

ICANN Dakar Meeting
IPC Meeting - TRANSCRIPTION
Tuesday 25 October 2011 at 12:45 local

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(Carl): ...to get some more details, but basically we just need to just follow up with them and let them know exactly what we want in the toolkit and it is now available. One of the recommendations for the toolkit that was put forward was for there to be funding for the constituencies instead of these services. For example, they are willing to host our Web site, but if we want to host it on our own, there was a recommendation that we should be able to get funding.

That's the one element of this process that hasn't been worked out, so just for something to keep an eye on. But again, this toolkit is available for us and we just need to follow up with (Rob). Thanks.

(Brian): Thanks, (Carl). Does anybody have any questions about the toolkit or comments?

(Carl): (Brian), Steve Metalitz had a question online. Is the list of toolkit services written down, posted somewhere? It's actually not, and that was one of the questions I asked (Rob) earlier today, and I asked him to put an announcement up on the GNSO Web site about that. So, there you go.

(Brian): Great, (Carl). Can we ask you to pencil me on the list once that's posted?
Okay great, thank you. Good, well moving on to the next agenda item, we are going to ask Nick Wood to give us an update on what he learned from attending the budgeting session for fiscal year 2013.

Nick Wood: What I learned was probably not that much. It was a presentation at the end of the day yesterday that was pretty poorly attended. The only other IPC member that I saw was - who I heard was Steve Metalitz, who was online, who asked a couple of good questions.

Xavier Calvez, the new Chief Financial Officer, and his team made a presentation beginning with a timeline, which is designed to give clarity to the community about the budget process for the financial year 2013. The timeline's published on the site, so I recommend everyone have a look at it. I wasn't aware I was going to be doing this report or I would have actually made slightly better notes yesterday, including copying down key dates.

But I want to highlight a couple of things. One key date is that for the IPC and other constituencies, is that the window for the Finance team to consider requests for special projects closes on the 9th of December. And it was stated by Xavier that the priority that they will be giving to special projects, special requests, was for those which went across constituencies.

It wasn't that the requests in a single constituency would be turned down, but it was the cross-constituency that was to be looked at more favorably. Three sets of issues kind of popped up during the rest of the discussion. One was the granularity of the information, because it's very hard for constituencies or the community to judge how effective ICANN's been spending the money that it spends if we can't really clearly see where that money is being spent.

So an example was used that if it all just goes under travel, is that travel in order for outreach, is it travel for the Board, is it travel for something else. So there's a degree of granularity which would be helpful. Balancing that is the

fact that the budget is \$70-odd million now, and kind of granularity on a budget of \$70 million on what was that trip for depends upon ICANN staff and other people filling in a code appropriately.

And until now, ICANN has not been very well equipped with financial management software. So I think everyone is kind of going to wait and see until the end of this year to see what kind of detail can come out, so that was the first issue.

The second issue that I picked up was to do with the opportunities for interaction between requests being submitted and then being rejected or approved, and that a lot of constituencies have raised concerns that you put something in and then the first you really hear about is when you've been rejected. And that was felt to be less than satisfactory.

And then the third kind of bigger debate that took a lot of time was the extent to which policy is influenced by the Financial Department's need to get a working budget approved, and that probably is something which all organizations with a turnover of kind of \$70 million face. But there are issues around that. So what I'd recommend is people go on the Web site and they have a look.

That was the first - that was the most important and pressing date that I picked up on, the 9th of December. On the 17th of January, the Financial Framework is going to be published for a comment period, I think of 45 days, but I recommend you all go and have a look.

(Carl): Great, thanks, Nick. I just wanted to add on behalf of Steve Metalitz from the chat room that a team has been formed with other constituencies in the Commercial Stakeholder Group to monitor the budget process throughout the year and to please reach out to him if you'd like to get involved. They could definitely use one or two volunteers to assist with that project. So please feel

free to reach out to Steve or let me know and I'm happy to get you in touch with him.

