

**ICANN San Francisco Meeting
RAP
TRANSCRIPTION
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Stephane Van Gelder: Thanks very much. So good. So we'll start the next session. We're okay to go. The recording's been started, and the next session is with regards to the implementation of the recommendations on the registration abuse policies.

We have Pam Little here. Welcome, Pam, who is Senior Director, Contractual Compliance, the interim head of that department. And, Pam, have you got a presentation? Or is it your intent just to take questions for that directly?

Pam Little: I didn't prepare a presentation, Stephane. My understanding was we're here to discuss, and then there were some questions from the members of the GNSO for me.

Stephane Van Gelder: Great. Okay, so that's good. So we'll just launch straight in. Jeff, did you...

Jeff Neuman: Sure. So, I guess there'll be a question to this, but just a comment first. You know, I was surprised and I know others were surprised at the response that we got, because it seemed like it was a very late time to find out certain things that ICANN Compliance could or could not do.

And, in fact, in most of the stuff in the letter, it was ICANN Compliance can't do this. We can't do that. We can't do this. Very little in the letter that says,

"Well even though we can't do this, maybe we can do A, B and C as a substitute or as an alternative."

Buried in this letter there are a couple little things. So my first comment is I think the tone of this letter could have been a little bit better, as far as it was a very legalistic response to our questions. And coming from a lawyer, I mean I understand those responses. But I think when people read it, it was very much - it was probably not the right tone that should have been used.

There is also in the letter, there are a couple things that we've asked for -- certain compliance -- and at the end if you look at the very last part, the last paragraph, it talks about the fact that there is no automated tool that Contract Compliance has to monitor each of the 970-plus registrar Web sites.

And that's okay to know, but that should have been followed up with. We can investigate getting a tool. This is how much it might cost, or these are the things we can do, as opposed to just a letter saying, "We don't have this tool, so we can't do it."

And so while - I guess my first comment is I think there are things that you can do. And I think the letter, the way it came across to a number of the councilors was more either what we can't do, without any suggestions of what we can do. And so that's my comment.

My question is have you looked into getting some kind of tool to monitor registrar Web sites for who is compliant. And if so, what have you found out and what can we get done?

Pam Little: Okay, thanks, Jeff. Thanks for those comments. They're well-taken. I just didn't want to create an expectation that the Compliance may not be able to deliver. And although they were comments, I just want to say the request from the GNSO is actually quite broad. And there are two recommendations in that referral.

So one of them is about fake renewal notices. The other one was about 443. The request was also very broad and quite general. And in terms of fake notices, we can talk about in more detail. So I want to make sure we promise what we will deliver, rather than overpromise and under-deliver, so the reason for the tone of the letter.

In terms of your question about whether we have investigated a tool to monitor registrar's Web sites, no, we have not done that. But we will do that. In fact, we are investigating a whole host of automation or using technology to do a number of registrar RAA obligation audits.

So you'll become more scalable, rather than involving, you know, lack of manpower to audit one obligation or another obligation, or all the obligations under the RAA. So that's one of the initiatives that Compliance has at the moment -- trying to use technology to have more automated tools to do those contract audit work.

Jeff Neuman: I appreciate that. And actually I'll do a little pitch. You know, NeuStar has a tool that can do that for you, by the way. We have a service called Webmetrics.

So but putting that aside, so there are tools that are out there. And it would have been nice to see a paragraph that says, you know, "And we're investigating it."

One of the other points that I'd like to make is as far as the overpromising/under-deliver, what would have been great, and what I'd love to push for, is before the Council goes through the whole exercise of proposing a motion and then having it approved, there's a lot of time in between there.

You know, when the report comes out, these recommendations - it's not that these recommendations weren't known for months and months in advance of the Council actually voting on them. It would be great to get some better dialogue between whoever's going to do the implementation and the work and the Council, before we actually pass a motion.

It would have been helpful to know all of this stuff prior to passing the motion. And I know we have good interaction with policy staff, but it would be great to have interaction between those that would be doing the implementing.

And to throw in another pitch -- not for NeuStar this time but for the PDP work team -- one of our recommendations is clearly to involve not just policy staff, but to involve the other departments of ICANN, so that we don't get all the way down the path of years' worth of work to find out that something can or can't be done.

Pam Little: Thanks, Jeff. And you're exactly right on that point. When I first learned about the potential recommendations or requests from the GNSO, I actually reached out to Marika. And Marika can attest to that.

