for illustrative purposes.

In the case of Whols data predicate, harmful action includes automated male harvesting, the main registration by proxy support of Whols -- false Whols data et cetera. So is -- are we talking about the way in which you carry out an abuse or is it a prerequisite for abuse?

Are we talking about the means or are we talking about an action that's required to -- for the abuse to take place?

Richard Tindal: If we (unintelligible) the abuse an action Whols harm, what's the predicate phrase adding to that?

Man: Well, let's say -- let's see if we can come up with an example.

In order to spam you need a list of e-mail addresses and in the Whols example, they said, well, harvesting the Whols for e-mail addresses is a way you carry out spamming.

Richard Tindal: Oh, okay. I'm getting it now.

Man: Right. And so that might raise questions, you know, you need to have some terms of service on the Whols to prevent people from harvesting it.

Richard Tindal: So we're saying in this -- I think I get it now. So predicate meaning enable so it may not be the direct cause, but it might enable some other action that causes harm?

Man: Might be. Again, I'd have to go back to the dictionary to understand predicate, but maybe predicate isn't the word that we want.

Man: Yeah, I've just gone through the dictionary. I don't think predicate is the word we're looking for. I think its prerequisite is what was intended here, something that is required forehand.

A visa is a prerequisite for travel in main country is the example they give. Isn't that what we mean?

Predicate is something totally different really. You look at dictionary definition it says it's a -- that which is affirmed or denied concerning the subject of a proposition. It doesn't seem to be what we're talking about.

Man: And Webster's will say that and also that predicate is a term designating a property or relation which I'm still trying to wrap my head around.

Man: Yeah, just so I don't know where they came up with that word, but I don't think it's the world their intending to use.

Richard Tindal: In any event, most people aren't going to understand that world so we do need to change it. I think we have to decide what the concept is before we pick the word.

Man: I agree with you completely. Isn't it prerequisite that we need? It says the requirement or precondition?

Richard Tindal: How is that different from the first part of the sentence?

Man: How is it different from the first part of the sentence? So an action that causes harm causes actual harm or is the predicate -- or is the prerequisite to such harm.

Faisal Shah: Hey, Mike, maybe it might be -- this is Faisal. Maybe it's a precursor and not necessarily a prerequisite.

Man: The thing about that Faisal is I think it just leaves it really too wide open and precursor just means anything that came ahead. It doesn't have to be any sort of causal relation.

Man: That someone perceives something about to happen, right, but not -- it doesn't necessarily mean it's a requirement.

Man: Yeah, but that could just literally be anything.

Man: Yeah, that's true.

Man: Are we trying to get it -- the enablement, something that you do in order to carry out...

Man: Yeah.

Man: That's what I think we're trying to get to.

Man: Yeah, the concept of enablement -- the prerequisite would maybe be a little closer to that because prerequisite means something you need before something happens.

Man: Right.

Man: Precursor is more general. It means anything that happens before.

Man: Yep.

Man: But not causal relationship.

Man: Yep.

Man: I think even enabler is probably a little too broad too; although, I would be comfortable with it.

George Kirikos: If the enabler of the (unintelligible).

Man: Okay.

Man: I would be okay with enabler as well.

Man: All right. So instead of predicate we could use prerequisite or enabler.

We'll probably need to spend a little bit of time working through the implications of those two words, but they are interesting words, absolutely.

All right, so, so far we have a definition that reads as follows, abuse is an action that one, causes actual harm, comma, or is the predicate/enabler/prerequisite to such harm.

Okay, so...

Man: Could we stop there for just a second?

Man: Okay.

Man: I'm sorry. I had my head up from before but I'll take it now, to take it down.

Because I agree with Richard's earlier concern that there ought to be some standard for the amount of harm so I would suggest that actual and substantial harm just to take away any sort of de minimis argument.

Man: So your proposal would be?

Man: Actual and substantial harm.

Man: Okay, so you're trying to say non-trivial or?

Man: Exactly.

Man: Or he demonstrated or?

Man: Something that is non-trivial. That's all. And I think we need to go back to -- James raised a good point earlier too about the harm to whom.