Anyone else have anything to add regarding budgeting? (Kristina)?

(Kristina): I actually have a question for Wendy, and that is to the extent that we wanted to try and explore what possibilities there might be for joint budget requests with, you know, either the NCUC or the NCSG, who would be the point person for that?

Wendy Seltzer: I would refer it to our NCSG Chair, Robin, and there is a Finance Committee at the NCSG, but I think that sounds like a great proposal.

(Brian): Great, thanks. Anyone else have any questions or anything else to add regarding the budget topic? It seems silent, the chat room's quiet. All right, I would like to make a call now for any other topics or comments that people would like to put on the table. That actually concludes our brief agenda that I put together.

(Kristina): Well, let's go - what I can do is go through the Council Agenda for the meeting tomorrow, which is on the one hand, not - most of it is not terribly controversial, but one bit of it is, in fact, very controversial. There's several motions that will be voted on tomorrow, the meeting starts at 2 o'clock. And the first hour of it, we're trying something new to avoid it being rather the kind of tedious exercise that it's become for people who aren't actually having to participate directly.

So the first hour's actually going to be presentations by the Stakeholder and Constituency Group leaders, as to not only topics that were discussed during Constituency/Stakeholder Group Day, but also kind of what the hot items on the respective agendas are. And Paul McGrady has volunteered to take that on for us. So that'll be the first hour of it.

And then starting at 2:30 - I'm sorry, 3:30 - we'll move into kind of the actual meeting, going through a pending projects list. One thing that is occupying more of the Council's time is really kind of as new projects are coming up, trying to figure out how to prioritize. The staff made it very clear during the Council working sessions that they really are at the limit of their resources and that kind of going forward, they will be doing work on a first-in, first-out basis.

And that even if, for example, the Council has passed a motion calling for an issues report and the Bylaws call for that issues report to be delivered in 45 days, if they simply don't have the staff bandwidth to get it done, that it will frankly just get done when it gets done, which is not ideal. But I, for one, don't really have any great ideas as to, you know, how to deal with that.

Then, kind of, the first substantive motion is a motion that I have introduced on amendments to the RAA. This is actually the third iteration of this motion. It basically - there's some very, very long history to it, but the long and the short of it is that it identifies a way forward for discussing topics as potential amendments to the RAA.

For those of you who may not remember or weren't involved back when we voted - the Council voted on the last - what is the current version of the RAA in March of 2009, there were a number of topics that had been brought up that did not make their way into the agreement itself. And the condition for voting to pass the agreement, the Non-Contracted Party House insisted that there be a plan for moving forward. And so we're now on the third iteration of motions to try and get that plan going.

I - the past two motions have been block votes where the Non-Contracted Party House has voted for the motion as a block and the Contracted Party House has voted against it, which means that it hasn't passed. I, frankly, have no idea how the vote's going to go. Up until probably Sunday midday, I would have said this one's going to get defeated too.

But in light of the rather stern conversation, I guess is probably the best way to put it, between the GAC and the Registrar Stakeholder Group during the GNSO Council meeting, it may be the case that, you know, the Registrar Stakeholder Group, or at least enough of them to get it to pass, will vote for it. I don't have the foggiest idea and wouldn't put money on how it's going to turn out.

(Brian): (Kristina), I'm sorry, could you just quickly, for people who are new in the room, could you just give them a little bit of background on the RAA, what it is?

(Kristina): (Unintelligible). No, I'm sorry. No, the Registrar Accreditation Agreement is the standard form agreement that all entities that wish to operate as ICANN accredited registrars must sign once they've undergone the accreditation process. It is, unlike the registry agreements, a very standard form agreement.

And it was last amended in 2009. I'm not really quite sure what else to say, while trying to stay objective.

(Brian): I would just encourage subjectivity. Because - no, seriously. I, you know, I think that it is certainly one of my goals here is to try and, you know, sort of help to, again, have less public and more, you know, sort of productive discussions. And so, subjectivity would be great, I think.