I was saying this recommendation probably would not have worded it that way if Compliance staff was involved earlier, because to me it's just too broad as a recommendation. And, in fact, I am a bit puzzled by the recommendation and how it evolved to the resolution by the Council.

Because if I were, you know, I've gone back, things to request from the Council, just some of the documents and minutes and records of the working group.

And in March last year in Nairobi, when the working group made a presentation to the GNSO, it was clearly said in that meeting -- and if I could just bore you for a second -- that the group wants to begin by asking the

GNSO to gather more information from ICANN's Compliance department, basically to figure out if they are proper enforcement avenues.

The second recommendation perhaps to follow would be to further discuss a PDP, if the issue warrants. So to me there was clear intention on the part of the working group to (unintelligible) as a data-gathering, fact-finding exercise from Compliance, rather than a, "Hey, implement this. You've got to do something about fake renewal notices." So I think there was a bit of sort of a lost in the process - the whole intention was lost in the process.

Stephane Van Gelder: Thanks very much, Pam. So in the queue now I have Tim, then I have an online question, and Mikey and (Kristina). Tim?

Tim Ruiz: I was just going to, you know, comment on the last part of that discussion as well. In fact, I think in the past we've had the situation arise before. And we've even specifically put it in terms of reference.

I know in at least one working group -- I think it was one of the transfer working groups -- that specifically that Compliance be consulted on any subsequent recommendations, to be sure that they're implementable and enforceable.

So I think that that should actually be a standard part of our terms of reference. If we have a template, that should be added right to it and should be something every working group does, and that is to be sure to run those recommendations past Compliance.

So that we come away with something, by the time it gets back to Council, that's implementable, that's enforceable. And the only way to do that is include them before it gets to that point.

Pam Little: Yeah, I agree, Tim.

Stephane Van Gelder: Thanks. Very useful. So there's an online question now I'll just read out. This question's from the person called (Rob), no last name.

What and who to do ICANN (unintelligible) reported as regards compliance issues about registrars and registries not providing sufficient or adequate WHOIS details on 443, blocking access from radar-registered IPs, and effectively rendering the inter-registrar transfer policy defunct?

As there is in no way - there is no way, sorry, to consistently get the necessary details -- the name, address, email, telephone of contacts, or even expiry dates.

Pam Little: Okay. I think there are a couple of issues here. One is a complaint about whether a registrar is providing the 443 to the public. The other one is about the information, about WHOIS, whether there's accurate and complete WHOIS information.

In terms of the accuracy of WHOIS information, there's actually a portal called WHOIS Data Problem Reporting System that ICANN has implemented many years ago. And I can send through the link later on. I don't have the link in front of me. So people can actually file a report about a domain name and data inaccuracy through that.

In terms of registrar who doesn't provide 443 or a Web-based WHOIS service, we don't have a portal at the moment. So you can use a C-Ticket system. That's another window, another portal, you can use. Just file a complaint and one of our staff members would deal with it and escalate as appropriate. Or if you like, you can send it to me, Pam dot Little at ICANN dot org. I'll get one of our staff members to look at it.

Stephane Van Gelder: Thanks very much, Pam. Mikey, you're next.

Mikey O'Connor: Thanks, Stephane. Mikey O'Connor. I was on the RAP working group, and I want to point out that David Giza was really involved in the conversations about this. I was looking around to see if Greg Aaron was here, yet. He's not, right?

So I think that what has gone on here is, you know, Jeff, I think your point is right on the button. I think what we need to do is figure out a way to make sure that these don't fall between the cracks like this.

Because, you know, we asked David about this and, you know, got no pushback at all. So this was a surprise to a lot of us on the working group as well.

Pam Little: Sorry, Mike. I didn't quite understand. Did you say you asked for the data on fake renewal notices? You raised that with David Giza? Is that what you were saying?

Mikey O'Connor: Yeah. I mean he was in these conversations.

Pam Little: So I wasn't aware of that. And so I thought, according to Marika, my understanding is the conversations between David Giza and the working groups was mainly focused on the WHOIS issue, rather than the fake renewal notices issue. (Unintelligible) on the way, I have not come across any requests for information or data from the working group throughout the process.

Mikey O'Connor: This is Mikey again. As the participant in probably too many working groups with a sailing brain, you know, to tell you the truth, I don't remember on this one. But I was equally struck by the tone and approach of this, and I think that Tim's point is right, which is we need to figure out a way to bind these together better, so that we don't get to this point again.

