ICANN Brussels Meeting
RAP WG Presentation of Final Report to Council
TRANSCRIPTION
Sunday 20 June at 0900 local

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Coordinator: Excuse me. This is the conference coordinator. Today's conference is being recorded. If anyone has objections, you may disconnect at this time. Now you may begin.

Chuck Gomes: Or leave the room whichever the case may be. So welcome everyone to our next working session. And this is - we're going to have a report, a final report. Other reports have been dealt with - we've been dealing with so far this weekend have been initial reports. This is the final report from the registration of the Abuse Policies Working Group.

Just a few instructions. Again I won't read through them all. But when we get to discussion, we'll give priority to counselors or if sitting here at the table and then we will open it up to comments from the audience.

I do want to again remind people -- I guess I've been forgetting to do this -- when we do speak at the mike, unless your name has been previously called out, please identify yourself. That's greatly helpful for the scribes and also then those who listen to the recording will be able to tell who is talking.

Greg Aaron the Chair of the working group is here with us today. And I'll start off by thanking Greg for taking on that responsibility and thanking the entire working group for - our working group has been working for quite a while on this and have spent a lot of time. So that is much appreciated.

Greg, I'll turn it over to you.

Greg Aaron: Thank you Chuck. Five minutes. We'll start with basic background for you. We'll then move (unintelligible). Just so you understand the history, this group was launched (unintelligible). It had a rather broad mandate and charter. (Unintelligible) and create a definition of registration abuse.

(Unintelligible) and identify some ICANN (unintelligible) issues (unintelligible) text that would be within (unintelligible) policy making (unintelligible).

(Unintelligible) then make some recommendations. Some of those will be for (unintelligible) recommendations. So it was to get down and do some real reach and understand policy issues (unintelligible).

Had at open sessions in Sydney, Seoul and Nairobi. (Unintelligible) mandate. We published our initial report in February. We then had a full comment period (unintelligible) comments from individuals and also (unintelligible) stakeholder groups. (Vested) those comments this spring and (unintelligible).

One of the key issues we were asked to look at and one of the key issues that you need to understand we talked about was this issue of registration (unintelligible) in a lot of ways.

You can think of registration as not just the creation of the (unintelligible) but those core domain functions, registries (unintelligible). So specific examples would be the creation of domain names, (creation) and maintenance (unintelligible), transfer, deletion and distribution of domain names, (feuds) about domain strings, which is why we have (unintelligible).

For example, some other areas that we discussed (unintelligible) reports. These are the kinds of issues that are listed in the registry and registrar contracts as being subject (unintelligible) policy making and they're the kinds

of issues that we've had PDPs about in the past looking for instance at (unintelligible).

On the other hand maybe sometimes related to registration issues but it's also sometimes (unintelligible). (Unintelligible) in some ways. It's what someone does with their domain name after (unintelligible). That can be a technical use for example. (Unintelligible) email, file sharing, sub domains, technical use.

It can also be the purpose to which you put your domain name in, social use. So we use domain names for speech an expression, commerce, social networking, education and other types of uses.

Now sometimes these are related to registration, sometimes not. By the way, ICANN has not regulated (unintelligible). That is sometimes the values that are stated in ICANN bylaws, try to respect technical innovation and in general ICANN has not regulated content. (Unintelligible). For those - that's use.

We had a really thorough grounding. What we wanted to try to do at the beginning of this working group was develop some common language amongst the members (unintelligible) of these issues. So we did a lot of research.

We looked at what the contracts say about policy making such as the issues report, which contained (unintelligible) from staff (unintelligible) (senses). We looked at some ICANN (unintelligible).

What was interesting is that after going through all of that, we discovered that in this working group at least some people have different ideas about what ICANN (unintelligible). Also shows us what led ICANN's mission.

Some members were of the opinion that ICANN (unintelligible) should not regulate uses of domain names unrelated to registration issues. (Unintelligible) thought that ICANN should regulate those things.

(Unintelligible) use unrelated to registration issues (unintelligible) ICANN can compose these, you know, those mandatory practices. So in some cases I think there's some difference of opinion.