(Kristina): I think, realistically, I mean, I think probably the only thing I can say at this point is that, at least it's my sense that from a significant portion of the community, that if this motion fails that there is probably going to be a fairly strong effort to pursue changes to the agreement indirectly through other fora, outside the ICANN world. And I'm not sure - I can't imagine that that's a good outcome for anyone, frankly, for any of the players. And I also don't think it's a good outcome for ICANN because it then, I think, highlights that

there are certain subjects on which the multi-stakeholder model isn't - or can't - work, which I think has some really pretty troubling implications, so, you know, I just - I really hope that we can get this moved forward.

(Brian): Wendy?

Wendy Seltzer: If you'll permit an observer to add a comment, from our Constituency, we were considering proposing an amendment to this motion to divide some of the procedural from the substantive issues, because this has been a procedural debate for a long time about how the RAA should get amended and the transparency of that process. The debate has never delved down to the level of the items being proposed to be added, and NCUC agrees very much with the procedural transparency, disagrees with some of the items that are marked as high priority for eventual inclusion and we would propose to strip out the endorsement of all of those items from the motion. I wondered if this would be an appropriate time to discuss that briefly.

(Kristina): We could. I'm inclined to say it's not going to be accepted as a further amendment, primarily because, you know, as you know, the Council used to work very much as a policy-making body, and we've been instructed under the new structure to work as a policy-management body. And as a result of that, and I think we saw in Singapore, that when, you know, these topics came out of a joint drafting team that had members from I think everybody except from the Registry Stakeholder Group, and I think that there is concern kind of generally on when the Council starts kind of picking and choosing particular items out of the work product of these - whether you call it a drafting team or whether it's a formal working group.

And I think the other point is that, kind of from a more substantive level, you know, the fact that they were identified as high, medium priority topics, doesn't necessarily mean that they will actually materialize into amendments. And in fact, you know, one of the bones of contention that the Registry Stakeholder Group in particular had with this was that in earlier iterations of

the motion, that they - GNSO Council and staff would first take this big list of topics and figure out which were the subject of consensus policy, in which case they would go through PDP, and that which were not, in which case they would then go through the negotiating process. So that has now been moved to the General Council's office.

So, you know, given that there's a fairly decent likelihood that I - at least half of the topics in each category are going to end up being deemed to be consensus policy, I'd be reluctant to kind of constrain things from the very outset in that way. And frankly, if we strip that out, what topics do we use? Is there a proposed alternative list?

Wendy Seltzer: Beyond - the proposal would be to generate a list at the Council level.

(Kristina): I think the community is going to have some issues with that. I mean, I know that particularly within the CSG, there is a real strong desire to make sure that the Council's only acting as the Council and not acting as the GNSO.

(Carl): Great, I just wanted to put in some comments on behalf of Steve Metalitz from the chat room. He, first of all, wanted to indicate that there are detailed proposals on the changes that if we'd like to see the RAA that he'd be happy to share with Elliot and then of course, anyone else who's interested. Also, he just wanted to mention that he agrees with (Kristina)'s remarks and he thinks the GAC discussion underscores what (Kristina) said earlier.

And finally, he's indicated ICANN staff has already opined that none of the topics identified are a priority required to go through PDP consensus process. Anyone else have any comments or questions? Go ahead, Paul?

Paul McGrady: I jokingly said to (Kristina) on the way in that I wanted to put forth the motion to name her Queen Emeritus of the IPC and to designate some funds to send a tiara to her home later.

But on a serious note, I think we would be remiss to not thank (Kristina) for all of her amazing good work on the GNSO Council. I have never encountered someone with so much passion and drive and consistency in this sort of role before, and I think that we have been very fortunate as a constituency to have you in that role.

(Kristina): Thank you. Either that, or I'm just stupid.

