

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

ICANN Consultation on the Trademark Post-Delegation Dispute Resolution and Registry Agreement Amendment Processes

**13 April 2010
Marina del Rey, CA**

Coordinator: Thank you, the recordings have been started. Please go ahead.

Craig Schwartz: Thank you. Good morning everyone, or afternoon, wherever you might be calling from to dial into today's consultation and we appreciate your time and energy in showing up either here in person today or on the phone.

We've got about 16 or 18 people here in the room and another 15 or so people on the phone. And we did a sound check a little bit earlier today without using microphones and people on the phone could actually - could hear quite well. If someone's on the phone, could you just confirm that you're hearing okay?

(Kathy Bernstein): This is (Kathy Bernstein), and I can hear you just fine. I'm having problems with online access though.

Craig Schwartz: You (unintelligible)...

Tim Ruiz: Hi, this is Tim, I can hear fine and I'm logged on to the Adobe Connect without a problem.

Craig Schwartz: Okay. Well if at some point you find that it's difficult to hear people speaking in the room let us know and we'll be sure that we speak into the mics.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

So before we - to get started why don't we go around the room and have everyone introduce themselves and then we'll do the same for the folks on the phone. So, Jeff, why don't we start with you in the corner. If you could state your name and your affiliation, that would be good.

Jeffrey Eckhaus: Jeff Eckhaus from Demand Media.

Daniel Schindler: Daniel Schindler representing myself.

Jonathan Spencer: Jonathan Spencer from VeriSign.

Chuck Gomes: Chuck Gomes from VeriSign.

Craig Schwartz: Okay, why don't you take the mic out of the handle.

Man: It didn't come off.

Keith Drazek: Keith Drazek from Neustar

Jeff Neuman: Jeff Neuman from Neustar and also the vice chair of the registry stakeholder group.

Amy Stathos: Amy Stathos of ICANN.

Craig Schwartz: Craig Schwartz at ICANN.

(Doug Bradley): (Doug Bradley) at ICANN.

Dan Halloran: Dan Halloran, ICANN.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

(Craig Johnson): (Craig Johnson), (Johnsay).

(Phil Espinola): (Phil Espinola), (Johnsay).

(Brian Choo): (Brian Choo), the Afilias.

David Maher: David Maher, PIR.org, Chair of the registry stakeholder group.

(Unintelligible): (Unintelligible) Afilias.

Kurt Pritz: Kurt Pritz, ICANN.

John Jeffrey: John Jeffrey, ICANN.

Craig Schwartz: And if folks on the phone could - actually why don't I just take roll from the phone. Hold on one second. Of course we've lost our connection here, so, hold on one second.

Sorry about the delay, folks. We're having a minor glitch here with technology.

Okay, on the phone we've got Konstantinos and if I butcher people's last names, I apologize. Jim Prendergast, Meredith Wilkes, (Michael Delaney), Caroline Greer, John Nevitt, Elaine Pruis, Pat Kane, Brian Beckham, Michael Palage, Tim Ruiz, Karen Lentz, (Domain Crispin), and Karen Bernstein.

Is there anyone who is online, perhaps sharing a phone that I haven't called out by name?

Kristine Dorrain: I'm not sharing a phone, but this is Kristine Dorrain.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Craig Schwartz: Kristine Dorrain. Sounds like someone got your name - they gave you a new name, Kristine, sorry.

Kristine Dorrain, thanks Kristine.

Man: (Unintelligible).

Craig Schwartz: That's who I think it is.

Brian Beckham: This is Brian Beckham, from (LIPA). I'm expected to be joined by Erik Wilbers. He's currently in a meeting right now.

Craig Schwartz: Thanks Brian. Yes. So we - why don't we go ahead and get started. A few more kind of administrative piece of information. If anyone needs restrooms that's sitting here in the room, they're down the hall and to the left.

We've got basically a little more than three hours scheduled for today's session with half being dedicated to the trademarks, post-delegation dispute resolution process, and the other dedicated to the registry agreement amendment process.

It's not a lot of time to cover all that material, so we do want to keep the comments on the phone and here in the room, folks, on those two particular issues. And then we'll break at around 12:30 to have lunch here, and then folks will be on their way.

So, that being said, if folks on the phone are having issues with any technology items, please let me know. And with that, I'll turn the meeting

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

over to, I think Kurt Pritz and Amy Stathos, who are going to introduce the first topic today.

Kurt Pritz: Thanks, Craig, and thanks everybody for joining today.

(Unintelligible) those who are on the phone and on Adobe Connect. So as we continue our debate on the issues of the new gTLD process, you know, we've come to know in the most - well (most poignant) questions.

Two of those are (unintelligible) today. The first is the post (unintelligible). I just want to talk in shorthand. Plus I think everyone in the real and virtual rooms are part of that (unintelligible) that understand this (archaic) stuff.

So the first is the post delegation dispute resolution model where - it's a difficult issue where those who have had their rights infringed can bring a sort of case or (unintelligible) against registry for their behavior, or you know, acts they commit and acts they might facilitate - (unintelligible) registration. So, it's a very tricky area, one that must be (dealt) very carefully.

And the second is the process for amending the registry agreement, which is where we'll spend a lot of the discussion. And so I think I lead with that idea because, you know, because, you know, there's sort of iteration where we post an (applicant guidebook) or we post some form of it. And they (post) a comment and (sit around the table) and read the public comment and go back and forth and make some judgments.

To take, for example, the post delegation dispute resolution model, in the last round we read the comment very carefully. We painted that dispute resolution model in a way that made a lot of changes and found, (to our surprise) (unintelligible) (both parties were not in accordance). Part of that is the

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

difficulty of a model where one party makes a comment (then somebody sits over by themselves and tries to read, or you know, (all the intended) or comment, make some adjustments) and then without some back and forth (iteration).

So I think that one of the purposes of the meeting today - the biggest purpose is for us to have a conversation about comments and the intent behind the comment so we can arrive on or get closer to a (model) where there's more agreement among the parties.

So I think that (unintelligible). I urge everybody in the, you know this group doesn't need urging, but I'll urge everybody in the room and everybody on the phone contribute in some way to the conversation. (And do that iteration). (You know, come off with) a better model.

As we read the comments we find, you know, we find ourselves in agreement or (it's debatable), (unintelligible) or most of them.

Craig Schwartz: Kurt, you may find that you need to come sit closer to the mic because people are saying they're having a hard time hearing.

Man: This mic?

Craig Schwartz: This one.

Woman: The phone mic.

Craig Schwartz: The phone mic that's sitting over there?

Kurt Pritz: Oh, the phone mic is over there.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Craig Schwartz: Yes.

Man: You can sit next to Craig.

Kurt Pritz: Well, I'm almost done with mine.

Man: (You wanna switch out)?

Craig Schwartz: I promise you it was fine this morning, (when we got at 8:00 so).

Kurt Pritz: Well, I don't have this great, projective voice, so, for those of you who missed it, I think this - you know, this is good because the reader's digest version of what I said is that, you know, the ability to iterate comment on a live basis is much more effective than throwing comments over the wall in a, you know, ICANN publishing and guide book, holding a public comment session, and trying to divine the intent behind all the comments.

So I think, you know, it's a faster way to arrive at accommodation where, you know, we think, you know, we struggle with these issues and the post delegation dispute model in particular, and how to do that in a way that's going to be, I'll just say good.

So, I think the meeting will be very beneficial. From that standpoint I'm actually looking forward to it. And so we've had a lot of input on these issues and we talked quite a bit about so how do we want to run the meeting. We've got a - from the registry stakeholder group, for example, we have a redline of the post delegation dispute resolution model. And we could run through that.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

We also have a, you know, comment from them, comment from others, and most recently, we have a set of slides delivered from the registry constituency or stakeholder group. So I think, you know, sitting around talking about how to run the meeting, we thought those PowerPoint slides really hit on all the issues well, so we thought we'd drive the meeting using that. But we have at our disposal those other things too, and can go back and forth between them.

So, you know, when we talk about individual issues with this post delegation model, we can go to the redline or talk about it. I'm not sure this -- and I think Amy's going to touch on this -- I'm not sure the session is a negotiation, but rather it's certainly - but certainly gives the opportunity to signal understanding or agreement on issues and, you know, provide again the opportunity to explain the intent behind the comment so it can be most carefully considered by all sides, or all interested parties in this debate.

So, I just want to say thanks again for attending. And Amy, so are we just going to start with this slide, is that all right because?

Amy Stathos: Yes, that's good.

Kurt Pritz: I think that's good.

Amy Stathos: So, Jeff? I guess.

Jeff Neuman: Yes, I'll walk us through. Hi, this is Jeff Neuman. Can everyone on the phone hear me?

Amy Stathos: Yes.

Jeff Neuman: All right. I'll take that one voice as everyone.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Okay, so these slides again are really just from the registry stakeholder group and (being) some observations that we've noticed from our proposal and a few others as well. But it's not in any means comprehensive of all the comments that are received. So if we missed a few and you all want to raise them, then obviously they should on this call.

So the first item on the Post Delegation Dispute Resolution Policy that we had made comments on and a number of others have made comments on where ICANN's involvement at the outset of a proceeding. So that ranged - if you look at the comments that were received, it wasn't just the registry stakeholder group, but the INTA, (the Universal Property Constituency), John Nevitt and the IOC, which is the International Olympic Committee, all raised some form of comment about this particular item, which is have ICANN be more involved, or more available, to file complaints with prior to a third party initiating the Post Delegation Dispute Resolution Process, and I'm just going to say PDDRP just to make it a little bit quicker.

And so those comments range everything from ICANN should get a third party and do the full investigation itself, kind of like the IRT had recommended where only if it was inconclusive or if the third party was not happy with ICANN's decision with they actually take advantage of the PDDRP, to some form of a more robust quick-look system, where ICANN would actually not just look, and this is another item on the agenda, but currently I think the quick-look is ICANN just looks to see if - I'm sorry, not ICANN, the panelists, or someone looks to see whether the third party is a - the party complaining is a trademark owner and that's it, but doesn't look at any other details.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

So the comments range - and we also noticed that there was no comments on oppose to ICANN being more involved from the outset. But I will say ICANN did in the preamble to the policy, or to the explanation of its changes, did commit being more involved or actually to commit to this not replacing the contractual enforcement obligations of ICANN. But it was not in the policy itself, which led us to believe, you know, is ICANN going to formally document that somewhere in the policy as opposed to just the preamble.

So that's pretty much - so the registry just said that we would like to see an affirmative commitment by ICANN to actually do an investigation and to do their enforcement activities prior to the third party having to initiate the complaint and undergo the expense of filing such an action.

Craig Schwartz: We're going to go through these one by one, right?

Jeff Neuman: Yes, I think that's probably the best way to do it.

Man: All right. So why are you...

Man: (Cover) your microphone. Yes, can you use your mic card?

Man: Yes. Is that (unintelligible)?

Woman: (Unintelligible).

((Crosstalk))

Man: So, why are you passionate about this? We're trying to figure that out. But we're trying to create a process that we're (asking), and we're also, you know, I think maybe John Nevitt's better to talk about this, but we're really

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

concerned about making a decision about, you know, kind of (equate to) a UDRP position, you know, where ICANN isn't really quick to make that sort of thing even on a threshold level. So once you're making threshold decisions, I think that's (grey).

So, you know, of all the issues, you know, this is the hardest one for us, because we think, you know, because that (based on the contract) we should be (active), but we should be able -- (I'm going to start over again) -- (unintelligible) the dispute between, you know, a third party and the registry about violation of their rights. We think that's (unintelligible) to an (entity like), you know, somebody providing PDDRP (services) (now where ICANN's really not equipped to begin that). So that's what we're struggling with. That's hard, you know, for us to move into that new area of, you know, responsibility (unintelligible).

So are you the administrator of this (feed)?

Craig Schwartz: Sure.

Man: Okay.

Craig Schwartz: David you want to...?

David Maher: Yes.

Craig Schwartz: So, for folks that are speaking, if you can announce yourself before you speak, so the hostesses on the phone know who you are.

David Maher: David Maher (unintelligible).

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Craig Schwartz: Thank you John.

David Maher: The answer to that question is that this is an opportunity for blackmail by the trademark brand owners. The remedies are very drastic. The registry faces the possibility of losing its contract with ICANN, and more realistic - more likely result is huge legal expense.

So what's likely to happen, the brand owner says that there's a pattern of ignoring trademark violations and with any large registry, trademark violations happen all the time. This is why we see the UDRP hard at work.

And if you're the general counsel of a registry and you get a claim from a brand owner saying I've got 50 incidents of trademark infringement and I'm launching a PDDRP, you're facing huge legal expense.

Hopefully, if you're cynical, the easiest way to avoid this is to say, okay, we'll just take down all those sites. Now, there's been no trial, there's been no determination that they really are infringing. All there is is a claim by brand owner. But if you are the general counsel of the registry, what are you going to do? Spend a fortune defending it, fighting for the rights of your registrant?

That's why we're passionate about this.

Craig Schwartz: Okay (unintelligible) (then we'll go to Amy).

Man: (I agree), the instruction that you created is ripe for abuse in a number of ways. There's a blackmail concern, the concern for registry for TLD that might be politically unpopular. You can imagine a registry for (dot G-A-Y), attacked by an organized group under these trademark numbers, you know,

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

because they're not happy with what that registry is promoting outside of the trademarking.

There is no protection here for repetitive complaints on it. There's no vetting here things that, again, all in all, there's no requirements on - I'm not sure why I see the need for speed in this particular proceeding. I see a need for speed in the URS, UDRP, from these others where there's an individualized trademark with domain name. Where you're arguing that there might be a pattern or an activity or where a registry may have violated the terms of a charter, you know, I think this needs to be (more) (unintelligible). And I think that ICANN needs to be in the front of this to make sure that these things aren't being abused.

And making that limited determination that this is truly a complaint that is based on, you know, solid trademark rights, solid trademark issues, as opposed to, you know, a registry coming back repetitively. You know, there's nothing in here to prevent, you know, a portfolio trademark holder, you know, on five or six - (unintelligible) five or six different claims until they got it right. And now you say well at the back end of it, ICANN wouldn't - might not impose its penalties in that situation. But that still doesn't avoid the legal costs, and the expenses and the time commitment that would be required up front.

Craig Schwartz: Announce yourself to - to the...

Amy Stathos: (Unintelligible)?

Man: Yes.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Amy Stathos: So, I'm not sure if this is reading through the phone, but I think (unintelligible) here. So, I guess I want to understand, so are you saying that you want ICANN to investigate allegations of trademark infringement? I mean that's what I'm trying to understand in terms of what it is you want ICANN do.

Obviously if there is something that is a violation of the contract, the - clearly you have every intent to continue our contractual compliance. But this is something that's not part of the contract to not violate somebody's trademark infringement. So I'm trying to understand what ICANN - you're thinking ICANN should be doing.

Man: If I can respond to (unintelligible) (consensus), or Jeff, you want to respond?

Jeff Neuman: You can go first and then I'll (unintelligible).

Man: Well, I think you have to look at what is the particular purpose of the PDDRP, this process here? Okay, and that is supposedly to deal with a pattern of abuse by registry that is willful, that is intentional, that is desired to - you know, that breaches one -- a lot of it is about - concern is about reaching sort of (the charter to begin) with, where you have a TLD that said it was going to be for one purpose and it comes out being for another purposes, and registers domains and industries for uses in industries outside of what it claimed it would be.

And the other part of it is that, where, you know, at the second level there, it is actively engaging in promoting, and that's serious claims. This should not be a process that's being, you know, (bode) upon every day. It should be a rare process. You know, an infrequent process, to deal with - and hopefully, you know, prevent, you know, egregious conduct.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

And in that situation, I think that ICANN does have a role in policing and determining that yes, this raises to that level. There's still other avenues of protections for trademark holders if they truly felt that, you know, someone was engaging in truly egregious conduct, you know, outside in the courts and things of that nature. But this is supposed to be a contractual remedy, and as that, you know, ICANN, I think, should step up to the plate.

Craig Schwartz: There - just so in the cue we've got Jeff Neuman and Michael Palage and Kathy Kleinman.

Jeff Neuman: So again, this is Jeff Neuman. You know, I'm glad Amy you're asking the questions, because you're asking the same questions that we, as registries, ask ourselves everyday. Your point is you're asking ICANN to investigate trademark infringement when you're not really a party to that.

In essence, isn't that what you're asking the registry to do here? Because we get claims every day about trademark infringement, and we can't - we don't have (privity) of contract with the registrant.

So when we get these letters of infringement, it's not like we ourselves can conduct the investigations. We don't have the resources to do that. You know, we know we're not involved in it, and so we basically send out these letters to the people that are having to dispute things, look, you guys work it out amongst yourselves.

But when you put a contractual remedy for a PDDRP in place, you're essentially asking the registry to do this investigation, to which we're not a party of and more and more companies, more and more trademark owners, are going to send these letters to the registry because they're the ones with "the

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

deep pockets." They can do a shortcut around going after individual registrants by going straight to the registry.

And how do I know this? It's because it's being done today. You know, when the Anti-Cyber Squatting Protection Act first came out, most people didn't necessarily go to the registry for certificates and things like that. But as the years have been going on, trademark owners have started to go to registries more and more often to get certificates to put names into the courts jurisdiction, because they realize they can.

