

**GNSO – ICANN Nairobi Meeting
Registration Abuse Policies (RAP) Initial Report Information Session
10 March 2010 at 16:00 local time**

Note: The following is the output of transcribing at the GNSO RAP Initial Report Information Session held in Nairobi on Wednesday 10 March at 16:00 Local time. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

Greg Aaron: ...on the status of this working group, which delivered its initial report one month ago. And we are currently in the public comment period for the paper. The public comment period is open through March 28.

The purpose of this session is to give information. We'll start with the presentation of the status and the main issues that the group has worked on. We'll then have after that a discussion period. Also I'll note that if you are interested in providing formal input and comments on the group's work please do submit it as part of the public comment period.

That way we'll get your comments in your own words and the group will digest all of those public comments as it creates its final report, which we want to have out in advance of the next ICANN meeting, which will be held in Brussels in June.

We do have online participation. We have people logged in from different locations. I'm speaking to you today from Reston, Virginia in the United States. I'm going to ask Marika to help us manage the speaking queues since she can see the participants in Nairobi especially.

So let's begin with the first slide and then we'll take questions after the presentation. This working group was started about one year ago. Some of

the questions that came up were what are the registration abuses that we may need to be worried about in the community and what role might ICANN play in addressing those?

What are the contours of GNSO policy and development related to those problems? And so this group was started. It is a pre-PDP working group. That means we may make recommendations of various kinds including recommendations that the GNSO council initiate policy and development processes in a formal fashion. Next slide please.

The group's charter asked it to address a number of issues including exploring the difference between registration related abuses and other uses of domain names. What is the effectiveness of existing abuse policies? Are there uniform approaches or non-uniform approaches and what would be the benefits of perhaps more uniformity?

Again, the issues may be suitable for policy development and so on. If you're interested in getting into any of the details you can visit the group's site. It's available through the GNSO and ICANN Web sites and it contains the charter and all of the documents that we'll be referring to today.

Next slide please. The group was asked by the GNSO to create a definition of abuse and you'll see it on screen. This is a definition that the members of the working group wrote and agreed to unanimously. It says abuse is an action that A, causes actual harm and substantial harm or is a material predicate to such harm, in other words is an enabler of such harm.

And B, it is illegal or illegitimate or is otherwise contrary to the intention and design of a stated legitimate purpose if that purpose is disclosed. We note also that the party or parties harmed in the substance or severity of the abuse should be identified.

And those enabling actions must have a clear link between them and the abuse. As an example the registries work within grace periods and the ad grace period was designed to help registrars recover from some specifically stated problems such as fraud or software problems and those kinds of things, stated, legitimate purpose of the ad grace period that over the years we have found in the GNSO that other parties were using it for other activities such as domain tasting and those had impacts.

And it was determined to be a significant impact upon other parties and so the GNSO created a policy to address that issue. Many of the consensus policies that the GNSO has created over the years do deal with abuses of various kinds. Next slide please.

One of the activities that the group spent a lot of time on per its charter was trying to understand some of the policy contours that are involved. One issue was pointed to in the issues report in which the staff and the general council's office pointed to some differentiations between registration abuses and uses of domain names.

And there is a lot of discussion of this that you can find in the report. There are also other areas that may be appropriate or bear upon policy making in this area. For example, the registries and the registrars have provisions in their contracts bearing upon the need for security and stability for the DNS system overall for example.

Now I want to start by saying that registration abuses don't just have to do with the creation of a domain name, the initial registration of the domain name. Registration issues and activities occur potentially through the life of a domain name. Those registration issues are related to activities performed by registrars and registries including creation of domain names but also activities like transfers, how domain names are deleted and redistributed.

Whois is actually a registration related issue because that's the basic information about the registration of the domain name and similar topics. And these traditionally are the areas in which the GNSO has made consensus policies and that's a simplification but generally true.

Now use issues may concern what a registrant does with the domain name after it has been created or the services the registrant operates on the domain. One can use a domain name for technical services like email or Web sites, to support sub-domains and so on. Of course there are many practical or social uses of domain names, speech and expression, social networking, peer to peer applications, all kinds of things.

We have to see if a registration issue is involved. That might be in scope. If there is not a registration issue then the question becomes is it something that policy making is possible to do. Next slide please. So as part of the exercise the members of the working group proposed a number of issues to look at.

And it was our job to see if they were abusive and to see if they might be within or without policy making scope. And there is a list of them and in some cases the group found they were within scope and some cases we found that these issues actually were without of scope and therefore we didn't make recommendations.

What we are going to do next is look through the recommendations that have resulted and a little bit of why we have made those recommendations. Next slide please. One issue that came up is the malicious use of domain names, problems like phishing, malware distribution, spam and so forth.

These are of course subjects of great interest to many people, a topic of current interest across the Internet. The question is whether they have any relevant intersections with registration issues and what might be done within ICANN's mission and policy making boundaries.

Whois is perhaps an example. Whois accuracy is important because sometimes criminals fake Whois data and Whois data is important for law enforcement and other parties to investigate misuse of domain names. We also discussed issues including intent, how can one figure out what someone's intent is when they register or use a domain name, issues of risk and indemnification and we also discussed the expedited registry security request, which gives registries an opportunity to receive some leeway in their contracts when dealing with significant threats to DNS security or stability.