Man: Okay, that's an interesting question. In our earlier creations we try to enumerate harm to whom? And some of the definitions included registrants and Internet users. One said to any third party. One said to the Internet community. One said upon another party.

So I have a question, do we need to, in this definition, say who specifically?

Richard Tindal: No, I don't think we do. I think it essentially it's harmed anyone.

Man: I am wondering if -- when we get into discussions of a specific abuse then we would explore who specifically is harmed? It could certainly be somebody -- it could include parties other than registrants, Internet users, certainly that includes registrars or registries.

Should we just leave it -- leave the issue of who out of the generally definition?

Mikey O'Connor: This is Mikey. I like that idea because you know there are all sorts of people that could be harm that aren't included in all of the list above. For example, somebody crashed the electrical grid; it wouldn't be an Internet user. They wouldn't be anything and yet they would be substantially harmed so I like the idea. It's pretty broad.

Man: Thank you. Anybody else on that idea?

George Kirikos: Torture. I think we have to circle it around it at some point and bring it back to the main names; otherwise, you have scope issues that are way too enormous for this working group.

Man: Well, is it a -- isn't it assumed that we're talking about the main name issues?

George Kirikos: Hopefully. Hopefully, like a paragraph above this and says domain name registration, domain name, you know, name server stuff, IP addresses, they are in the scope of the use of the word abuse.

Man: Yeah, stuff, well, anything within (unintelligible), I guess.

George Kirikos: (Unintelligible).

Man: Yeah, exactly. What that is is another question, but we'll get to that.

Anybody else on -- one thing maybe we can say is there may be some -- we could keep some commentary that goes along with the definition.

And maybe one thing we can do is say, you know, as we do our work that the party harmed -- party or parties harmed should certainly be identified in the discussion of specific abuses.

How does that sound?

Man: (Unintelligible).

Man: Okay. Let me write that down. Okay.

All right, now our definition reads abuse is an action that colon, one, causes actual harm or is the predicate or enabler or prerequisite to be determined to such harm, comma...

Mikey O'Connor: This is Mikey. I like rose-bud language, the substantial harm. That kind of dropped out of that version.

Man: Okay.

(Rick): This is (Rick). I do too.

Man: Causes actual and substantial harm. Okay.

Would it be fair then to say then in the notes that the substance of the harm should also be examined in relation to the specific abuse?

Mikey O'Connor: This is Mikey. Yeah. I think that's a good idea.

Man: Okay, all right. So abuse is an action that colon causes -- one, causes actual and substantial harm colon -- comma or is the predicate,

enabler, prerequisite to such harm, comma and two is illegal or illegitimate, comma, or is otherwise considered contrary to intention and design of a stated legitimate purpose if such purpose is disclosed.

Man: I think you might want a three in front of that last little...

Man: Right.

Man: Well, I guess number one is about harm; cause is harm or enables the harm.

And then two why is it abusive or what's the other criteria.

George Kirikos: These are new. Instead of two they would be like A and B and...

Man: Well, it apparently reads is illegal or illegitimate or is otherwise concerned contrary to intention and design of a stated legitimate purpose and if such purpose is disclosed.

Now, let's -- maybe one way to work through this is to look at some examples. We have that AGP Policy recently.

AGP Policy -- the main tasting wasn't illegal. Some people thought it was illegitimate. Some people probably thought it was legitimate. So that one was -- I don't know. It might have been kind of matter of opinion.

Man: All adults -- so be careful there because there are certainly arguments made that certain practices about the main tasting were illegal.

Man: Well, right, it depends on how you do it.

Man: Right.

Man: Basting trademark names that was different than tasting names that had been dropped but still had residual traffic, for example.

Man: Right.

Man: Right, but the main tasting was considered contrary to intention and design of the AGP; therefore, it was considered an abuse because it met that criteria.

If phishing would be something that I think most folks could agree is illegal because theft and fraud are pretty much illegal everywhere. Would everybody agree with that in principle?

Man: Yes.

Man: I met you in Somalia.

Man: What are some other examples of things that would be maybe illegitimate but not illegal or contrary to a state of legitimate purpose? Can you think of any?