Once these trademark owners realize that they can go after the registry, they will. And they have. I've gotten letters, I'll tell you, and I don't mind saying this, but you know, when .biz rolled out the two letter auctions (upside our RP) process in the auctions, we got nasty cease and desist letters from Volkswagen claiming that they are the exclusive ones to get (VW.biz). And they wrote us threatening letter after threatening letter saying by merely making it available, we're infringing on their trademarks. And they threatened every action in the book.

Now what did we do? We pulled the name. We didn't give it to them, we just pulled it out of the auction. Why? Because we didn't want to spend hundreds of thousands of dollars if not millions to litigate this.

So what's going to happen, what realistically will happen, is if us as a registry, we get a letter, just like David said, saying either you do something about these 50 infringements in your space, or we're going to sue you, or we'll initiate a PDDRP action against you. Then rather than being faced with a loss of my business, I make take 50 names away from legitimate registrants and give them to the trademark owner simply because I don't want to spend the money and face possibly losing my business.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

That will happen when it's a PDDRP. It's not a question of may it happen, it definitely will. Because general counsels are being put in these positions every day. Now I'm comfortable when someone wants to sue me in court, I'm comfortable with that. What I'm not comfortable is a panel of -- even if it's WIPO panelists -- a panel of one and we'll talk about panel of one versus three or five or whatever it is. But I'm not comfortable putting my registry in the hands of one panel.

Craig Schwartz: Let's see. Michael Palage your next.

Michael Palage: Could Amy perhaps respond to Jeff's question before I ask mine?

Amy Stathos: I'm not quite sure what the question was. Sorry, this is Amy. I'm not quite sure what the question was at the end of the day.

Kurt Pritz: Hello, this is Kurt -- I'll go. We're like in complete agreement. We sit around the table and realized that's exactly what's going on here and the remedies evolved, and think to ourselves, this is something we want to see used seldom or never. And you know, try (for it in the strictest standard) possible.

So, I think our discussion is about having a reliable - well, (unintelligible) to get to some (unintelligible) to make sure it reaches some (bar). And I want to comment that when we talk about (other things, I want it out on the record) --0 we think ICANN is the cheapest, most reliable (unintelligible).

But - so, you know, I'm sitting here and I'm a little frustrated because that's exactly the same conversations we had. So we want to provide some way of providing that, I don't know, what do you call it, peace of mind or what. We

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

simply - but we sure don't pick a (type), you know, uh, oh, I've
(unintelligible).

((Crosstalk))

Kurt Pritz: But we sure don't think it's us. You know, and so I think maybe if we focus on our procedure or process, you know, what's the way to screen these possible allegations or complaints. And then let's, you know, if we have like a st- you know, pre-standard or something like that, then we can stare at it and decide, who can do it most reliably and you know, and work for the protection of all the parties involved. So (I thought) you asked a question, but that would be my answer to it.

Jeff Neuman: Just to -- and I forgot to - I actually forgot to mention like the point of - I was getting to a point and I never got to the point. So what we could do is, ICANN's involvement could be, you could make a more robust quick-look process, which you kind of introduced the concept in here, where ICANN can get the complaint and actually verify that some of the activities that are taking place in that complaint are taking place.

In other words, yes, you looked to see that the complainant is a trademark owner. You look to see that in a complaint that the marks that the complainant says they own, are actually ones in the domain names being used, right? And you can look to see whether some of the allegations are, you know, at least on its face look like they're happening. Not whether there's infringement, but yes, the complainant says that there's 50 Web sites all using this trademark in this manner. You can look and say yes, there are 50 trademarks - 50 domain names being used in that manner.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

You're not making a judgment as to whether it's wrongful conduct. You're just seeing whether what the complaint is alleging is actually sort of true.

But the benefit of having ICANN, I think this is how you started it out, and the point I forgot to make, is I think it protects both sides. It protects the complainant in essence that if this is something that ICANN can look into and can kind of, and the three parties, ICANN, the registry, and the complainant can get together and work it out, it may save cost for the trademark owner in not having to file these things, and it saves the registry from our perspective in being involved in frivolous action, and it may weed out some of those.

The more you can do that, the better it's going to be for all of us.

Craig Schwartz: Amy?

Amy Stathos: Hi, Amy Stathos. Is this working? I can't tell.

Craig Schwartz: Yes, that thing (unintelligible) right there.

Amy Stathos: So, I - from that description, Jeff, it sounds to me like what you're saying is you would like ICANN, at least in a quick-look phase, to A, determine whether or not somebody is a valid trademark as opposed to a panel that's making that determination and then B, investigating to determine who actually owns the registrations that are in the TLD that somebody is claiming to be infringing. Is that - so you're saying ICANN should be the one making those determinations?

Jeff Neuman: Well, I think ICANN should, or they can subcontract it out, but essentially have no charge for it. In other words, if it doesn't think it's qualified, then it could hire a firm to do that for it, and absorb some of the costs of

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

enforcement. Just to - it's not just that. There's a valid trademark and that - and the nexus between the trademark and the complaint.

So, if there's 50 names that all involve - I'll make this up, Toyota, but the complainant is actually Volkswagen, you would say okay, there's not enough nexus, you're not the right party to bring that action. Right? And there's no actual nexus in the quick-look process now. It just says, is the party the complainant a trademark owner? It doesn't even say is the party the trademark owner about which the trademarks are being complained. So there's no nexus there.

So yes, I think ICANN could work - if it doesn't have the expertise now, could hire, you know, someone to do it. Could hire a trademark attorney, after all, that's what most WIPO panelists are. They're trademark attorneys.

So you can hire one of them to do that work for it. To say is that person complaining a trademark owner? Is that trademark being complained about, or is there some nexus between that trademark owner and the bad behavior? And then do some sort of (sanity) check on the things being complained about.

You know, are these names really registered? Are these names being used? I mean if I go and do a quick-look on some of these Web sites. Is that trademark actually being used to try to get some of that frivolous stuff out of the way.

Craig Schwartz: So, we've got a mounting cue. Did you want to respond to that?

Amy Stathos: No, no.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Craig Schwartz: So, in the cue we have Michael Palage, Kathy Kleinman, Kristine Dorrain, Chuck Gomes and John Nevitt. So Michael, you have the floor.

Michael Palage: Thank you, Craig. Amy, to your question of what you want - or your question was, what do you want ICANN to be? My response to that would be I wouldn't want ICANN to be a trustee of a global resource. And that does require it having some skin) in the game with regard to this issue.

So, to give you a hypothetical that I think could frame the context of when I think ICANN would need to be involved, let me go back. Three years ago when domain name (tasting) was a rather scourge within the industry, based upon most people's opinion of that particular practice, there were two registries that came forward, Neustar and Afilias, and proposed a funnel request that basically ended that particular practice.

That particular funnel request was then adopted by the GNSO and became a consensus policy which was binding upon all gTLD registries. So I ask for this purpose of this hypothetical, let's just suppose that never became a consensus policy, and let's just say that 85 or 90% of the ICANN gTLD registries voluntarily adopted that funnel process, right? But there were 5, 10% of the registries that were not doing it and this caused - and there were trademark owners coming forward saying this pattern is an abusive pattern, there's harm. Every other registry that has adopted this best practice established within the industry...

Craig Schwartz: Michael, can you slow down a little bit, please?

Michael Palage: I'm - yes, sure.

Man: Can you speak more clearly and...

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Craig Schwartz: Slowly and more clearly, please, is requested in the room.

Michael Palage: Okay.

Craig Schwartz: Thanks.

Michael Palage: Say - so the question then is, if there was clearly a best practice within the gTLD community regarding that funnel request that ended (tasting). But there were certain registries that chose not to voluntarily implement that. And their voluntary choice not to implement that safeguard was resulting in harm to a class of peoples, in this case such as trademark owners. Would ICANN in that sense have some role if trademark owners were to complain through this process?

Or, that's my question. Do you see the potential where ICANN would have to come in and say, yes, this is evolving as a best practice standard, and you know, we might want to sit there and you know, do something about developing a consensus process or, you know, having this registry address the problem. Is that a scenario that you could see Post Delegation Dispute Resolution Process having some scope or application?

Amy Stathos: Are you asking if the existing PDDRP would have jurisdiction, if you will, to cover the scenario you just identified?

Michael Palage: Yes, I would - two questions. Is it within the scope? My answer to that would be yes. And the more important question that I'm asking you that I think Jeff was asking was, don't you see that ICANN would have some role to say yes, we need to be involved with that, and this is just not something that one panelist and registry operator should somehow have to resolve on their own?

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Amy Stathos: Well, I don't think I can say that ICANN would have a role. What I can say is that I don't see that ICANN would have a contractual compliance role, because that's not in the contract for us to (take) compliance of. That's why I'm having a difficult time understanding exactly where ICANN's authority would come from in that instance.

Michael Palage: So it's - and I guess that's what I find so frustrating and perhaps some of the other registries as well, is you know, ICANN has no problem accepting money from all these transactions. But when there is a problem that needs to be addressed, it's conveniently not within the contractual remedy at hand. It's not its problem. So I'll end on that. Thank you.

Craig Schwartz: Kathy Kleinman, you're next in the cue.

Kathy Kleinman: Okay, can you hear me?

Craig Schwartz: Yes.

Kathy Kleinman: Excellent. Thanks for the opportunity to talk. Hello to everybody in Marina Del Ray, for anyone who doesn't know, I'm now with PIR as the director of Policy. And I want to read a larger question, which is why does ICANN even need a special procedure here?

We're looking at an acronym that looks similar to the UDRP, the PDDPRP, and so the analogies seem to flow. But the rationale for the URDP were completely different, I think, from the rationale for this dispute process that we're now talking about.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

The UDRP was created because we need an expedited process, because there were cases of abuse. We had cyber squatters that had registered hundreds of thousands of trademarks and needed a rapid way to arbitrate those and review those quickly.

I don't see the rationale here. I see it's opening up the floodgates to threats and allegations from trademark owners, but I don't see the rationale here for it. Where are the cases for abuse? You know, where do they exist now? I don't see that. I also don't see - I see you know, some kind of vague ideas for where they might. But we need to quantify that before going forward with something like this.

Further, I see that in some countries, like the United States, you can't get trademark protection on a top level domain. So you've got - so there isn't that trademark protection, it isn't granted. So what are we really looking at here? What rights have we evaluated?

The other thing we didn't have - so let me start with a general question, why can't the court processes that exist, balance these rights and allegations between two businesses? And that's what we're looking at. The trademark owner as a business, and the registry as a business.

And let me point out that there is a danger here that did not exist in the UDRP. In the UDRP we're talking about one domain name, one Web site, potentially hanging off of it. But here the danger is enormous. We're talking about potentially tens of thousands, hundreds of thousands Web sites, even millions of Web sites of perfectly reasonable registrants. And the danger seems different.

I'm not sure I see the whole rationale for this process. Thank you.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Craig Schwartz: Thanks, Kathy.

Amy Stathos: (Unintelligible) answer.

Craig Schwartz: John Jeffrey?

John Jeffrey: So, let's just say -- this is John Jeffrey speaking. I just want to say in the last round of discussions, I have a question, or maybe a way to (draw this out) a little bit. Because we're having a little bit of trouble understanding (the part).

So, there's - I'd say there's a couple different things that are on the table and I don't think it's all included with what's in your (statement), so I want to make sure one, I understand it, and then two, the public partners understands (it because of the) (unintelligible) part.

But so anyway, what I hear is you're looking for some preliminary threshold enter into process. That's - and that that be some review process, (so call it a first look) threshold point, okay? And the suggestion is that ICANN would be that threshold point that we would be looking at it and determining whether there was something that causes it to go into the process. Is that consistent with what I'm hearing so far?

And so, I guess then what I'm trying to understand is, is it just that you're trying to create a barrier or a clear threshold that this is less likely to occur? If that's the case, I think that we all agree that's reasonable. We don't want hundreds of these - we certainly don't want frivolous ones. And then Jeff, I think, suggested that, there be a WIPO panelist or someone could work for ICANN and that they'd do that.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

And I guess what I'm having trouble understanding is why that would be inside ICANN as opposed to as part of the process. And the reason I ask that is most cases, where you're looking for some first (unintelligible) you're not looking for ICANN to do it because they believe that there's an assertion of bias or some other thing. So it's interesting you're wanting ICANN to be involved in that process at this point.

And so, and the last point I just want to make and ask, is that because it's related to the monetary concern at that point, where (it's before) it enters the process. So, do you understand the questions I'm asking and how I'm trying to break it down or should I elaborate more?

Jeff Neuman: So, at least from my perspective, I think it is monetary in the sense of, you know, someone's got to pay those costs, if it's going to be a party outside of ICANN. And you know, if ICANN wants to pay those costs then that's fine, whether you do it or you sub it out to someone else. I think that will reduce at least - if there's some barrier to entry, then I think it will reduce the frivolous claims that will be filed under the PDDRP, but it should also reduce the amount of threatening letters that we as registries get all the time.

I - but from my perspective, it's the monetary aspect as to whether it's ICANN or not. Now with the remedies, it's a lot different.

((Crosstalk))

Man: So I'm hearing that there's two main issues. One is a threshold issue, so you don't want a lot of frivolous things like this. And then the second is a cost issue relating to if those claims are coming in, how that initial phase of it is going to be paid for. Is that right?

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Craig Schwartz: So, I just want to follow up on that, Jeff. So I mean I'm just hearing - I know there's a lot of just bigger concerns about what are the remedies and what are the standards and stuff. But just on the quick-look on ICANN involvement at the outset.

It sounds like you're just saying we want a quick-looker, and you think ICANN can do that, and I'm just still stuck on why isn't it - like, why couldn't there be an independent quick-looker. In other words, if you want to spring a PDDRP claim, you'd have to first bring your claim to the independent quick-looker and have him verify A, B, and C, which you're saying, you know, it's a real trademark, they're a real owner, there is Web sites that are registered. Why should that be ICANN?

Man: Yes.

Craig Schwartz: And make this third party, make the complainant pay for it. Well, we propose that the provider would do that quick-look and you're saying ICANN should do the quick-look.

Jeff Neuman: And then just one more thought. Just one more thought on - one more quick thought on that thing. (Mike) said, I think the phrase was "skin in the game." So is there skin in the game he's talking about ICANN liability or is it money? I'm just trying to understand those differences and understand, you know, from a registry constituency perspective what, you know, (unintelligible) has been discusses.

And again, I just go back to the two questions, is it about the threshold and is it about the cost or something else.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Jonathan Spencer: Look (unintelligible) -- Jonathan Spencer, VeriSign. I think it is about the threshold and it is about a cost. I don't think you can separate those two items. Because if a registry is (imposed) (unintelligible) has to pay the cost of this, that's as bad, you know, to a certain extent as there not being a threshold.

The threshold -there has to be, you know, a party who is independent enough at a certain level, who is qualified to take a real substantive look at this to make sure it's not a frivolous complaint, it's not a repetitive complaint that has already been again frivolous in that matter, that the trademark holders have a real issue at hand, that we're talking about real conduct that's at the registry level. That those items, you know, and maybe it's ICANN, maybe it's a panel consisting of different constituencies. I don't know what this group is.

But it should be something that the registry is required to pay for up front. You know, it shouldn't be - but it's got to be something that basically acts as a reasonable barrier to non-frivolous - to frivolous complaints and things that aren't politically motivated complaints. That the issue here is, you know, serious, you know, activity by the registry, (to foster), you know, what is the complaint?

Trademark infringement, a pattern of abuse, you know, either at the TLD level, at the top level or, you know, actively promoting at the second level. And I think, you know, we want to make sure it ties very clearly to that standard, and that this doesn't become a process. And that's why, you know, my earlier comments about, you know, I don't see this as being a quick process in that it has to be in 20 days (unintelligible).

I'm not saying it should be stretched out. No, it shouldn't be. A party that's truly abusing shouldn't get away with that. But, you know, we are talking about serious things, and it should be that if this is done properly and if you

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

know, we have registries that are serious, you know, as we expect, you know, (players) here that are doing things that (we won't) (unintelligible).

This is meant to deal with the rare occurrence, we all hope, you know. And to deal with the problems - settle the fears of many trademark holders that, you know, there will be a rogue registry out there. And we don't want that. None of us want that. But on the other hand it can't be turned into a tool, you know, to be used for all sorts of other purposes.

Craig Schwartz: Thanks, Jon. Let's go to Kristine Dorrain on the phone.

Kristine Dorrain: Hi, thanks you guys for letting me speak. I'm with the National Arbitration Forum.

I'm - my comment slash suggestion, I guess, is that one - number one on the agenda merges a tiny bit with Number 2 in that, I mean I think that - I hear the concern that there are - that there's going to be a lot of costs at the outset for both of the parties, and you know, whether or not ICANN should even, you know, should be involved to begin with.

But my thought is with respect to the remedy could prevent some, I think, of those initial problems, in that I think like if PDDRP sets out a very strict list of remedies. For instance, the registry could not be cancelled with the first filing of the PDDRP. You know, then the first trademark owner in the door is going to have to pay, you know, a pretty hefty sum of money to bring this, you know, just to their attorneys and everything to prepare this complaint and file this action.

And they're not going to get, you know, the death blow to the registry as a result. Maybe they could have a, you know, a much lighter remedy. And you

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

know, and then it would progress. So maybe by the time the registry had it's, you know, second or third or fourth claim against it, at that point that's when the remedies step up.

