

ICANN Dakar Meeting
Best Practices - TRANSCRIPTION
Saturday 22 October 2011 at 11:30 local

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Stephane Van Gelder: Marika could you please give us an update on the best practices, thank you very much.

Marika Konings: Yes so hello everyone. Stephane has actually asked me to keep it as brief as possible to allow maximum amount of time for discussion by the council on this paper so I'll try to do that.

I'll skip over the history, just maybe to remind everyone that this is a recommendation that came out from the registration abuse policies working group who initiated this work.

Here would just like to emphasize because this was an issue that was raised I think in the previous council call, we did already organize a workshop on this topic in Singapore where several of you actually participated from a different part of the GSNO community to provide input.

And that input was you know duly considered and then has been referred to on several occasions in the paper. So basically now the paper has been

submitted to the council and then it's up to you now to consider what the next steps should be.

From staff's perspective there are two concrete suggestions which I'll talk about in a little bit but one initial step might be to just put this paper out for public comment to allow the different part of the ICANN community to provide input or provide additional information in addition to what staff has provided in the paper.

So just briefly on what the paper actually covers, so talks briefly about the scope from a staff perspective we consider this an important issue and then part of ICANN's mission and core values.

Very briefly talks about as well the scope issue of an issue that has been very extensively debated and then the previous working group on you know if it's in scope looking at it from a consensus policy perspective.

But from our perspective as we're talking here about best practices there's no need to go into that debate here.

It is within scope of ICANN's mission and the GNSO as it deals with gTLDs. And the paper basically outlines a list of issues that we believe need further consideration, should the council decide to move forward on this issue.

I think the first very important question is what makes a practice a best practice? What criteria do you use for that and what kind of framework would you need to establish?

We provide some examples as well of other industry sectors that have best practices which might serve as a model or at least as a reference point should further discussions take place on that.

Important question as well, are you looking for identifying practices that might qualify as best practices or are you looking for creating new ones?

Defining the non-binding nature, I think the paper outlines several gradations that you could look at, you could just say non-binding means you know we just post them on the website and that's it.

You can look at non-binding as non-binding but up on adoption there's some kind of monitoring or auditing or it could become part of a code of conduct for example.

So there are different options that could be explored there and would need further definition going forward.

What should ICANN's role be in this project? Should it just be a role of convener, bring people together? Should it be more proactive role and you know monitoring, updating, best practices as they are developed and then adopted?

What are the resources required for such an effort, the kind of processes you need. Important considerations are also once you have a framework how do you go about maintaining it, reviewing it, making sure that it's promoted and disseminated according to the appropriate parties.

And then looking as well at issues such as cost versus benefit, funding and also incentives, what kind of incentives should you provide in such a framework to ensure that you know people adopt it and make use of it.

The paper also provides a preliminary inventory of current or proposed best practices, it's quite an extensive overview as you'll see, for example many of the ASAC recommendations are included there.

So I think our idea behind it is that list might serve as a starting point for any follow up effort, looking at the list to see if there are any candidate practices there that might qualify as best practices once the appropriate framework has been established.

And it was too very concrete next steps in moving this forward, the first one would be the creation of a GNSO working group, it would actually set up or establish the framework for best practices.

And the parallel and of course there needs to be a lot of interaction between the two groups will be a more cross stream technical group which would actually look at the candidate best practices that would qualify under that framework.

So I said it's now in your hands to consider what the next step should be, whether you know it should go out for public comment or whether you want to enact on the two next steps outlined in the paper or whether something completely different that you would like to do.

Just want to remind you as well in light of the recent adoption of the other registration abuse policies recommendations there is a request there or the council resolved to also consider this work in the context of the registration abuse policy or recommendation on the collection, dissemination of best practices, like a general thing that working group also made the point that in general there's not really a framework in which you know several working groups have made recommendations for best practices.

I mean the post expiration working group is one of those but there's not really a framework of what happens with those. You know we just put them on the list and they might get adopted but there's nothing, no real process of what happens then with them.

Are they kept by someone, does you know people check whether these are actually followed or adopted, is there any kind of mechanism to promote those?

So I think that recommendation links very closely together what this specific project is looking at and might serve as a model going forward as well for best practices in all the areas.

Just maybe to mention as well there will be workshop on Wednesday in which we just provide an overview as well on the paper and to the broader community and hopefully you know are able to provide some feedback to the community as to what the council discusses or decides maybe today on what the next steps should be.