George Kirikos: I mean, front-lining is probably one example. It's not illegal. Whether it's legitimate or not is considered a matter of opinion. It isn't contrary to intention and design of legitimate purpose because it's just normal registration. It happens because people are faster on the ball or whatever.

Man: Also...

George Kirikos: It causes actual harm but the only one person it is more of a competitive harm than a true harm. Well, that's (unintelligible).

Man: (Unintelligible) for example. Another one is mining Whois database for marketing purpose.

Man: Well, the -- yeah, in the contracts there -- is there anything that prohibits you from mining the Whois?

Man: It depends the service generally do the registrar.

Man: And of at least some registries I know of.

Okay, so that would be contrary to stated purpose.

Man: And contrary to intention. Intention is simply the allotted contract for technical reasons and administrative and building reasons I guess that's true; but, yeah, none of those reasons apply to mining the whole database for marketing purposes.

Man: Okay.

George Kirikos: Things like archiving the Whois like domain tools in their registrant search to be able to find out all the domains owned by a certain party. That's probably an example of...Even though that has a legitimate purpose too if people want to do research but it was not the initial design of what Whois is for.

Greg Aaron: Right. So...

Man: It was always possible but it was never (unintelligible).

Greg Aaron: What you're referring to is a service that basically collates and collects a lot of domain name information to allow one to look up the history of domains or the relationships between names and registrants or domain names and name servers that kind of thing.

Man: Right.

Greg Aaron: It's not illegal.

James Bladel: And I would question - this is James. I would question whether that would be even illegitimate. I think that - now we're starting to set into an area that's somewhat innovative. I mean they're not doing that within the WhoIs system, they're, you know, in that particular example, they've built their own infrastructure to facilitate those services, so...

Man: But some people might say it's considered contrary to the intention and design if they say that the intention was to have a current contact info. Other people might argue it becomes illegitimate when you start saving all the past contact details to do correlation analysis or whatever. Or it might violate privacy or whatever. That's where the legitimate becomes a big question mark. Mike brought that up properly.

Greg Aaron: Yeah.

Man: Mike Rodenbaugh, given the number of Mike's we have.

Greg Aaron: That would be the kind of thing where there would be a debate about whether it was illegitimate or not.

Man: Right. I don't know that we need to use that one as an example because I think there is a big debate about whether that's illegitimate, but I think there's no debate that mining the WhoIs database for marketing purposes is illegitimate.

Greg Aaron: Okay. All right. So we've got a definition. And we have a couple of unanswered questions about it. One is this issue, should we replace the word "predicate" with something else? Since it's about 20 after, what I would propose is that I post the definition as it currently stands up to the list and that we have a vigorous conversation about it on the list over the next week.

And since we're on the list that allows us to update - you know, see a version in written form in front of us and then we can trade comments on it. I'd like to leave a few minutes in the meeting to talk about some other things if that's okay. George, I see your hand?

George Kirikos: I was going to say it may be possible to add a few more columns to that list of abuses and then we could go and see whether our definition matches it once the appropriate columns are there.

Greg Aaron: Okay. And Richard, I see your hand.

George Kirikos: Given the (K) definition.

Richard Tindal: Yeah, I think we're making good progress on the definitions and I think there's still probably a little ways to go (unintelligible). Part of my mind is saying that at some point pretty soon we should start to get into some actual examples and debate what we think is or isn't abuse. And I think in the context of those examples we're going to get some good feedback back to the definitions.

Greg Aaron: Okay. Well, in our document we do have a - kind of a laundry list at this point and one of the things we could do on the list is trade examples. I'll put up the list again and we could play around with the idea of matching up those with our definitions. In some ways this will be a way for us to (unintelligible) our definition, see how it works. It's also a way to question assumptions. Does that make sense?

I don't want to put too much structure on it. I said we should just take it to the list and trade some notes. One of the things I wanted to mention is that since we're meeting every other week, we actually don't have that many meetings until Sydney. Actually we only have five meetings after today and then we'll have a meeting in Sydney.