That said, down to (unintelligible) staff about whether those views are (unintelligible) both can't be right. So where we have to leave it is it's going to be up to some authorities to decide in specific cases which (unintelligible).

So here are the recommendations that we've come up with. The first one is about cybersquatting. This is a well-known registration problem. It has to do with (unintelligible) and (unintelligible).

We decided to focus on UDRP because UDRP is the existing tool that we have to deal with this problem. Later I'll talk about some additional (unintelligible).

But one recommendation that everyone in the group could agree on was that it's probably time to take a look at (unintelligible) policies now more than ten years old. And in some ways it's served us very well (unintelligible).

However, report contains a list of issues that people brought up about it over the years have to do with both the policy itself and how it (unintelligible). I won't go too much into details but I'd encourage you to look at the report. And we have this recommendation that we do have - that we go ahead with the PDP (unintelligible) through a balanced review.

(Unintelligible) thought this was worth (unintelligible). If some (unintelligible) look at how it's been addressing cybersquatting over the years; problems or inequalities associated with it and (unintelligible) rather (unintelligible).

The second recommendation is about malicious uses. What we decided through unanimous consensus is that would be an excellent idea to take some non-binding best practices to help registries and registrars deal with the illicit or criminal use.

What we're basically asking for is to get a working group together of volunteers to create (unintelligible) practices. Like to make a personal appeal that authorize this for several reasons.

One, it can be very effective. Someone who specializes in (unintelligible) problems. And I've seen both gTLDs and ccTLDs (unintelligible) by sharing information and practices that are being (unintelligible).

Also best practices are flexible. Different registries and different registrars and different business practices (unintelligible) customer basses, they face very different problems. However, best practices can be adopted and adapted according to their needs. That's flexible and that flexibility is really required in an area like e-crime, which is rapidly evolving.

Crime is bad guys do something and the good guys respond. The bad guys change what they're (doing) (unintelligible) really quickly. And so we need flexibility.

We also encourage it because we will have lots of new gTLD operators. (Unintelligible) very good idea to let them understand the problems that they might face. Have some tools that they can use to be (unintelligible) for those (unintelligible). This would be a good time to get this work underway.

We also think that this is also very cost effective (unintelligible). Basically all we're asking for is (unintelligible). (Unintelligible) about who is accessing. Of course we stayed away from the (unintelligible) accuracy, which is a separate issue.

But what we found is that basic access to WHOIS information is really important. It has a very - not a lot of registration issues. Both registrants and registrars and other people need this information and need to be able to get to it.

What we see through our research is - we had some problems especially with (com net) data because that information is (unintelligible) registrars model. And what we've seen is that we have two issues that might need solving. One is a compliance issue. This seems requirements that are in the (unintelligible).

Basic research did reveal (unintelligible). A lot of registrars don't make their information (unintelligible).

We also see some issues where we might need to look at some additional requirements. (Unintelligible) that if you look up a domain name on a registrar's Port 43 server, you'll get a certain set of information. Look up the same domain name on the registrar's Web based WHOIS might get different information.

So is that a good thing to have perhaps to look at that issue? So we're recommended that GNSO look into this issue. One personal suggestion is have to look at whether this is (unintelligible).

But we seem to have some issues (unintelligible) recommendations (unintelligible) much that the compliance department published more data about WHOIS (accessible).

Haven't been any reports publicly available for a while that tell us whether or not (unintelligible) good policy making always involves some fact finding and some data. And we found that we don't have enough data perhaps for the community (unintelligible) recommendations.

Bank renewal notices are basically solicitations that you'll get saying that (unintelligible). One of the issues is WHOIS is the (unintelligible).

The working group recommends that the Council refer this issue to the compliance department whether they're existing (unintelligible). If there aren't then maybe (unintelligible). But we've seen a constant complaints about (unintelligible).

Again it's (unintelligible). Did some research on it. We were not able to determine exactly how widespread it is. Recommend that somebody do some more research on that particular topic. We stopped short of making a recommendation for (unintelligible). (Unintelligible) report and bring it to them.

At this point we're moving down the levels of consensus. Those were the unanimous recommendations. We have a recommendation regarding uniformity of contracts that received strong support but also significant (unintelligible).