(Carl): And just, (Kristina), to let you know that Steve Metalitz seconds Paul's sentiments, and you - Kristine Dorrain is clapping in the chat room. Claudio?

Claudio Di Gangi: I just had a question for Elliot in terms of whether the registrars have had a chance to take a look at what the staff put out and if you guys had any reaction to that, or - I'm not sure if you're discussing that today or anything.

Elliot Noss: Specifically...

Claudio Di Gangi: There's a staff paper about how, you know, they were suggesting a way forward and how long the process, I mean, my understanding...

((Crosstalk))

Elliot Noss: ...the RAA?

Claudio Di Gangi: Yes, yes.

Elliot Noss: So I just kind of looked through what was A, and I've seen (Kristina)'s B. I mean the one thing, again, you know, I don't want to kind of put registrar positions into the room, but I think that the third rail issue is typically where things end up. I think registrars and, you know, I can speak personally, you know, we are certainly extremely comfortable with a very transparent, evolved, detailed process for taking input, gathering requirements. I think that

where there's always a struggle in form and in substance is where the actual negotiating is done between multiple parties.

And I think that the current iteration of B, you know, is kind of a, you know, a rose by another name because, you know, it's sort of if you get to this point, can't do it, come back, get input, come back and get input. You know, the one thing that I would stress personally - and again, I just think that's - just to frame it, I think that we've all, as a community, spent so much time on procedural issues and so, relatively speaking, little time on substantive issues. And to me, that's just a shame, and not as productive as it could be.

And, you know, one of the things that I'm personally trying to push for a lot more and, you know, in fact I've made some progress on some other issues today inside of registrars, was to do more bilaterally. And, you know, again, that's one of my goals to, you know, to start something here is to try and accomplish that. I think that it should be so much more about getting things done as opposed to how we get things done.

And, you know, one of the really important issues that I think doesn't get thought through well enough is that when something's in the RAA, the mechanism for dealing with it (is at) the Compliance Department. So, you know, we can think about Compliance Department as essentially the RAA police. And I think that so many of the issues, especially, you know, your guys' issues - and when I say your guys', I don't mean trademark holders, but Council - are things that end up necessarily being dealt with in the legal system.

And, you know, we find, you know, boy, we're dealing with 10% of the issues just by nature of our size as a registrar. And there is such a delta in the effectiveness of dealing with informed and polite Council versus uninformed and impolite Council. I mean, it's just, you know, it's spin cycle and people are getting things done.

And so, you know, I'd love to bring some of that, you know, into this process. I always feel like it's such a shame that, you know, you sit and watch Council and it's so win-lose, you know, it's so adversarial. It's so much about scoring points and winning positions and, you know, that's just the construct we've all created. That's not, you know, "Hey, that's you guys or us," or whatever.

And so, you know, at least in parallel, you know, by all means, what will happen there - I'm not on Council - will happen. But at least in parallel, I'd really encourage, you know, substantively, bilaterally, trying to chop up some of these issues and seeing if there's ways to deal with them.

Claudio Di Gangi: Thank you, that's very helpful. I wasn't sure if it was clear, the way I phrased the question, but I wasn't sure if you looked at the staff paper itself, not the motion that...

((Crosstalk))

Claudio Di Gangi: Okay, okay, so you...

Elliot Noss: Is there something specific in the paper that you would call to my attention that I should have looked at, or...

(Kristina): The only thing that I would note, Elliot, and I would assume that your colleagues will mention this in the meeting later today, but I had indicated although, you know, hopefully clearly, that if it was the view of the Registrar Stakeholder Group that the way set forward in the staff paper is the way that they would prefer and, you know, one of the registrar representatives would offer up a friendly amendment to basically strip out the guts of my motion with a motion that would adopt that, that I would certainly accept that.

Elliot Noss: Yes, so I don't know. What I can say is, to make sense...

(Kristina): Right, no, I just wanted to make sure that you're - that to the extent that they may not have understood that that's what I was saying.

