

**ICANN Dakar Meeting
UDRP Update - TRANSCRIPTION
Saturday 22nd October 2011 at 14:00 local**

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Stephane Van Gelder: ...who isn't able to be with us at 5:15. So that session will be cancelled. We will try and fit 15 minutes with them during our open council meeting on Wednesday and will keep you informed of how that goes.

In the meantime, a comment has been made that tomorrow we have just half an hour on the Reserved Names issue -- the issue that the GAC brought to our attention. And that may not be sufficient. So one suggestion has been to use the 5:15 to 5:45 time slot that we had today on the ASO to use that to - as a kind of (unintelligible) discussion on the Reserved Names issue. Is that something that the Council would like to do?

I will go with (Adam)'s rule that silence means yes. So we will do that. And - okay. So please make a note that at 5:15 we will start the GAC Reserved Names discussion.

Good. Margie can I pass the mic to you please?

Margie Milam: Sure. I am providing you an update on the current state of the UDRP. We had - right before the Dakar meeting we published the final issue report on the current state of the UDRP. I just want to kind of bring you back to how we got here.

The Council did request an issue report on the current state of the UDRP. And because it was such a complex topic we took the approach of essentially adopting the new PDP format, where we published a preliminary issue report prior to Singapore for public comment. And we had that run until July.

And then that led to the final issue report being published just before Dakar. And prior to the preliminary issue report, we had done a lot of work with the GNSO Council drafting team to put together this webinar that has shared the viewpoints of many experts on the current state of the UDRP. And all of that is reflected in the issue report that was published by staff.

It's interesting that in the public comment forum, we received many, many comments. It was a very extensive public comment period. The summary itself I think has like 35 pages. And that is purely a summary of what was presented in the public comment forum.

And the next step for the Council is to consider whether or not to initiate a PDP, although I understand there is no motion yet for that. But that is the next steps for the Council after you all review the report and consider it.

And so because I have made presentations before, a lot of this will sound familiar. The final issue report didn't really deviate very much from the preliminary issue report in terms of the recommendations or the viewpoint of the community and the perspective of how the UDRP is - in fact kind of whether it is effective or should be changed. It is widely recognized as a success.

I think that was a clear through the comments -- that it is a success, but not perfect. I mean, it certainly is not a perfect policy. I don't think anyone would argue that there could be no improvements made to the UDRP.

But it is viewed as a viable alternative to litigation. And the issue report talks about what litigation was like before we had the UDRP and how costly it was both to brand holders and to registrants. And over the last ten years, the decisions that have been published are viewed as bringing consistency and reliability to both the registrants and the trademark holders.

It's a lot less expensive to defend a claim under the UDRP. And there is a lot of decisions and treatises published out there to help guide both registrants and complainants in how to interpret the UDRP and whether to even file a claim or what your other defenses would be. And that's the beauty of - a very positive aspect of the UDRP.

And so the report does reflect this community view that the UDRP is cost-effective and for the most part is viewed as flexible and fair to respondents. We know that it has been rarely challenged in court and we see that as a sign that it is generally considered fair.

And although it isn't perfect, there's the viewpoint that more harm than good could result from a PDP. And so that seemed to be a theme that was reflected both in the webinar and in the public comment forum.

And although there were some recommendations that if the UDRP is to be reviewed at all, one suggestion is to focus on process improvements as opposed to changing the policy itself. And so that was a theme that was reflected both in the public comment forum and in the paper.

And there is also the concern that a PDP could actually undermine the effectiveness of the UDRP. And the reason for that, as you read through the public comments and really understand what that is all about, is that there is this sense of stability and reliability with the way the UDRP is interpreted right now.

And even if there were changes to be made to the policy, it would take some time to actually reflect that reliability and stability in the actual decisions themselves -- that there would be perhaps a time of uncertainty until, you know, the new modified policy would be, you know, tested and the community would understand how it is being interpreted. So that is the concept of why people think that the PDP could actually undermine the effectiveness.

And there is also the notion that it is probably best to wait until I receive data from how effective the new gTLD program's URS is. As everyone knows that the URS -- the Uniform Rapid Suspension system -- was modeled off of the UDRP. And so the idea is that if we could get some data and see whether it is actually improved or are a valid and - that are enhancements to the UDRP, that you could use that data and feed it back into the PDP to modify the UDRP perhaps 18 months after the new gTLD program is in place.