And again, you're getting that panel recommendation and ICANN is again still looking over the shoulder to make sure that those remedies aren't too severe. That doesn't really alleviate the need for legal counsel and the expense to pursue the whole process, but I think that you can avoid some of the fear that, you know, there's one complaint, you know, the registry has one bad actor and they're going to get shut down. I mean I think you can deal with some of these problems with the remedies. Thank you.

Craig Schwartz: Anything on that? You want to respond to it?

David Maher: This is David Maher. I don't really see that as a helpful suggestion. Our experience with the (grant) holders is that there will be multiple instances of complaints, and simply limiting the first remedy won't stop the second, third and fourth from causing the kind of harm that we're concerned about.

Craig Schwartz: Chuck, you're next in the cue.

Chuck Gomes: Thanks, Craig. Let me make a process suggestion, first of all, and I'll try and follow it in my comments. Let's all try to be as concise as possible in our comments or we're not even going to get past two of these items on this agenda item.

And so to now try and follow that, a few points that kind of, I think, ties things - various things together. First of all, I think ICANN and the registries are in the same boat. Neither one of us are qualified trademark specialists where we can investigate things.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

So we understand your position as well. At the same time I think there's an agreement in this session as well as in the public comments that there needs to be some sort of filter. But we don't have to define that filter in this meeting today. I think if we agree on the fact that there needs to be some sort of a filter, and who does that, we can work together. We can form a team. My suggestion would be that we take that and that we work together, we form a group and work on what that is, who should do it, and so forth.

The next thing I want to say is just that, and a couple people referred to this at least briefly. From a registry's point of view, we have all kinds of different customers. It's very important in this discussion, as well as in all the things with new details, that we don't just focus on one customer group.

I fully respect the needs of rights holders with regard to trademark, and we need to deal with those. But let's not dump everybody else out, all the other customers out at the same time. So we have to maintain a balance there. And of course, part of that is achieved if the filtering process is effective. Thank you.

Craig Schwartz: John Nevitt, you're next in the cue.

John Nevitt: Thanks. Craig. Just following up on Chuck's point, I think what we're hearing is we need to avoid rushes to this process, and avoid having this process being the form of first choice right away.

There (are, sort of) remedies, for lack of a better term, to that, you know, that concern about a rush to the PDDRP to avoid frivolous complaints, and to avoid, more importantly from my perspective, intimidation complaints that are inextricably intertwined.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

The first I think is a safe harbor, and to make that clear right up front, that would ease a lot of the tension that you're hearing. Second, in the draft contract that you have with the registry operators, the section 5.1, which talks about cooperative engagement between ICANN and the registry operator when there's a dispute, that same theory should be used before PDDRP is applied for by a third party. That ICANN could act as a form of the mediator between the two parties, knowing the terms of the safe harbor and knowing what the allegations would be in the perspective PDDRP.

And then to Amy's point, I don't think ICANN can avoid this at all, based on your contract argument, and that - the only reason why (unintelligible) in the room at all is because of a contract that they're required to be there under this provision. And don't get me wrong, unlike Kathy, I support this kind of process. I think it's a good thing, it's something we supported from the IRT and Jeff and I worked, took pains, to make sure that there are protections for registries so that they're not intimidated and they're not buried with frivolous complaints.

So if you add a safe harbor, add a cooperative engagement where ICANN's involved up front, make sure that the complainant pays fees up front, and that there's more than one panelist, I think those are a series of protections that need to be implemented to ensure there's (some fairness).

Craig Schwartz: Thanks, John. Tim Ruiz, you're next in the cue.

Tim Ruiz: Did you say Tim...?

Craig Schwartz: Yes sir.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Tim Ruiz: ...Craig. Okay, thanks. Yes, well my point is similar to Jon's, I think that when you look at the process that is proposed right now, you know, some of the remedies that are suggested, you know, go as far as (spending) registry's ability to register domain names or even termination of the registry agreement and that those remedies are ultimately are going to be ICANN's responsibility to enforce.

So I guess that it surprises me that there isn't - that ICANN wouldn't want some process up front through which it would have the opportunity to try to arbitrate this issue, or whatever the problem is, between trademark owner and the registry to try to resolve the situation before it gets to this point or goes to a panel and then they have to enforce remedies.

The other thing that that would provide, I think, for ICANN is give you a better look or better information on what the kinds of problems are that might need to be addressed in a best practice or policy development process or whatever, if it's an ongoing issue across multiple registries or something that continues to come up.

And it may actually encourage more dialogue of those kinds of things that can get resolved without having to involve panelists and courts, etcetera. So, I guess I would agree and encourage that, you know, ICANN consider some up front process to try to arbitrate the situation before it goes to a PDDRP, and make that actually part of the process that has to occur prior to a PDDRP pursuit.

Craig Schwartz: Thanks, Tim. The last person we have in the cue is Konstanine, and we are having a technical issue on our end right now, so bear with us with regard to the Adobe display. Konstanine?

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Konstaninos Komaitis: Yes, hello. Can you hear me?

Craig Schwartz: Yes, we can hear you fine.

Konstaninos Komaitis: Okay, brilliant. Well, I would actually - we really need to think, I believe, why we're creating this process. It seems that there's another process if we can trademark owners, and we already have the UDRP, we already have the (URA)s which is going to be created. And right now trademark owners are targeting another audience and that is the registries.

And we have to be very careful here because the registries are not (consequent) controllers and in essence what we would ask them to do is start controlling whether the person - the registrant is actually a trademark owner or not. So we will ask them to go into (unintelligible) that they do not necessarily want to (unintelligible).

And at the same time, we really have to consider what - how this will upset the whole registration system. And I think Chuck was the only one to mention it, but - and correct me if I'm wrong, but basically trademark holders are not the only registrants out there. We're talking about individual registrants, we're talking about registrant (that support) or they want to (unintelligible). And through the process we are jeopardizing the (whole registration) (unintelligible).

And I don't know, but my reading, at least, from the PDDRP, the way it's written right now, it seems to be repeating (sic) the same notions as the PDDRP. We will end up having WIPO panelist that will be biased, (the system) will be open to abuse, and as Jeff said in the beginning of this discussion, (rates) will be forced governing names without (evaluation) because they just don't want to be subjected to this process.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

(As for) ICANN's involvement, ICANN (unintelligible), but I cannot really understand how (unintelligible) an entity or - and how is ICANN able to say to an entity, okay, just go out there and become a registry. And suddenly when this whole process becomes a real thing, just stay out of it. Thanks.

Craig Schwartz: Thanks, Konstanine. So I think we're going - I'm going to turn the mic back over to Jeff, who also has control of the PowerPoint, to move onto the next session point.

Man: (Unintelligible).

Craig Schwartz: I'm sorry. I apologize. Brian Beckham, why don't you go ahead. I apologize.

Erik Wilbers: Thank you very much. This is Erik, actually, it's Erik Wilbers, WIPO. Hello everyone. And I'm here with Brian, and I sneaked in through the - I think I've been announced on the chat about a half an hour ago. Thanks for the opportunity.

I just wanted to come in right here since I know you're about to move onto the next unrelated subject. The reason why I'm - I would like to just take two minutes is not because WIPO has just been mentioned as or it's panelists are being biased or anything like this. Where I think the answer would really be, and I think that's a pertinent comment to make also in the context of the wider discussion about the PDDRP. I think the question is where would the system and where would registries, and especially where would registrars be without UDRP today? What might have happened if it hadn't existed?

I think that's always a good question to ask. The same question can be asked, actually, for registrants who I do believe are probably a lot safer off with

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

being the subject of the occasional UDRP complaints. I say occasional because we have 100 million names theoretically at any given time subject to them. And we have a mere 2000 UDRP cases a year over here.

So I think the discussion is perhaps not just, you know, what is good and bad about this proposal on the table, but it's perhaps also and what if you don't do it? And here I heard that Kathy was among others, perhaps, questioning, you know, the ((Foreign Language Spoken)). The reason why one should consider to have PDDRP in the first place. What's the problem was kind of it's loosely translated was the question.

And I think there's a few points which I think are fairly in a sense, they're kind of (base born). The first one is - was mentioned also by (Mike) Palage, I believe, who said that, or noted that they system of course makes money out of registrations. And so (that mean)- and the system is a big one. The system means everybody from the registrant (if) to make money off the infringement up to and frankly speaking ICANN and the middle - in between, who gets money out of registrations. I think that's an objective fact. Not necessarily by design, so to speak, but that I think is just how it happens.

And then the second point is, it would of course be, I think one would not probably have this discussion if there was reasonable confidence that the domain name system in the future, as you know, in terms of the additional new domains, will turn into a clean space, or will be as clean as perhaps current registries may be.

I'm not pronouncing myself on it at all, but I think that's - if you look at the amount of trademark abuse in the domain name system today, on different levels, perhaps, but in any event, effecting the DNS as a whole, I think it's a very safe bet to know that there's going to be all sorts of abusive patterns and

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

most of those we don't even know what they will be because they will all evolve in the future, if the domain name space gets opened up in this massive way, the likes of which we have simply not even begun to see.

So, and in particular to sort of bring this back a little bit to the trademark point, at this stage, how - it's hard to see, you know, given the abuses that have been seen in the past, and the intention to open up the domain name space in this way and the money that is being made out of all that, is really hard to see why trademark owners at this stage would just sort of sign off on these things or would be expected to just look the other way or simply accept everything that's on the table. The expansion of such without raising this point about whether or it might not be wise, not exactly as a condition, but as part of the package of expanding the domain in the domain name system to look at an option like the PDDRP.

But I want to maybe spend my last one minute, two minutes, on this in the chat to turn it a little bit more positive. Because if these are sort of - if this is just sort of a base response to the question, why should we consider one in the first place, it seems to me that the real question is how does one design it if you go ahead with this?

And here I think there are two questions. The first one is to be distinguished. The first one is a question of principal, what is the scope? Another one is a question, in a sense of practice, which is how do you arrange the process? Base rate? What are the timelines? Who manages all of this? I think these are two sort of distinct questions. The second one may be easier than the first one.

On the question of principal, the - I think there is just one fundamental choice to be made, and that is whether the (affirmative) conduct condition will stay

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

on as a core threshold for activating the PDDRP system. I think that is the core question.

We believe that if one - if there is going to be a PDDRP, and it will in a sense only be for...

Jeff Neuman: Erik? This is Jeff Neuman. There are...

Erik Wilbers: Yes?

Jeff Neuman: We're going to go through a number of topics. I think we were just addressing the ICANN involvement. But I think we will get to the standards a little bit later. Can we save that? Is it possible to save that comment for when we get to the standards about the affirmative conduct?

Erik Wilbers: Yes, with that I want to mention just two words in this regard. (In our view) what it's about is an equitable, workable, fair trade (off). And the two words I want to use is safe harbors.

And my main point on this, frankly, is I would like people to start to dare considering a little bit this concept as something constructive, as something of a partnership, as something that gives certainty that precisely tells you where you stand if trademark owners frivolously or not are coming in with their allegations about abuses. And to give you something to hold onto in that sense. Okay.

Craig Schwartz: Erik? I'm going to need to take the meeting back for a moment and give it over to Jeff Neuman.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Jeff Neuman: Yes, and just not to interrupt, we're actually going to get to safe harbors, I think is Number 6, but we're only on number - we're just starting Number 2 now. So we'll get back there and certainly appreciate your comment.

So, Number 2, actually, we started talking a little bit about and it relates actually also to Number 3, which is ICANN must be more involved in determining the remedies, applicable to registries for violations of the PDDRP. And I think we had some productive discussions, you know, either remotely or in person in Nairobi.

And I think ICANN has - well they put in the draft, that they're still the ones responsible for determining the ultimate remedies, and that was reaffirmed in the discussions in Nairobi.

It's important, I think, as Kristine from the National Arbitration Forum raised, it's important for one reason to as kind of like a sanity check on the remedies ordered by the panelists. But it's also important from a registry perspective because it actually then allows the registry to take advantage of the contractual dispute resolution mechanisms that it has in its registry agreement.

And that's a vital important (start) because yes, you can say that a registry has a right to appeal, but if it's not specifically acknowledged in the agreement that the registry has the right to appeal to (no vote) the findings and the remedies, it's possible like what has happened in some court cases with the UDRP, but a court would deny jurisdiction over hearing that complaint.

So what I've seen happen in a couple UDRP cases is that when a registrant tries to file an appeal of a decision, that sometimes the court will not take that action. In other words, a court will not hear a declaratory judgment action

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

based on a UDRP case because it doesn't really rise to the level of a claim. You know, there's no subject matter jurisdiction. At least in the U.S.

So, in order to avoid that whole thing, and points two and three kind of relate to each other, where Number 3 says that the PDDRP must not replace contractual dispute resolution mechanisms, is a - one is that ICANN makes the determination, and that two, the - or point three here, is that (and I don't know if Craig, if you want to jump there). Point three is that we, as registries, must be able to challenge the substantive decisions and the remedies to de novo and the only way to do that, really, with respect to remedies is to have ICANN involved.

And part of that we wrote into our redline, which is ICANN must acknowledge in all determinations and remedies recommended by the PDDRP, or implemented by ICANN shall be entitled to de novo review through the dispute resolution processes set forth in the registry agreement. So that's with respect to two and three.

Again, it's a safety check on the panelists' recommendations, but it's also a way to ensure that there's jurisdiction in the current agreement.

Amy Stathos: Thanks. So, I think I can say that with respect to Number 2, that is something that we had talked about and that I think the concept is clear that ICANN would be making the final determination of a remedy that may be recommended by a panel.

With respect to Number 3, I do think I'd like to understand a little bit more what - how you see a decision or determination. Let's say it's just even a determination, not the remedy for to start. Determination by a panel in this outside independent dispute resolution process, becoming part of the contract

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

in the sense that you can challenge that under the contract as the panel determination. I'm just not clear on the process...

Jeff Neuman: Yes, because...

Amy Stathos: ...of - on how that would work.

Jeff Neuman: Well, so my fear is that the contract basically states, or will state, that the registries agree to be bound by the decisions of the panel, and then my question is well, how do we challenge that?

So if ICANN then says, well the panel found that there was this activity, so we're taking the registry away, then if we challenged ICANN's remedy, I mean we need to have the right to challenge both the remedy and the determination.

And I think the only way to do that is under the contract, and not under a court. (Its not going to) well, you're going to have two different dispute resolution (mechanisms) and you're going to say, well, you can appeal the PDDRP decision via court, but then you have to appeal ICANN's determination of the remedy under the contract.

That doesn't make sense (as) two separate proceedings. Now the court litigation and an arbitration going on at the same time makes no sense. And it also depends on there is - and I raised it in a different comment in the registry redline, where you basically say that the registry operating against its representation, but in the agreement you have the registry representing that it's not going to violate the legal rights of others. So it encompasses everything.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Essentially, we have to basically have the right to challenge the determinations and challenge the remedy and it has to be under the dispute resolutions in the mechanism in the contract.

Amy Stathos: Are you envisioning then that it would in fact be basically a de novo appeal to a whole new provider, and this time it would be the one that's under the contract or the contract dispute resolution provision as opposed to the PDDRP provider?

Jeff Neuman: Well I'm...

Amy Stathos: Is that...

Jeff Neuman: Well, I guess I'm trying to envision what ICANN would see, so if ICANN's the one that's determining the remedy, you can't challenge that in the same action that you're challenging the decision, right? So basically you're forcing the registry then to litigate two different forums. One a court jurisdiction and one a contract dispute resolution - I'm sorry, yes contract dispute resolution mechanism, which is arbitration, which is the (ITC) I guess in many cases.

So I'm not sure how you do both and you're forcing the registry to spend a lot of money to fight two different aspects.

Amy Stathos: But you're looking for de novo on both?

Jeff Neuman: Correct.

Amy Stathos: So for example, if you got a determination and then you waited for ICANN to impose or identify a particular remedy pursuant to that determination, would

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

you then speak to have the entire matter re-adjudicated by the panel, both in determination and the remedy?

Jeff Neuman: So, I think you bring up a good point. I don't think that a - I think that ICANN must make the determination of the remedy prior to when the challenges of a decision. So they can go hand in hand.

In other words, as a registry, that there's a panel decision, but the remedy is just something that's easy, and I'm not, you know, I'm not - I don't want to make the decision I have to challenge in a court. I need to have everything in front of me as a registry before I decide challenge.

Amy Stathos: So if you challenge it in a court, would it be a de novo review or would it be a review to determine that the practice was followed properly.

Jeff Neuman: De novo. Everything would be de novo. It'd be with the UDRP, right? Everything's de novo review.

Amy Stathos: I'm still just trying to figure out the mechanism under which the determination becomes part of the registry agreement.

Craig Schwartz: Jon, did you want to?

Jonathan Spencer: Yes. If I may, Jonathan Spencer. I think it becomes total registry agreement because your remedy would be (asked) including the proper determination or whatever. And those actions have to be made under the corporate governance requirements. And I think as a matter of law, that ICANN operates under - under corporate law, that ICANN operates under, ICANN must make those determinations. Must determine what remedy they will pursue under the

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

contract, okay? It cannot delegate - fully delegate those decisions to a third party.

Amy Stathos: Yes, I think we're in agreement.

Jonathan Spencer: Yes, okay. And then as a result, okay, when a registry would challenge those actions, those decisions, that all has to be subject to review, okay? So I think it comes out as a matter of law that really at the end of the day, you have to have a review of all the factors that go into that decision.