And links to where you can actually find the paper. And that's it, short enough?

Stephane Van Gelder: Very good, thank you very much Marika. Jeff has three questions, you know I was right to ask you to keep it short, thanks for doing that and Alan I have you next in the queue. Jeff?

Jeff Neuman: Okay, thanks Stephane. So the first question is - and I think it's a good paper, but I noticed that one of the statements in here is that it says ICANN staff thinks that this work should be a priority and I found it interesting because I've never seen that really in other staff papers where they say it's a priority.

I've seen them recommend against doing a PDP but I've never seen such a bold statement, this is a priority. So given the discussion that we just had about all the things going on in the council and all the things that are up on the block for us to find people and resources to do, just a question.

You don't necessarily have to answer now but more sort of an explanation as to why it's a priority.

Marika Konings: I'm happy to answer. I think just to point out as well that you know staff in this case was requested to do a discussion paper, not an issue report because in an issue report indeed the recommendation is more limited to whether we think there should be a PDP or not and I think here as a discussion paper we thought it was important as well to express our view of things.

And I think from our perspective we think this is important, it's an issue that has been for a long time on the table, has been a lot of community discussion around it, and if you look at the whole list of issues or recommendations that came out of the registration abuse policy's working group, not a whole lot has been implemented off that yet.

A lot of stuff is ongoing, so I think from our perspective we do believe it's an important - also listening to community comments but of course it's the council's prerogative to decide whether it's an actual priority or not.

Margie has something to add there.

Margie Milam: Can I also expand on her answer if that's all right? And also too this issue if you think about what we were talking about really malicious conduct it's - there's been other issues in the community that have been highlighted as priority.

So for example a law enforcement recommendations that have been out there, that touches upon that work to the extent that this gets dealt with through best practices effort as opposed to an FRA amendment, it's addressing an issue that's been you know - that the community is facing through various facets and it's something that you know is just one way of dealing with that particular topic.

Jeff Neuman: And actually that's a good lead in to the second question I had which is it seems a little out of place in the paper but it was kind of towards the beginning of section 3.2, it talks about registration abuse versus use abuse.

The registration abuse group, sorry the RAP group was fairly clear that what we were addressing, what they were recommending was against registration abuse not use abuse.

And the fact that council when we voted on the motion for best practices we were talking only about registration abuse and not use.

But the paper seems to go on and just I think it's setting kind of the wrong tone is saying just - I guess maybe this is just staff opinion that I disagree with and I don't know how others do.

But it's staff's opinion that since we're just developing non-binding practices, as opposed to consensus policies we should delve into the other areas that involve use abuse.

And that's the impression I got and I really strongly disagree because that's not what the council approved and it seems like staff on its own kind of just made a recommendation that just seems contrary to what the council had asked for and what the group had decided.

Marika Konings: I think just to clarify that issue of registration abuse versus use abuse is very extensively debated within the RAP working group and I think use there, different but there it was very relevant because if you look at the picket fence that's where it talks about registration abuse might be in scope.

So apart from if you look at that definition but apart from that there's no need - we're not talking about consensus policies in our view, there's no need to delve into that differential at this stage, because you're looking at best practices to address registration abuse.

Jeff Neuman: Right but from a contracted party standpoint and again this is a Registry, the council is very clear that it involves registration abuse and as much as others would like to delve into it and unit's non-binding, you know the council is clear in its instructions.

And if I had known as a contracted party that registration abuse would also be interpreted as use abuse, we would have never voted in favor of it and this motion on the discussion paper needed a majority of both houses.

So unlike you know the lower thresholds where you have an issue report or a PDP we would not have approved - well I'm speaking on my own as Neustar would not have approved moving forward.

And I'm pretty sure given the discussions that took in with the registries and Registrars we would not have approved it going forward in any discussion on use abuse.

Marika Konings: Well one of the questions there is just around the thing that was heavily debated as well in the registration abuse working group, how do you define registration abuse?

Because for some people it means that abuse that - it takes part from start to end of registration. And I know that's probably not the definition you have but I think that's another part where we look at the definition and that's where we really have gone into a lot of discussion in this call.

So I think we try to just you know step aside of that and say look, let's just look at abuse, we're just trying to come up with a list of best practices, nothing more, nothing less.

Stephane Van Gelder: Okay, was that two or three Jeff?

Jeff Neuman: That was two.