(Unintelligible) idea here was that general language be (unintelligible) that could take in and deal with existing and potentially future registration abuses. (Unintelligible) (proposal). Some people were not comfortable with this because one, if we a problem that needs uniform action, well that's what (unintelligible) for consensus policies (unintelligible).

Also some felt that creating general language might not be a good (unintelligible) because (unintelligible) the abuse (unintelligible) and to what extent before you can come up with (unintelligible).

There was a second recommendation regarding cybersquatting and the group (unintelligible) there was no (unintelligible). Some members suggested that two TLD rights protection mechanism (unintelligible). These are

mechanisms like uniform rapid suspension programs, trademark (unintelligible) how (unintelligible).

So there's some thought that we should look at a applying those in the gTLDs that (unintelligible). The other half of the group said it's too early because we haven't seen how those work in practice and also there are still adjustments being made to them (unintelligible).

(Unintelligible) processes (unintelligible). So not enough information and (unintelligible).

Next recommendation is (unintelligible). The group did - had to do a lot of research and wanted to mention that it's really important to do uniform reporting. Now on one hand that means when you create a policy, you should measure its effectiveness.

In some cases Council's been (unintelligible) excess deletions for example (unintelligible). Another area is perhaps not so much. There's also this aspect that we don't have enough information to go on when these starts (unintelligible).

Personal opinion may sometimes have difficulties having all the information you wanted (unintelligible) some investigations that find the problem that you find a (unintelligible). My personal opinion that we're always (unintelligible).

We also looked at a number of other (unintelligible) decided not to recommend (unintelligible). We certainly looked at some issues that people proposed as abuses and we decided they actually weren't abuses (unintelligible).

We also looked at some abuses - decided not to recommend anything. For example front running everyone agrees is - could be a problem but we don't

have any evidence really that it's happening. So at this point we recommended that (unintelligible).

There were also some recommendations regarding (right size switch) we decided (unintelligible) or just being out of scope. Also domain kiting was (unintelligible) separate from (unintelligible) some data from (unintelligible).

So that's a high level summary where we've arrived at. First I'd like to commend the members of the group. They spent a lot of time (unintelligible) work. They had a big job and navigated the issues pretty well. It's a collegial group (unintelligible) all their hard work and I'd also like to (unintelligible). We got some good briefings (unintelligible) others.

Like to (unintelligible).

Chuck Gomes: Let me start things off Greg and thanks for a very good report. One of the things is everybody (unintelligible) project as (unintelligible) overwhelming workload that we have (unintelligible).

So I kind of have a general question with regard to priorities from the working group's (unintelligible). How these (unintelligible) recommendations (unintelligible). Are there any of those that working group thinks particularly urgent from a time perspective?

Greg Aaron: Just ask too much on prioritization (unintelligible) focus. UDRP's been around for a while but there was a lot of interest from the members. (Unintelligible) especially in development over the last couple years.

I don't know if it is really a hot burning issue but people are interested in the topic because they wanted to also talk about other right protection. So dealing with cybersquatting is still very much of interest to (unintelligible). Especially with use of domains in those best practices I think (unintelligible) get that going because (unintelligible).

As far as the Council goes, folks say we want to volunteer for this. We'll go off and do this (unintelligible).

WHOIS access, that's a question for the Council about how to pursue that. (Unintelligible). Looking at some of these ideas (unintelligible).

(Unintelligible) answer the question basically play with one caveat. I think the best practice certainly should be bumped up to the top and (unintelligible) volunteers then are in the RAP group now or have been in the RAP group (unintelligible).

UDRP reform, that very well may be - well not necessarily reform but that may be a pretty big (unintelligible).

Chuck Gomes: (Unintelligible) follow up on something you said though (unintelligible) working group (unintelligible).

Greg Aaron: I can't speak for them all but I'm (unintelligible) filled out a process by which (unintelligible).

Woman: Thanks Greg. This was not an enviable task. One thing that really struck me when I got actually to the (unintelligible), I started to look at the attendance. And I guess I'm a little concerned that we have working group recommendations (unintelligible) of getting on the (IRG) and (unintelligible).