So the paper basically summarizes that the majority view is that there is no support at this time for a PDP. But that is certainly not a uniform or a 100% view. There is a minority view and the report does reflect that. That essentially - that it is good practice to review all ICANN policies and that is one of the themes that we did pick up in the public comments forum.

Also the notion that after ten years of implementation - that a review of the UDRP is overdue that perhaps that, you know, there is plenty of time to review the effectiveness and now would be a time to take a look at the UDRP. There is also pointing to extensive third-party literature out there that is critical of the UDRP and that could give (unintelligible) at this time to decide whether to amend the UDRP.

And then some other comments focus on different aspects about whether changes to the UDRP could be done outside of a PDP. That was raised by the registry stakeholder, for example. And finally there was also the theme that if the UDRP was to be looked at, it should be updated to include better protections for free speech and fair use.

During this process we also received input from (SOs) and (ACs) and primarily the GAC and the at-large and the ALAC. The GAC advice was sent to the GNSO council and it essentially took - the GAC position that initiating a PDP along with the new gTLD launch has public policy implications.

And the GAC is concerned that there may be uncertainty from the new untested rights protection mechanism. And this uncertainty could be compounded if the future of the UDRP was also uncertain.

And so the viewpoint from the GAC anyways to the Council was that the continued availability of the UDRP is - as it's been tested in the, you know, and been in effect for ten years, it is important to the new gTLD program and if there were to be a PDP at this time, that it, you know, that it would introduce uncertainty.

And so the GNS - so the GAC advice is to not launch a PDP at this time. They weren't opposed to a PDP altogether; they were just saying not now.

Stephane Van Gelder: Can I just interject to remind that we were under - we had question about what GAC advice was when it was given to the GNSO. We asked general counsel and the answer was that it wasn't GAC advice in the way that people might understand it when it is given to the Board. So you can refer to the email I think that I sent to the Council list from general counsel explaining the situation there. Thanks.

Margie Milam: The ALAC had a similar view. They also thought that PDP should not be commenced at this time.

And they also raised concerns about one of the staff recommendations regarding a possible expert panel to be appointed via ALAC itself -- that it would need to be geographically diverse and conflict-free if there was to be an expert panel appointed. And the ALAC also pointed to the history of the

UDRP and felt that in the past there perhaps hasn't been sufficient geographic diversity in - when the policy was first enacted.

And so that was just raising a concern that that should be addressed if this expert panel idea has - is followed. ALAC also mentioned that they felt that those that are calling for a PDP right now do not reflect the consensus. And they also felt that a PDP should not be commenced at this time.

So the staff recommendation essentially is mostly the same from the preliminary issue report. Staff recommends against initiating a PDP at this time.

Where we made a change in the report was to say that a PDP would be more appropriate after the URS has been in effect for 18 months. We felt that the data that you could glean from having the URS in effect would be helpful in the PDP that would look at the UDRP and so that data would be very helpful. And that's the staff recommendation is that it should wait until that URS has been in effect for 18 months.

But if the GNSO Council believes that something should happen now as opposed to wait, staff does recommend convening a team of experts. I mean we talked about this in the preliminary issue report. The experts would agree with the ALAC recommendation that you would have to get geographic diversity and different, you know, viewpoints if there were to be an expert panel appointed.

And the panel could look at process recommendations only. At least that might be a way of addressing some of the issues that have been raised with respect to the UDRP.

And then after that process has been followed and recommendations have been implemented, the Council could always consider initiating a PDP later if there is a need to really take a look at the policy itself. And certainly if out of

this process there were changes to the obligations of the contracted parties, for example, then you probably would need to go through the PDP route. So that's - the recommendation is that if an expert panel is appointed, to focus purely on the process and on things that could be done quickly without having to go through the PDP process.

And so on this slide I have links to all the current documents. And that is essentially it. Thank you.

Stephane Van Gelder: Thank you very much Margie. I am sure there is going to be discussion on this. Yes please (Jeff).

(Jeff): Just as a - this is also a topic we are going to talk about with the GAC tomorrow to get just a little bit more background behind their statement - how they came - how they got that statement, you know, just what is behind it. So I just wanted to put that on the table -- something to think about. If any questions come out of this discussion I will jot them down and we will just go from there.

Stephane Van Gelder: Thank you very much (Jeff). Robin.