Elliot Noss: I can check in on that. But, you know, to the extent the staff paper lines up with kind of that third rail issue that I outlined, it's kind of where does this end up, you know, who ends up doing the negotiating of the contract? You know, I think that would probably be determinative as to whether they were comfortable with it or not.

(Brian): Thank you. Does anyone else have any questions or comments about the RAA? (Kristina), I was wondering if you could take a minute to kind of update everyone on where things stand with the potential UDRP review.

(Kristina): Oh, of course. Okay, so we got the final issues report. One of the other motions we're going to vote on in Council is to adopt the recommendations of the PDP, the Policy Development Process work team, which basically, after two years, has come forward with a very broad and detailed renovation of the Policy Development Process.

And one of the, I think, kind of more visible improvements in that process is that instead of just having the staff create an issues report, under the new process, staff creates a preliminary issues report. That report goes out for public comment, and then staff incorporates or - in those comments and generates a final issues report. And it's that final issues report the Council votes on.

We received the final issues report, I'd say, about a week and a half ago. There is no motion currently pending before Council. There was some discussion of the issues report.

I wouldn't even be willing to venture a bet as to how that's going to play out. What I would say is that we will probably see at the next Council meeting a motion which will likely be deferred, in keeping with the Council's usual

practice of any constituency or stakeholder group that wants to defer action once on a motion can request it. So two meetings from now, I imagine we'll have a vote.

(Brian): Thank you (Kristina). Does anyone have any updates or comments you'd like to provide regarding the UDRP or potential reviewing it? Go ahead Erik, come on up.

Woman: Oh I think there's - Erik, there's one over there.

Erik Wilbers: Does this work? Can you hear me? I think I'll use this one, thanks a lot. This'll be very brief. Erik - Erik Wilbers, World Intellectual Property Organization.

Yes, just a - the position of the UDRP - we've had - and the UDRP, by the way, has had, maybe an interesting statistic in the room, less than one in I think 1,000 names in the DNS. That's a very conservative estimate. There's actually (unintelligible), and we're not aware, at least speaking for WIPO, cases of a single one of those actually ever being successfully challenged in court.

But apart from that I think we all know, just as recalling that here, that collectively that the board has given assurances to - in shepherding through the expansions to DNS of the - and this is, of course, (to contain) the availability of the existing longstanding and tested UDRP.

This is insurance that is on record. So that's the - and then there is (as you know), so it referred to there was the Webinar which attracted substantial expert participation.

And then, of course, there was the report which (Kristina) just mentioned which, again, attracted substantial observations. And (rival) would submit in the (unintelligible) absolutely but (rival) would submit if commitments and

comments mean anything then that (unintelligible) which I mean will be another matter when it comes to the (stats) of UDRP.

Now the thrust of those - of the comments was essentially twofold. I say thrust because that's my way of summarizing a lot of overwhelming sentiment subject to minorities that are also being expressed, of course.

But the first one was DNS needs stability. Right now, you know, this is not the time to risk destabilizing the one proven mechanism that is in place. And the second (one), kind of a point of common sense is that it's much better, of course, if you wanted to review the function of UDRP which you do this with the other (RPMs) which are supposed to work in concert with UDRP, when those have had a chance to prove themselves or not.

So and the - so the background reasons why we are quite pleased with them as being sentiments so far is that unfortunately - and I say unfortunately very deliberately - it's clear that I can process by whatever name is just not really suited to improve the functionality of RPMs.

And I don't need to document that and argue that point too hard I think. But just you'd like to refer to the URS which, with due respect, through various processes has become a Chinese whisper of an effective loud compliments to UDRP.

So that's just our reality today. One more thing maybe is that if and when it will come to (across it) by whatever name, I think you must (only) prepare it for a process which is going to be pretty contentious. If you look, for example, at the comments about being submitted just in the context of ICANN's, you know, staff report and Webinar, that's just a laundry list of pretty irreconcilable and in some instances, rather wild wishes.