Stephane Van Gelder: Okay, can I push you back to the end of the queue for the third one and just let - I have Alan Wendy and Zahid, so Alan please.

Alan Greenberg: Okay thank you. As Marika mentioned the PEDNAR working group had extensive discussions on what does a best practice mean, we voiced opinions which ranged all over the mark that there are things people adopt because it's going to make them money or things that you know people feel will make them a better industry.

We didn't feel it was within our scope to go any further on that but we did end up adopting a number of best practices in our formal recommendation in the belief or hope that someone else in the organization would put some meaning behind what the words mean.

And so we are delighted that this may actually come to be. I think it's absolutely crucial and it ties in really heavily with the previous discussion on consumer confidence.

So I think it's something that despite the fact I'm not sure what it means to win steps is this is a priority, I agree.

Stephane Van Gelder: Wendy?

Wendy Seltzer: Thanks, I just wanted to add my voice behind Jeff's, coming from the RAP working group, they - I think getting to consensus it was important to have the limitation to registration abuse as distinct from use abuse.

And while I understand that best practices, that may be beyond contractual terms aren't necessarily bound by the same terms as consensus policies, I think the thinking of the group and the place where we can get consensus is going to be on a limited narrow scope to registration abuse.

And I think it would be unhelpful for us to try to broaden the scope here.

Marika Konings: If I just may respond, I think it's definitely not staff's intention to you know broaden the scope. I think what we tried to avoid is distract the attention from trying to you know define that bright line that lies between registration abuse and use abuse.

Because I think that's something where we got stuck in the registration abuse policies working group. And I think smart that we're really see okay, let's just move forward with the effort and come up with a list of best practices and hopefully through that it will become clear what is acceptable to the community as a whole to accept those best practices, and which issues are really considered as not part of that mandate or that scope that the council would give to such an effort.

Stephane Van Gelder: Zahid then Jeff then Alan then Margie.

Zahid Jamil: So I went back and looked at the resolution and resolution says she (sparrowed) me for a second, address the abuse (unintelligible) in accordance with the registration abuse policies working group final report.

So I went to final report and it says recommendation but one the RAP WG recommends a creation of non-binding best practices to help Registrars and registries address the illicit use of domain names, unanimous consensus.

No, I know, I agree but in accordance with the registration review policy's working final report, so I could read it one way or the other, I'm sure that you may read it saying well it's only registration domain names.

But the report itself which came from the working group doesn't say registration of domain names anywhere, it's in at least four or five places and it talks about use, illicit use.

So I mean I'm just informing the debate here, I'm not taking a point of view at the moment, but I think if you go through the report it talks about use, illicit use and not about registration.

Stephane Van Gelder: Alan.

Alan Greenberg: Just a quick point, I'll be really quick so whether I'm in order or not shouldn't matter. The PEDNAR recommendations have not - do not necessarily have any relevance on abuse issues.

We are recommending best practices. I would like to think that despite the origins of how this ended up on council table, if the title is best practices that we look at best practices, not necessarily restricting them to a specific type.

When we end up instituting and deciding what the best practices are then we can get more specific but I would like to see this go on in a more general sense, not necessarily tied to the registration abuse issue that spawned it.
Thank you.

Stephane Van Gelder: Thanks Alan, Jeff.

Jeff Neuman: Yes, I just to respond to Zahid, I mean I think there's a lot of things in the report, the report's fairly long, the resolution is fairly clear. And just you know again just from an information standpoint the registries would not have voted in favor of a resolution that had anything broader than registration abuse.

But putting that aside, the third question I had was in Section 4.3 there are four different ways that the staff has said that we could do non-binding best practices.

I think two - or sorry three of the four I think are true legitimate non-binding, but there's one option in there that I would actually like to see removed.

Because I think by definition it's binding, it says inclusion of a Registry Registrar code of conduct in the RAA or in a Registry agreement.

So the notion is here you put it in the code of conduct, it automatically becomes part of the Registry - or sorry part of the Registrar accreditation agreement.

And therefore is by definition binding, so I don't understand how that's non-binding, and I'd like to - we have to decide what to do with this paper.

I'd like to actually see that option removed because I don't see how that's non-binding at all. Unless someone could tell me how that would be non-binding I think by definition that's binding.

Marika Konings: I mean what's actually in there, but on the point of removing it I think this is the staff discussion paper. I think for the council to decide how to move beyond that and you know might provide specific guidance to any kind of working group saying these are the one - these are the parts we want you to consider.