Robin Gross: Thank you. Yes. I just wanted to I guess challenge the statement that the majority view of the community is that there should be no PDP at this time. I have heard from at least four of six constituencies that have talked about different problems with the UDRP and ways to fix it.

So I am a bit puzzled how the staff could decide that the majority view of the community is no PDP at this time. So I just would like to challenge that statement. Thank you.

Stephane Van Gelder: Thank you. Do you want Margie to - yes.

Margie Milam: Yes. Many constituencies and stakeholders have submitted comments during the public comment forum and that statement comes from the statements made in the webinar in the Singapore sessions that we had on the UDRP and in the public comment forum. We actually, you know, took a real deep look at the comments filed in the public comments forum.

Stephane Van Gelder: Sorry. Marilyn and then (Jonathan).

Marilyn Cade: Just maybe it's a clarification that will help Robin. Although the business constituencies' comments may have identified areas of improvement, that does not equate to a call for a PDP. So even in our comments if we may have said there are areas of improvement, I think that's a different point than whether or not our comments call for a PDP.

Robin Gross: The DC wasn't one of the four of the six I was talking about.

Stephane Van Gelder: (Jonathan).

(Jonathan): All right. I'm at risk of being told I'm dancing on a thin edge here, but I sort of - I also just balk slightly at the use of the word majority because it implies - the use of the word majority implies a democratic process. The implication I believe is that there has been a democratic process gone through to select some kind of balance.

You know, I accept that it may well be that the majority of the comments submitted were in a certain direction. So it's just a really - it's a very fine point. But the impression was that it had been subject to some form of vote and that a majority decision had been reached, whereas there wasn't a majority decision. It was just - there was significant - the balance of the comments were perhaps against a review.

So it's really a nuance, but I just wanted to make that point. When I read - when I heard the word majority, it also just slightly stuck for me. So it's not a

strong criticism, it's just a point of view how it comes across when you hear the majority view. It implies that it's been through some sort of systematic, democratic process which is perhaps not the case.

Margie Milam: In the paper we actually say it's a public comment forum and just is a summary. It was difficult to put the words to describe that. I mean, it was -- as you recall in the preliminary issue report -- we used the word consensus. And that was challenged, and challenged for a good reason. I am not going to - disputing the criticism there. There certainly was more, you know, clear, you know, substantially more comments in favor of that position than the other.

Stephane Van Gelder: (Jeff).

(Jeff): So just so I understand, is the majority in favor of not doing a PDP at all, or not doing a PDP at this time?

Margie Milam: It's a combination of both. So if you look at the comments on PDP -- don't do any at all, and PDP -- do them in 18 months. So I mean, I can break it down in more detail if, you know - if it's useful to the Council.

(Jeff): I think it is, because I think one of the things the registries are considering is, you know, maybe now is not the right time. But, you know, we are not going to say at all that it's not the right thing to do at all.

And I was a little confused on the GAC advice because it went kind of both ways. It sort of said, "But you shouldn't do it at all" and then they said, "You shouldn't do it at least until 18 months." And so I, you know, one of the questions I have for them is, you know, what is your - is it don't do it at all? Or yes you should do it and just wait until 18 months, or whatever there - I don't even know if - I don't think they've set a time frame. They may have.

But the other point is there seems to be some mingling of the fact that if you do a review, it's automatically going to result in changes and it's automatically

going to be adverse changes to the process that exists now. And I think that's something that, you know, I would like to hear from others on. And it seems like the report - the staff report also seems to make that implication. That if you do a review, it is going to result in adverse changes.

Because just remember, any changes that come about from this still need to go through our process. They still need to be approved at least by the majority of both Houses, right? So it's not like you do a review. Let's say it takes a third -- whatever the standard is to initiate a PDP -- that is completely different from the standard to actually change the - or to recommend or approve policy.

I think it's an important point that people need to realize. Just because you do a PDP, A, it doesn't mean that changes are going to be recommended. It could be that the result of a PDP is "Let's keep it all the same." And, B, if there are any recommended changes one way or the other, either more favorable toward (IC) owners, less favorable -- doesn't matter. They still have to be approved by both Houses at a minimum.

Stephane Van Gelder: (Jeff) you mentioned that there was a question there that you had for the GAC. So you will be adding that to the list of GAC questions, right?

(Jeff): Yes.

Stephane Van Gelder: But we will discuss tomorrow. I had Constantinos, Tim, and Zahid.