Jeff Neuman: Right, because we can't be in a situation where basically when we challenge the remedy under the dispute resolution mechanism, ICANN's argument is well, you agreed to be bound by the decision of this third party, that was their decision, so there's nothing to dispute.

As Jonathan said, we have to have the whole matter in front of one jurisdiction all at the same time.

Jonathan Spencer: (Thank you).

Craig Schwartz: Dan, it's not working now, so just speak up.

Dan Halloran: This is Dan Halloran. I'm just trying to understand how does it work? Because it sounds like - who would be the party in this de novo review and who would be - would ICANN have to re-prove all the trademark allegations or is the trademark owner going to come back in? Prove that you don't have the trademark and you violated and - who are the parties doing this proving?

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Jeff Neuman: Yes, I do think that the trademark owner is going to be involved again. I do think that the panelists may be involved again as a witness. I'm sure that will be the case.

Remember, I'm like the UDRP, where you're basically taking one name and transferring it. You're actually talking about a heavy sanction against a registry, either preventing registrations or taking away a registry's right to do business. So yes, all of that's got to be involved in this de novo review.

Craig Schwartz: For everyone on the phone, there's just people thinking in the room. That's why the silence.

Man: So, (this is a prop).

Man: (Unintelligible).

Man: (This is a prop).

Man: Okay go ahead.

((Crosstalk))

Craig Schwartz: It gives me authority.

Jonathan Spencer: So literally, ICANN were to pursue it and the registry was challenging it, ICANN would have to call as witnesses to prove its case in this review, would have to call the trademark owners as a witness, call the panelists as a witness, and then prove that it wasn't biased, and call the...

Jeff Neuman: Yes.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Jonathan Spencer: Prove everything the trademark owner proved in the dispute, ICANN would have to prove, too.

Jeff Neuman: No, but it's de novo review. So, you're talking about one panelist, and we will talk about that, it should be three or five, but you're talking about relying completely on three people that, you know, they're not a court. They're just trademark attorneys. And no offense Kristine or WIPO, but they're just trademark attorneys. They're not a court. They're not judges.

So, yes, it's de novo. And yes, you would have to prove the same elements. How else does a registry defend itself?

Craig Schwartz: it's just different parties. It's like - the analogy I'm thinking of is that the registrar, like, let's say you open a PDDRP case, and a court says take away Google.com, that's infringement, that's a panelist comment. And then if the registrar really wanted to take away the domain name after it had the panelists' decision, it would have to de novo prove again that it was infringement. The registrar would have to prove to some provider that the domain name was (infringed).

Jonathan Spencer: No, I was thinking it in a different way. If a registrar is dragged into UDRP, and the registrar loses, the registrar can de novo file an appeal to a court, and yes, all that same testimony will be heard all over again. Right?

Craig Schwartz: So you guys - the registry could do that under this - I mean, we're not (proclude) a registry from getting (say exploratory) judgment that there is no infringements and there's...

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: Then the third - I was just looking at a third circuit case that holds that the registrant (there's a) loss of UDRP, can get a de novo review in a U.S. Federal Court.

But on the basis of the Federal Anti-Cyber Squatting (ACPA), that act, gives the court jurisdiction to look into the registrant's problem. And we're talking here about other countries.

Jeff Neuman: And we also don't have a statute...

Craig Schwartz: Right.

Jeff Neuman: ...for the PDDRP.

Craig Schwartz: Exactly. Exactly.

Jeff Neuman: Right? So the only reason courts now, I think that came about because of the fact that initially when the UDRP came out, there was a registrant that tried to appeal on the court because we had no basis to hear that.

Craig Schwartz: (Is it?)

Jeff Neuman: So we would need a statute in the U.S. that would give a registry a right to a de novo review unless it's acknowledge in the contract that ICANN would agree to take that to a dispute resolution mechanism for the contract. Because the court won't take it. That's why we need Number 3. Unless some statute comes, but we can't really control that.

Jonathan Spencer: Yes, but still, I mean, in the UDRP (content) you're talking about the two real parties of interest there. The registrant and the person (for the) infringement,

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

right? And that the first round is the UDRP in front of panelists, and the second round is in front of a court with a judge. Still have both the parties interest, the party claiming infringement and the party, the defendant.

And here you guys are talking about ICANN having to step in as the party of interest, having to prove the infringement.

Man: But that's from a registry's standpoint, having registration transferred after due process, is fine with us. We don't get involved in that. As long as there is due process to transfer a registration or not transfer it. But what we're talking about here is a penalty against the registry or even a termination of its contract to operate as a registry. That's a whole different ballgame. That does affect ICANN and it does directly affect the interests of the registry. That's why we're concerned.

Jeff Neuman: And the registrant, as Kathy posted and some other people posted some comments on the chat. If you're taking away the entire registry, you are potentially having a lot of registrants that may have legitimate registrations within there. I'm hoping that would go within ICANN, what ICANN considers a remedy. I'm sure that that will be one of the factors that's considered. But we can't really forget about all of them either.

Amy Stathos: So what if they, you know, just to make clear and I know that this goes to the standards, but this isn't - the standard as it's written is not about the fact that infringing may happen to be in the registry. It's registry conduct. So it really - I just want to make sure that it's not just infringing names in the registry. It's something that the registry has been adjudicated by the panel (to have done) improperly as well. I want to clarify that.

That the registry conduct with that issue in the PDDRP, actually.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: That's right.

Amy Stathos: Right.

Craig Schwartz: Yes. So I'm getting that you want to have an appeal, I'm just not catching the how and why. So if you're going to have an appeal then re-hear it de novo, I'm not understanding why that shouldn't be again the trademark holder and the registry as the parties. Why the parties should be ICANN and the registry.

Jeff Neuman: Well, ICANN's the one that determines the remedy. So, if ICANN is not a party, then how do you challenge the remedy? In other words, the finding may be right, but ICANN may order a remedy that's way to severe for what happened.

Craig Schwartz: But again, if you have, you know, in any other kind of case, if you don't sue - an appeal, you don't sue the judge or the jury, you sue the party again. You re-hear the case, try to prove it again. But...

Jeff Neuman: No...

((Crosstalk))

Man: That's because judges and juries are protected under principals of law. ICANN is a private California...

Jeff Neuman: Right.

Man: ...non-profit corporation. It's not a judge or a jury. It's a party to a contract.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Craig Schwartz: Look, so we - I mean I totally understand, but the complaint is that you know, we're treating unfairly or somehow abusing, you know, breaking the contact in the way we're angling the dispute or the way we're making the determination about whether to implement the - remedy that that I understand, you know, basically an arbitration about our conduct.

But so I need to understand how we're going to have an arbitration to re-litigate the trademark claims.

Jeff Neuman: Because as David said, we are private party review. We're agreeing to submit to a third party, the substance, the trademark substance, where they have expertise in deciding. What we're not (complicitly) agreeing to is to allow you, ICANN to determine whatever sanction you want to determine against the registry simply because of that third party finding. We need a way to challenge that.

Man: And from the very beginning of the UDRP, and I know because I was there, basis of the UDRP was that the decision of a panelist was not final. It was a hybrid mediation arbitration. Now in fact, most UDRP decisions never go to court, but the (escape bill) that gave it legitimacy under law was the ability to go to a court having jurisdiction and a de novo review.

And that same principal applies here. That ICANN is not about the law. You can't delegate contract rights to an arbitrator for a final binding decision and say we've not washed our hands. We have nothing to do with it. If the arbitrator says revoke the - terminate the contract, that decides it.

That is not due process.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Craig Schwartz: But we're certainly, I mean nothing in the PDDRP or the contract is intended to take away anyone's ability to go to court or any protection you have under law. Clearly, I think you (are rightly concerned) you might not have a protection under law. That registry might not be protected, is what I hear you saying.

Man: I am worried the way this contract PDDRP does now written.

Craig Schwartz: Go ahead Amy.

Amy Stathos: Yes, so maybe it needs to be split up so the fact that if you're challenging both the determination and the remedy, that ICANN is intending to propose, the determination challenge would be just the party and interest, the trademark or the person who's challenging the registry conduct would be the one that would have to respond to those claims.

Whereas once that is decided, then if you're looking at ICANN to be the one to basically defend its determination for remedy based on the decision. So I don't - so ICANN wouldn't have to claim that there was infringement. That would be outside of ICANN's area. Is that...

Craig Schwartz: Let me see if I can say it a different way, because just to make sure I'm understanding it. So what I hear you saying, if the result comes in from this process, but how ICANN applies the remedy, you want to be able to challenge under the terms of the agreement, because then we're in (unintelligible) provisioning (in the agreement). Is that what you're saying?

Jeff Neuman: Yes, and as long as it's - they can be intertwined. In other words, ICANN can say because of the severity of panelists' decision, right, because of all the (acts) that the panel has found was done, we are determining this is the

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

appropriate remedy based on that decision. I'm not sure how that would all be heard together.

In other words, the severity of the sanction that ICANN applied could be dependent on the findings of the panelists.

Craig Schwartz: So part of the issue then is, if the scope of the panelists role and (how can we) determine the remedy? That's still a question?

Jeff Neuman: Yes, I mean, my - the IRT, when we put this out, and what I've tried to argue from the beginning, although it never made it twice, so I've come off of it a little bit, but initially what the IRT said is that the panelists should not be involved in really determining the remedies. That it should be completely up to ICANN and then that's handled by a contract.

And then that would also get rid of some of our other complaints about the monetary damages and other things.

Man: So essentially then what you're proposing is separating the decision from the application of the remedy.

Jeff Neuman: Yes.

Amy Stathos: So - from even recommending a remedy.

Jeff Neuman: Correct.

Amy Stathos: So in that situation, if those two were separated, and then ICANN imposed a remedy based on the finding of the panel, then you want to do - the registry wanted to appeal that decision, would ICANN still be though in the position to

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

have to prove up the severity of the infringing action or conduct by the registry in order to support its decision on remedy?

Jeff Neuman: Well, my guess would be that the determination would be de novo review, and then obviously ICANN wouldn't implement any of the remedies until that was done. And then ICANN, you know, if that de novo review turns out to be a finding say for the registry, then obviously the remedy would never come into play.

If the panel - I'm sorry, if the court on de novo review finds that yes, there were violations of the registry, it would still allow for registry to challenge what ICANN has imposed, but yes, the substance of the outside, the contractual dispute.

Amy Stathos: So ICANN wouldn't be in a position of having to prove up the (substance) in that - in the circumstance you just stated.

Jeff Neuman: That's what I'd say. I don't know if Jonathan or others have a different view, but...

Jonathan Spencer: (Unintelligible).

Craig Schwartz: If you want to remark right to that, that's okay, but we do have a cue of people on the phone. Jon.

Jonathan Spencer: (I don't want to jump from the cue), I would say that I think that ICANN certainly, at the end of the day, the panel is making a recommendation to ICANN on both the substance of whether there's trademark infringement, and you know, the other (unintelligible). But they're making their recommendations on the (substance).

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

That means that ICANN has to take that (opinion) (unintelligible), and most (unintelligible) said they could rely upon us, but when it gets challenged, everything is subject to review again. That's why we require the trademark (holders) to come back in and provide the support in the (quick-look) problem with that issue.

But the end of the day, everything again has to be (in my opinion) proven, to get the court's (unintelligible).

Craig Schwartz: Thanks, Jon. Tim Ruiz, do you want to go ahead? (Unintelligible).

Tim Ruiz: Actually, I got my question answered on the chat list, so I'm good.

Craig Schwartz: What about Steve Metalitz, you're next in the cue.

Steven Metalitz: Yes, thank you. I think this question, this point is still valid, although I think Jeff and others have kind of shifted their position on what they're seeking de novo review of. But if the issue is really about remedies, I mean, I think you'd have to change the registry agreement to allow for example for termination and for lesser sanctions upon the recommendation of the panelist, you know, and make the appropriate reference to the PDDRP.

If that's the case, then any decision ICANN makes there, and that the registry is unhappy with, is a dispute under the contract, isn't it? And it's subject to arbitration. Mandatory - it's a binding arbitration under the contract, under article five.

So, I think if you accommodate as far as remedy is concerned, anyway, if you accommodate the fact that ICANN would be authorized to impose a remedy if

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

the panelists recommends it, then once they - if they do decide to follow the panelist, or even if they don't, any remedy they impose would be subject to the standard arbitration procedures under the agreement. At least that's - I may be missing something there, but I'm not sure this is as big a problem as far I think at least as far as remedy is concerned.

Then later I heard, and I think David was taking this position from the beginning, that they wanted de novo review of the findings as well as the....

END

ICANN

Moderator: Craig Schwartz

April 19, 2010

12:00 am CT

Steven Metalitz: ...the remedy. So that's a little more difficult but that could probably be accommodated too I would think.

Craig Schwartz: Thanks Steve. I think this is probably a good time to take a five minute break and then come back and move on to the next series of points. So folks on the phone, we're going to go on mute for a few moments.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: Are we moving then to the other topic?

Craig Schwartz: No. I think we probably need to spend a little - I think we need to spend more time on this particular item. If we take, you know, 20 to 30 minutes over and above what we allotted, it's going to take some time off the agreement (unintelligible) process unless we extend that.

So why don't we spend a little bit more time on this and then see where we are, you know, come noontime on the other agenda items? Does that work for everyone?

Man: Fine.

Man: (Can we work)...

Man: Fine.

Man: ...through lunch if needed?

Craig Schwartz: We can work through lunch if we need it. All right. So let's go - let's take a break for five minutes right now.

All right. Okay folks on the - folks on the phone, we are - we're back live and we're going to continue - I'm going to turn the presentation deck back over to Jeff Neuman. I think a number of the issues that are throughout the presentation we probably have already touched on and maybe we're not going to get to every one. But Jeff, why don't you take us through what you next want to discuss.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Jeff Neuman: So Number 4 is ability of a panel to award monetary damages. And it's the registry stakeholder group's view and actually it was supported by WIPO and the comments that John Nevitt made to remove the ability to award monetary damages.

And actually I want to give kind of kudos to John Nevitt. I think he said it best in his comments where he said that, you know, the way the UDRP was designed, the way the URS was designed, even the way that the independent review process was designed was to deter future conduct. It was not a way to punish past behavior.

So aside from awarding cost of a proceeding, we just don't see any basis for monetary damages and in fact even WIPO had said in their comments they don't see it as well.

And from our point of view there's just no - the determination of damages is extremely complex. I've been actually involved in a number of cases that involved damages of trademark infringement, knock on wood, (all the play inside).

But it is very complex. They have their own discovery process. They have experts. They had hearings and witnesses and you name it. So this process is not designed at all to hear anything on monetary damages. And we think that just needs to be completely removed.

Amy Stathos: Well, I mean I can say - this is Amy. I can say that, you know, I'm not sure that this, you know, we need to spend a lot of time on this. If anybody else has any thoughts on this with respect to it, I think we understand the point very well.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Jeff Neuman: Okay. Should I just jump on to the next one? I'm not seeing...

Man: Yes. I'm just trying to move forward.

Jeff Neuman: Okay. Chuck says I should so I'm going to move forward. The next comment is the requirement for registries to put up 50% of the cost. And I will note that the comments were split with the trademark owners obviously favoring, whether it's (inside PC) or whatever, favoring registry's pay 50% of the cost. And obviously the registries - interested registries do not want to pay 50% of the cost.

We believe it needs to be removed because we think like ICANN's involvement in the outset, we just think this is such an easy tool for trade - overly aggressive trademark attorneys to use against registries especially because you could have multiple trademark (owners file) all of this at once.

And you could basically - again the example of if a Volkswagen sends me a nasty cease and desist letter saying I'm going to not only, you know, I'm going to bring PDDRP against you but - and you're going to be required to put 50% of the cost up. But you can settle this with me by taking these registrations away from a few people and I'll go away or you can choose to fight it and pay 50% of the cost.

You know, in that kind of circumstance, I as a registry would much rather go to court because I'm not required to put up any fees and I'll fight it out there. But will note that paying fees upfront is not required in any kind of dispute resolution mechanism that's been set up or implemented by ICANN such as the UDRP or URS or for that matter bringing a proceeding in court.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

So we were just very concerned about this. We don't see that it's actually needed. And if there's a finding against a registry, then it will be required to pay the cost at the end of the process. But we just don't see that it's necessary at the beginning.

Craig Schwartz: And for those on the phone, we're having a technical glitch here with Adobe so just be patient for a moment please. Are there any comments on Jeff was just talking about Number 5?

Amy Stathos: So again, I have a question. If we look at where we were talking previously, about in terms of an expanded quick-look that may require only complainant to pay upfront to complete the quick-look process, that's an idea that's on the table. Would then you be willing if you - they went through the quick-look and it was determined that they sufficiently satisfied the threshold criteria, then be willing to pay some money upfront or has that fell off the table in that circumstance?

Jeff Neuman: Well it certainly would help a little bit but I think it still needs to be off the table in the sense of, you know, if I'm a trademark attorney, I might get other trademark attorneys that can meet the quick-look to file their own cases, you know, to make the registry pony up 50% of the cost. Kind of like a class action type thing where it's not joined.

I mean I just think it is so ripe with abuse that it's just - it's not in any court proceeding. It's not in the UDRP. And I just think it - I'm not sure where this came from. But again, if the registry is actually held to be liable, it will pay the cost. It's not like you can't find the registry.