Pam Little: I agree One of the things I have in mind is to make sure any working group that actually is looking at issues that might impact Compliance or may need Compliance to implement one of their recommendations in the future, is to have somehow make it sort of a more formalized requirement where a Compliance staff member will be participating in those working groups more actively.

I think this is one of the examples where things fell through the cracks because, Mikey, by record, David was very involved in one of the working groups, which would be the IRTP. We provided a lot of data for the IRTP as a fact-finding exercise, right?

And I found, I think, the (unintelligible) that. It was useful in terms of some of the policies or issues you were considering. In terms of the fake renewal notices, just to be honest and say we in the group - at least I have been with ICANN for 19 months. And I know the working group was working for a long time.

I have never come across any requests from David or anyone else saying, "Hey, have you seen any fake renewal notices? How do we deal with it? What do the statistics look like? What do the issues look like?"

Stephane Van Gelder: Can I just - I think Tim had a follow-up on what you're discussing, and then maybe it can come back to you. I know (Kristina)'s chomping at the bit.

Tim Ruiz: Yeah, I was just going to say that I think, you know, participation in the working group's fine. But I think that the report should have, you know, a specific section area that's devoted to here's what Compliance thinks, or here's our discussion with Compliance -- something more formal.

So that we can be sure that, you know, all the communication that needs to take place has taken place and, you know, someone leaves staff, those kinds of things, don't end up hindering the end result.

Stephane Van Gelder: Thanks. Did you want to come back, (Mikey)? Or can I go to (Kristina)?

(Kristina): Pam, I have two practical questions. As somebody who actually has a stack of fake renewal notices on her desk, where do I send them?

Pam Little: I can send you the link to the C-Ticket, or you can send it to me. And actually after this Council's request, I stopped to look at some statistics on the fake renewal notices. I really think we still need a bit of fact-gathering exercise before - as a working group or, you know, as ICANN community, to decide how best to address this issue.

(Kristina): Okay. And I have another question, and I'm just wondering whether -- and I think everybody's probably going to laugh (unintelligible) about this -- but I'm wondering whether ICANN has given any thought to the possibility of coming at the fake renewal notice from another perspective?

Namely, you may not be able to take enforcement action against a third party, but if that fake renewal notice has any of the ICANN marks on them, as the owner of the trademark you could certainly send a Cease and Desist letter, which may in fact have the same effect. And I don't know if that's something they've ever considered.

Pam Little: I cannot answer that question, (Kristina), because I haven't come across an instance like that. So in terms of parties who use ICANN's logo in an unauthorized fashion, yes, we do. Our legal department does, you know, look into them and address them.

Stephane Van Gelder: Okay, (Alan), you're next.

(Alan): Thank you. I support Tim's comment that we should put provisions in charters that say we should involve Compliance. But I don't think it should be necessary to make it happen. And the two things are different.

I think, you know, right now for instance PEDNR has a report out for comment. Clearly, for anyone who has some idea of what we're talking about it's going to involve compliance issues.

I would like to think Compliance is going to look at that and give us some feedback formally or informally, you know, inside the comment process or outside, as to whether or how harebrained our ideas are and they're not implementable, regardless of whether we formally ask for your advice or not. It's going to come back to you anyway, so I'd like to think these things are institutionalized without having to remind people that it's a tick-box.

In terms of participation, we had a little bit of participation from Compliance, someone who's now left the organization. So whatever participation there was, was a long time ago and now gone. We would be very upset if we issue a final report and are then told they're not implementable or we should have gotten the wording different.

So we need to work more together as a matter of course, not just to satisfy words in the charter. Thank you.

Man: My concern with it, (Alan), is that we're here discussing it, right? Because that was the assumption some had made, and it didn't happen. This isn't the first time actually either. So that's my concern.

If we don't make a point of saying, you know, "Okay, what's our section in the report on compliance going to say?" You know, then that way we make sure that that whole circle gets closed and we don't miss it.

There's three parts. There's what's in the charter, what the work group does, and Compliance being proactive about it. They're all three things I think should all be there. One doesn't rule out the other. Thank you.

Stephane Van Gelder: Okay, thanks. Zahid, Marika, Michele, (Jonathan). And we're five minutes over already, so can you make it extremely brief, please?