We noted that all registrars and most if not all registries are empowered in various ways to develop and enforce anti-abuse policies. And an issue is whether or not ICANN has power to force registries and registrars to suspend domain names for malicious uses.

Next slide please. One issue we looked at also was Whois access. The GNSO is looking at a number of Whois issues including Whois accuracy and the use of proxy or privacy contacts. We looked at a different issue, which had not been raised, which is basic access to Whois information.

And we did determine that we think it has an inherent relationship with registration processes and therefore registration process abuses. One issue is that especially for (thin) registrant Whois (comma net), that data is not always accessible on a predictable, guaranteed or enforceable basis.

So simply retrieving and accessing that information may be an ongoing problem. We also found that users sometimes received different Whois results depending on how or where they look up that information. For example, parties may be offering different information on Port 43 versus a Web Whois for the exact same domain name.

There may also be problems we discovered with enforcement of existing contractual obligations. Next slide please. Uniformity of contracts is another

area that the charter asked us to look at. A sub team from our working group investigated some questions related to the desirability and applicability of uniform provisions related to registration abuse in the current agreements and did an analysis of the current landscape.

If you look in the report you'll see some rather detailed tables and evaluations. We'll talk more about that in later slides. The group also wanted to point out to the GNSO council some kind of overarching or meta issues, which we encountered in our work.

And these may yet be applicable to other working groups inside the GNSO and elsewhere in ICANN. One of these was uniformity in reporting, which is if you're going to make policy you need to have good data to rely on. And if you have a policy related to something people need a good way to report problems with it or compliance with it.

So uniformity of reporting and having reporting mechanisms is very important. Another issue was the collection and dissemination of best practices. In a moment we'll talk about one best practices area that we make a recommendation for. But we realized and recommend that best practices are something that could be very useful in the community and we need to figure out ways to support and maintain those.

So let's move on to the recommendations that are in the initial report. These are listed in order by the level of consensus they received within the group. The first one came out of the issue of cyber squatting, which is an issue that has long been recognized as a registration issue or problem.

It's one of of course the reasons why the UDRP exists. In our discussions we discussed how the UDRP is a venerable policy. It's now 10 years old and the group does recommend the initiation of PDP to investigate the current state of the UDRP and possibly consider revisions to address the core issue of cyber squatting.

The effort could consider how the UDRP has addressed that problem to date and its inefficiencies or inequalities that have been associated with the process and whether the definition of cyber squatting in the existing UDRP language may need to be reviewed or updated.

UDRP has been used to settle thousands of cases but over the years many parties have expressed some dissatisfaction with it and this would be a way to examine that. This is by the way not a recommendation regarding other rights protection mechanisms. We'll touch on those later in this presentation. Next slide please.

There was also unanimous consensus to create some nonbinding best practices to help registries and registrars address the illicit use of domain names, malicious use of domain names. We suggest that this effort be supported by ICANN resources from getting a group together in some fashion to look at the issue.

And specifically it should look at some subjects such as how can you identify and investigate common forms of malicious or criminal use, anti-abuse terms of service, practices for identifying stolen credit card information and other credentials and on the next slide we have some additional topics for possible consideration.

Basically the idea here is that ICANN is a natural place for registries and registrars to talk about these kinds of issues that they encounter and to trade information and ideas about how to effectively deal with those issues. Next slide please. There was unanimous consensus around recommendations regarding Whois access.

As I mentioned, the issue is that access is not always guaranteed or predictable. The first recommendation is for the GNSO to determine what

additional research or processes may be needed to ensure that the Whois data is accessible and reliable and enforceable in a consistent fashion.

As part of the affirmation of commitments process ICANN has been asked to do a review of Whois policy and implementation and so we commend this issue to the GNSO to figure out the appropriate way for this issue to be explored. Next slide please. We also make a separate recommendation to the GNSO that the ICANN compliance department publish more data about this issue on at least an annual basis.

The data should include the number of registrars that show a pattern of unreasonable restriction of access to their Port 43 US servers and also the results of an annual compliance audit of all contractual Whois access obligations. This is an attempt to understand what the landscape is and whether there are problems regarding compliance with existing obligations.

Next slide please. There is consensus regarding the issue of fake renewal notices. These are notices sent by various parties to domain name registrants. Sometimes these notices are made under pretext. The goal is usually to get someone to transfer their domain name somewhere else from where it is now.

The group wants to begin by asking the GNSO to gather more information from ICANN's compliance department basically to figure out if there are appropriate enforcement avenues. The second recommendation perhaps to follow would be to further discuss a PDP if the issue warrants.

Next slide please. There were a few issues that the group decided not to make recommendations on for example, domain kiting, which is registering a domain name over and over again and deleting it over again many times within the ad grace period. It's different than domain tasting in some technical aspects.

Front running is making a domain name registration based upon some advanced knowledge of what a person might want to register such as registering a domain name that someone else has made a Whois query about. In these two cases the group decided it was unclear how much these issues were happening or to what extent.

So we basically recommend that an eye be kept on these issues. There is unanimous consensus that uniformity of reporting is important as I mentioned previously. Next slide. And also that collection and dissemination of best practices can be a very useful thing and we recommend that that receive attention and funding mechanisms. Next slide.