So we do need to do - in our off time we need to be, I think, productive on the list. There is also the question of a meeting at Sydney and we - previously everyone had agreed, yes we should definitely do that. There is now the question from the staff about scheduling that. The staff is starting to block out time for the Sydney meeting and I believe Glen has asked, do we want to have that meeting during GNSO days, our working days, which are the first Saturday and Sunday of the meeting.

So that would be either Saturday, June 20 or Sunday, June 21. We'll have a conference facility no matter what. So if you're not going to be in Sydney, we'll still have a meeting and have a conference line open so you can participate. But does anybody have a preference? Should we have it on that Saturday or Sunday or should we have it during the week some other time? I'd like to open that up.

Richard Tindal: This is Richard. My personal preference would be not on the Saturday/Sunday.

Mike Rodenbaugh: I agree with that. I think it would be better if we could have more of an open meeting that people could come in and observe.

Greg Aaron: Well it could be on the Saturday or Sunday but it could be open. I mean I assume our meetings are open anyway.

Mike Rodenbaugh: Yes, it's just that nobody's really there on Saturday and Sunday or not nearly as many people are there Saturday and Sunday.

Greg Aaron: Yeah, this is true. I myself don't know exactly when I'm going to be coming in yet, probably not on that Saturday though. Does anybody else - of the folks on the call, how many of you are planning on going to Sydney? Can you raise your hand if you'll be there? I'm sorry, can you use the checkmark if you'll be there?

Okay, myself, Faisal, (Jane), Margie, Mike, Richard, Mike Rodenbaugh, (Richard Baud), for sure. Roland doesn't know yet, probably not (Barry), George, (Greg O.), or Mike O'Connor. The other thing to keep in mind is Sydney is on the other side of the world for most of us. If we're going to have a call in, we have to have it at a time

when it's either going to be earlier in the morning or later in the day in order to let people from Europe and the United States join. And that's where most of our members are.

So it doesn't sound like there's any enthusiasm for Saturday or Sunday. What I can do is let me post back on the list to Glen. And Glen, the schedules for Monday I imagine are fairly unsettled as far as all the other kinds of meetings that could happen.

Glen Desaintgery: Yes, they are. But that's why I think that (unintelligible) Greg was that if we were thinking of, for example, something like a workshop during the week, that we should get our request in right now, which I think we could do.

Greg Aaron: Okay.

Glen Desaintgery: For Monday I just think it would be very difficult to schedule a meeting in Australia that is going to suit the rest of the continents because as somebody has said, the base time would be 7 a.m. in Australia. But there is a placeholder on the draft schedule for Monday morning for a breakfast meeting. Would that mean anything to any of you?

Greg Aaron: So that would be Monday, 7 am local time?

Glen Desaintgery: That's right (unintelligible). Like we had it in Mexico City (unintelligible) placeholders too on the schedule.

Man: As we speak right now, it's 1:30 am in Sydney. So if everybody adds like six hours, that's 7:30 their time. Six hours from my local time is pretty good but I...

((Crosstalk))

Man: A 7 am meeting just doesn't - I would want a meeting on Monday, Tuesday or Wednesday because nobody's going to come to a 7 am meeting except for hardcore members of this group.

Man: Even if it's 9 am or 10 am, it's reasonable for those in Eastern Time. It becomes like early evening.

Greg Aaron: Okay. Tuesday is constituency day.

Glen Desaintgery: That's right.

Greg Aaron: And some of us certainly will be booked into meetings starting probably at 8 or 9 that day.

Glen Desaintgery: And on Wednesday morning we've got the council meeting from 8:00 until 12:30.

Greg Aaron: Margie, do you know of anything interesting that's going on on Monday that might conflict during say 9ish on Monday.

Glen Desaintgery: Yes, the 9ish, sorry hit that button again, but it is the opening ceremony. And we've all been asked not to put anything conflicting with the opening ceremony. Then I see that there is a new

(unintelligible) session just after that and a Fast Track session just after that on Monday. Those are provisional.

Greg Aaron: Okay. So on Monday it really does look like early morning is the only viable time.

Glen Desaintgery: Yes, as I said there's still that - there's the placeholder in there from the last conference schedule, which we've just (unintelligible) in. But it is early.