Zahid Jamil: Hi, thanks. This is Zahid Jamil. I like (Kristina)'s idea about the (unintelligible) provisions. It's a very good idea. And, (Alan), I agree. I mean maybe there should be a space for compliance which says, you know, if you have a comment on this, make it now. And that closes the loop on that so we don't create the same problem subsequently.

On the issue of the monitoring tools, I was reading the ICANN's contractual compliance operating plan which talks about the fact that you'll be using tools. I was wondering whether this tool, specifically the one we're discussing now, will be part of the operating plan. If so, would you be mentioning that subsequently? So that's one question.

Very quickly moving on to the second more important one, I understand from your letter, I think you write about the (unintelligible) contract issue and Clause 3.12 of the RAA absolutely third-party obligations. I guess it fell through the cracks here, I understand.

But here's my question. This allows basically any accredited registrar to open up an (SPZ) and conduct its practice. It's something serious from the perspective of consumer trust and consumer confidence. And ICANN needs to be looking at what needs to be done here.

Now my question is, looking forward, with the new RAA amendments on the table, do you see this possibly as a form of abuse? And therefore that could be used as a form of taking action against any registry or registrar reseller

even, saying that this is some form of a malicious abuse. That was my second question. Just two questions.

Pam Little: I'll answer the second question first, if I may. I think, yeah, it could be potentially a form of abuse. But the difficulty, as you would appreciate, is to have evidence to establish the link, the direct link, between the registrar or registry with whatever entity they set up to engage in this sort of malicious conduct.

So if we have evidence, we obviously would use that evidence and pursue the registrar or registry in question. But if we don't, then we are limited by what we can do. It's the same sort of, you know, conundrum, if you like. And the legal framework unfortunately does provide, you know, entities that - separate entities have separate legal responsibilities, et cetera. And we have to look at each case on a case-by-case basis. Yep.

Zahid Jamil: So just going back very quickly, I look at it as three different steps. One is, those you have a (unintelligible) contract with, whether they're registrars or registries, you can't take action enforcement. I can understand that.

Pam Little: Yeah.

Zahid Jamil: Where there's a third party, a reseller, there's absent clauses there. So you can't take action because under 3.12, you don't have the necessary clauses to take action against resellers. And if it was a form of malicious abuse, what I see from the registrar and the RAA amendments bringing in an obligation on even resellers and registrars to take action against resellers when there's a form of malicious abuse that may arise.

So if you could identify that they're the reseller, then you could say that this particular reseller has done this. Under the new amendments to the RAA, would you be able to take actions under malicious conduct?

Pam Little: I'm not familiar with under the new - are you saying the new RAA that's under consideration? Or...

Zahid Jamil: The proposals, yeah.

Pam Little: So I'm not familiar what exact provision's being suggested. But even under the 2009 RAA, if we are shown there is a, you know, malicious conduct by a reseller, and we know who the registrar is associated with the reseller, we can try to get the reseller to enforce their contract and with the reseller, and take action under that contract between the reseller and the registrar. Does that answer your question?

Zahid Jamil: Yeah...

Stephane Van Gelder: Zahid, can I - yeah. Actually I'm going to have to cut this short. We really must get to the other session. I don't want to run over too long. If you have questions for Pam, can you take them off line? If you just want to make some closing comments, then please do so.

I don't want to cut people off from, you know, I had in the queue. But I would ask you to make it extremely brief and we'll move on. So Marika, Michele, (Jonathan), please do that.

Marika Konings: (Unintelligible) I think we're identifying a need that, in the RAP case, there might have been some transition issues with staff that, you know, might have resulted in issues falling through the cracks. But just want to point out I think on all the working groups now we have very good internal communications.

I mean if you look at the IRTP report as well as their dependent report, the specific sections where Compliance has provided input, we will be taking the time now as well in the public comment period to check internally both with Compliance and Legal, whether there are any additional issues that, you

know, we want to share from our perspective on the recommendations that are there that we haven't already shared.

Because I think on many of the issues, we did already provide input. I think for the RAP recommendations, I just want to point out as well that these recommendations were not recommendations for changes to policies. These were specific recommendations to identify issues for the policy work. So I think it's all a different aspect of these kind of recommendations where, you know, there was some information requests from Compliance.

And on the fake renewal notices, I think the working group very specifically asked for that input through the Council, to make the Council aware of whether there were ways to enforce these issues. And if not, there's this conditional recommendation saying, "Well if the answer is no, we cannot do anything because we don't have the tools, then the next step might be the PDP."