There is rough consensus around the issues you see on screen. Gripe sites are domain names registered to complain about a company or service typically. Deceptive domain names are meant to deceptively draw someone's attention. Offensive domain names of course contain strings, which may be offensive to some users.

The group had rough consensus not to make recommendations for special treatment of these kinds of domain names. Some members did feel that the UDRP should be revised or have carve outs or exceptions to specifically deal with these while other members felt that UDRP is currently sufficient to deal with domain names that contain trademarked strings and similar issues.

Next slide please. There was strong support but significant opposition also for a proposal to turn down a proposal that registries develop best practices to restrict the registration of offensive domain strings. Some members felt that that was not applicable, that is an old issue that has been solved a while back.

Other members thought that recommending best practices in this area was a good idea in order to mitigate potential harm of those strings to consumers

and children. There is also strong support but significant opposition to a proposal regarding uniformity of contracts.

The proposal is the creation of an issues report to evaluate whether a minimum baseline of registration abuse provisions should be created for all in scope ICANN agreements i.e. registry and registrar agreements and if it's created, how such language would be structured to address the most common forms of registration abuses.

So a baseline might involve some general guidelines to address registration abuses that currently exist or might exist in the future. Those members who voiced opposition did so because they thought that consensus policies are better done when they address specific issues among other reasons.

There was a recommendation that received no consensus, the group was almost evenly split on a proposal to have a PDP to investigate the appropriateness and effectiveness of how rights protection mechanisms developed elsewhere such as in the new GTLD program, could be applied to the problem of cyber squatting in the current GTLD space, in other words, the existing GTLDs.

Those rights protection mechanisms for example in the new TLDs include a proposal for a trademark registry that potential registrations can be checked against and also a uniform rapid suspension system, which would be another way to address potentially infringing strings or infringing strings. So there is a lot of debate on this topic, no consensus.

Some saw utilities, some saw it as premature given that the new TLD process and the rights protection mechanisms proposed there are still very much in flux. So next slide please. So those are the main recommendations. There are also a couple of areas that the group decided were simply out of scope and you can read all of the details in the report.

As I mentioned, the public comment period is open through March 28 so if you would like the group to read your comments and consider the issues that you raise for inclusion in its final report, please do post them by March 28. The initial report is available at the location there on screen and there are translations available as well.

So as I conclude, on behalf of the working group I'd like to thank you for your interest in the topic. On behalf of the group I'd also like to extend some thanks to our ICANN staff who have supported the working group especially Marika Konings and Gisela Gruber-White with some advice from Margie Milam.

So thank you and what we're going to do next is open up for discussion. If you're online you can use the Adobe feature to raise your hand. If you're in the room in Nairobi Marika will be able to recognize you. As you give your comments please do speak up into the microphone and if you could please identify yourself by name and perhaps with the name of your company or otherwise indicate your interest in the topic. Thank you very much.

Marika Konings: Thank you Greg. And while I give everyone some time here to come to the mic and think about their questions if we can invite as well the working group members here on stage and I don't know if there is anyone else on the bridge to maybe share some further comments if they have any. Berry.

Berry Cobb: Thank you Marika and also thank you to Greg Aaron for running the group. He did a really good job at keeping us on task and focused. We definitely accomplished a lot over the year and it's been a great experience for someone like me kind of introductions into the whole working group process.

I would like to just point out by just one note definitely the issue of registration use versus use abuse was a streamlined topic that meandered its way through just about every aspect of our discussions. And that definitely

warrants further investigation as to that delineation and especially what is referenced to the scope as to what policies can be made in those areas.

As you can see in some of the recommendations there wasn't consensus on some of those points. But I do believe that both sides of the fence agree that there are issues out there and ultimately that kind of led to some of us with the default of best practices as well, which we still fully support.

So anyway, I'd like to just offer up the notion that when we do reconvene we'll be deep diving a little bit further on that topic and move on from there. And I'd also like to extend a repeated thanks to the ICANN staff and Marika and Margie for helping us out. It was a great time. Thank you.

Marika Konings: Martin.

Martin Sutton: Thank you Marika. I would like to reiterate the last point. I think it's tremendous the amount of work and effort that the ICANN staff have been able to put into this and also the participants in the working group.

The debate is a lot of time and effort discussing all the issues and we have come to this stage and it is time for us to take on as many questions and feedback from the community so I'd like to leave it open to questions.

Marika Konings: Steve, please go ahead.

Steve Delbianco: Thanks Marika. Steve Delbianco with NetChoice Coalition and a member of the business constituency. Thanks again for the work you did. I'd like to see if I could get staff, Berry, Martin or even Greg to explore and explain a scope question namely was use abuse outside the scope completely of ICANN stability and security mandate or was it merely outside the scope of what would be put into a registry contract?

And you mentioned the sense item. Is it outside of the scope of the picket fence, the consensus policies, which the community can impose on existing contracts? In other words examine for us how you determined it's out of scope to look at use abuse. Thank you.

Greg Aaron: This is Greg. I'll begin by saying that some of the issues you mentioned actually are definitely within scope and within the picket fence. For example, the contractual provisions regarding security and stability of ENS are actually within.