I'm just a little concerned that we have recommendations coming from a working (unintelligible) who only had seven people including (unintelligible) but all the recommendations are voted on by 14 people which means that half the people voting (unintelligible). So I'm a little - I mean personally I think that really (unintelligible).

Greg Aaron: Also during our public comments, got a lot of support for the particular (unintelligible). Now I think you're touching upon a larger issue, which is (unintelligible) a lot of work going on (unintelligible).

Now when we had unanimous recommendations (unintelligible) of course was broad before some people (unintelligible). But I think that we did the best we could (unintelligible). I think that having attacked upon (unintelligible).

I think we did the best we could. I don't think it under missed - I don't think it undermines the (unintelligible).

Man: I'll just add that, you know, attendance at working group meeting (unintelligible) creditability and resolutions or otherwise (Bob) to the point where working groups can act on paper and on emails. (Unintelligible) local time zones, different languages other than English but relying on working groups phone calls is really not fair (unintelligible).

Chuck Gomes: (Ken).

(Ken): (Unintelligible) providing public comment (unintelligible).

Greg Aaron: (Unintelligible) took those into consideration but in the end it (unintelligible).

Chuck Gomes: Greg in that regard, (unintelligible).

Greg Aaron: Chuck, there might be a couple of points where the language no longer - language in the UDRP policy itself no longer matches the practice. The question of what (unintelligible) has to be that space and there also has to be use of that domain.

However, a lot of decisions over the years (unintelligible) potentially disconnect (unintelligible) practice as a precedent (unintelligible). Is that a good thing or not?

There's also the issue of not just the language but also the way that (unintelligible) create may have an impact (unintelligible) is that actually in keeping (unintelligible). Clearly (unintelligible) on decisions be (unintelligible). Say yes we agree with (Salinger) but then they (unintelligible).

Also the issue ICANN does not have contracts with its providers. So how do you ensure that they're doing (unintelligible) or following the policy?

Chuck Gomes: Thank you. (Call up). There it is. Other questions or comments? Question, but one of the things that I (unintelligible). One of the things I noticed in several places in the recommendation (unintelligible) had that I'm trying to think okay, now let's see. How does this - what are you envisioning (unintelligible) obviously for a group (unintelligible). Those are the kinds of questions I had when I saw that.

Greg Aaron: Some cases (unintelligible) felt that the problem was digging us that we needed (unintelligible). That needed a very decisive (unintelligible) into recommend that (unintelligible). (Unintelligible) very aware that we need to do (unintelligible). Can only get so far in our research.

So it might be appropriate for some research to be (unintelligible). In some cases we've asked for compliance. Maybe the compliance department is the appropriate source of that. In some cases frankly we weren't (unintelligible) exactly where that data should come from. We wanted to leave it (unintelligible).

So, you know, at lot of these - a lot of these issues there's a lot of anecdotal evidence.

Chuck Gomes: I'm less concerned about the (unintelligible).

Greg Aaron: The Council monitor is basically there's been some concern. We had some evidence that something (unintelligible) but it's not at a level at which (unintelligible) potential abuse out there or it's at a certain level. It's not enough for you to be (unintelligible) about it yet. Keep your eye on it and maybe if something changes, let's come back - circle back to it.

Chuck Gomes: That's very helpful because I (unintelligible). Identify yourself please.

(Eric Gubers):   Yes. Thank you very much. (Eric Gubers) with the (WRQ) our (official) mediation center. Wanted to provide the (unintelligible). I just wanted to keep this very brief because I think that a registration abuse working group would have much more on its plate than the one mechanism that seems to have worked against registration abuse so far, which is UDRP.

                But still let me make this point. In this, (WRQ) is on the record with a whole range of positions in response to the various (perhaps) applications working groups' reports. Most recently we've written about the Number 4. And those positions are indeed known to the working group itself.

                We noticed at some point that perhaps our positions were not necessary well received or even well understood at which point we did offer an opportunity to perhaps simply, you know, answer any questions which the committee might have. And that opportunity as we understand it was not taken.

                Having said that, that's water under the bridge. It's just hard to understand how at the time when trademark owners are invited to buy into a wholesale expansion of the domain name system how the mechanism that seems to have been assisting them quite well so far ends up being suggested for a review at this time.