I think it's good to separate the two, you know, PDPs in this specific work, where I think you have a different kind of feedback and input from Compliance.

But we're going to take that feedback back, and I think we're really trying to get that internal communication going and making sure as well that - because I don't think we want a situation either where we have Compliance in each conference call every week. That's just not feasible from their perspective as well.

So the point is that the working group is well formulating the specific questions they have, so we can take that back and forth and get a dialogue going.

Stephane Van Gelder: That's your definition of brief. Michele?

Michele Neylon: Well Marika's Dutch and I'm Irish, so we really are, you know, we're going to break this badly for you, Stephane.

Stephane Van Gelder: Thanks very much, Michele. And we'll end there.

Michele Neylon: I will try and keep this brief. With respect to ICANN Compliance, I mean it was incredibly helpful within IRTP when earlier on in our work to actually have facts, data, hard facts, hard data to deal with.

And more of that would be appreciated in the future, because some of us get the distinct impression that we're trying to come up with policies for problems that don't really exist, or for problems that may affect a very, very small number of people, or whatever.

Whereas with the transfer data, the complaints data that we got from ICANN Compliance, we were able to see clearly that there were tangible complaints and where they were coming from and what they were. And again just to thank the Compliance team for that and that's all. There, see? I kept it brief, Stephane.

Stephane Van Gelder: Thank you very much, Michele. And I want to thank Pam for coming to talk to us today. I'll move straight on to the next presentation, which is - where's Margie?

Margie Milam: Thank you.

Stephane Van Gelder: Oh, Margie's over there. So (unintelligible) paper that Margie has a brief presentation on, and then we'll move into questions on that. So I think we're set up. And over to you, Margie. Thanks.

Margie Milam: Okay. As you guys may remember, there's the resolution asking for an issue report on the UDRP. And this is really Jeff's idea to provide kind of an overview of where we're thinking before we issue the issues report, to get

feedback from the Council. So that's really the purpose of this session, and I think it's a great idea.

Okay, I'm going to start with the GNSO Council resolution, because as I've been tasked with drafting the issue report, it's really unclear how broad the GNSO Council wanted this issue report to address the issues with respect to the UDRP.

And so I thought if you look at the resolution, there's a couple things that, as I'm drafting the report, raise questions. It essentially says that it's an issues report on the current state of the UDRP.

Well from a drafting standpoint, what does that mean? I mean it's very broad. It does say that it should consider some specific aspects such as has the UDRP addressed the problem of cybersquatting to date, and any insufficiencies or inequalities associated with the process. Well that's a really big question.

You know, in drafting it and in doing some initial research, you know, I found like 300,000 documents that talk about the UDRP. I mean it's really a huge task. And I think, you know, my message here for you as a Council is to help me figure out how narrow or how broad you want this report to be, because it's a very big project and guidance would certainly be appreciated.

The other thing that the resolution said to focus on is whether the definition of cybersquatting inherent in the existing UDRP language needs to be reviewed or updated. And the issue report should include suggestions on how this possible PDP might be managed.

And so part of the theme also is the prioritization issue we've been talking about before. If we actually go into UDRP PDP, you know, what kind of resources are going to be involved? And, you know, are we going to have sufficient involvement from the community to do this?

I'm also providing you just kind of a highlight of what the issue report would address. In the bylaws, Annex A, essentially it says that, you know, I need to provide a description of the issue.

I need to provide identity of the parties submitting the issue and how that party's affected by the issue, and what kind of support there is for initiating the PDP. And then there's a portion of the report that talks about the staff recommendation on whether the Council should initiate the PDP.

So if you step back for a minute and you look at the resolution, I think Zahid - I think Tim made it, and then withdrew it. And then Zahid submitted it and it passed. And so I guess from a drafting standpoint, I mean I'll ask the question when I address this, am I addressing it from the (BC) perspective? Or I guess this is one of the things in the PDP process that's kind of unclear how this part of the report would, you know, would be addressed.

So in this case it was Zahid who maintained the motion that got submitted. But the bylaws say I'm supposed to identify the party submitting the issue.

Man: (Unintelligible).

Margie Milam: Is that - okay. I mean it's something to think about. I was struggling with this. I don't know if you can imagine, I sort of just skipped that for now because I didn't know how to address it. But it's, you know, it's just that problem we have with having an old Annex A that doesn't really map, you know, how the Council works at this point.