Constantinos Roussos: Thank you Stephane. I actually just accent what I want to say. The fact that we are opening up the UDRP for review, it doesn't actually mean that it will be reviewed. And this is something that we all need to understand. I mean, you need - the GNSO will evaluate and will see the facts as to whether after commencing this process, the UDRP needs to be reviewed.

And on another point, if I remember correctly, there was some reservations expressed concerning whether the term PDP is the appropriate term to use. A lot of people seem to be having problem with the term PDP and what that involves.

But there was some sort of support that the UDRP needs. We need to do something with the UDRP because it's been 12 years, and for all the reasons that were submitted during the public comments. So this is - when it comes to the panel of experts, I think that the majority was against initiating the panel of experts. So - and I don't think that this is also reflected in the report. Thank you.

Stephane Van Gelder: Tim.

Tim Ruiz: Thanks. Just a similar comment to suggest, I guess, is just that pointing out that the threshold for starting the PDP, you know, isn't a majority. It's like actually a minority. It only requires 33% of each House or, you know, complete opposition in one House as long as 66% of the other House approves.

So there has never been any concept that it requires a majority to be in favor of in order to initiate the PDP. So whatever in that, you know, staff would consider the, you know, the majority view, and its ultimate decision as to whether to initiate a PDP or not. I think they should keep that in mind.

And I am not saying one way or the other, which way, but I just (unintelligible) I don't think we've decided that yet, but I just wanted to point out that it only requires a minority in the first place. Thanks.

Stephane Van Gelder: Thanks Tim. Zahid.

Zahid Jamil: Hi. First of all, just on the final issues report on the UDRP. On page 18 of 85, 5.4 it says, "a majority of contributors either oppose the initiation of the PDP

which will stand to be reviewed the UDRP and/or recommended that any PDP delayed to a latter date." And there is a footnote that gives you exactly the number of contributors and how many were opposed and how many weren't, right at the bottom of the page. So it's fairly clear there. I just wanted to make that point. It is there in the final report - issues report.

(Jeff): Clarify - it was an "or" statement. Either opposed for one or the other reason, and then it talks - the footnote says which ones, how many opposed on...

Zahid Jamil: So just (unintelligible) the breakdown. Yes I know. I don't see that. But there's - where there - I mean if you go through this report you will find it clarifies what majority is really - I mean what it means by majority.

(Jeff): Yes.

Margie Milam: I don't know if it answers your question fully, but I did actually count contributions in the public comment forum.

(Jeff): Yes. No no. It's what, like - I just wanted a breakdown of...

Man: Walter.

(Jeff): ...who said we don't want to do it at all, versus who said we don't want to do it right now, we want to do it in 18 months. And that's all I'm looking for.

Zahid Jamil: Okay. Second point -- I am, you know, we have to look at why we are trying to review it. Is it just to PDP because it is being 12 years and we are doing PDP for the sake of a PDP? Okay. Okay. Hello? Hello? That's okay. I can. Yes. Hello? Okay.

Man: Unintelligible.

Zahid Jamil: I don't mind. Yes. Sure. I mean - is it?

Man: I think they just lost power Zahid.

Zahid Jamil: (Unintelligible). I guess that's fine and I understand. Oh they can hear me?
They can hear me? Now I can anything I want, right?

So what is the focus of the PDP? Is it review for the sake of review or is it a review because - okay, I will wait, because there are people in the back saying they want to hear. Okay.

Man: Somebody is either beating up a mic or flogging themselves, I don't know which.

Man: (Unintelligible).

Zahid Jamil: Hello? Hello? Okay. Okay I am just going to shout. I mean, the anticipation is going to be killing people, right? I mean, what is Zahid about to say? So let me just - it was just a really small comment. It wasn't supposed to be something so bizarre.

Anyway - simple point. Why are we reviewing it? There has to be a reason to review it. Is it just a review for the sake of a review because of 12 years having passed, then that's - then I don't understand the value of it.

But if it's a review for a purpose, then the only purpose there could be for a review would be because you want to change something. If not then I don't understand what the purpose would be. And maybe that's a question really, then it's not a comment.

Constantinos Roussos: Oh. I sort of have a déjà vu because I was speaking after you in Singapore on this very subject. And I think that the reason for this discussion was when the UDRP was looked at in isolation.