I mean this came up initially with some debates on the URS at least with the IRT because it was a - you know, but then they basically said well, the - some

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

people wanted it because - or some people said you couldn't impost it because you couldn't find the registrant sometimes.

Here you know who the registry is. You know it's - you know where to find them. You know how to get the money out of them. I just don't see a need for it upfront.

(Ted): So...

Man: Use the mike (Ted) please.

(Ted): Yes. So given what we talked about before (I mean, we should get) (unintelligible), you know, something that's fast (won't be half bad). And, you know, give that the weight it needs. But, you know, with the idea that there - I have two thoughts. One, you know, the proceeding - if it get the main proceeding, if you (funded) it some way. And two is - to me it's likely that, you know, think of, you know, an environment with a lot of registries.

But it's likely that - not likely but possible that, you know, the registries that it is found to be in violation of (such, you know), what we think is (unintelligible) standard, you know, is also likely that it just skedaddle, you know, like at the end of the day.

And so I wonder if, you know, if we cut - kind of make - draw a parallel between what was formerly known as the quick-look process but, you know, is some threshold that it must be passed in order to get to the dispute central. And then the idea that has to be funded in some way. That we can arrive at, you know, (unintelligible) get to some methodology where the parties could not dispute, you know (unintelligible).

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: So we've got a smile over here.

Man: I have to laugh because if the registry was to skedaddle as you would suggest, then as far as the trademark owners would be concerned, that's problem solved. That registry's out of business. I would actually be more concerned about a trademark holder or a trademark group that (split up) half the cost is found not to be (fair) and then skedaddle like in the registry, you know, getting caught up with having to pay money that it shouldn't have paid.

So, you know, I have this sort of (plan or comment) that the registry not being there because it doesn't pay up (it's out of business).

Amy Stathos: Well, I mean I think it's something we can look at in view of the concepts of developing possibly threshold issues and our safe harbors, et cetera. I mean I think it's something that we can go back and look at.

Craig Schwartz: Jeff, you want to - (sounds) like we're done on that topic.

Jeff Neuman: Yes. So the next one, which was actually introduced earlier by Erik from WIPO who talked about safe harbors. And we still believe that like the UDRP, examples should be given as to what would be affirmative defenses for registries. And we're still unclear as to what constitutes a pattern of bad faith.

So getting a list of safe harbors into the policy would certainly help with the predictability aspect of this whole policy.

Amy Stathos: Make some recommendations from safe harbors.

Jeff Neuman: So I think we certainly will do that. I think - I know you've had a number of comments on -- part of the problem we haven't been able to do that yet is

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

because the standards haven't been fully set. And I notice Brian has his hands (waving). So I'm sure he wants to talk about, you know, the willful blindness and other aspects that WIPO has talked about.

So once we come to a definitive settlement as to what the standards are, then we can propose the safe harbors. But it's kind of hard without knowing what the definitive standard is.

Craig Schwartz: Brian you have the floor. Brian Beckham.

Erik Wilbers: Thank you. This is Erik with Brian. Yes. I definitely agree with Jeff that there is obviously a link between how you set the standards and at what level you pitch them. And here we've - our position is known on whether or not it should be limited to affirmative conduct on the one hand and on the other hand, the design and the sense of the safe harbors.

And I guess there's two sides to this. First of all there's again the principle side, which is the construct as a whole. You build it up from the criteria and then once you've set that standard, you try to give meaning to the standard to give a degree to let the degree of predictability by talking about safe harbors.

And here in a sense there is some comparison to the scenarios, which you can find in the UDRP. The UDRP is not the standard for everything but there is inspiration in some of the design elements that are being discussed. And I would say that for the safe harbors you see kind of examples with our - and don't mean it in a content in a literal sense. But the principle is such.

And if you look at UDRP decision, they owe their predictability generally speaking in very, very large part to the fact that the policy goes beyond the criteria - setting the criteria themselves. But gives meaning to those by saying

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

the following three or four scenarios are deemed to meet this or meet that.
And then it's meant to be non-exhaustive of course.

And so what something that could be done in connection with the PDDRP would precisely be something similar whereby the talk would sort of move from a lot of suitable criteria to well if you take this criteria, what could it mean in practice?

And that's why we have really emphasized a lot the importance of safe harbors. And we do this not only because we think that that makes it workable in practice but also because we perfectly understand the trepidation or the concerns that exist on the part of intermediaries in particular registries about what they would be getting into if this were to become part of the tapestry.

But I guess then again we have made a concrete effort and it was more of a way of example. But we've made a concrete effort to list out food for thought four or five - for example, you know, just potentials both on the side of what a (unintelligible) would need to establish in filling a PDDRP case.

For example, you know, unequivocal evidence of, you know, or very convincing evidence prima facie convincing evidence of trademark rights. That's quite obvious. Unequivocal evidence in the sense - very obvious evidence of what is going on in terms of the infringement or the, you know, the action which is the cause of the case or regardless of what at level that actually takes place.

Perhaps explaining, you know, the history of whether or not the history of that cause itself. Has it been - has this issue been engaged with the registry before? Has it been engaged if we're dealing with second level behavior with the registrar?

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

What is the reason - you know, has any other legal action been attempted? If not, why not? You know, a degree or proportion of it. Perhaps why this remedy in relation to that behavior. Those are some of the things that you can think about to list out in an understanding fashion in think on the claimant side.

On the respondent side, one can think about other stuff. And we - other factors examples and again be given by us. And I'm sure that especially a group like the one - like most of you in - on this call have thoughts on their own about this. And I've seen some of them already on the screen today.

You can think about whether or not, you know, there is a reasonably prompt action on earlier, you know, on the earlier indications in relations and behavior. Whether there's been, you know, whether other mechanisms are being made available by the registry in accordance with their intended purpose and so on and so forth.

This sort of behavior that you can - that you could expect from somebody who is careful but active and responsible towards the third parties in general. And so this is why I...

END

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

ICANN

Moderator: Craig Schwartz

April 19, 2010

12:00 pm CT

Erik Wilbers: ...I, I believe it's not an exaggeration to say that if it is properly designed.

And then this should really not be something to become source of concern about all sorts of frivolous parties coming in there and saying all sorts of things because they would have to meet certain conditions on their own and they're going to have to either front some money or pay some money ultimately if the case was, if the case was not a valid one.

It's, I think that if it is properly designed then it could, it could for example in the, you know, Volkswagen scenario, which Jeff mentioned at the beginning here, it would precisely be the sort of thing whereby the registry could say well look, let's test this, these assertions against these conditions and see if prima facie there's a case that we need to respond to or not.

And if the registry believes, you know, taking off those conditions prima facie that there is no case, well then it's, you know, that is, that is at that point that is the registries call, and if, and if there is a decision by a panel we have always advocated at least on our current understanding of the situation that the remedies not only should act through the monetary ones but they, they would normally speaking take in the decision take the form of a recommendation to ICANN by the panel.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

And that is why in the beginning when we sort of advocated post delegation why we called it a form of outsourced compliance assistance for ICANN.

Craig Schwartz: Erik.

Erik Wilbers: The question what ICANN does with that...

Craig Schwartz: Erik.

Erik Wilbers: ...and how that relates again to its contractual relationship with (Red Seas) in a sense a separate designed question, but I think that if you don't...

Craig Schwartz: Erik.

Erik Wilbers: Yes please?

Craig Schwartz: This is Craig and now I'm going to need you to bring your point to a conclusion if you could please.

Erik Wilbers: I think I have made my point.

Craig Schwartz: Thank you. Jeff let's move on to...

Jeff Neuman: Yes I think we could skip Number 7 actually.

Man: (Can we skip 8 too)?

Jeff Neuman: Well...

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Woman: We can skip 7 today but I would like to talk about it a little bit more at some other point.

Jeff Neuman: Oh okay, I thought we kind of covered that with the previous discussion but.

Woman: We covered the first point and the second point I think is not a big deal that, but the third point that also goes to a point that's not on your slide but is in your redline about jurisdiction on personal and subject matter jurisdiction relating to who is entitled to bring a claim and I'm, that confuses me.

Jeff Neuman: Yes that's probably part of a longer discussion so...

Woman: Exactly. That's why I think it will be a much longer discussion.

Jeff Neuman: Yes. So let's skip that for now but we'll have to come back to that. I'll, so how do we come back?

Woman: I'm not sure, we should figure that out because it...

Man: All right.

Man: (Unintelligible).

Man: Yes.

Woman: Okay.

Jeff Neuman: Okay. So all right, so I, so the third point then on the quick-look is that probably the easier one to understand is you know, that we feel like a

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

trademark that forms the basis of the quick-look should be from a jurisdiction that conducts substantive review.

The last thing I want is to, for a post delegation dispute to be based on trademarks that are in, in jurisdictions that don't do any of that kind of review up front. So all of the sudden you have, and again I'm not trying to put down any of the countries that do this, so I won't name them, but there are countries that essentially look to whether the name's on the register or not, and if it's not on the register it'll allow it to go through.

So there are a number of generic names that have been registered in these jurisdictions. So let's say I operate .web in the future and all of the sudden now I have a, or 50 trademark owners that have all these generic terms that are basically saying there's widespread infringement based on you know, the registrations of auto like car, or car.web and health.web and insurance.web, all of these I've actually seen as registered trademarks.

To me it shouldn't even put us into a position of having to go to this PDDRP if they're not trademarks that were based on some sort of review.

Woman: Kurt (unintelligible) looks like you were going to say something.

Kurt Pritz: So (unintelligible) this is Kurt. So they could be about a bunch of trademarks right? I mean for (unintelligible) attached to a registry we've said it a hundred times (big deal) so it's not about a trademark and then...

Jeff Neuman: Well so the quick, yes, so the quick-look right now states that you have to be a trademark owner, right, and you have to make claims but it doesn't say, A, it doesn't say it's a trademark owner whose mark is being infringed, but B, so let's say I own sorry Jeff Eckhaus we're going to pick on you now, on

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Demand Media and I own Blog, the trademark Blog and I got that in Tunisia or wherever you guys got that.

If let's say Demand Media is my competitor and Demand Media then (unintelligible) PDDRP to kind of hassle me, they are a trademark owner, they own the word Blog in Tunisia and they're basically making allegations that my registry is allowing Blog.web and Auto.web and Insurance.web and each one of those are registered trademarks in Tunisia, they now have systemic, widespread claims of infringement and so I'm worried about that being used as a tool at passing the quick-look.

Amy Stathos: Okay, so then the other question I have for you with respect to jurisdiction issues is what's not in the slide but what's in the redline, which is about (six) and I really need some explanation about what you guys were trying to intend with the subject matter of jurisdiction and the personal jurisdiction that somebody would not be able to bring one of these claims unless they could otherwise have subject matter or personal jurisdiction over the registry.

Jeff Neuman: Right. So part of it was in thinking about this and that trademark owners didn't necessarily want to go to court, right, so they wanted a faster more efficient process of handling these disputes, as a registry taking a step back it was, well should I be subject to a PDDRP where I could never be subject to a court case?

In other words, let's say that there is oh, trademark owners in China, they want to bring me PDDRP action, they could never sue me in theory in the United States, well actually they could, they would have to come to the United States. They couldn't sue me in China based on their Chinese trademarks, so they could try, there would be no jurisdiction over the registry.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

And the question is based on the Chinese trademark, so this one kind of went back and forth and we were trying to figure out a way to state this, but I think the most important one is probably the substantive review, because if that issue is settled I think we probably would be okay with the personal jurisdiction item.

Amy Stathos: If the panel conducted of the substantive review, or you're still saying that's not good enough?

Jeff Neuman: If - so you're saying that the panel would now undergo a substantive...

Amy Stathos: It would be like validating a trademark based on use of some sort, I'm just asking the question.

Jeff Neuman: You see and that's my question though, if it's based on marks in Tunisia then high as a, how am I as a registry based in Virginia necessarily violating their trademark rights. This is what is pretty confusing to us as we were discussing it.

Man: We should probably let the conversation include the people that are in the queue.

Jeff Neuman: Yes.

Man: Since they've been waiting and we're going back and forth (unintelligible).

Jeff Neuman: (Unintelligible).

Craig Schwartz: Kristina why don't you, Kristina Rosette why don't you go ahead and then we'll go to Jon.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Kristina Rosette: Sure thanks. This isn't going to come as a surprise to anyone who's heard me articulate this concern, but I think that ICANN is going to create some real problems if they start taking this position that certain trademark registrations are more valuable than others and that certain national trademark offices are better than others and that's essentially what this type of prohibition would do.

It would also as a practical matter eliminate from eligibility for this proceeding tens of thousands of trademark owners, many of which are actually going to be located in developing countries.

So I, I have significant concerns about this, I haven't read the redline recently so I don't want us to get this point on the personal and subject matter jurisdiction point that Jeff has raised but upon hearing it I do have some concerns about it.

Craig Schwartz: Jon Spencer.

Jonathan Spencer: Yes. I guess one thing I would add (and once) some level of jurisdiction comes up is what happens when you have geographically based TLDs, what happens when you have .Paris a .NewYorkCity, you know, and you have a trademark that you know should - I would say that the city of Paris would be quite surprised if they will have to defend trademark claims for something registered under a .Paris, you know, if it's registered in Japan or Australia.

So you know, there's going to be, we're having a whole new environment of TLDs some that are not intentionally globally oriented, and how does a city TLD for those deal with that issue if they would now be subject to claims if they never thought it would be there, if there was some level of having to bring that claim within the country where they are intending to operate.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Dan Halloran: This is Dan Halloran. But, so what I'm trying to understand is we're talking about in your .Paris example we're talking about the operator of .Paris through affirmative conduct breaching out and infringing trademarks that might be in the United States or China or in other countries, and you guys are just talking about just restricting (it could only come into this PDDRP if you've had a trademark basically that was (unintelligible) in France.

Man: (You could bring a) claim there.

Dan Halloran: I don't know, I'm just asking but that's just an issue.

Jeff Neuman: The problem with so much of this whole process, and Dan you know as well as anybody because you've been around so long and you've seen the gaming that goes on, the wider open it is the more it will be gamed. And if you're a registry in this particular situation you have serious concerns about that.

Dan Halloran: So yes, I'm totally all for stopping the gaming and I understand your concerns about you know, giving up a bunch of kind of bogus registrations you can get somewhere but I think what Amy's going at is so let's, let's try and put the filters you want on you know, particular kind of gaming registrations to put that into the process as opposed to just ruling out full classes of countries or regions and saying your trademarks are no good in the process because (you don't get) the kind of review you want.

You know if you want to be a trademark plus, like a trademark with, so whatever it is you want to (unintelligible) like kind of the work we've done on clearinghouse where it's kind of, you know, we're using those same ideas here instead of that last bullet there, you know, I think Kristina's totally right on

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

that we'd be in trouble (unintelligible) countries and all their trademarks just because of that rule.

Jeff Neuman: So I guess the suggestion that, I'm trying not to use quick-look as Kurt said, but whatever this process is, the weeding out process, so long as that happens prior to the registries even having to respond, that may address the concern.

So if it goes through a clearinghouse or if it goes through someone that actually validates, yes this is actually a mark, it's registered, it's actually in use and the complaint about activities are something which would, you know, we can reasonably if true, reasonably expect the registry to have to answer to I think is, that may go away, that may make our concerns go away, and it may also address Jonathan's concerns too.

So if it's marks in the U.S., you know, if it's U.S. trademark owners that are going after the .Paris registry because they're ignoring the rights of U.S. trademark owners, well that may be too bad. If there's something in the beginning saying well, you know what, tough. We're not even going to allow that to go to a PDDRP because that's legitimately within the purview of .Paris, they can do that.

Or if you, you know, if you want to challenge it go to court in Paris or handle it there.

Man: So, I mean just again we're, I understand the concerns about gaming but we have to look at it both ways and we don't to set up a situation where registries can set up you know, wherever it is Cayman Islands or some, you know, Liberia or something, it would be immune to any challenge because the trademark doesn't work there.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Jeff Neuman: Okay. Should we move on to Number 8?

Number 8 should be fairly quick, I mean I think it was supported by a number of different categories of people that responded to the comments that the panelists should be at least three.

I think ICANN has responded, you know we've made this comment in the first draft and ICANN's response was we want this to be a more efficient, quicker process and having more than one would be more complex, more costly.

And I think as Jonathan kind of said at the beginning, I'm not even sure why that's even a factor that ICANN needs to consider in developing this process. I think it's a pretty widespread group that agrees with three panelists and so I'm not sure where we are on this one. I don't know what ICANN's thinking is on this.

Amy Stathos: I think we're open to hearing everybody's points of view on that and then looking at it. I think we understand.

Craig Schwartz: Is there anyone, anyone on the phone that wants to comment on Number 8?

Kurt Pritz: (Craig) this is Kurt, this is Kurt.

Man: Hey Kurt.

Kurt Pritz: So it's about, you know it's certainly about money right, so the - when we first - when it was first proposed that there would be one panelist (it was about keeping the) cost flow, sort of balancing to be done with that and

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

(unintelligible) procedure that you know, provides the right amount of deliberation and making it's decision.

So my (unintelligible) only comment is that again, you know the process has to be funded somehow and (unintelligible) do a zero sub-gain and so just that when we make that decision we just need to go in with our eyes open that maybe somehow the parties (in the) dispute and ICANN (for its) contributions to registries, from registries/registrars hopefully registering (unintelligible) at the end of the day.