What you might want to do is take, if you go to the issues report, go to Section 7, which is some of the commentary by the staff and the general council office. On one hand ICANN has never dealt and gotten into regulating certain kinds of activities. For example, historically it has never gotten into regulating speech, which could be construed for example as a use issue.

So in some ways this is not what is ICANN responsible for in a fundamental fashion. And there are probably some disagreements about the contours of that within the community and that's one of the reasons why we're here for discussion.

Marika Konings: Margie.

Margie Milam: Yeah. I thought I'd provide some clarification as well. It is a difficult issue and when we look at the scope of consensus policy there is just a lot of permutations, one of them being the registrar agreement, the other the registry agreements.

And so when we talk about things are within scope of consensus policy, we have to look at the limitations of the contracts. But that doesn't mean that ICANN can't look at it if it's not within the consensus policy arena. You can still have things within scope in the broader sense and that's where we talk about things like best practices or just general recommendations of ICANN.

And so it is an analysis that we're going to go through. It all depends upon the types of policies that we will look at if PDP is pursued because that means you get very specific about if it's something that relates to security and the stability of the Internet, well maybe it is within scope.

If it's something like Greg mentioned where it's purely content and it really isn't related with domain names or domain name system then there is the question that goes back to the general council's office to say well, is it really appropriate for ICANN to consider that.

So it's not an easy answer and it's something that we're going to have to grapple with as we proceed if we do proceed with the PDP.

Marika Konings: Steve, you have a follow up?

Steve Delbianco: I do. Steve Delbianco and the follow up would be I know security and stability are always those guide words but we now have one other agreement that goes a tiny bit further.

It's the affirmation of commitment, which is going to hold ICANN specifically to Whois implementation that fulfills ICANN's obligation for global public interest whatever that means. And we're all going to be debating that but our limit is slightly broader than security and stability given that we have an explicit call for global public interest.

And it would be hard for me to understand how many of these abuses should be tolerated because perhaps they're outside of a particular scope. But in fact it's clear they undermine the public interest and the availability and integrity of a DNS.

Margie Milam: It's an interesting comment because we are bound by the ICANN bylaws and I don't believe the affirmation of commitment changes what the bylaws say.

So the question that you're suggesting is does the affirmation broaden our scope?

I don't know the answer to that but I would assume it's an analysis that you would have to go look at the bylaws and look at the limitations within the bylaws and yes public interest is important but within the scope of what ICANN is allowed to do. And that's just my off the cuff answer.

Berry Cobb: And this is Berry. I'd just like to add to that I think it's pretty clear with some of the other working groups I'm on as well that this topic isn't quite as prevalent as it has been in RAP.

It does exist in other facets that we're looking at policy development and as I mentioned in my comments earlier, it's something that we're definitely going to have to take to the higher power so to speak to definitely try to get some clear definition around this.

And once we do I'm hopeful and optimistic that it will improve future working groups and we won't have to recreate the wheel on some of this as well.
Thanks.

Marika Konings: Can we maybe take a question from the chat before going to the next person in line? There is a question asking about Bob Hutchinson, why was front running recommended for no action? Who wants to respond to that one?

Greg Aaron: This is Greg. I can take a shot at it. One of the problems we ran into is a lack of information about how often it's happening or where. We know that it's a possibility and there is a feeling that that might not be a desirable activity.

But we don't know how much it's happening. There was a study commissioned by the ICANN compliance staff for example that we looked at that wasn't able to identify any. It's just kind of an unknown and my personal recollection is that it wasn't a big enough issue to dive into it and make a

recommendation about a PDP for. And other members of the group can also comment if they like.

Berry Cobb: Yes Greg. This is Berry. Definitely I echo that sentiment and something, which really leads to the meta issue about uniformity of reporting is on several of these topics we didn't have all the data that one would like to have in trying to make some of the decisions and recommendations that we have had.

So on several of the topics we really had to either go fetch data from ICANN compliance and sometimes that did result in good stuff. But other times there wasn't enough delineation to denote a specific abuse. And so just that was very a big issue with us was getting to the data. Thank you.

Marika Konings: Next in line.

(Joe Alania): My name is (Joe Alania). I'm with central. My comments are personal though. I apologize if I missed this in the beginning but if we talk about the subject of abuse in the domain name realm I didn't see listed reverse domain hijacking. Was it? Well, reverse domain hijacking is certainly a practice where larger entities, companies I would say harass legitimate domain name holders.

I acknowledge that cyber squatting is a problem but I also think we must acknowledge that reverse domain hijacking is a problem too and I think that the victims of it are really the people that need a lot of help and that should be protected by the rules by ICANN. So that's one thing.

The other thing I'd like to go on record as saying is that I notice that there is discussion about retroactive rules that are being used for new TLDs, those rules being discussed about applying to existing TLDs. I would find that deeply disconcerting because to me there are companies and businesses that have built very large businesses on the assumption that they would be able to renew their domain names and use them based on the existing rules.

So I think that is a very concerning precedent and I think it should be on the record. Thank you.

Greg Aaron: Thank you for your comments. This is Greg. I think your thoughts about reverse hijacking may be covered in the recommendation to look at the UDRP if you're concerned that that mechanism is used to do that kind of activity that you are concerned about. Thank you.

Marika Konings: Other comments? Bruce?