So we know that we're going to be in for a long and agonizing process if we go this way. And the second point - and I would like to really leave it at this

point here - is if that has been stated by some proponents of (like) UDRP, if the purpose of such a process is to move review, (rather assume), that's its job in combating some of this quarter and, you know, ten years, 11 years after it was created.

Then (unintelligible) since to start with the problem, to review first where the problem (started), where it stands today. You don't look at the solution. We're not a solution of the problem, just like UDRP has actually been evolving very, very flexibly in the course of the involution of the DNS itself.

And so inevitably by whatever means, an ICANN process that's, you know, that meets standards of eternity and effectiveness is going to have to ask the harder questions.

So who is doing cyber squatting, actively and passively? Where are the proceeds going in cyber squatting? How much of this is still within the registration system itself, the budgets, the proceeds that are being made by the very stakeholders within the DNS?

Those will be the hard questions that have to be on the table if you want to look at the (GDRPs) election to those very phenomena. Thanks (for having - this is my comments).

(Carl): Thank you Erik. Anyone else? Sure. Sure.

Man: Thanks. I do want to at least technically correct one thing and then share a comment. I can only speak personally but (two counts) has had two WIPO decisions while not adjudicated in court, settled with a settlement, which is a public settlement, completely contradicted the UDRP decision.

So I think the fact that we didn't have to go other - this is an order of an Ontario court that completely contradicts the UDRP finding. So I don't think your statement was accurate.

The thing that I'd really - you know, and again, this goes to - I'm struck as you were reading through and describing the process. You could've substituted a bunch of registrars talking about the RAA for all of the description of the bloody process and everybody has a laundry list that they're making demands.

You know, there was great irony in that. And I think we should both, you know, appreciate that we feel that way at times when we're going through these processes.

There are a couple very simple things, you know, often as there are in the RAA and I look to get them out and diffuse them, that really makes so much of everything else go away and I think those are very simply, I mean, you know, show me that people have more but simply having contracts and a mechanism in - that is an ongoing mechanism to deal with rules changes and a lot of community input into those rules changes, would probably diffuse 90% of the noise around PDP reform.

And that's something I'd really urge, you know, both the IPC and (Michael) in particular to consider approaching on a bilateral or even unilateral basis. Thanks.

Nick Wood: It's Nick Wood again for the record. I was asked by INTA to chair a session on the UDRP in Washington, DC a month ago that looked to many of these issues. And my starting point was that - and to use a phrase that someone else used on the panel - that you need to cut the crass sometime in a ten year period and that changes will be a good thing in some areas.

And we had represented on that panel, we had panelists. We had investigators including people who is practices - are devoted to working for respondents. And much to my surprise, the view that came out at the end of, there's actually no one who uses the system who wants change at the

moment. And that most of the driver change that's since becoming from people that don't regularly use it.

And there was concern that at the moment when there is so much change happening, that this was not the time to do it. So I agree with both of you and I think there should be some change but I don't think it should happen now. And the people who use it continue on...

Man: I think on that that, you know, this was - I'm sorry if I (cut you off) - because with that specific panel, you know, you should know that the backroom, you know, when (John) in particular, and I think it was Alan Greenberg were questioned as to why they said that in the domainer community, the answer was because we're so afraid that under change, things might get even worse then they are now.

And in the situation today, you know, generally a legitimate - a domain holder is exceeding, it's that fear of getting worse that was really driving them. So - and please do understand that as opposed to, you know, hey, there's not sort of a change that they would really deeply like or see as fair.

Man: If I may take off to my (unintelligible) here, and this is the last thing I'll say about it because I don't want to monopolize this microphone and I don't want to get too incidental about it either, but maybe just two things.

First of all, you know, cutting the grass. Our point is not that you could not look at UDRP. For example, I know that (unintelligible) is (one and to be or). You know, I - again, there are many things that (typical) owners have (on my wish list) I have seen (user face).