Chuck Gomes: And don't you think Kurt that, this is Chuck speaking for those on the phone, don't you think that this has serious enough consequence that it's worth making sure that there's some balance there, that would be my opinion.

Kurt Pritz: Yes, I again if we integrated with the process known as formerly quick-look you know I think it does (unintelligible).

Man: Kristine did you want to speak on this?

Kristine Dorrain: No I'm good I was, I was just agreeing that I think it's got to be three panelists.

Man: Okay. And then I see Michael Palage's hand.

Michael Palage: Yes. No Mike Palage, just a quick point I also think three panelists is a prudent approach. If you look at some of the studies that have been conducted over the years I think you would see a lot more predictability in the three panelist decisions as opposed to some of the more erratic decisions that have been associated with one panelists opinions. So I agree on three.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: John Jeffrey.

John Jeffrey: I just want to raise one point, this is John Jeffrey. So the three panelists makes a lot of sense in terms of predictability, decisions and other things and the severity of the proceeding.

END

If in fact we were going to tighten the formerly issuance first look and the potentially safe harbors then you're getting into a level of hearing where you want the results to be something that's very meaningful and you want to make sure that it's taken seriously and I think a three panel burden would actually assist that.

I think one issue though that we've recently experienced with the IRP on Triple-X is the cost or the potential cost for the three judge panel. Just - I don't know how public this is but it certainly will be in the near future. The cost of the IRP in Triple-X was near half a million dollars and that's before attorney's fees and costs of staff time and costs of all the participants from the ICM side.

So when you start to look at costs in that realm I think three panelists might make sense but you also want to put some caps on how proceedings could be managed so it doesn't become a tool for the more powerful party to simply abuse the system.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Craig Schwartz: Konstantinos you wanted to make a comment?

Konstantinos Komaitis: Yes. Very quickly I just wanted to say that INC supports a three-member panel. And we have to remember that this process will determine the future, the potential future of the registry.

And whatever the determination will be and especially if it's found against the registries will have a (rolling) effect on the registrants as well. So a three-member panel is really, really appropriate and it should be in place. Thanks.

Craig Schwartz: Thank you. And Jeff Neuman you had raised your hand.

Jeff Neuman: Yes. To close it I think there are other things that we - that are in this process that could cap with the amount of money that could be spent whether page limits or the types of things in the proceedings that I'm not sure the IRP had in there.

So I hear you on costs but I think you bring up a good example of the IRP, right? You had two panelists that decided one way, one panelist that decided the other way and if you only had one panelist, you know, it could have gone either way. You don't know which of those three panelists you would have had. And maybe that's a good thing for ICANN, I don't know. But, you know, I think having three adds a lot of legitimacy especially for the seriousness of these decisions.

John Jeffrey: I think you make a good point on the (page line) as an example. So - and so in using that IRP as an (unintelligible). But the initial brief from the substantive brief filed by ICN in that particular opinion was over 500 pages.

Jeff Neuman: Right.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

John Jeffrey: So just to review a three judge panel is going to cost you hundreds of thousands of dollars.

Jeff Neuman: Yes. And I think there is other things - there are motions and other things filed in that that I'm not sure really have the ability in this proceeding to file those types of motions. And hopefully in discovery and...

But anyway that does bring us to Number 9 which talks about some of the other items that we have in there. Which, you know, I think we kind of talked - I think Jonathan actually may have mentioned something of this at the outset. You know, the registries kind of wanted to see some sort of consultation process prior to bringing this action, you know, some sort of requirements that the trademark owner try to consult with the registry before just bringing this action. And as someone else had raised the possibility of having ICANN sort of help mediate those conferences before those actions actually filed.

We also talked about in our comments about - and I saw the non-commercials had raised this too about a time period for the registry to respond. You know, I'm like a UDRP which is, you know, based on one name and probably an - or URS probably not the most complex of facts. We think 20 days to respond to a complaint is probably too short so we had recommended a much longer time period, at least to respond.

And there is an option in here - let me go through all five and then we can just go to people on the phone to raise documents. The third one is in this process ICANN introduced the concept of a complainant being able to file a reply but there's no sir reply ability.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

So we just wanted to make the point that if there is a reply by a complainant that they not be allowed to issue us anything new. Otherwise, you know, there would have to be a registry - you would have to have a response.

Availability of a hearing we thought since some of the issues may be complex we thought that it should be more readily available. And it was interesting in the sanctions part of the document it said that there will be a payment of penalty fees but it would go to the provider and that kind of confused me.

Because I'm not sure why the provider should get the penalty fee as opposed to, you know, if this is an abuse of the process and it's made the registry go through all this why would the penalty be on the - why would that be paid to a WIPO or to National Arbitration Forum? I didn't understand that. So that was the five other things.

Man: Thanks Jeff. Kristine you have your hand up in the room?

Kristine Dorrain: I just have some concerns about having a blanket prohibition of the complainant introducing new facts. Simply because there will likely be situations in which the facts can change after the complaint has been filed.

Or similarly the registry may raise issues or factual information in its response to which I think the complainant should have an opportunity to respond. That doesn't necessarily mean that I would object to limiting the grounds or the categories of new facts that could be introduced but I think a wholesale prohibition is unfair.

Jeff Neuman: I think just to clarify I don't think it was meant to - although it may have come across that way. If there are - then there should just be a surreply allowed. I mean, right? So you kind of have to go back and forth, right? If the

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

complainant's going to be allowed to respond then in theory the registry should be allowed to respond to anything new that's introduced in the reply.

Kristine Dorrain: I mean I, you know, I don't have a problem with that provided that you don't end up with 12 iterations of it. I'm just thinking of instances where in the context of UDRP's that I've filed where important facts have come to light after the complaint was filed. And that's information that would be directly relevant to the finding in that case of the UDRP panel, in this case of the provider.

Say for example in between the time that the complaint is filed, after the complaint is filed the complainant that finds out that for example that the registry has been found - that there's a court decision against the registry - there's a finding of trademark infringement. That's relevant information that the panel should have. And I think that there just has to be some kind of mechanism narrowly tailored that will allow that to happen.

Jeff Neuman: Right. But - so in a proceeding where there's no discovery if - would you, I didn't get a feeling would you oppose then a sir reply?

Kristine Dorrain: Not necessarily as long as the same limitations were on the sir reply that was - I mean on the sir reply as on the reply.

Jeff Neuman: Well maybe that's the answer then. Right? Because my fear would be you have the reply and then no ability for the registry to respond. And there's no discovery it just goes straight to decision.

Kristine Dorrain: Yes. I mean I think that's fair. I think you just need to make sure that if you're - that whatever limits you would apply to what could be raised in a reply by the complainant should also reply to the sir reply. I mean to me that's just fair.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Jeff Neuman: Yes. I don't disagree with that.

Craig Schwartz: Any further comments or discussion on any of the items outlined in Number 9? Here in the room or on the phone?

Jonathan Spencer: Well on availability of a hearing you know, I think it would be prudent if we put something about in their reply. So can we talk about the details (unintelligible) get the impression that that was (unintelligible).

Kristine Dorrain: In the last version there was a reference that under circumstances under the discretion of the panel there could be a hearing. That was included in the last version. And I'm taking it that that wasn't - that's not good enough.

Jeff Neuman: Right. We just think with the complexity of the issue we just think that a hearing should be granted if one of the parties requests it.

Jonathan Spencer: So what we have in there right now is both parties have to agree, right?

Kristine Dorrain: It's the discretion of the panelists. I think the panel could say no even if both parties said it. Unlikely but that's a possibility. The question on that though in terms of if either party can select it, would that still be that if the registry wants a three member panel that the complainant would have to pay all of the money up front for that three member panel before the registry starts paying? Let's say in the in the quick-look process? Or "quick-look."

Jeff Neuman: So if the default is three and they know the cost going in instead of just if the registry selects it, the default is three and they know the cost going in -- yes, they should pay it before the registry pays anything.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Kristine Dorrain: But then the registry is willing to pay half of the costs up front if it gets past the threshold into a hearing stage if we add hearing in as also the default?

Jonathan Spencer: I think if the party requesting a panel - I think if a party wants to request a panel I think they should be under - I mean three (unintelligible) to incur the costs (unintelligible) the next thing. So if either party, who ever is requesting that there be...

Kristine Dorrain: Hearing, right.

Jonathan Spencer: ...hearing, you know, then, you know, that would be a cost that might be reasonably for them to incur. If default is that there is no hearing but, you know, we're not depriving anybody of that right. If the panel decides to have it then (unintelligible) you know, that's something that could be worked out but I think it would not be unreasonable. Just (unintelligible) -- this is Jonathan Spencer speaking -- you know, I don't know what other people feel.

Craig Schwartz: Any additional comments on that particular discussion? No? Well shall we shift gears into the second item - agenda items for today's consultation which is the registry agreement amendment process.

And again the registry stakeholder group has provided this set of slides to kind of guide the agenda in the discussion today. So I'm going to turn it back over to...

Jeff Neuman: Is it David or...

Craig Schwartz: David are you going to speak to this?

David Maher: I'd be happy to.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Craig Schwartz: Can we give David a mic? Kurt, can we have - can David have your mic please?

Man: You can't stop (unintelligible)

David Maher: This is David Maher.

Craig Schwartz: Can you make sure that's on David.

David Maher: David Maher.

Man: Keep talking, it takes a second to kick in. There you go.

David Maher: David Maher, PIR.org. We're talking about the agenda for unilateral amendments. So the registry agreement. And the first item that we have is the review of discussion of public comment that was suggested by ICANN. And I think if you go to the next slide or - not. I think it's at the end of this - yes, there we are.

Man: They weren't at the right place David.

Craig Schwartz: Where would you like me to be?

Man: Right there.

David Maher: Okay. Thank you. INTA commented that ICANN has the ability to unilaterally amend and coveting on certain provisions for negotiation. The stakeholder - registry stakeholder group agrees with this position and we

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

know that the basic agreement already allows this kind of amendment by the emerging specification process. Next slide please.

INTA commented and that this should be available on the (unintelligible). Okay. Our notes have that the right to audit is already covered product registration as consensus policy. Escrow is already required. Data retention requirements are required. Operator training (customs) requirements need clarification and other areas are subject to discussion. So the next slide.

INTA comments recommendation Number 3. In terms (in any) agreement should not be subject to standardization. We agree with that. Next slide. The registrars commented - they reaffirmed their position that any process permitting unilateral contract amendments is unacceptable. Obviously we agree with that.

And then we've another list of extensive comments of - and our position is that we assume if there is any need for unilateral amendments in some very limited cases we are willing to talk about the definition of those cases.

And in then business constituency we agree with their position. And then finally (unintelligible) balance. We're here to talk about it. (Richard Kendall) is supporting the registry stakeholder group and we agree with that.

So now I think that we can go back to the agenda. The first item that we would like - we recall that John Jeffrey in Nairobi said that staff would comment and provide a progress report on unilateral amendments. So John ball is in your court.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Dan Halloran: (Unintelligible). John I can talk to this. So - I mean first we (got to) think (unintelligible) go through more of the comments and at the starting point start off from, you know, where we (unintelligible).

The comments were - I think other people were chiming in and I saw on your slides or at least (unintelligible) version of them that you guys were (unintelligible). We're all here to talk about solutions, trying to come up with a kind of a middle ground on not what was proposed originally by (statutes).

You know while you're concerned about it, we want to try and you know change and modify and I also, I mean, I know you guys have (unintelligible) opposed to the whole idea.

But hopefully we can work on something that's not about you know (unintelligible) to commit to something or we're not - you know it's just hopefully a working session to go through some different ideas.

Some of the - I think the VC, the comments proposed actual areas that they think should be subject might not be within the "picket fence" but there should be some way for ICANN to have uniformity across different registry agreements.

I know there are you know kind of procedural concerns about how we implement that and how it would get approved so I think we want to start talking about all that.

And I don't know how much time we have left to actually go through the new (unintelligible). We have just you know following up on the kind of progress report you know we're still - the comment period just closed recently.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

So we're still processing through the comments, looking through the comments. There's not that many comments, there's like six comments on this but the hard part is it's a tough issue and we've actually got today and I know it would be helpful if you guys want to look at it.

It's not formal official yet, we're not publishing it as guidebook excerpts or anything at all yet, it's just first draft strawman text on something like you'll recall the memo we put out for comment, there were five options.

And we tried to focus in on two of the options just to explore it and see what it might look like, either the sort of hybrid model where you'd have you know something like what was posted in version three but significant changes to it.

You know we've gotten to the board override, possibly one thing we'll talk about changing it from a registry veto to requiring registry approval.

And the other model that we tried to just flesh out to see if it would help discussion is what it might look like if the registries were to have a provision similar to what the registrars already have, which does allow ICANN to change formant RA across all registrars.

And in which we actually just last year and changed the form to RA, so what it would look like in the contract if there was such a provision for registry.

Man: You mentioned that something is now available, I didn't quite catch that?

Dan Halloran: That we brought today include help so we could put it up on the screen draft strawman that they're talking about alternative models, compromise models.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Chuck Gomes: Before we go there Dan, this is Chuck, just a question. You can see through - (Dave) went very quickly through the responses to the comments and actually most of them are on the same page as we are.

But there were a few like you noted where they were suggesting some other areas. I'd like to ask a question, is there general agreement, if there's already a process in place to handle changes like the "picket fence", the consensus policy process?

Or the emergency specification procedure, we have both of those that are in flight, they're still in the new agreement. So I think a basic position of the registry stakeholder group is that okay, we have processes for that, they're well defined and everything.

If we first of all take those kind of issues off the table, is there agreement in that? And so what we're focusing on is in those areas that can't be covered by existing procedures if there are any.

Is there agreement in that or not?

Dan Halloran: I totally understand the concept and to a large extent I agree with it. But I think - I kind of hate to just carve out wholesale anything that's ("picket fence")" because the ("picket fence")" can be sort of a (morcus) at the edges.

And I don't want to - and I mean I'm imagining a situation where ICANN and the registry, 95% of the registries agreed to make some change to whatever it is, let's say the response codes in Whois or something or the report or something.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Or something - somebody says wait a minute, that can be within the "picket fence", what about this provision that says that's in the "picket fence"? And all then sudden we couldn't do an amendment on that process even though almost everybody agreed on it because someone would say whoa, that's the "picket fence", that's out of bounds.

You have to start a PDP and then...

Chuck Gomes: But what does it mean if 90% agree on something? Ninety percent of who?

Dan Halloran: Of the registries.

Chuck Gomes: Oh, so it's 90% of (.museum) size registries and the majority of the registries that register most of the names would be shafted.

That doesn't work.

Dan Halloran: Okay, so the accounting issues. So all I'm saying is I don't want to just jump to agreement, I think there's still areas where we look at where the problem is.

And I agree, we - I think even just from within the RA where we have - we did the RA amendment last time and we're actually doing another round of RA amendments.

And there are issues that people bring to those discussions and say hey, I want to change Whois requirements or I want to change you know RA, you know I want to change UDRP or whatever.

And we say - and we've told people as staff we're like no, we think that's best handled through a PDP, that's what's in the "picket fence", that should be the

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

subject of policy development, that should not be let's rewrite the whole contract and you know do a mini PDP and plan the new contract provision on all registrants.

So I agree with the spirit of it.

Chuck Gomes: I understand that. But as soon as you start messing with the whole concept of consensus policy process, you're deviating something that was fundamental in that whole process. Registries and registrars and you've heard this before so I'm sorry for repeating it, but that's what we're talking about now.

Sign up to implement consensus policies sight unseen if they're adopted. That's a big step that is rare in any kind of a business, okay? So that's why I'm really concerned.

Okay, we have a consensus policy process, if something fits into the "picket fence", it should go through that and as soon as you open the door, you've just compromised on a big risk that registries and registrars take when they sign their agreement.

Ken Stubbs: Would you put me in the queue please Dan?

Dan Halloran: Let me just (draw one) out for example - (unintelligible) understand the point. I think just so you maybe can understand the way we're looking at this is another concern I think I've heard even you personally Chuck raise before which is that you don't want the GNSO to be a place where contracts get rewritten.

You know you don't want - you don't think of the world of GNSO to renegotiate contracts or to rewrite contracts. And what you'd be saying is

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

anything that's in the "picket fence" we couldn't bring that to this process, an ICANN/registry amendment process.

You'd have to take it out of - we couldn't you know sit around this table and talk about it, we'd have to take it to the GNSO. And it might be things, I'm just really quickly looking at what's in the "picket fence".

You know things like reservation of registered names, you know like single character names or two character names or whatever. We couldn't then agree between ICANN and the registries to change that.

We'd have to stop, take that GNSO in our PDP because that would be barred from amendment through this process, right? I mean again part of just trying to set the understanding better is part of the reason why we had this in the first place is because we heard the concerns that we - every time we want to change the contract we don't want to go around the GNSO and put them in the middle of every contract negotiation.

Chuck Gomes: No, I understand that but keep in mind in this case -- let's look at where we're at. We've got a base agreement, we've already put things in that base agreement or are in the process of doing so, it's not finalized yet as we all know, what's what we're working on, that have things like single character names and double character names.

That we have agreed through pretty much a consensus process or a PMD even though it hasn't been a - well it was a PDP with the new detailed (ease) right, that there is agreement that those things are in there.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

So what we're talking about now, we're past that point, we've already agreed to some of those without each one of them going through a PDP. What we're talking about now, okay people are going to sign up to this agreement.