And I would be very interested in seeing some - when this third-party literature that was referred to in the comments was actually written. And I would assume that part of that was written prior to the establishment of the RPMs under the new gTLD program.

And this is why I think that it is too soon to talk about or initiate the PDP for UDRP now. I think since the RPMs have been established to be complementary and to overcome some of the weaknesses of the UDRP, particularly the URS, one should give that a go and see how that works in practice before actually initiating the PDP. And I would fully agree that unless there is a reason to review it, why put resources onto it since everybody is lacking resources, you know, all over the place.

Stephane Van Gelder: Thank you. I have (Jeff), Wendy, and Mary, and Robin. Anyone else? Okay. Jeff?

(Jeff): So I believe, and someone can correct me if I am wrong, one of the reasons why (unintelligible) precisely because of that. Now one of the reasons to do a review was that it was one of the consensus recommendations of the (RAP) group. Wasn't that one of the ones that was in there? So that's why we talked about doing the review. It's not like we just brought it out of thin air.

One of the reasons they discussed that was - it may have had to do with, you know, the whole new gTLD process. And there were a lot of comments that said the UDRP was in position to handle new gTLDs.

Now that goes into support as well the notion of waiting 18 months to see if - what was the RPMs, if that adjusted the issue. And perhaps we decided the Council to do a motion to say, "In 18 months we will initiate a PDP and commit everyone to do that." I think that may go some way to address some of the registry concerns if there is a firm commitment now to actually do it in 18 months.

You know, that is something that we are talking about. One of the things the registries are worried about is, you delay it now and we never get back to it. And it just gets delayed and delayed. So maybe a firm commitment to say, "We will start the review 18 months after the first delegation" or whatever term you come to. As long as there is a commitment to do it, I think maybe something - that is something that the registries may consider.

Stephane Van Gelder: Wendy please.

Wendy Seltzer: Thanks. I think one of the reasons that we keep having trouble with this issue as it comes around the table is that the thresholds of support described in the report don't reflect the thresholds of support in Council that could take the issue forward. And so it's not particularly helpful to us to hear that a majority of people participating in a webinar or even of a count of the individuals participating in public comments said one thing or another, if those of us in Council representing our constituencies and stakeholder groups have a different perspective on what our stakeholder groups think and want.

And so I think to move things forward, we will ultimately need to make a motion in Council. And I think from the non-commercial side, we are interested in talking about that and talking about what would move this issue to the next step.

We think that there are issues in the UDRP that need review. We are open to talking about what the timing might be and how to scope that review so that it doesn't become an immense, drawn-out process. But I think to take some concrete steps forward, we would be eager to work with other parties around the table.

Stephane Van Gelder: Mary.

Mary Wong: So I wanted to respond to the (HE) on behalf of the NCUC. It's not just a review for the sake of a review. We do in our comments say that we believe it is time for a review for various reasons.

The first I think is related to your point, that this is one of the most important and earliest policies that ICANN made, and therefore it ought to be reviewed at some point. And ten years is a significant period. And we have seen literature as well as cases.

The second point is that there are substantive grounds in our view for review and I don't intend to go into that today. But I thought it might be helpful if I explained that.

Stephane Van Gelder: Robin and Zahid.

Robin Gross: Thanks. Really Mary just beat me to the punch, which was to answer Zahid's question about why we would want to do a review. And I think the answer is that every policy at ICANN gets reviewed.

We always are looking to see if we can make improvements -- where things are working, where things aren't working. We've heard comments from everyone about places that things can be fixed in the UDRP. It's a policy that has been around for what, 10-12 years now.

So the idea that we shouldn't do a review is kind of surprising to me, because we do a review, we should do a review, and do do reviews on all the other policies. And this is certainly one of the most important policies that ICANN has come up with in its history.

So, you know, to sort of think, "Well gosh, why would we ever look at that?" It's kind of a surprising comment to hear. Thanks.

Stephane Van Gelder: Thank you. Zahid and then Chuck.

Zahid Jamil: So that means that - what I'm hearing is that in fact review is for a reason, and the reason is to improve something that has been there for so many years. So then it comes into the subjective area of who thinks what improvement has to be made. And then there will be obviously political sides to that.

So by definition it has to be changed. There will be something that will come. To say therefore that, "Well, we could do this and nothing may change." Therefore it is out the window. So let's just kill that right there. Any PDP is therefore targeted to my understanding toward some sort of improvement, some sort of change.