                So the two points I'm making is first of all is this the right time? We certainly think it is absolutely not. Otherwise we throw this into today's mix, Number 1.

Number 2, if the UDRP would be subject to what's being called a review, it's very important I think to watch by what process it happens.

If you want to see the most recent illustration of what can happen if what has essentially been to be a practical mechanism ends up in review processes within ICANN committees succeeded by committees, look at the URS in it's current state.

I'm going to characterize this in a bit of a loose way. You know the expression a camel is a horse designed by committee. At that stage should that be not befall the one mechanism that works so far being UDRP.

That said, there's always room for improvement. There's always room for discussion. But let's absolutely make sure that it happens in the right time and especially that it happens free of bias and based on information. Thank you.

Chuck Gomes: Thank you. And I think you know that our - all of our - if we did a review, it would be to (unintelligible) process and (unintelligible) be participants. They don't (unintelligible) part of a stakeholder group or constituency. They don't even have to be associated with the GNSO.

So fortunately though we are dependent on those who have the time to volunteer.

(Eric Gubers):   This is precisely why I respect your comment because you are part of the, you know, of the ICANN structure. So it's (purview) respect to what you say. At the same time, it's precisely that sort of structure, which you identify which for example the URS has been going through.

It's really important to remember how the UDRP came about. The UDRP came about at the time when the domain name system was very small compared to where it is today and especially quite unsophisticated in its

(squatting) practices compared to what's happening today and much less important in terms of business interests behind it, Number 1.

Number 2, of course and commensurate or responding to that, ICANN itself was in a very, very different phase. What we are submitting is if you put out the UDRP to some sort of review do not make it a process whereby anybody's voice at the microphone is another potential (amendment).

Chuck Gomes: I believe that's the case of what's happening in our - and as you may or may not be aware, we have a working group model team that is heading towards finalization of recommendations with regard to the things you're talking about and I encourage you to participate (unintelligible) elements of that that are bias or (unintelligible).

I'm going to go to Wendy first as a Councilor and then to (unintelligible) Jeff and (Cathy).

Wendy Seltzer: Thank you. This is Wendy Seltzer. Just a couple of quick notes. I participated in this working group and here too was very pleased to see a great commitment by the members and chair to getting through a great deal of work. (Unintelligible) that we thanked them for that.

And I wanted to respond on the notion of UDRP review. I thank the URS for having gone through lots of community discussions as important procedural protection this is while perhaps cumbersome, also important. And review of the UDRP would (unintelligible) those suggestions (unintelligible) inconsistencies (unintelligible) the process.

I would urge that we not turn it into a review like the reviews of the ICANN structure that seem to last forever and produced just gobs of new work and - but a focused review on places where people have identified problems with the existing mechanism from one side or the other (unintelligible). Too many names being taken away, not enough names being (unintelligible).

Chuck Gomes: Thank you Wendy. (Jeff).

Jeff Neuman: Thanks. Jeff Neuman. I want to start out actually be agreeing with (Eric)'s second point from WIPO basically any review that is done needs to be fair, needs to be balanced, needs to not only consider some of the issues that have been raised in the report but issues that IP owners have raised as well as stronger protections that are needed.

The part where I disagree is I think now is the best time. Now is the perfect time. I mean WIPO, W-I-P-O went to the GAC yesterday and said there's not enough protections right now for existing trademark owners and they're very worried about new TLDs and went on to criticize, you know, some of the URS and the post delegation dispute and resolution policies.

So I'm just trying to understand the inconsistency. On the one hand you want new protections but on the other hand we can't look back at what we have in place where improvements can be made. But I think everyone - I think this is a perfect time. It's been ten years since UDRP has been in place and I think now is a great time. I think it should have been reviewed years ago and probably should have an ongoing review.

And, you know, issues have been raised to the Board as to whether the UDRP providers should have contracts with ICANN. I personally think that they should. Others do as well. So I think now is actually the best time and I would put that, you know, Number 2 or Number 1 on the list.

Chuck Gomes: Okay. (Cathy) and then (Jaime) and (Philip).