Bruce Tonkin: Thanks. Bruce Tonkin, (banking). The report used the term cyber squatting and the definition seemed pretty loose. If I understand correctly it's the use of a name for making profit and it used an example of profit using pay per click advertising.

That seems a pretty broad definition of cyber squatting. Names can be used for lots of different reasons. Like you might well if you used a generic word like apple, you could legitimately an (apple.movi) and use that for purposes that are completely unrelated to computing. You could be selling apples that you eat.

And then the other I think quite a big shift if you look at the origins of UDRP I don't think it used the term cyber squatting. It's a bit more specific about defining the definition of bad sites. But it talks about one scenario which is where somebody registers a brand for the purposes of selling it back to the original owner.

And that really was the situation back 10 years ago when UDRP was created because that was the most common scenario like people didn't really know much about the Internet. Smart people would sort of look and say okay, well, I bet this particular brand owner that doesn't seem to have a domain name right now will be interested in a domain name in the future.

So they register that name and the predominant method they used was just generic please this name is for sale for X amount of dollars and almost trying to extort an amount from them. What really shifted in the industry was the use of pay per click marketing. And I think what's not clear in the report and sort of not really concerned with the shared view in the community is what's legal versus illegal in that front.

So illegal to me would be somebody registers (apple.movi) and the pay per click advertising is entirely related to the field of computing. So in other words if you went to (apple.movi) assuming apple.com existed and then you looked at the content and all the pay per click marketing was related to computing, that really (is a danger. You're advertising computers.) Pay per click is just the mechanism.

Whereas if the pay per click marketing was about selling fruit, that to me is not an infringement of the brand Apple in the computing industry. So I just caution you in just drawing really long bows and saying cyber squatting equals pay per click marketing on a brand name.

And then the issue of spelling is a very sensitive issue as well, which is where you take a brand name and you rely on the fact that users mistype the name and they go to another location and at that location again is pay per click advertising. Now again, if it's a breach of the trademark, presumably the advertising would be related to the trademark.

If it's not and they're advertising say fruit using the apple scenario and an intentional misspelling of apple, again I'm not sure that's necessarily illegal. It might be annoying, definitely annoying. I'm not quite sure what harm it's actually creating.

And then the question is would the user be confused by that? Probably not. They go to a misspelling and they see some advertising that is completely

unrelated to the site that they are originally going to. It's probably pretty clear to them that they have made a mistake in their spelling and they correct the spelling.

And it's probably not that dissimilar - I mean I know people don't like to practice but it's a bit like if you set up a shop that was selling computers and you had a lot of people - and I'm talking about a physical shop on the street - and a lot of people happened to come and buy those computers, someone else might try to set up a shop next to it to sell fruit because there happens to be a hell of a lot of people going into that computer shop and they all look pretty unhealthy.

So by selling fruit I can make money because I have positioned myself next to the Apple Computer shop. But that's the equivalent of (kind of abuse). You've got the address slightly wrong, you have gone to the fruit shop. But if I was going to buy a computer, I would know I'm in the wrong spot or not.

So just caution the terminology but I also wonder just how well that has been - what the - I guess has it been tested in court because I think what ICANN needs to be doing is following what is law. And if what you're setting is actually illegal or it's been found to be illegal in court then maybe we incorporate that and tighten up the UDRP rules.

So I just want to separate annoying and obviously people are trying to make money using the brand, versus illegal and whether that's really being thought through, particularly with the pay per click.

Margie Milam: Thanks Bruce. I think on the question of the definition I think if you would only know how many hours this group debated the definition of cyber squatting. But I'm sure some of the members will respond back. Does anyone want to respond?

Greg Aaron: This is Greg. Bruce, thank you for your comments. They're well taken. You critically note that our definition of cyber squatting mentions for the purpose of profiting. It's also true in the report that there was consensus in the group that the UDRP offered a sound definition of cyber squatting.

There is discussion about whether we should take it broader than that or not. So I wonder if there is perhaps an internal inconsistency in our report there. Maybe that is something we'll need to take a look at as we work towards our final report. Regarding pay per click, we did examine the issue.

We didn't say much about it except that the group had consensus the pay per click advertising is not in and of itself a registration abuse and I'm reading verbatim. And that bad faith in the use of trademarks and domain names is a cyber squatting issue that can be addressed under the UDRP.

And the abuse of a PPC system for elicited gain is perhaps appropriately addressed by the operator of the PPC advertising network so there is a little information in there about that. Thank you.

Marika Konings: Will we make any further comments Berry or - if I could maybe first before going back to the queue and take a question from a remote participant, Chuck.

Chuck Gomes: Thank you. As I went through the recommendations there were several of them that it wasn't really clear what the working group was suggesting that the GNSO do.

The first example is with regard to Whois access. You say the GNSO should determine what additional research and processes may be needed to ensure that Whois data is accessible in an appropriately reliable, enforceable and consistent fashion.

Is that - are you envisioning a working group like your own working group, the RAP working group - that doesn't exactly sound like a PDP. And then a second example was the under uniformity of contract recommendation one says the RAP working group recommends the creation of an issues report to evaluate whether a minimum baseline of registration abuses proficient should be created.