I will not say where the wiper blades and (user face) (model) or not. You can look at the first process but there are these enormous (missions) here and so the question is not whether you can theoretically and (pay for) improve the UDRP.

If you put (wiper) in the room with families (David Bernstein) and with respondents council, (John Barryhill) who, by the way, believes and is on record as saying it was an extremely fair and functional system, this is a respondent council.

You know, one can come out with, you know, with ideas here about how you - what you can do about UDRP. But the real - remind you - the real opportunity to make a difference of RPMs in the second level is not to tinker with UDRP but is to actually have a URS which is (radically) different from UDRP in that you would not have a (ben) appointment with sufficient comeback opportunities for defaulting respondents.

But that's an opportunity that (unfortunately that Kevin) lost. This is just where we are. But thinking the UDRP is not going to make anybody happy. And finally, just a more generic comment, you know, we follow not every file at ICANN but we do go to the meetings and we ha- we are very invested in how things are going with these RPMs.

We are making a lot of comments and proposals over time. I would really think that - I would really expect ICANN to focus on its problems and not on its successes.

And I think it's a matter of common sense. I don't mean to speak for registrars or registries but I think it's time to look at the problems and to stop trying to dissect the successes.

(Carl): (Kristina).

(Kristina): I - not to take - e- a step back from it, there was an idea that was floated towards the end of the council discussion on the UDRP that seemed to have appeal to most of the constituencies and stakeholder groups, and that is the

possibility that the council could ultimately deal with the issue by passing a motion saying, in effect, we recognize this as an important topic.

We also recognize that there's a lot of change being introduced in the system. We recognized that the board has called for an evaluation of the RPMs and new gTLDs 18 months after the first gTLD launches. So we as a council are committing to essentially deferring action on this issue until that investigation of report is completed and that we can take it into account on a more comprehensive basis.

I think - I am hopeful that that's ultimately where we'll end up but I think it's still an open question.

(Carl): Paul.

Paul McGrady: A couple things. Firstly that I think one of the reasons why UDRP decisions generally don't get challenged, at least in the U.S. courts, is the federal judges have consistently said that it's not real arbitration and therefore the court doesn't take any mind of it.

And that's pretty consistent in the case (file). So whether or not UDRPs have been challenged I don't know is necessarily all that interesting of a point in terms of whether or not we should be opening the UDRP for reform.

But to the point of things getting worse for cyber squatters, I do think that that's precisely...

Man: That's a gross misstatement. I said getting worse for domain holders not cyber squatter.

Paul McGrady: Okay. Okay, well I want to talk about things getting worse for cyber squatters.

Man: Then why not - then say let's make it worse.

Paul McGrady: Okay. But in any event, I think that that should be the expectation. I think one of the things that the branding community learned through the new gTLD process is that all of our efforts to put forth reasonable adoptable protections for brand owners and - that we design to balance various people's interests will be chopped away at every step of the process.

And I think that obviously reasonable and adoptable are very important things to do. But I think you may see a completely different negotiation tack in the event the UDRP is open.

Then someone mentioned the word wish list. I think that's a great term but I think that sitting back and trying to put forth proposals that we think everybody should be willing to adopt is probably not where this will go.

I think loser pays is just the beginning of the changes to the UDRP that the branding community will be seeking in the event that the mistake is made and this is where you opened up at this point.

And then also to the point of we have the staff telling us that they're going to get to their work when they can get to it and do the reports on an first in, first out basis, I do think that there is some reality of overload on the volunteer community that makes up ICANN.

And so I think that jumping ahead at this point is a bad idea and I also think that for - and again, I don't mean this to sound ominous - but for anybody who is simultaneously selling services to the branding community, for those people to be pushing for this is also a very bad idea for them.

(Carl): Thank you Paul. Anyone else have a comment? Elliot.