The next part of the issue report has the General Council opinion, and this is pretty standard stuff, I think. You know, we don't have problems coming up with analysis on this. It basically addresses whether the PDP is properly within the scope of the policy process, and within the mission statement.

And I'm not going to go through these factors, but this is what the report will cover. And it's fairly - we have a good handle on how to address this. I think, you know, from a scope perspective, you know, a UDRP is, you know, I don't see any issues at the moment that wouldn't be within scope. But the question really to the Council is how broad do we want the issue report to be.

Now the next part of my presentation is going to talk about where, you know, my thinking is. Because as I mentioned before, there's a tremendous amount of documentation out there. This is what I looked at to try to provide you guys with this overview of what the issues are that I've uncovered.

You know, obviously I looked at the UDRP. I looked at the final report by, you know, by the working group. And many of you may not recall that there actually was an issue report back in 2003, written by Dan Halloran, suggesting that the Council take a look at the UDRP. And I believe that the Council never actually did anything to follow up on that initial issues report back in 2003.

Also in 2008 ICANN - it was primarily the Compliance staff. I think (Stacy Burnett) led off the effort to bring in different perspectives on how the UDRP was working, at least from a compliance perspective. Dave Taylor, you were a panelist on that. And I looked at those materials to gather information.

And then WIPO back in - I think it was 2009, had a conference that talked about, you know, what's happened over the last ten years and what's next and what should change. So those are the sources of the information that I uncovered so far.

And essentially, you know, if you talk about the issue of the current state of the UDRP, I mean certainly from a staff perspective it's, you know, widely recognized as a success. It works. It has issues, but certainly, you know, it's - 30,000 complaints, you know, have been filed over the last decade.

And there's a lot of, you know, it's been used as a model for ccTLDs and, you know, certainly it, you know, works and at least addressed the issue with respect to cybersquatting.

So but the question for the Council again is how broadly would you, you know, you'd like this issue report to address the topic of cybersquatting. You know, the resolution wasn't really clear. And so, you know, would you want it to be a narrow issue report that really talks about the definition of cybersquatting?

Or are you really looking at a full-blown, you know, every aspect of the UDRP? Because it is, you know, because the resolution said the current state of the UDRP. And it's hard, you know, to really define what that means. And as I go through the next slides you'll see the kinds of topics that I uncovered when I went through this analysis.

So, for example, there's a lot of substantive policy issues. And as you look at this, this is really the resource question. If we do a UDRP on every - a PDP on every aspect of the UDRP, there's, you know, I probably identified 30 different issues addressing all kinds of things related to the policy and the process.

And you think about, you know, the resources of both staff and the community, and the type of time frame that would, you know, would be involved in going through this extensive analysis.

And I'm not going to go through each of these slides, but you can see there's, you know, each one of these are very in depth questions. So they're probably going to require a lot of analysis and information-seeking.

So there's substantive policy issues related to, you know, reseller issues, proxies, privacy, WHOIS status code. All of these are issues that have been

raised in one venue or another in the past, as something that could be looked on and possibly part of an improvement to the UDRP.

There's also process issues, you know, questions whether there should be a fast-track process, for example; or, you know, issues related to language. You know, there's a lot of work that would be undertaken if it were to be, you know, a full-blown PDP on the UDRP.

And like I said, I'm not going to go through each of these. It would take quite a bit of time. But just so you as the Council get a flavor for the kinds of issues, if you think of, for example, the IRTP PDP where I think there was, Marika, what, five issues that were addressed? Yeah, here you're talking about quite a bit more if you were to undertake, you know, that work.

Marika Konings: IRTP actually grouped together, so you have five PDPs. But in each of those PDPs, you have a number of issues, okay?

Margie Milam: Thank you, Marika. And then there's also just general. Beyond the actual policy issues are the process issues. There's other issues as well related to, you know, things that will probably be touched upon if there were a PDP on the UDRP.

And so the last part of the issue report usually deals with approaches to the PDP. And in trying to get my head around the issue, I've come up with some suggestions and would welcome comments from you all as to whether there's others I should focus on.

I think one of them would be for the Council to clarify the resolution and provide a little more information to staff as to, you know, what the intended scope of the issue report would be.

Another suggestion might be to narrow the focus to only the aspects that really involve a revision to the policy itself. Because there's a difference

between the policy itself and implementation, and that might be a suggestion for you to consider.

The other think I was thinking of is in looking at the materials, a lot of the information is dated. Like I said, ICANN had a workshop in 2008. There's some information in 2009. But maybe a good idea would be to have a session at the next ICANN meeting where we would invite experts.