Again, that's not so much - that doesn't sound like policy development although I know we use that pretty broadly. And I'm not even sure an issues report applies there the way we typically use it. And then last of all or maybe there's two more - in your meta issue uniformity of reporting again, your working group recommends that the GNSO and the larger ICANN community in general create and support uniform reporting processes.

What are you - I'm really curious as to what you're thinking about these things. The last one would be the second meta issue, collection and dissemination of best practices where the working group recommends that the GNSO and the larger ICANN community in general create and support structured and funded mechanisms for collection and maintenance of best practices.

And maybe I'm missing it somewhere but all of these seem a little bit different than a typical PDP. That does not mean they shouldn't be done but I'd just like a little more thinking from your part in terms of what you're envisioning that the GNSO do and how you would see that happening.

Marika Konings: Any comments to that? Thanks Chuck. I think we'll definitely take that into account. I see Liz wants to make a comment. Go ahead.

Liz Gasster: It's Liz Gasster. I just wanted to comment on the Whois issue in particular. One thing that we opted to do was simply add the idea or the concern to the Whois requirements report that is being developed that will be released probably by the end of the month.

We just took it to be a future possible requirement for Whois based on what we know some of Whois flaws to be today. So there still might be other ways that you want to address that issue but at least it is going to be captured in our Whois requirements report that Steve Shang is putting together.

Marika Konings: Thanks Liz.

Greg Aaron: Thank you Liz. I'll try to respond on a couple of other of these as well. Liz covered the Whois. In regards to the uniformity of reporting - I'm sorry, uniformity of contracts, when we first set out and the sub team that was assigned and after several weeks of debate about and research first and foremost to really get a picture of determining whether there was or wasn't uniformity out there, once the picture was created it was definitely clear that there was no uniformity.

And that in the nature of itself makes it much more complex to manage. But I would just add that when we concluded the sub team our recommendations were more formalized as to well, perhaps there is formal changes that we could make to contracts. But then we kind of retreated a little bit in terms of recognizing that it's only a pre-PDP and that any recommendation that we put forward could necessarily influence any future PDPs.

So we were very careful about our wording in our recommendation itself. One other note that I would mention in regards to the use of an issues report, that was something that was kind of batted around in the team when we were just making the general notion of starting a PDP.

I think that is the general process that an issues report be kicked off to kick off the PDP. So that's why we included that language and every recommendation that mentioned the PDP. Lastly, with the uniformity of reporting or next to last - again, even within our paper I wouldn't say that it's

fully developed about uniformity of reporting. I think ultimately our main goal was to draw attention to this face.

And within this working group and again, IRTP and (pedner), there is this lack of data out there for us to really get to move from the anecdotal to what's really going on out there. And as an example, if we look at the compliance component within ICANN I can't remember some numbers off the top of my head but when we were talking that there is within this given timeframe that there were 1200 compliance cases submitted, the fact that we can't delineate specifically that this was an expiration issues versus an abuse issue, that kind of granularity would be very helpful down the road.

So again, I would agree that there probably needs to be more development around the uniformity of reporting part but again, I do believe the biggest notion was to draw attention to that fact. Lastly, collection of best practices - as you can tell with the malicious use slide, we managed to gain unanimous consensus on implementing best practices.

This is my personal opinion is while I do support and advocate best practices, in my past life it's something that we revolve around, the problem is there doesn't appear to be a primary framework or vehicle for which any best practices do get pushed out across the industry or the market participants.

And so we had it kind of ties back into the problem with registration abuse versus use abuse. WE couldn't gain consensus on whether use abuse was in scope or not so kind of by default at least we did get consensus across the stakeholders that we can try to implement best practices where possible.

And I don't think that this is the only working group where best practices are put forward so this kind of second notion where I think again it kind of goes to the higher powers and across the community as how do we disseminate these, what's the best platform for best practices in absence of true policy development? I'm sorry I rambled for too long.

Marika Konings: Chuck, do you want to respond to this? I see you have your hand raised or do you have a separate question?

Chuck Gomes: No I would like to respond to that Marika. Thank you. I wanted to clarify that we have actually in the GNSO ended up with best practice recommendations instead of policy recommendations.

So there is precedent for that. There is actually PDP can result in best practices as Liz and Margie and Marika know very well. If a recommendation from a PDP does not result in a specific policy recommendation that can be enforced via consensus policies, it's still possible that some best practices could come out of that.

In fact fast flux working group is an example of that although we haven't completed or done anything with the recommendation yet, it did not - the PDP did not result in a policy recommendation. But there were some recommendations that possibly some best practices could be created. And that's still on the council's table.

Berry Cobb: This is Berry again. Yes, that was the example we talked about in the team and that's precisely what we walked away with is we haven't seen any final conclusion of that especially being rolled out across the environment. So that's why again we're just kind of bringing notion to it. Thank you.

Marika Konings: Please go ahead next in line.

Bob Hutchinson: Bob Hutchinson. I had a...

Marika Konings: Can you speak closer to the mic?

Bob Hutchinson: I had several comments. One is that I've been a member of this working group for at least three months or so now and the group itself has done a

marvelous job parcel and part, all of the facets of registration abuse, it's been pretty impressive to be listening to candid opinions about a lot of this stuff.