As far as having a resolution passed now for something that may happen 18 months from now, here is what I don't understand. We will want to do a UDRP after 18 months; we may not want to do a UDRP PDP after 18 months. We want to review RPMs, we may not want to review RPMs, or we might want to do both.

But can we take that decision now? Is it premature to take that decision now? And why should we not wait for the 18-month period to pass, see what the issues report comes out with, and then do a UDRP. Because we need an issues report after the 18 months of the launch of the new gTLDs to then take that decision. So I mean, isn't that logical? And that is just a question. Thank you.

Stephane Van Gelder: Chuck.

Chuck Gomes: I would say no, it is not logical. It didn't make any sense to me at all Zahid. I think the answer is correct that the purpose of any review regardless of the policy is to see if there is a need for improvements, and if there are, to debate what those improvements are. That does not mean by any means -- I can't

find any logic to conclude from that -- that there have to be changes. So I will just have to disagree with you on your logic there.

Secondly I would like to counsel the Council, okay? With regard to 18 months, 18 months isn't the right figure. If you think it is going to be ready for review in 18 months -- and by the way, I am not opposed to it being delayed to some point in time -- but please don't say in 18 months. We are not going to be ready in 18 months. In 18 months there will barely be some new TLDs in place. So be careful about setting an artificial date that you are going to have to come back and revisit.

Stephane Van Gelder: Thanks Chuck. I thought that was 18 months starting from the launch of the new gTLD program. Is that correct? Just trying...

Man: There's lots - the first delegates.

Stephane Van Gelder: The first delegation, you know - is that correct? Yes. Mary.

Mary Wong: Actually Chuck gave the response that I was going to give, so...

(Jeff): The reason why we would ask for a commitment now is no different than the reason why any affirmation to commitment that asks for a review within 12 months of the launch of a new gTLD process. This is something that members of the community want reviewed.

And the reason why we would ask for a commitment to review it is that we don't want to be sitting here in 18 months and have, you know, others, "Are you - it's too soon to do it. There is this reason, there is that reason."

You know, the Council - (unintelligible) now does not mean that the Council by the majority couldn't undo that in 18 months. But it just means that there is a commitment and we know going in this is something we want to do. We could always add to it in 18 months.

But to just say - to just not act now - to just refuse to act now may not satisfy some of the communities that want the commitment for the review to take place. And I am trying to come up with some middle ground here as opposed to those of us that think the reason they are saying to wait 18 months is so that in 18 months they can argue, "Don't do it at all." I think that would go a long way to appease some of those that want the review now.

Stephane Van Gelder: Christina.

Christina Rodriguez: Can you come back to me in a minute?

Stephane Van Gelder: Yes. Alan.

Alan Greenberg: In light of what (Jeff) was saying, to satisfy the need to pass a motion saying - mandating a review by Council of the issue in 12 months, 18 months, 16 months -- something -- it forces it back on the table because you can't forget about it forever, but defers any decision.

Man: (Unintelligible) to that mandate. (Unintelligible).

Alan Greenberg: Or whatever time. Eighteen months from now, after, you know, after the new, you know, you pick...

(Jeff): Sorry -- 18 months from the delegation would go a long way into some compromised position that - which is also another reason why I wanted to break down comments, because that is helpful for the registries to know.

If 80% of the comments opposed to PDP completely, that is different than saying 80% opposed it being done now and would recommend it being done in 18 months. They are just two completely different concepts.

So I just want to have all the information on the table so I can go back to the registries. And I do think that perhaps a commitment to put it back on the table in 18 months or to have the PDP in 18 months would satisfy - may satisfy.

Alan Greenberg: To have the PDP - to say now that we will have a PDP in 18 months or 18 months after the delegation of their first new gTLD is making a decision on behalf of Council a bit far out, I would have thought. To simply put it back on the table and force the discussion isn't reasonable.

(Jeff): Well again, I kind of -- and people may disagree with my analogy -- but, you know, when was the affirmation to commitment passed? 2009? And that accepts that there will be a review of new gTLDs at 12 months after they have delegation.

I know it is not exactly the same situation so please don't attack me. But there is no opportunity for us as the ICANN community to say, "No we are not going to do the review." That is the only part of the analogy I am drawing. Please don't return the affirmation to commitment. That's just - again just my own analogy. It may not be perfect, but you know.