And I think this is just one of the - I mean I think that's the one that talks about you know it's non-binding to start off with but once you adopt it and once it becomes part of the code of conduct that it might have a binding effect.

So it's a kind of path you might set out and there might be some in the community that might be interested in having such a path and others might not.

But that's why what we tried to do in the paper is put those things on the table for discussion. So we're not saying that's the right one, that's the - you know the worst one, we're just saying here are some options for you to consider and discuss.

Jeff Neuman: I guess my point is when staff puts out a paper, it's seen by the community as authoritative, right? So the community will read this.

If we put this discussion paper out for comment, you're going to have a lot of comments by a lot of different groups that are going to say yes, we like that option of including it in the Registry/Registrar agreement.

What I'm telling you - what my point is, that that's not non-binding. In other words I don't think that should as a council it's my view that that shouldn't go out for comment because that's not non-binding.

And my fear is that what's going to happen is you're going to get a ton of comments that are going to think well staff puts this out so it's actually an option and we want the council to do that option.

So I just - that's why on the last call I said I didn't think that this paper was ready to go out for public comment because I don't want to create the impression that this is something that a number of people on the council actually support or not.

Stephane Van Gelder: Thanks Jeff. I have Margie next then (Steve) then Alan, Jamie. I'm going to have to - well there's four minutes to go so can I just keep to the queue? You wanted to come back to Jeff's point? Okay go.

Man: It's just a comment on what Jeff just said; just let's just imagine we have a non-binding best practice. It becomes binding, some part of the history of afterward.

It doesn't phase us to be a best practice, you know, the decision of non-binding or binding is crucial but it doesn't define what is best practice or not.

I mean it still is a best practice, being non-binding or binding and this is what I think the ideas of the collection of best practices, this is something that I think is the priority, the - okay.

Stephane Van Gelder: Can I just cut to Tim because he's - it's always more difficult to participate remotely so I'd like to give people that do so priority. Tim you have a question?

Tim Ruiz: Well just a comment I guess and that is that you know I - and maybe it's a part of the misunderstanding on my part. But you know when a working group recommends something as a best practice and you know it's one thing then for the council to say yes we agree with that.

And so you know registries, Registrars are informed that the community didn't feel you know there was enough consensus to create a policy around this area.

But there was strong support that you should consider this a best practice, you know that's one thing. If we're talking about creating a set of best practices that are going to become some sort of formal document that's going to be held out as a measure for some sort of gold star program that's going to be managed by ICANN.

You know that's a whole other thing that I guess I have concerns about, because there is no mechanism within GNSO to create such a think but for the GNSO to be in a position to approve or be an authority for such a thing and then especially if we're talking about as was mentioned that you know this might be used as a path into something more binding such as the code of conduct that's mentioned within the RAA.

Again there is no such path defined from best practices to code of conduct, there's a single specific measure for the creation of a code of conduct and the RAA period.

So you know I think we need to scale back here a little bit about what we're talking about because if it's this formal document that's going to be some sort of gold star measuring program, that's a whole 'nother thing that I don't see where that's in ICANN's purview whatsoever.

But if we're talking about you know here's some recommended best practices for Registrars and registries to consider, you know that's completely fine.

And that was my impression as to what I thought this working group was talking about or that other working groups were talking about.

Stephane Van Gelder: Thanks Tim. Marika wants to respond to you.

Marika Konings: Yes, if I can just respond because I think indeed the whole idea behind this initiative and the discussion paper is actually indeed to create that mechanism or create that framework you know through community discussion.

Because you know we agree there is indeed, there is no system currently in the (near) so GNSO council can maybe adopt best practices, but there's no real - no set mechanism what happens after that.

So I think the whole idea behind this initiative is actually trying to see if it's possible to develop that. And I said the discussion paper outlines a whole lot of questions that will need to be addressed and considered, like indeed what is ICANN's role?

You know what does non-binding mean, you know are there any kind of incentives that ICANN for example should provide when those best practices are adopted or there is a list of best practices, so to encourage adoption and how do you measure effectiveness?

How do you measure indeed that these best practices actually have an impact on abuse, because I think that's at the end of the day what you know the on the line reason is for such an initiative.

You want to you know reduce abuse and if it doesn't work, are there other mechanisms that should be considered?

So I think this is really the starting point of a broader discussion and I don't think staff is trying to say the council has to do this, through this mechanism and this way.

I think what we are trying to do is just outline the - outlining the options and just encouraging community discussion and work on this.