Greg Aaron: Okay.

Man: Phil Corwin just sent an email to the list saying he's going to make it to the ICANN meeting in Sydney. He couldn't get onto Adobe Connect.

Greg Aaron: Thank you. 7 am sounds bad, but for those of us in Europe and - from Europe or the United States, our clocks are going to be off anyway. Is it really that bad?

Glen Desaintgery: What if we said 7:30 because I remember why we said 7:00 for this meeting the last time was because it conflicted with something to do with the registrars and the registries who were having - oh, I know what it conflicted with the last time was the (unintelligible) open meeting which was at 8 o'clock. So what about compromising and say having it from 7:30 to 9:00, 1-1/2 hours?

Greg Aaron: Okay. And again 7:30 at Sydney time is equivalent to 5:30 pm Eastern Time, United States. So those of you from the United States, it would be early evening. Those of you in Europe it would be approximately another five hours, 10 pm. roughly - 10 or 11 pm.

The other - the alternative is to have a meeting on Sunday. So - and - so right now we have 7:30 to 9:00 on Monday. That's the proposal. Is it horrible? Or can everyone live with it?

Richard Tindal: This is Richard. I'm okay with it.

Greg Aaron: Okay. Do we have any strong objections to Monday 7:30 to 9:00? Hearing none, I propose that I send a note back to Glen saying that we should reserve that time for Sydney, Monday 7:30 to 9:00 am. And that will allow us to get a meeting room guaranteed.

If no objections, let's go ahead and do that so we're guaranteed some space and at least that way those of us who are straggling in over the weekend will be able to participate, will be off the planes and at the conference facility. Okay, cool.

Glen Desaintgery: About 50 to 100 people, Greg?

Greg Aaron: Good question. I have no idea. Will we be presenting this as a working group meeting or as a workshop? The proposal was for a meeting of the working group. Now that could be open for anyone to observe. Now I think the question of a workshop maybe is a little separate because at this point the working group is still doing it's work.

It doesn't have a work product perhaps to present at that point. We don't know if we will or not. There's also the question of whether or not there are any other activities taking place at Sydney which might have a bearing on our work or some relationship. Margie, do you know if there will be any session during the week on e-crime?

Margie Milam: Yeah, we're likely to have e-crime sessions. We're still trying to fit them in the schedule. So I don't think it would be that early on Monday, so I don't think there would be a conflict there.

And then also with respect to the new TLDs, there'll probably be sessions that talk about the four overarching issues. You know, one of them is trademark abuse. The other one is - that's relevant to our group is the malicious abuse. So yeah, there will be some things that are probably very interesting to this group.

Greg Aaron: Okay, so that's good to know. So we won't overlap with those meetings, which members may want to attend. Also if this group needs to give an update about its work in those kinds of meetings where there's overlap, then we could do it.

Okay. All right. So let's present this as a working group meeting. Are there any objections to having it be an open meeting where ICANN attendees can observe?

Hearing none, no objection, let's do that. It would allow perhaps members of the community to come in and then maybe during the course of the meeting we could have questions and answers, and it would give members of the community an opportunity to have some transparency into our work. So does that sound okay? All right. Let's do that then. Glen, I'll send a note back to you confirming.

Glen Desaintgery: Thank you, Greg.

Greg Aaron: Okay. We've gone a little bit over time but we have some takeaways. We'll continue some work on the definition. I think we made some really good progress today. And I encourage everybody to participate in that discussion. I think we're getting close to some good wording we can use.

Part of the work over the next two weeks on the list will also be to play with matching this proposed definition up with some of the examples that we have on our list. And then I imagine that in future meetings we'll try to nail down our definition and then start working our way through specific proposed abuses and get into some nitty-gritty there.

So I think that's it. We're a few minutes over time. I think it was well worth it. Does anybody have any parting thoughts? Okay. If not, thanks everybody for joining today and look forward to talking with you more on the list.

Man: Thanks Greg.

Man: Thanks Greg.

Man: Thanks a lot.

Glen Desaintgery: Thanks Greg.

Greg Aaron: Thank you everyone.

Glen Desaintgery: Bye.

END