And now we're going to - after we've already done that, put in this unilateral contract change ability. And that's where the concern is.

Now you can tell by our comments that we haven't ruled out maybe there are - you know we're willing to talk about okay how do we define that narrow place where maybe some are needed, like the BC mentioned and I think John Nevitt mentioned and so forth.

So we're willing to talk there but I'm hearing you say and the answer to my question is that you're not quite there, that you're willing in agreement that if it's covered by the "picket fence" consensus policy process should handle it.

You kind of agree with it but you don't totally. Now what about the emergency consensus, emergency specification procedure like for example security and stability?

John Nevitt: The other one's green. So I think what we didn't want to do was actually get into a dialogue over the same points again that we've had in other discussions so I don't think that was the goal of this discussion.

I think what we were looking to do when we talked about coming into this meeting was actually set up the five different ways of looking at this and talk about where we had seen there might be some space.

Because if you look at I mean not to go into your own slides and correct your comments David but if you look at the BC comments, there are comments that

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

you passed over was ICANN needs to strike a balance in the manner in which the registry agreements were amended.

And the BC's view needed the current ICANN proposal nor the registry proposal succeeds in doing so yet. So I think the same point you're coming from is there absolutely is no need for any change because it's already covered in the existing form.

We understand that. On the other hand I think we're being asked by the chairman in his most recent comments to you as well as in other comments that occurred in Nairobi to actually look at whether there is a meaningful change to the amendment process that could be made.

So that's what we've been tasked to go to between Nairobi and here, we've tried to go take a look at that. You might find none of those proposals acceptable.

But I don't think what we want to do in this discussion is just go rehash the same points again.

Chuck Gomes: I'm not John. What I'm saying here...

John Nevitt: I'm hearing exactly the same argument I've heard from you the last three times that we've met on it.

Chuck Gomes: John, let me clarify. Okay, what I'm saying is okay, if there is this area where there needs to be unilateral amendments, okay, I'm all for let's look at that, okay?

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

What I was asking - but you have to define what that is and I was asking a clarifying question. We've taken the position that okay, you don't need it for this area - these two areas over here because there are procedures for that already.

Now let's focus on what I thought I heard you just say and one of the things that he skipped over to was we're here to work on solutions. And it's - but we have to define what areas the solutions are and that's what I was trying to clarify.

And we're not on the same page here.

Craig Schwartz: So I'm going to give Kurt the floor for a moment.

Ken Stubbs: This is Ken Stubbs can you hear me? Can you put me in the queue please?

Craig Schwartz: We can hear you Ken and what I think we're going wind up doing is we're going to wind up taking about a ten minute break and bring everybody back and probably starting to look at this strawman that Dan was talking about earlier.

But...

Man: Can you send us the strawman?

Craig Schwartz: Yes. Well I'll project it.

Ken Stubbs: That's fine then. I'll just hold off until after the ten minute break.

Craig Schwartz: Thanks Ken. David was there a remark you wanted to make before the break?

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

David Maher: No.

Craig Schwartz: Okay. Kurt does want to make a remark.

Kurt Pritz: So I'm responding to Chuck's question. One of the senses I get is registries are somewhat comfortable with the (unintelligible) adherence or compliance because there are safeguards built in (unintelligible) both from a consideration standpoint and a timing standpoint.

So one of the things I want to try to get out of our (unintelligible) here is unilateral you know as ICANN's made proposals we're trying to get unilateral (unintelligible) what the procedures - our safeguard that we're comfortable with.

And then to go to Dan's point, so I think there's two areas that are addressed in consensus policy we're making a difference. The one is those things that are outside the "picket fence", and as you mentioned and as (unintelligible) I understand there are timing issues when we all agree that you know (unintelligible) we all agree we want to have so much (unintelligible) situations.

And so that's why I think you know yes, we agree with that, let's carve that out. So if we just want to talk about it so we fully understand what the contingencies are. And so I think - well (unintelligible) so when he's at 90% you know it could be 90% of the registries that support registrants.

Or it could be all the large industries and not some of the small (unintelligible) out there, he's just creating a scenario where we all agree you know largely agree something must be done in the rapid timeframe.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

So I think that's why we really need to (unintelligible).

Man: Well that's another good point, we talk about the "picket fence" like it's a clearly defined term that everybody uses in the same way in every contract.

And it's not - I think it's different in the VeriSign agreements than it is in some of the other agreements at least conceptually.

So I think a little bit of the (magnus) that comes with the current "picket fence" in which even on your own slides we put in quotes creates some of this ambiguity too.

So you know we could probably have a two hour position discussion just on what is the "picket fence" and how it - things fit or don't fit in it. If we're starting that as a point I think that's - you know that's a...

Chuck Gomes: But I'm presuming there will be a "picket fence" in the new agreement and that's the one we'd be focusing on for this discussion, right?

Man: There - you've seen the existing agreement so there is that - it's not a "picket fence" definition and when people throw around terms like "picket fence" we mean different things.

And so I think an initial breakdown of what that is...

Chuck Gomes: So wait, I don't want to use a term you don't like.

Man: We've got a consensus policy that...

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Chuck Gomes: Okay, we'll call it that.

Ken Stubbs: Craig, I have a favor to ask if I could please. I could not hear anything that Kurt said, I need to ask you to please make certain that the speakers get closer to the microphones.

Craig Schwartz: Yes, we'll make sure of that Ken, apologizes.

Ken Stubbs: Thank you very much. That was not the point I wanted to make, I'll defer that till after the break.

Craig Schwartz: I know when we come back from the ten minute break which will be noon time here in the Pacific time zone we'll have Ken Stubbs, John Nevitt and Jonathan Spencer are in the queue.

Folks on the phone we'll be back on with you in about two or three more minutes.

Thanks for your patience.

Man: Hey, I figure that they're about ready to start. I'm pretty well set.

Craig Schwartz: Thanks for whoever just did that, we're trying to load up one more document for discussion with you so that's why we're taking a little bit longer than we had planned so again thanks for your patience.

All right, I think we're ready to go ahead, we got the documents that we wanted to point out for discussion and can folks on the phone hear?

Man: Yes.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Craig Schwartz: Okay.

Ken Stubbs: Yes, I can hear clearly thanks.

Craig Schwartz: Thanks Ken. Ken since you were waiting in the queue, we've got three people in the queue. Let's not try and go back over all the items we were just discussing before we ended the call and are ready to move on to this new session.

So Ken, you have the floor.

Ken Stubbs: No, that's all right I was just going to say I'm going to relinquish my place in the queue right now, I'll come back in later on, thank you Craig.

Craig Schwartz: What about John Nevitt?

John Nevitt: I do want to say something and I do want to go back real briefly though.

Craig Johnson: Okay.

John Nevitt: I think until you define the scope of what this new amendment process will go towards we're going to have a hard time finding agreement or consensus.

And I think if you look at the comments and you'll see that over 80%, I think all but one talk about exempting anything inside the "picket fence" from this new amendment process.

If you think about it and to Dan's point you still have three ways to amend this agreement outside of a new process. You have an agreement between the

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

registry and ICANN itself just through normal negotiations as long as that's made public and put up for public comment.

You could still change the agreement Dan, you don't need this new process to change the agreement. And the thought process, you know the PDP process for any registries that don't voluntarily agree to let's say some new standard that's inside the "picket fence".

And of course you have the temporary policy that could be in both unilaterally by the ICANN board. And to John's point, to John Jeffrey's point, the BC asked for a balance, but they - one thing that wasn't quoted that for issues inside the "picket fence", "The BC does not see any need for a separate process for amendment on top of the current PBP process".

So again until you define that scope of a new process, I know we're going to talk about new proposals and new alternatives, but until you find - until you guys relinquish that thought that it should be applicable to things inside the "picket fence", I think - I fear we're going to have a problem.

Craig Schwartz: Thanks John. Jon Spencer.

Jonathan Spencer: I would rather wait.

Craig Johnson: Okay, well seeing no other hands in the room at the moment and in Adobe, Dan do you want to lead off this next...?

Dan Halloran: Yes, actually I would like to introduce and then defer to the gentlemen to my left here which I know all you will get a chance to meet him but Dave (unintelligible) Kevin Espinola and Craig Johnson from Jones Day.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

And I know a lot of you in the past years worked with Esme Smith at Jones Day. Esme, I don't know if you all know this has gone on, she's now with (unintelligible), a biotech company and so she's no longer with Jones Day.

So Kevin and Craig are helping us out and one of the things where you might have (remembered Esme was) involved but were fixing up in terms of your escrow agreement or whatever have routine things but also on this kind of bigger picture things, new gTLDs Kevin and Craig are helping us set up.

And they've put together kind of a summary and slides talking about those models. So hand it to one of you guys.

Kevin Espinola: So what we've done here and Craig can walk us through the details, what we're trying to do is show these various options that have been put forth today.

First being the DAG option, well understanding where the community is on the DAG option. The second option being the option put forth by the registry constituency stakeholder group.

We're going to come back to that.

Craig Schwartz: Where do you want to be.

Kevin Espinola: The second page. And the third option which is the following slide which is hybrid proposal that was set forth there in sort of the one bullet point fashion in ICANN's February memo on the subject.

This being a very preliminary look at what a hybrid approach may look like. And it's mainly from outside lawyer vantage point, not ICANN vantage point.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

We've been asked just to think globally about it.

Craig Schwartz: Kevin can you speak into the mic and closer because the folks on the phone are having a hard time hearing you.

Kevin Espinola: Then the final slide, second to last slide, go to the next slide, is what sort of the boundaries of an RAA type of approach to amending the agreement.

And then finally the last slide is just discussing any other alternatives that anyone smarter than us has thought of, sort of an open discussion forum.

So we thought the place to start at least this discussion to understand whether or not these alternative proposals have any appeal to the wider community would be on the third slide which is the hybrid proposal.

And then Craig will walk you through the bullets and we'd love to hear your viewpoint on this and the next proposal why it may be helpful, why it may not be helpful.

Craig Johnson: Thanks again, this is - next slide.

Craig Schwartz: David, do you have a question David?

David Maher: (Unintelligible). My question is the percent of effective registry operators in the registry stakeholder group, they provide promoting an effective leader according to these number of registrations under management.

Is that included in this concept? Obviously...

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: Completely open for discussion on that topic.

David Maher: Okay, thanks.

Craig Schwartz: (John) did you have a comment on this? Okay so why don't we let Craig walk through these points.

Craig Johnson: Sure. I guess the first two slides are just rehashing what everyone's already seen.

Man: (Unintelligible).

Man: (Unintelligible).

Man: Stay with us.

Man: (Unintelligible).

Man: I understand that.

Craig Johnson: I think the crux of the hybrid proposal is that we tried to maintain as much of the RYSE proposal as we could.

But we added sort of a new concept in there that would expand the discussions that would be had from time to time from just a one on one between ICANN and the particular registry operator to expand their concept of all the affected registry operators would be both invited to those discussions.

And then maybe in a position of being bound by what comes out of those discussions, based on sort of a specified procedure that we would suggest. But

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

I guess the main point is beyond what we had had in our original proposal and the DAG version three which was there would be this veto procedure that the registry operators could take place.

That the veto could then be overrun by the board, we cut off that, the RYSG proposal doesn't have sort of a concept that would extend to anything, it's all one on one negotiation.

So in order to bring those two things together what we're suggesting is that everyone be involved in the discussion process when amendments are proposed. But then some specified percentage of registry operators and we can talk about how the voting count would work -- would then be in a position to approve any amendment that came out of those discussions.

Of course it would have to be approved by the board first, there would be a number of notice periods, public comments, the usual bells and whistles for approving things through the community.

But at the end of the day there would be a possibility for amendments to be passed by the board, approved by a percentage of registry operators but would then go into effect to present to all registry operators that are subject to this approval.

Craig Schwartz: Jon Spencer, you have a question?

Jonathan Spencer: Sort of a point here, I guess I have a real concern where we have approved by specified percentage of registries. That in itself opens up a whole hornet's nest of issues.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

I also have a problem with the proposal in that it doesn't take into account that one of the goals of new gTLDs is to allow for innovation.

And any process that doesn't take into account the need for specific registry because of its size, because of its business model, because of what its charter doesn't take into account that they will need to opt out of this process - you know out of amendment.

It's fatally flawed and that any amendment process needs to take into account a need for registries to opt out of what might be (unintelligible) amendment.

And the need - or certain standards might be subject to certain criteria's and restrictions but there needs to be that process.

Craig Johnson: So what do you mean by opt out, what are you just sort of saying no we're not going to - no amendment process.

Jonathan Spencer: What I'm saying is this amendment as approved or being put forth does not work for this registrar for good reasons. And here are the reasons - and as a result I need to negotiate some alternative or simply say hey I need an exemption from this amendment.

I mean I think that has to be innately part of this, that there has to be a reasonable process you know to take into account the needs of registries that are different size, because of cost structure, because of business model, because you know that - otherwise you're going to have problems, you're basically going to stifle innovation.

Craig Johnson: And how would you see this sort of exemption procedure work? So I'm - may be misinterpreting - I'm seeing process where consultation occurs, whatever

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

percentage of you know registry operators and however we fix - count the number, approves an amendment, let's just say it affects 100 registries.

It works for 95 and 5 of the registries say it doesn't work for me - our registry because X, Y and Z. Do you see a process around that where the panel would say...

Jonathan Spencer: Those five then engage in basically saying exemption request, it doesn't apply and here's my reason and I can either accept it or not accept it or it's a - and because they document it - if they don't accept it then it goes to an arbitration or negotiation to revise or whatever the change.

But that you have the ability that where there's good reason and the question I would put back to the group what would be the basis for this that could be you know - make it uneconomical, you know it could be a whole bunch of things.

But there would be a basis for that.

Man: So you're saying conceptually this works if there's an exemption process whether its built in based on some reasonable (unintelligible).

Jonathan Spencer: I'm throwing that out, I think that could work.

Dan Halloran: This is Dan Halloran.

Jonathan Spencer: The percentage, I mean I think there's a whole issue about percentage as well.

Dan Halloran: So on the exemption or the opt out I kind of - what's kind of resonating with in my mind is the thing, are a procedure for conference of national laws where there might be an ICANN consensus policy or agreement provision.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Jonathan Spencer: That might be one thing.

Dan Halloran: National law is the registry operator or the registrar can't comply with it and when we build up a procedure for basically asking for a waiver for complying with that obligation based on the conflict with national laws.

And you're kind of floating it out there or expanding that idea, maybe in conflict with business models or conflicts with...

Jonathan Spencer: But I think there needs to be basis - and I think you know there can be some independent third party arbitrate or whatever it is you (unintelligible) it doesn't match, you know.

Your claim isn't in good faith on that but I - in terms of the conflict laws I could see as a basis I could see there's some economic level that comes there, basic charter provision that's already been approved.

You know those sort of things create essential conflict.

Craig Johnson: And then to go back to the specified percentage, can you more - put more color around what you see as the issues? Is it more of how you calculate that percentage, what that threshold is?

Or is there something deeper?

Jonathan Spencer: I think it's more how you calculate it, who is affected? I mean I think the whole question of who's an affected registry becomes very problematic.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Particularly for registries you know in this kind of discussion to oppose provision in view of (organic) customs terms but when you bind it together to float that, I'm just saying there's a whole issue of how do you determine what's an effective registry?

And then what's the optimal percentage? And is based on - is it domains, is it just total you know one (unintelligible), how do you do that? How do you do it so it's fair because...

Man: Do you think one way is fairer than the other?

Man: Let me jump in there Kevin. David mentioned the voting procedure that we have within our own stakeholder group. And it's not just one way.

We actually - it's kind of like after the - a little bit after the US Congressional structure in a sense.

We realize that everybody needs to have a voice so we have one part of our voting procedure that every registry gets a vote.

If we have another part of our procedure that is - it's not weighted proportionally but that is more weighted towards the size of the registry based on number of registrations.

So we have a hybrid ourselves in terms of bringing that together so we don't think that there's one right way but it is complicated because one of the things that we realize was - and we've had somewhat of that kind of approach all the way along - all throughout our history.

So it's not just one or the other, we actually have a hybrid.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: Is this a published headline?

Man: Yes, if you go to the (RYFC) Web site you will see - you look at that there's a place that has the articles, it's on there.

And I'm not saying that that needs to be used for here but I was just trying to illustrate for you that it does get complicated.

Man: I get the flavor of what you're talking about.

Man: Sure.

Craig Schwartz: Jeff Neuman did you want to get in the queue?

Jeff Neuman: Yes.

Craig Schwartz: Go for it.

Man: Hold on.

Craig Schwartz: You've got the mic right there

Jeff Neuman: I can probably speak loud enough for this room and then I've got this here.

Man: Everyone gets a mic.

Man: Great.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Jeff Neuman: Yes, so first I want to thank ICANN for putting this hybrid proposal together because I think it's got some elements I think we can work with.

I think I would add a couple of things for the no amendments relating to and I would add for example no amendments related to fees paid to ICANN. I don't see that in here.

Man: Anything - is that covered by current registry agreements?

Jeff Neuman: The fees paid by registry to ICANN?

Man: Upon renewal?

Man: No.

Man: It's not.

Man: It's excluded (unintelligible).