We would invite WIPO and others that are really involved in the UDRP to come and talk to, you know, and provide information on what they think would be a useful next step, you know, if there were a PDP, and what the issues might be. So that would be a suggestion as well.

And then as Marika mentioned, you know, maybe we take a look at these issues and try to break them down further into groups and approach them, you know, one group of issues at a time. I haven't done that exercise, but it's certainly something I could do if you guys thought it was a good idea.

And then I'm open to suggestions if you have other ideas. But that's kind of my thinking right now.

Stephane Van Gelder: Thanks, Margie. Let's open this for questions. (John) - no, hang on. I'm just acknowledging you. I already have two people in the queue. (David) and (Jeff). Okay, so (John), (Wendy). (David)?

(David): Thanks, Margie, for that. I just certainly was happy to have a review of the UDRP. We do need to ensure that (PDRP) is the appropriate scope, as you've pointed out there, and whatever that scope is that needs to be complete, and it needs to be balanced. And one of the best sources again, as you pointed to, is the providers themselves and I'll just add to that that I'd probably say the panelists themselves, whoever, they are.

Because for instance, WIPO organizes a meeting every October of panelists. And you have somewhere between 150 and 200 getting together to discuss many of those issues which are raised there. And those are discussed at length, and something as simple as SUCs cases, you can have hours and hours amongst panelists. And these are the people who really do know what the law is, and where we should be trying to go on those matters.

But I just wanted to say one thing as well that having said that, I think the timing is all wrong on this with the new gTLD rollout. Because we've got the URS proposed in there. We need to see where that's going to end up before we start dabbling, I think, with UDRP. And we do have the issue of resources.

So my sort of thinking there is it's important to learn from our mistakes and not make them in parallel. Thanks.

Stephane Van Gelder: Thank you very much, (David). (Jeff)?

(Jeff): Yeah, a couple points. I also want to be careful not to confuse an issues report with the actual work to be done by a working group, right? So there's one thing with getting all the issues out on the table. There's another with actually doing the work of the working group, and doing the fact-finding and all of the other stuff.

So I don't want to get too bogged down in the issues report to, you know, basically get into the activities of the working group. But I do think more information is helpful.

One of the sources I would use, and kind of one of the things that I envisioned at least, was when the new gTLD process started and as it was going and moving along, there were a lot of letters by trademark owners and brand owners on the problems of UDRP, and how it wasn't fast enough; how it wasn't cheap enough; how it wasn't efficient enough.

And I think that is a good source of issues identified by IP owners as to what the problems are with UDRP. On the same token, on the other side, when the IRT report came out and there were some recommendations, there were a number of letters and comments from not-commercial entities -- from registrants and others -- that talked about problems that they see with the UDRP.

I think that'd be a great source. It's certainly more modern than the 2003 and others. And there are a lot of good kernels in there, even looking at the staff analysis reports from those comments would be helpful.

I actually disagree with (David) a little bit as far as the timing. I don't think this is something that should wait for new TLDs. Because even today, I see debates going on between the GAAC and the ICANN board saying what we have in place is just not good enough, and we need more.

So URS, at least according to the GAAC, doesn't solve the problems. And according to the comments I've seen from trademark owners and others, it still doesn't solve the problem. So just waiting and delaying it is not really - it's not helpful. I think we're already at a stage where an issues report needs to be put out. And, you know, so I think we do need to move on the issues report now.

I would also ask - I'm sorry. My last comment is that I don't think we need to wait for a face-to-face. I think Webinars are a great tool. We're supposed to be an online environment. So I don't see any reason why, you know, we couldn't get something together for April or May or both.

Have different sessions to get fact-finding through Webinars is another way to do it, as opposed to waiting till June, having the public comment forum. I mean if you follow that timeline through, you're talking about the end of the year at the earliest for getting an issues report out.

So I just don't - I mean this Council has asked for an issues report in, you know, normally it's 15 days. I totally understand that that's not at all realistic. But I think saying the end of the year is probably an issue. Stephane has (John) next, right?

(John): Thank you, (Jeff). I have a simple question. On Slide 7, the widely recognized success slide, why is 30,000 complaints filed over the last decade a measure of success? And why are four service providers approved, providing choice and competition? Why are those statistics measures of success?

Margie Milam: (Unintelligible) point is that it works in the sense that the policy was created. It's implemented. People use it and rely on it, rely on precedent. And, you know, it certainly can be improved, (unintelligible) couldn't be improved.