Stephane Van Gelder: Thomas.

(Jeff): I will say the affirmation to commitment does talk about a review within 12 months after date of whatever. It does talk about that. That's why we are all here talking about consumer trust.

Stephane Van Gelder: Thomas.

Thomas Narton: Thanks Stephane. I think that regardless whether we are going to have a review in 18, 24, whatever months' time, the weaknesses of UDRP are going to be the same as they are now. However, the relevance of UDRP may have decreased because you are assume other mechanisms will work by then.

So I think that if we want to have a reminder for some date in the future, the approach would be to look at the various mechanisms that there are in conjunction, to have a holistic approach to that to see whether the stack of all the RPMs work together and whether that would actually require new changes to the UDRP.

Stephane Van Gelder: I have Christina next, then Zahid, then Anna.

Christina Rodriguez: Just a couple things -- and perhaps we have moved past this -- but the whole idea of doing a PDP without assuming that there will be some change - I guess it just calls to mind how we ended the PDP on Whois, which really didn't satisfy anyone, and in fact kind of outraged a large portion - kind of cross-section of the community.

And I would be very reluctant for us to set up any kind of situation that from the outset, one outcome of people putting in hundreds if not thousands of volunteer hours on working groups is that they are not going to change anything. I just think realistically that is not a good way to incentivize people to participate, I guess.

Second, I would just note that, you know, I agree with Thomas that, you know, from the IPC's perspective, you know, we are not saying that there should never be a PDP on UDRP. We just don't think that now is the right time. And that he is absolutely right. It may turn out that as far as the IPC is concerned, that having a robust URS and having required RPMs at launch before - shortly before and shortly after solves a lot of the problems that UDRP was designed to address, in which case we have a different focus.

And finally, without obviously having a chance to consult with our constituencies, my instinct is that the IPC would probably be willing to support a motion that would call for consideration of the issue to be deferred. But frankly the last time we committed to action in the future -- as our discussion

this morning reminded us -- we got a little burned on that. So we are not going to do that.

Stephane Van Gelder: Thanks Christina. Chuck wants to address something you said, and then we will go back to the queue.

Chuck Gomes: Yes, something that you said, and back to Zahid's comment. I would like to point out the example of the inter-registrar transfer policy, Part A. That was a PDP. No policy recommendations came out of that.

So to assume that because we do a PDP has already been proven false, because we have had - we had one recent example where there were no policy recommendations. So I just don't understand the logic that we are assuming that changes have to be made if we do a PDP.

Stephane Van Gelder: Thanks Chuck. Zahid.

Zahid Jamil: I think most of us recognize and understand that there are various interests around this table and the Council which want changes. Sure -- maybe there won't be any changes because of the politics that they have set in the end, but I think the reason why various people are pushing is because they do want a change. Let's be clear on that one.

Second, I would like to read out -- I am sorry (Jeff), I know you said, you know, AoC -- AoC doesn't reference the UDRP. AoC is set at 9.3 and it clarified -- because as you were using the analogy would like to just clarify this -- it says that there will be review after one year of the launch of new gTLDs of safeguards put in place to mitigate issues involved in the introduction or expansion of new gTLDs.

The point that Thomas is making is the point - it's absolutely right. We are looking at safeguards which means RPMs. All of them together -- a holistic

basis. It can't just be the UDRP. It can't just be the URS. It can't just be the PDP or RP. It has to be a holistic basis for all RPMs.

If you take the basis of all the RPMs -- is it a foundation or a UDRP, that is how the UDRP works -- if you take that and start changing that, then you have got to be able to review all the others at the same time. They are all inter-linked. It was a tapestry as we all agreed. And if it's a tapestry, then we have got to review all of it together. We can't do one of them alone.

So anyway those are my comments. Thank you.

Stephane Van Gelder: Thanks Zahid. Alan, Constantinos, (Jonathan), (Jeff).

Alan Greenberg: Thank you. I was going to - I had an inspiration or a very stupid thought. I wasn't sure which. Clearly to approve a PDP starting "n" months from now, or "n" years from now, based on an issues report done in 2011 doesn't sound like the wisest move, because that PDP will be committed to addressing the issues that we talked about in this issue report.

So it would be more reasonable perhaps to say we are requesting an issues report for delivery in June 2013 or something like that, which I think is within our mandate. However the most recent comment - if indeed there is going to be review starting the year after the first gTLD is launched -- and that review almost implicitly will review the protection mechanisms -- that group will come up with a report a year later.