Man: I'm talking about there's a general statement in the existing registry, again it varies from registry agreement to registry agreement that upon renewal of the registry agreement they aren't necessarily automatic.

And that's part of the problem which is ten year term automatic renewal unless a registry is a really bad guy or gal and then so there's no fluff, there's no interim period where we can all sit down and say this isn't working.

So we're trying to - that's the crux of the...

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Jeff Neuman: So with respect to fees paid to ICANN that shouldn't be any kind of unilateral right amend and it also shouldn't necessarily be for the all the registries to decide what others pay ICANN.

Like I'm not sure (you would ignite)...

Man: I understand the unilateral right.

Jeff Neuman: So that's where - and as far as you know one of the things that - one of the problems that we have and we talk about, especially right now which is budget time for ICANN is that we as registries have no control over the ICANN budget except for the fact that we're allowed to file some comments.

And if they're accepted great, if not there's nothing we can really do about it. And so one of the issues that we've seen in the years is that certain projects get put into the budget that we don't necessarily want to be responsible for funding.

And so what we don't want to see is a automatic right of ICANN to just impose a new set of fees whenever it wants to.

So I think that needs to be - there should be a separate process for determination of registry fees but I think that should be outside this unilateral amendment process.

Man: What do you envision that would sort of look like? Our worry is that we don't know what ten years from now...

Jeff Neuman: That's my worry.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: ...like everybody. So we share the same concern.

Jeff Neuman: I think if (unintelligible).

Man: In your core process they're not.

Jeff Neuman: Right, I think what the registries need is something similar to you know what the registrars - we need a right to have input into the budget and have an approval right. If that's going to mean an increase in our fees then the registries should have some sort of approval right, right?

Now I'm not sure that ICANN's going to want to see that so...

Man: That's with this process, this hybrid process would be right? It's an approval right.

Jeff Neuman: Well I don't think that I'm looking at (John), that (John) thinks that that applies to (his team), right. So I would definitely add no amendments related to pay to ICANN through this process.

And I think again you know as John Nevitt kind of said earlier on, if we can come to sort of an agreement of what's in the scope of what these amendments relate to and if they exclude things like consensus policy or you know things that would be within the consensus policy process, I think this is something you can kind of work with at least from my perspective.

And I don't want to speak for anyone else, you know one of the things that I've advocated and I still will advocate is the creation of instead of once every you know year and a half or twice every three years discuss amendments I

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

think there should be a standing legal working group that's put together that it tosses around these issues.

That works on them comprised of ICANN and the registry you know legal representatives and the registry operators, that so when it is formally presented at one of these meetings, that it's actually been vetted.

And you'll know going in and we'll know going in how we each feel about it, and hopefully have had an opportunity to help craft it.

So when you say the third bullet point amendments must be reasonably necessary, I know that's kind of shorthand, but what finishes that statement, reasonably necessary?

Man: That was borrowing I think a little bit on the language that you had proposed and quite frankly I don't know what it means which is amendments must be reasonably necessary in light of changes and external factors affecting the legal and technological context of the agreement.

We should have put that in our minds in brackets because we don't know what that means.

Man: We wouldn't do it if it wasn't.

Man: Yes, in front of the (unintelligible).

Jeff Neuman: So now I have to go back.

((Crosstalk))

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Jeff Neuman: Yes, we have to further define that, I guess part of that is like the ® problem, I think what we were trying to say is that it must relate to some security stability issue that has such a need to resolve at that point in time.

Man: What's that?

Man: That's distracting on the slide.

Jeff Neuman: No, I don't remember what we said, I'm just trying to flush it out a little bit more as to what we meant.

John Nevitt: No, (unintelligible). I'm not sure that this type of hybrid (proposal leads) with that because that comes under temporary specifications. There's some needed, there's a provision already for that.

(It's) equivalent, it can be done.

Woman: (Unintelligible).

John Nevitt: Hi

Craig Schwartz: You're going to need the mic John.

John Nevitt: Well can I ask a -- well never mind, go ahead and then I'll come back because I just have a question on this.

Man: No, go ahead and ask your question.

Man: Well my question if I could just be - the language and how you would get temporary (policies) and this is something they do often.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

And I would think that...

Man: He's nervous, right?

Man: Exactly so I would think that there could be security and stability insurance that would not raise the level of needing to have temporary (unintelligible) amendment but might raise the level of (unintelligible).

And so if the only way we can get that agreement is to go and renegotiate with each individual registry, but everybody agreed it was something that was useful.

And it may not reach the level of meeting the whole policy development process, (unintelligible).

That's kind of that gray area where we're trying to effectively get it where everyone agrees that there's something that needed to change, but it doesn't really rise from the level of needing to go through the GNSO and have a consensus policy.

And it doesn't make sense to go and negotiate with the mutual agreement. So I completely understand the point you've been raising about consensus policy and the temporary specifications amendments.

But I think there is that gray area in the middle and that's exactly what we're trying to get.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: And that's kind of what I was trying to say in the - before we broke on that, that you know that's where we wanted to focus too, I was just trying to go by what we were focusing on like John Nevitt mentioned.

I'm a little bit confused and sorry for going back to this discussion because - before the break, but it says in the last bullet and the first sub bullet, no amendments relating to consensus policies, temporary specifications or policy.

That was the question that I asked that generated that discussion before. So I'm confused.

Man: That's my fault because what we're trying to do is put a proposal out and get everyone's thought process on it including...

Man: This isn't...

Man: This is not ICANN audited approved...

Man: Now I'm okay.

Man: ...this is lawyers being lawyers trying to solve a problem.

Man: And just for your information I'm one of the non-lawyers here.

Man: You're lucky.

Man: Be careful what you say.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: Can I just jump in to play somewhat on Chuck's point, it's one thing on custom - business policies is up there. But there's two separate questions. And one is could the amendment process rewrite the topics for consensus policies.

So think what this is going to. And it's another question. Could topics be on a subject header within the "picket fence"?

So I think, like I said, we won't re-write the "picket fence" to denote a process.

Man: I got you.

Man: But you raise another point which is if it's in the "picket fence" of the (unintelligible).

Craig Schwartz: So do you want to move on to the alternative approach or still focus on...

Man: There's nothing to say. I mean again, being one that's a non-registry attorneys here, this is going in some directions that I think that are areas that could be worked.

You know, so it's not that I'm obviously, (I didn't think), some of the concerns that have been raised. But that doesn't mean that we couldn't work together to - on this kind of direction. Because I think we've talked about internally some of the things like what do you exclude, so for a show. I want to leave that more positive note there.

Craig Schwartz: So why don't we then turn to the RAA-type proposals, oh sorry.

Jonathan Spencer: Before you do that, I think, this is Jonathan Spencer again, I think the key on this proposal is what are the standards or when does this process come in to

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

play? What is the standard that has to be met, especially of you're going to talk about saying we'll, we have them both in the (unintelligible) book of consensus policies, the same - we're going to touch upon the same areas.

But we're not going to go to the consensus policy route. And the reason why I raise that is the consensus policy is written for the entire community. You talk (unintelligible) involved in that discussion.

If we're doing the lateral method, (unintelligible) between just on the registry that becomes an issue. Now I don't want to erode the consensus policy or the protections or any consensus policy and the discussions there if this becomes an end run around.

In other words that all of a sudden, all the changes are put through this process because, you know, we're not talking consensus. Consensus policy has protection, you know, for purposes.

So I think it's a very important question is what is the standard that has to be meet? You know, the (recess frequent) necessary? What does that standard really entail? What is the requirement for doing that?

(What issues truly didn't come in here on this)? (And what are, though they might forward them this, have to come through the other policies)? Those are the (major) critical issues I think.

Man: Do you want to...

Craig Schwartz: I want to go to the next one. Okay, so the next slide here we put down some bullet points that in our mind would coincide with what's currently done for registrars within in RAA amendment process.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

We haven't flushed this out a ton. But the (VIGA) is that upon expiration of the agreement, there would be, you know, whenever that is, ten years from now.

There would by then be a new form of agreement that has been worked out through the community development process, approved by the GNSO, approved by the board.

And at the time of renewal, there would be new terms that would be put forth and would have to be executed at that time, as long as it had gone through this approval process.

It's similar to what is in current agreements, except in current agreements there is no sort of a formal GNSO format.

With respect to what the form agreement has to be, it just says that there will be reasonable renewal terms that have to be agreed upon. We've sort of been operating under that with the current agreements.

But this will be a more formalized process where by the agreement would just be replaced when the term runs out, a percentage of these procedures.

Man: Sort of the rationale for the - a replacement versus a revision on a one by one basis is just scaling?

Man: Yes, let me just point out something else you'll want to look at. This is just for you to look at on your own. At the third bullet where it talks about (appearance) of a GNSO, maybe you'll want to look at the bicameral structure

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

of the GNSO council and how it's - we can no longer talk about 2/3 of the GNSO.

But I'll let you look at that on your own. It's not something you can discuss here. Just for your point of discussion.

Jeff Neuman: It's interesting because I'm looking at the fourth bullet which says a registry operator may elect to discontinue TLD in lieu of executing new form of registry agreement.

Not really an option right. I mean that's taking away the entire business. And I know registrars have kind of a similar provision. But registrars can always at worst be covered with (unintelligible) of other registrars.

So there are other options for registrars. Registries don't really have that option. So you're basically saying if the registry doesn't accept the new agreement, that's it. The TLD is taken away.

And of course that's also a (Birds Brican) to figure out okay, what do we do with that TLD and all the registrars under it? I'd probably take that bullet out.

Man: You can become back-end providers.

Man: (Unintelligible).

Man: Jeff did you want to talk? Would you have a mic since you're so far away from the system?

Okay, we've also, we've got Tim Ruiz as well.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: I just wanted to comment on being (unintelligible) under the RAA negotiations has to be very cautious about the term complications (with the community). A lot of people, you know, they (unintelligible) the negotiation table. And that's not the two-way negotiation between ICANN and the registrar (unintelligible).

They should be involved in the actual negotiation. So I'd be careful with just using that term on conversations with (unintelligible).

Craig Schwartz: Tim Ruiz, you have the floor.

Tim Ruiz: Thanks. Yes I just wanted to be clear, so this, what I'm looking at now, the RAA-type proposal, that slide. This is an alternative proposal to the one we were just looking at? Or is this an extension then some form of that process?

Man: So these slides were an attempt to show the different ways that we could go. I think certainly on the ICANN side we, you know, we felt that from the ICANN's staff side, we felt the hybrid is probably the way to look at it.

And it sounds like that's been definitely positively received in this room. And there's some positive discussion happening about how we might go there.

So, you know, if there are comments to the contrary on the phone, I think we'd want to hear that.

Man: Okay, so the RAA-type proposal is, basically it sounds like a process through which the registry agreements amended as a community effort, and not in negotiations with the registries themselves.

Once the community agrees, then it goes into effect. Is that basically correct?

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: Yes I think it's an effort to show the spectrum of choices.

Man: All right.

Man: So I don't know, if there aren't any other comments immediately about these slides, I think we're - what we were interested in talking about is as a going forward point.

It seems to me that we've identified a number of areas that could use some additional work today. One being sort of that threshold standing issue that's up front.

Another being the Safe Harbor. Also clearly, I think what we just heard in the last half-hour has been some discussion around the hybrid model. And suggestions on that might be a useful discussion.

Were there any other topics that might fall into that drafting team or working team? So from the staff side, I think we'd like to make a proposal that we could set up some team that could look at those issues and suggest some approaches. I think that would be very useful.

Man: I don't know if this fits in that same category, but that concept of an opt-out needs to be talked about as well. So, and I think an example, as Jonathan mentioned would be, you know, we can (all get) concerns.

I mean there literally could be with the variety of TLDs we're going to have, there could be a registry that if they had to implement a certain policy, it might put them out of business.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

I mean that's feasible in how things are looking. So those - the opt-out thing, and we're not just saying just to arbitrary opt-out, but something that's meaningful and has some strengths around it from an (issue).

Man: Yes, I like the exemption term a little bit better because I think that gives us good examples...

Man: (Unintelligible).

Man: That's all part of the hybrid model.

Man: That's right, yes. So the third thing that (John) was saying as (just in key), if I got it right, (should be) initial look or quick whatever, (structural umbrella).

((Crosstalk))

Man: Right. Then the Safe Harbor provision, and then the, just this hybrid proposal. Just everything around it, and that includes the scope. It includes the redemption and the (unintelligible). Yes, I think that's right.

Man: And I don't know if anybody else on the phone, have we given you an opportunity to speak on this? Are there any other issues you think that need perhaps some additional work from this specialty?

Man: Yes I think that's (unintelligible).

((Crosstalk))

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: I know everybody here understands this. But we kind of compared the hybrid to the RAA model as one as community. Input in the other's doesn't. I don't think the hybrid model excludes community input in everything you do.

And I can't always have community input. I just, well it's not my - well let's not portray it that way okay.

Man: I think the additional proposal about creating a working team actually came from you guys over there. Did you have some (addition) how that could be set up?

Man: Yes I mean I think if there was a creation of like a legal working group. I mean, yes, it's pretty common in a lot of standard-based organizations to have that (unintelligible).

Any registry that wants to have members, they're on, you know, as long as they're actually members. So if you want to limit it to contracted parties or not, I'm not saying that we definitely need to do that.

But essentially we limit it to, you know, attorneys or a team to resolve whatever issues are out there.

Man: Yes I would say - I would keep the membership open to (unintelligible). Subgroups working, but a fairly open group within both from ICANN and the registry constituency directed to various registries so that we're not running into an issue of excluding somebody who has a, you know, a key stake in it.

But again, ISO and a lot of other (sten sem) organizations do it all the time.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: Sure. So I certainly understand the concept. One concern that I have is that if we limit it to the registry constituency members only, we're actually limiting people that may be participants on the registry agreements going forward from the discussion.

So I would think that we would need to make it more open than that, maybe in a similar way to the way that we opened up this discussion today.

(John): This is (John). I didn't have an issue with that. I think as long as there's some break between the (unintelligible).

Man: But I'd like to just - maybe we could, I'm not trying to close it off. But is it possible to open it up to anyone that's representing an organization that's declared an interest in (ATLD)?

Kind of like our observer status in the registry stakeholder group. In other words, if it's supposed to be registries or perspective registries that are going to live by it, I'm happy with them participating.

What I don't want to see is all kinds (unintelligible) may be on the call that are from other constituencies. I don't want to see it as an open (trap) for a seat at the negotiation table for those that aren't going to have to live by it.

(John): So I think that's a - I don't know the answer to that question. Unfortunately my anti-trust lawyer left the room. So I think that's a very important thing for us to go back and look at though.

So my suggestion is we do this as soon as possible. Get it started and move this along. And for one, you know, I don't speak for all (ten), but I'll certainly

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

say I appreciate the level of discussion that everybody brought to the table today.

I think it was very positive. And we really appreciate the pushing to kind of move these things along.

Craig Schwartz: It seems like we've kind of come to the, I think to the end of this discussion. I mean some definite, as (John) just pointed out, some good discussions today. And it looks like some action items going forward in terms of working together.

Are there any, I'm wondering if there are any other further comments from the folks on the phone? And hearing none. And any further comments here in the room? Hearing none so...

Man: Just one.

Craig Schwartz: Yes.

Man: Let's make sure that we have an action plan and some sort of a timeframe. I would assume that we as the registry stakeholders (unintelligible) should, within very short-term here, come up with some volunteers to participate in this. Is that right?

Man: I think we could just create a mailing list (unintelligible). I don't think we need - we'll go to the stakeholder group. We don't need to appoint anyone. It's just anyone that wants to volunteer.

So we'll certainly post something as soon as you guys (ask) where that - where the volunteers will send information to.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Man: Yes and I think we'd like to post a notice in saying that we're doing it so that there's clarity and transparency around the fact that we're going to set up that group.

Man: Yes, if there's any way that we do without anti-trust violations, if there's any way we could make sure that when it's open, that it's open to those that are intending to apply for TLDs or have TLDs.

I guess if we could that now, I think that would be great.

Man: We'll certainly figure that out because I'm a little leery of restricting it from, you know, parties that are interested in participating to bring meaningful dialogue into the discussion.

That said, I don't think we want 65 people or 70 people attending early and trying to drop (later). So I do appreciate what you're saying. And I think there are good models in other organizations that we can try to follow about how to select a fine group of people that could help us meaningfully (this court).

Craig Schwartz: I think that probably wraps up today's consultation. A - the MP3 of the consultation should be posted up on the ICANN Web site in, probably within a day or two.

I think we should probably go ahead and a few folks have asked about the registry stakeholder group slides. And since we projected them today, it seems like we should be able to post those along with the MP3.

Note: The following is an unofficial transcription of the meeting. In some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the session, but should not be treated as an authoritative record.

Any objections and - on the new slides? Oh, you know, we only really talked about two of the pages right? Really we just spent time on the hybrid and the RAA.

Man: I think they were just rehashes of what is already in the domain so.

Craig Schwartz: As long as we have, you know, (turns) on our side, we will post those as well. And we'll probably - we'll also go ahead and post a copy of the chat room session from Adobe since there was a lot of dialogue happening there as well.

So, you know, on behalf of ICANN and all the folks who travel up here and who are partic - who participated on the phone today, thank you for showing up and contributing.

And we look forward to continuing our work together. Thank you.

Man: Thanks Craig.

Man: Thank you.

END