But certainly there's a, you know, there's a (unintelligible) if you say a, you know, industry of attorneys and brandholders and, you know, that use this for a relatively cost-efficient way of dealing with trademark disputes, compared to what it was when there was no UDRP. Think about when you'd actually have to go to court and go through the full, you know, court process.

(John): Yep, understood. So when you think of 30,000 as compared to how many domains are in registration; when you can think about four service providers with regard to how many disputes there are; when you think about the UDRP's decisions that then get appealed through local legal channels, I mean wouldn't that begin to put a little bit more context around the extent of the problem? The scope? And maybe begin to help focus where the point of our actions ought to be?

Margie Milam: There's obviously different ways of looking at it. I mean, I'll certainly take that into consideration.

(John): Thanks.

Stephane Van Gelder: (Wendy), you're next.

(Wendy): Thank you. I think I'm going to echo (Jeff)'s comments. We've been hearing a lot about the need for facts in decision-making. And this is a set of facts that it would be really helpful to have as against a lot of complaints about the new gTLD process.

If the UDRP is widely recognized as a success, let's get that evidence into the record as evidence on the, you know, cybersquatting isn't the menace it was once feared to be. And this is a process that if reviewed, that review can serve as example and guidance for some of the new processes that are being proposed.

I think the RAP working group spent a lot of time outlining the particular issues that it would be helpful to review from both sides -- the concerns of those using it to pursue cybersquatters and the concerns of those domain registrants who thought sometimes they were being tarred as cybersquatters when they weren't; that issue of balance in the UDRP among the issues.

But I think perhaps it would be helpful to hear a scoping question to you of what could you do in a short period of time, and could we start there and then ask further questions; rather than having a long drawn-out for a comprehensive report. So what could you do in a month?

Margie Milam: I can certainly address the issues we have here. It's just it'll be a long report. You know, it's going to be a question of when I would be able to finish it. But yes, you don't have to wait to do something in June. I just thought more facts would be helpful.

Stephane Van Gelder: Thanks. I have (Kristina) next. I'm going to try and cut this off once again, try and get us back on time. So please be very brief.

(Kristina): Sure. I think Jeff's idea of Webinars is an excellent one. Not only will it allow ICANN to gather the data it needs more quickly, but frankly I think this is too important an issue for too many sectors of the ICANN community to limit the opportunity for input to those people who are actually either going to A, be able to travel to Singapore; or B, be able to shift their life schedules such that they can participate remotely.

And I think having Webinars at, you know, multiple Webinars, different times to accommodate different time zones, is frankly the most efficient way to go.

Stephane Van Gelder: Thanks. So next I have (Philip) and (Fred). You wanted to say something? We'll close the queue off after you. (Philip).

(Philip): Thanks. This is a very brief comment in terms of has this been a success or not. It has been a success, because it's avoided harm. And it's avoided harm over the last ten years that would otherwise have been subjected to litigation, much longer cases.

With the policy that this Council, the (Grievance) Council, did in a very brief, a short, period of time, it was done with the right objectives. It has followed those objectives and has been successful, because it has avoided harm elsewhere. Let us not forget that that's its fundamental purpose.

Stephane Van Gelder: Thanks. (Fred)?

(Fred): Just to go over something, I think it'd be really interesting to look at it statistically, absolutely, and to actually, you know, take some of these myths about, you know, how it's been abused extensively.

But also, I guess I want to underscore what (David) had to say earlier is that is this the right time to be looking at it. Because actually the impact of the UDRP will actually, you know, either be amplified or diminished by the URS

and other rights protection mechanisms that we're contemplating for implementation in the gTLD program.

And that's something that was discussed in the RAP, which I was a part of. And I wonder if it's really the right time to be directing resources towards this while we have, you know, a big program that we actually haven't completed, which is the gTLD program, where we don't know the impact of these rights protection mechanisms that we're proposing there. So, that's just what I wanted to say.

Stephane Van Gelder: Thank you very much. Thanks to you all. Thanks, Margie, for making that presentation, and we'll cut this session off here, and restart in a minute once the recording is up, to discuss our Council - the motions the Council will look at on Wednesday.

This is a new type of session that we're trying out here, and the idea is for informal Council discussions to try and make as much headway as we can on the motions that we'll work on on Wednesday. So we'll stop here, and as soon as I get the go ahead, start again.

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