So I'm glad a lot of it made it into the report. I asked on the chat whether the part about contract consistency had made it into the report? I'm glad that it has in some detail. There was not consensus for recommendation in that area. For me, I think this is a very important area that I was hoping that we would get a PDP for contract consistency especially in light of the fact that we're going to have hundreds of new GTLDs and a very changing environment in the future.

I wonder whether any of the members of the group who are on the other side of that question could comment to that right here?

Berry Cobb: Bob, which side of the fence were you for uniformity? Sorry.

Bob Hutchinson: I'm (in favor) of having a PDP that addresses the issue of trying to make contracts uniform because I believe that it's very difficult for us to understand how these organizations interoperate with each other while we don't have transparency to the contracts and they are nonspecific themselves.

Berry Cobb: Yes. And the sub team as well as the larger working group - this is Berry again by the way - we debated that for quite a while. And in some ways I think the group even has consensus that in some forms uniformity may not necessarily be the best thing.

But that's where we came up with minimum baselines and at which to strive for. There are many in the community that would already exceed what some of those baselines are and especially let me just close by saying that that's why we did recommend that a PDP be created to further explore how uniform should these be and I'll just leave it at that. It's something that one side definitely wants, the other side doesn't.

But again I think both parties agree that there is room for improvement. Baseline was a good starting point and I think if a PDP or some future work did explore that better I think we could find more common ground to again start to resolve some of the problems that we have out there.

Marika Konings: Are any members of the working group on the phone bridge that want to talk about the other side? If not I see that Rod Rasmussen has his hand raised, another member of the working group. Rod, go ahead.

Rod Rasmussen: Thank you Marika and thank you everybody. This has been a good session here. I just wanted to address one of the issues Chuck had been talking about in the best practices and actually the overarching issues. There were a couple that we came up with.

And I think the intent here was that this may well go beyond the GNSO and actually be something that the overall ICANN communities would look at. But the idea that we would actually in the case of best practices, codify this and have a process for creating, maintaining, disseminating them beyond just having recommendations put out there is actually keeping them alive after the whole policy process has been gone through and recommendations come out, those tend to be a one time shot.

How do we then keep them up to date because best practices are in a sense a way of addressing problems that are fast moving where policy is too slow to address that in many cases. So that was one of our considerations there is that there should be a way of keeping those relevant over time.

And that requires resources and process in able to do so. So that was one of the intents of those overarching issues is to get those to the broader community, not just necessarily to the GNSO. Obviously the GNSO could have a role here too. That was it.

Marika Konings: Thanks Rod. Yes.

(Chris Japlo): Hello. (Chris Japlo) from the (angloseer.com) and the business constituency. I wanted to first underline, double underline the cyber squatting. I actually hadn't thought of it and thanks very much (Joe) behind me for bringing that up because that is very important.

I believe I was a victim of cyber squatting. I have still got the domain but it cost a lot of money to defend it. And it's an interesting case that you should look up where the Queen of England had her wrist slapped for reverse domain hijacking on the NewZealand.com case.

But anyway, what I actually joined the queue to talk about was what we call a usage case or a scenario that is very common as the webmaster of we have a number of domains and we're looking at domains for them. One of our clients is quite prestigious gated community in Marbella and that is in Spain.

And typical case, if I send us an email in front of me where the client rang me up and said I've just had a call from (Sharon Delson) working for ISP Global Internet and wants to - they have got a client and he wants to register the company name dot com, the company name dot net, the company name dot EU or in some cases a slight variation of it.

And we have got this client ready and we have got a credit card in hand and because we're a responsible company we just want to check with you that everything is all right. And so I rang Sharon and we all know this story because we have most of all seen it.

It's so, so common. But Sharon was so incredibly well trained and the only flaw in all her arguments in fact was the fact that what they wanted 600 pounds not euros, or 10 years and she was insisting that they would register for 10 years knowing that there probably isn't interest in registering for 10 years.

And I sort of quizzed her in all directions and in the end when I did assert that this so called client did exist then she got (unintelligible) - what did we do? Well, I had to advise my client I am 99.9% sure that this is a scam and don't do it to worry about it. But you register domains so I had to register one for the client just in case for that 0.001% chance.

And this particular client has now got 50 domains, has only got one Web site and only actually needs one. The other 49 are defensive registrations from this particular example and there is another one, which I can remember with a whole host of .hks, .coms, .hk and all of those.

So I just wondered where that fits in, what that's called. Does that fit into what you've done in the (initial) report? Thanks.

Berry Cobb: Yes. This is Berry. Thank you (Chris) for bringing that up. We did address - it's kind of the group came up with referring to it as planning and I think within the report it's kind of brought up under the umbrella of the - I just saw it. What was that - fake renewal notices.

I myself have recently received kind of a similar notice as well. Actually I received one a couple years ago but I just got one a couple of weeks ago. And so I did consult with another colleague to confirm that we actually cover this in detail or not.

We did bring mention of it within the working group overall but I don't think that we gave it the attention that it deserves. Ultimately I think that there is - I'll just make note that when we reconvene with the RAP team that I would like to bring it up to the larger working group and move on from there.

I personally might go as far as suggesting that we kind of move it out into its own category but I'd definitely like to share that with the chair, which I haven't done yet. And I'm not sure of the exact rules of engagement on how we flush

that out since we're on initial report until our final report. So thank you for bringing that up.