One of their items is if there are seem to be deficiencies in the protection mechanisms, that report will require the Board to take action, which could be requesting the GNSO to review holistically all of the protection mechanisms or specific ones. So that may have a life of its own and force a review at that point regardless of what we decide right now.

But it sounds like - I am one of the ones who thought a PDP now would be a good idea, so I'm not pushing my idea. But I think scheduling something out which possibly will be modified by the AoC review is not an unreasonable issue.

Stephane Van Gelder: Thanks. We have eight minutes left so I am going to ask you to just make sure that you are brief, Constantinos, (Jonathan), (Jeff), anyone else. Please let me know.

Constantinos Roussos: Thank you. Yes, very briefly. On the issue of deferring consideration of the issue, whoever (unintelligible) needs to be reviewed, I will say that we already have a very bad precedent.

I mean the UDRP -- discussions like that took place between 2002, 2003, and back then it was again decided that the issue should be deferred. And we found ourselves seven, eight years later discussing again exactly the same thing. So I really think that the GNSO needs to make a decision as to whether it will review the UDRP or not, instead of deferring again puts duration on the issue.

And I am not sure what data exists in relation to other PDP-related issues like the Whois, but the data and the evidence that exists, the academic evidence that exists on the UDRPs span across ten years. And I think that should be - that by itself is quite - is an evidence that the UDRP - we need to do something with the UDRP. Thank you.

Stephane Van Gelder: Thank you. (Jonathan) and (Jeff).

(Jonathan): I suppose my input, Stephane, is one of - just to try and put some context and information in it. My reading of the registries' discussion of this was - it was largely based around a point of principle that regular review or at least ultimate review of core policies should take place periodically.

And again to Chuck's point, the change may not come. It is not guaranteed that change would come out of it, but certainly the assumption was that minor change might come out of it.

So just to set minds at rest, there wasn't an anticipation of wholesale change but frankly rather the kind of process adjustment that is in many ways envisaged by the alternative within the issues report. So just to set minds at rest that there wasn't an anticipation of wholesale change and that the approach was largely one of principle.

Stephane Van Gelder: Thank you. (Jeff).

(Jeff): Okay, a few points to address the (HE). First I do want to affirmatively state there is not one change that the registries have discussed making in the UDRP. There is nothing that we are asking for at this point in time, or nothing we have in our mind to change in the UDRP. Period.

So please don't make that assumption that just because we want it reviewed - I think (Jonathan) is spot-on. I think what (Jonathan) said is, the registries have an interest in having every policy reviewed. In fact, if you review the PDP final report, the real final report, the one that we are going to be voting on in a couple days, it says that every PDP should have a review. Or the outcome is that every PDP should be reviewed. That is not a new principle in the ICANN world. This is the only one we actually have not reviewed.

To address Alan's point, if you want to make it on all RPMs, I think the registries would be okay with that. I don't think the registries have an issue with that. If you want to stay in 18 months -- we'll do an issue report, fine. I think the registries would be okay with that as well, in looking at the context. I think what the registries want to see is a commitment to move forward as opposed to a vote to defer. That is what the registries want to see.

Stephane Van Gelder: Thank you. Any further comments? Marika?

Marika Konings: If I could just, you know - one last reminder, because there is an IRTP Part B recommendation that is linked to the consideration on whether or not to initiate a PDP on the locking of the meanings subject to the UDRP. So if - once the Council considers that, if they can also remember to consider that specific recommendation.

Stephane Van Gelder: Thank you Marika. (Jeff).

(Jeff): Yes thanks Marika. I jotted it down. I forgot to mention it. And the other - the last point I wanted to make was it's also possible to take things - smaller issues out of the PDP even though I talk to a number of constituencies and stakeholders, for example, that support having the UDRP providers be under contract with ICANN, under direct contract. We can take that issue completely separate and apart from everything else.

I think there may be some little things that we can work on that have perhaps no bearing on a review of the UDRP but maybe have some other things that may address some concerns - some smaller concerns raised during this whole process.

Stephane Van Gelder: Thank you. I see no other comments so we will bring this topic to a close and start again straight-away on the IRTP Part B implementation process. Thank you very much. My pleasure. You may disconnect and reconnect.

Coordinator: The recording has ended.

END