(Cathy):   For everyone who is here in the - before the vertical integration, I just want to go on record as agreeing with Jeff Neuman on some things. And of course I wanted to thank Greg and the group for such a good report and so much work that's been going on for months.

I'm going to agree with Jeff on the UDRP. I was part of the original drafting team years ago - the final drafting team actually. And I think (Eric) actually laid out lots of reasons why it's time for a UDRP review. It is an old document. It does need to be updated. There are lots of new issues and we've all got lots of edits for it. Time to put it in the mix and updated version.

On the URS, as part of that group as well, I just wanted to defend it a bit because it started out as a system that I called (it's huge), you lose. No right to the registrant, no right (unintelligible). And over very few. I think it's become, as (Wendy) said, a much fairer system.

(Christina), not that it didn't start out as a good idea, but I think it's become a much fairer process. There is a real notice to registrants now. And what we've done, instead of cutting the noted security into registrants to respond in, we've cut the decision-making period down to three business days. So it's still a rapid response system and a fair one. So thank you.

Chuck Gomes: Thank you (Cathy). And we're considerably over time. So we're going to wrap this up very quickly. (Jaime).

(Jaime):   First I'm talking here in the personal capacity, so. First I would like to understand the (unintelligible) job of the Council would be not for the Council members. I understand that one thing that I figured of your presentation and for (unintelligible) is and we should emphasize the role of the compliance department.

And also give strength to this department because we have been very fruitful in creating rules but not thorough in demanding compliance to these rules. So I think something that we are Councilors should reflect upon. And this is something that I should be corrected if I'm wrong.

And also I would like to say that I very much appreciate this idea of best practices that can be adopted as things evolve because as UDRP - okay, it relates to one kind of abuse, the abuse of (marks) and legal protection of trademarks.

But I think the overall community is much more affected by what you call (buse) or abuse and best practices would address these more I think (brute) if not urgent (brute) the interest of the overall community. And I would from a person draft again - personal opinion that that factor should be given higher priority than the other things proposed.

Chuck Gomes: Thank you (Jaime). And (Philip).

(Philip):   Chuck, thank you very much. I think we should probably step back a little bit and try to think of the objectives of both what this working group's been doing and what the UDRP was about.

And ultimately it has been about public interest. It's about keeping the Internet a trusted place to communicate and to do business. That is what we're striving for in any of these mechanisms.

Now we all know we're on the threshold of a new expansion or a new type and new scale in which trust protection mechanisms have been diluted from what they were originally conceived. We have been particularly the URS which is looking potentially uniform, less rapid and less potentially suspension than it might have done in the eyes of those who first created it.

So we are at a time when the only thing that we know that currently works is the UDRP. So the expression, you know, once bitten twice shy and if we're looking at what happened to the new protection mechanisms we're trying to put in place in this world where we know there have been gaps in terms of mechanisms to how it's trust, we're yet to see how they're going to work.

Okay. How it's going to turn out and we'll see over time how successful we have been in imagining those processes with the checks and balances that we've put in place and we shall find out within wise where those checks and balances in time.

So I think the question about revision of the UDRP has to be one of timing. And when you think very carefully when is it wise in the public interest to look at the revision of the UDRP given the uncertainties of any other trusted housing mechanisms that we have. Thank you.

Chuck Gomes: Thank you (Philip) and you led right into what I wanted to close with on this session. And that is that (unintelligible). As you can tell, we're not all on the page. (Unintelligible) starting the discussion on (unintelligible) starting (unintelligible) have to - we're going to have to decide first of all how we will even develop a plan for following through on (unintelligible).

(Unintelligible) all of these (unintelligible) no other reason, just the workload (unintelligible). I want to thank the working group for the hard work, the recommendations (unintelligible) for the Council come up with a plan for following up on the recommendations and I'm (unintelligible) in that regard.

So thanks again and - considerably over time. Glen, what's the next meeting and (unintelligible). And are both PPSC meetings occurring in this room. Need to turn the room over to them. You're welcome to stay. They're open meetings. And I apologize for starting late.

But I do want to let you know that unfortunately at 1 o'clock we are going to have a Council planning session for our meeting with the Board and staff tonight that is quite important. And we will (unintelligible). Please stop the recording.

END