Martin Sutton: Can I just say something? Thank you. Martin here. I think the important element here is that we haven't got substantial data and research still. Where do people send these notices to for somebody to take any action against?

So unless we start collating that information effectively we're not going to have a reliable set of data that we can explore and do something with. I do get these regularly around the globe to our offices and it is an issue. But one of the staff is looking at what do you actually want as a brand or domain name strategy? So that needs to be fed into that question because these are just one of many types of scams similar to phishing that prey on the Internet users, the end users and it's very difficult to get all that information back into one place so that you have got data that you can rely on when you're doing these investigations and research.

(Chris Japlo): Yes. Let me just for a second advocate on behalf of small businesses because Martin, you'll tell me and others will how much millions of dollars a year you spend on defensive - well, the whole policy of cyber squatting.

But a small business in a proportion to their turnover it's more expensive because large businesses have got procedures, they've got departments, they've got legal teams. They know what to do and it's just a sausage machine. Not just a sausage machine but it's a nasty task and you've got to do it.

For small business, you don't want to do it. You ask somebody, you ask a lawyer and you sort of go round in circles. And so I believe the problem is worse and just wasting time talking to people, talking to the lawyer who doesn't know. I know a lawyer that might be able to help you with this and a huge amount of time gets wasted.

Martin Sutton: I truly sympathize because I don't think there is a difference between the scale particularly. It's not our wish to be spending time and resources similar to a business. But don't forget that the well known brands will be targeted day in and day out.

Marika Konings: Thank you. Next.

(Joe Alania): Again, this is (Joe Alania) and I just thought about Greg's answer regarding the reverse domain name hijacking and in light of the response I feel it necessary I want to read just this short paragraph from the World Intellectual Property Organization Web site that defines or points to where it's defined.

Reverse domain name hijacking is defined as using the policy meaning the UDRP in a bad faith attempt to deprive a registered domain name holder of a domain name. And it is a subset of a broader finding that may be made by a panel under paragraph 15A of the rules so forth and so on.

I just Greg mentioned that reverse domain name hijacking may be handled under the UDRP rules and that is true but so is cyber squatting. Now in no way am I advocating cyber squatting. In fact I have worked very closely with the World Intellectual Property Organization on behalf of the company I work for to develop our own DRP.

And we are very - excuse me. I get a little nervous when I talk at a mic. But anyway, we have developed our own DRP and worked very closely with them because we do care about intellectual property. But I also care about the guy that can't afford to come to this ICANN meeting.

And I know there are hundreds of cases, someone and some loss where individual domain name holders that have a legitimate, may have a very legitimate right to that domain, are abused and often lose very valuable domain names because of reverse domain name hijacking.

So I'm just asking once again to consider having that in this discussion because cyber squatting is covered under the UDRP and so is this. But if you are discussing this or making plans on behalf of ICANN, I think that should be a part of it and should be understood at the very least.

Berry Cobb: This is Berry. Yes. Thank you for that and it's on my to do list when we reconvene. And I'd definitely like to take it to the larger working group as well because I agree. Abuse can work in both directions and clean it all up.

Marika Konings: Please go ahead.

(Paul Borem): Hello. My name is (Paul Borem). I'm with (Sirius) Organized Crime Agency in the UK, with just a couple comments. On behalf of law enforcement I'd like to welcome the draft report.

And there is an awful lot in it (for just thought). On behalf of law enforcement, I'd like to welcome the draft report and there is an awful lot in it, which we support and we're glad that's been aired. I've just arrived from the gateway so I've missed some of this.

I believe somebody else has raised the issue of consensual or optional best practices versus some mandatory minimum standards. So I'd just like to reaffirm our question especially in light of (Rob Becstrum's) very articulate elaboration on the DNS threat to what he said yesterday, whether that's a sustainable and efficient model.

If I could just say that I'm very pleased that some stated that it is optional because it will save me from like instituting proceedings against the Queen of England for reverse DNS hijacking.

Marika Konings: Any comments? Anyone on the phone bridge that would like to comment or raise questions? Okay. So Greg, do you have any closing remarks? We don't

have anyone here any more in the queue. I see Chuck has raised his hand.
Chuck, go ahead.

Chuck Gomes: As chair of the GNSO council I want to express my thanks for this amount of work the working group and staff and Greg's effort in chairing the group - a lot of people I don't think look at the GNSO and often have negative thoughts because it takes us a while to do things.

But this is an example as with so many other working groups that we have and I think we probably have about 20 or so going on of the tremendous work that volunteers all over the world are doing and spending great amounts of time. So I want to make sure that we recognize that and thank you for it.

And one of the encouraging things over the last couple of years has been the number of new people that have stepped up to help us do our work. So thank you very, very much.

Greg Aaron: This is Greg. Thank you Chuck for those kind comments. We appreciate it. As we close I'll just remind everyone that the public comment period is open through March 28. The group will very much appreciate your thoughts there.

And then we'll examine them in depth and then please do look for another discussion of this topic at ICANN Brussels. By then we will have our final report done and ready for the council's and the public's examination. So thank you very much again for your participation and thank you.

Marika Konings: So with that we conclude this session. Thank you all for coming and see you tonight at the gala.

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