Elliot Noss: There's a beautiful piece of form that I think, you know, we can use maybe to sort of launch from for future dialogue. You know, Paul heard the term

domain holder and cyber squatter synonymously. They were naturally - and I'm not - and I'm - you know, and I just want to identify - you know, I understand you - no, because mine's on.

Man: (It's on).

Man: Oh, there it goes. Oh, there we go.

Elliot Noss: But...

Paul McGrady: Yes. Elliot, I - for the record, I did not make reference to your comment. I was making my own comment. I didn't say why Elliot said...

Elliot Noss: You said, you know, you said making things worse, which was exactly quoting...

Paul McGrady: Elliot, you clearly would like to characterize however you'd like to, so go ahead. Okay, thank you.

Elliot Noss: No Paul. Paul, what I want to do is I want to make the general point that too often those two terms are conflated and that too often where we all end up in unproductive rhetoric is that legitimate domain holders are lumped in with cyber squatters.

I mean, I think the best example, Paul, is something where we will deeply agree which is loser pays. You know, one of the reasons that in certain circum- you know, two (counts) is about something like 22 and 2 in UDRPs.

And the two, again, we were successful in the Ontario courts with. Loser pays for legitimate domain holders who don't abuse brand holders, is a great thing. And that's exactly the kind of issue where I'd love to line up in a productive reform process and ask for that together.

I think that would be fantastic. You know, I think that one of the greatest ways forward - I talk about this as a departure for future discussions - is to really understand the distinction between those two groups because, you know, that's where you get a (John Berryhill) saying, "You know, hey, the system ain't so bad right now."

And that's where you get me saying, "Loser pays. Great idea." So, you know, I'm looking for places for commonality not to criticize that or to mischaracterize it. It was my quote but it's changed word at the end.

Man: Yes, Elliot, we did defer any - if you remember at the dot next conference where you and I were on the stage together, and I stipulated to the philosophical existence of domainers, prospectors as opposed to cyber squatters.

And I'd do that again today. It's also in my book. You can read it. I acknowledge their existence and the distinction.

Man: (Unintelligible).

Man: Right.

Man: Get your copies today. Paul's doing the book signing tomorrow if anyone's interested.

Woman: (Unintelligible).

(Carl): Sarah, go ahead.

Sarah Deutsch: Okay – Deutsch -- (on) domain names is coming up tomorrow. (Deutsche ended) five minutes ago. So many of my colleagues have just nailed the issue on the head. I think it's not a great idea to open this issue up. It's really just a Trojan horse.

While we'd all love loser pays, I think the reality is that anything that happens inside this ICANN process will get diluted to the point where a remedy - a valuable remedy that's working today won't be available in the future to brand holders.

In the past 12 months we've won back a million and a half domain names from bringing 10 UDRPs. We use it very judiciously and carefully. We expect with new gTLDs we're going to use it a lot more and the thought that it would be eroded is very disturbing.

And if something is going to be measured, I think that we should look at registrar's port- how much of the - of that portfolio comes from cyber squatting.

You know, that's a key issue as well. But, you know, in my mind this is the one remedy that we're holding onto that seems to work. We had a case this year where the judge decided to the infringer owning - or having been ruled against 200 times in UDRP decisions and found that that was the basis for contributory cyber squatting.

So it does have value. Yes, it does get misused now and again. There're some wrong decisions that come out of it but it's not perfect but it works pretty well.

(Carl): Thank you Sarah. Anyone else have any comments or questions? Okay, I just want to also acknowledge that (Kristine) joined in the classroom and supported Nick's comment early and I apologize for not mentioning that sooner.

But I want to make sure our remote participants are feeling heard since they literally can't be. Anything else? That actually exhausts and probably went beyond our original agenda. Does anyone else have any comments or

agenda items they'd like to add at the end before we close our meeting today?

All right, well, I want to thank everyone very much for coming. And we really appreciate you being here and look forward to seeing you the rest of the meeting.

((Crosstalk))

END