Stephane Van Gelder: (Steve).

(Steve): Thank you. From the BC's perspective, the question of whether use abuse is covered by best practices becomes less important if we're able to break the process log jam on the RAA amendments.

Because of the 12 high priority RAA amendments and this will be one of the motions you'll discuss next Stephane, most of those 12 have to do with use abuse. They have to do with what we hope will be changes to the RAA that would become binding.

Things like malicious use, things like relay and reveal obligations and all of those have to do with abuses that occur after registration.

So if we can move some of these binding improvements into the RAA amendments it becomes sort of a moot point whether it's best practice, doesn't it. Thank you.

Stephane Van Gelder: Thanks. We're - Jeff.

Jeff Neuman: Just to respond to that, it seems like there's so much emphasis in this group and all discussion on how do we regulate things and how to force registries and Registrars to do things as opposed to a consensus building organization where we should come together and decide what these best practices are.

I can tell you right now that I consider and I hope others consider you know our Registry as one that does a lot of things that's positive with respect to malware and domain take downs and all the other stuff.

We do a good job, at least in my view. But if you want to get us into a room and talk about how to regulate us and force us to do that good job and how to force us to do it in a certain way, we're not going to come to the table, right?

It's not something we have an interest in putting into a contract on exactly how we do things and when we do things and how we're measured.

We measure ourselves out in the marketplace and we expect the feedback from the marketplace. Do you want to get around the table and talk about best practices we'd be happy to share how we do domain you know malware and screening and take downs and all that other stuff.

Happy to do it, happy to participate. The second it turns into a discussion of how does ICANN enforce it against us is the second we're going to probably walk. Again it's not because we're a bad player, it's just that we don't want to have some you know big brother arm on us that forces us to do things in a certain way and a very inflexible way.

Because once you put something into a contract it's not very flexible and its world and threat are changing day to day. And we need to be able to change with it.

Stephane Van Gelder: Thanks Jeff. I think I have Mikey and Mikey you'll be the last question we have to bring this to a close. Mikey, can you?

Mikey O'Connor: Thanks, can you hear me okay?

Stephane Van Gelder: Fine.

Mikey O'Connor: Can you hear me?

Stephane Van Gelder: Yes we can Mikey, please go ahead.

Tim Ruiz: I hear you fine.

Mikey O'Connor: Good deal, thanks Tim. I just want to chime in sort of with a little context from the RAP. What we were really trying to get to is just what Jeff was talking about.

There's an awful lot of really, really helpful information that's know to all the registries and Registrars which they are willing to share if we can build a safe space for them to share it in.

But if we turn that in to something that goes beyond that, think what we'd do is we'd kill this tiny little plant in the pot.

I don't think that we can get the scope much broader than the RAP was suggesting. So that's - I mostly just want to support this kind of comments that Jeff and (unintelligible) were making. Thank you.

Stephane Van Gelder: Thanks Mikey, Alan go ahead quickly please and then we'll bring this to a close.

Alan Greenberg: A number of things and they're at odds with each other so I'm not trying to present a single opinion. With regard to what Tim said I can imagine the RAA

having a clause saying if you follow these best practices you will get a gold star.

It's in the RAA, but they're not mandatory as such. So you can have different variations. Best practices is a complex issue. There are some best practices which working groups do not recommend as policy because it is clear there are some market segments to which it would be detrimental.

Is a best practice for some players but not necessarily applicable to others and this is another thing that needs to be taken into account, this is a really complex subject and I think we're having too much of a substantive discussion in this room as opposed to putting - letting a working group go off and do some real substantive work on it.

So I think there are a whole bunch of issues, a whole bunch of aspects to the concept of best practices and we need to let people discuss them and come up with some real recommendations, not just related to abuse issue that spawned it, thank you.

Stephane Van Gelder: Okay thanks Alan, there's obviously still some discussion to be had on this but we need to keep to the schedule so I'm going to bring this session to a close.

We have an important session next which is a discussion of the motions that we will be considering on Wednesday so we need to set aside some time for that.

Just to note that staff is looking for direction from the council on where we go next with this; we can pick this up perhaps at the wrap up meeting on Thursday.

But please give this some thought so we can provide staff with some idea of where the council wants to take this. Thanks very much, operator this session

is now over, let's have a five minute break and then rejoin for the motion discussion, thank you.

Coordinator: That does conclude this recording, parties may disconnect.

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