ICANN Singapore Meeting
RAP
TRANSCRIPTION
Saturday 18 June 2011 at 10:30 local

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Coordinator: All parties, the call is being recorded.

Stephane Van Gelder: ...there's a bus tonight for the restaurant. There is a bus leaving from this hotel, the Swiss Hotel, yes, the lobby at - yes. Outside the Swiss Hotel lobby at 8:15.

And it's coming back at 10:30 so try and be around the lobby just before 8:15 so we can all get on the bus. Okay. So our next session deals with the work that the registration abuse policies working group has been doing and more specifically the recommendations that came out of that work and went to the council.

We have been provided with a list of those recommendations and I'm going to ask Marika to take us through that list. It's up on the screen. It's I think - yes it is up on Adobe as well. So there are all the recommendations are in different stage of work. Some of them are still in progress, some of them we're waiting for staff to continue working on them.

Some of them have some kind of consensus on them from the group but I will ask Marika to take us through each one and give us the detail on each one and where we're at on each of these recommendations. So Marika if you can do that now please.

Marika Konings: Thanks Stephane. Actually I have some printed copies as well for those who like to look at it on paper. So I'll pas them around. (As Stephane said), we can act it also here on this screen.

Basically at the council meeting in May I gave a brief overview of the RAP recommendations and basically divided them into a number of categories which I think might facilitate the council's reviews of those recommendations that are still outstanding. So if you look at the first page there is a category that is titled like recommendations the council has already acted upon and are in progress.

So the first one is a discussion paper on best practices, which we'll be talking about later today. That's one that staff is working on. And the second one on the list is the cyber squatting recommendation one that said the issue report on the EDRP and Margie will be talking about that later today as well. So those are two items that are already being worked on and don't require any specific council action at this stage.

If you go to the next page you're under 2, those are two recommendations that the council started acting on by requesting input from ICANN compliance staff as outlined in those recommendations. There was a discussion with ICANN compliance in San Francisco on those two on the feedback provided on those two recommendations.

But the council hasn't decided on what next steps to take whether they feel that these recommendations are closed and the feedback received from compliance was sufficient or no further action needs to be taken or whether there are any kinds of steps that they would like to take, further discussion with compliance or concrete actions in relation to those items.

Especially on the second one, the fake renewal notices, you'll see later on that there actually is a conditional recommendation linked to this in which the RAC working group actually recommended commencing a PDP by requesting an issue report on this issue if the council saw that not sufficient information or no adequate information was provided by ICANN compliance on how this issue can be addressed through enforcement action.

So moving down the list in Category 3 there you see a long list of issues. Those are all recommendations that the council actually hasn't considered at all. I mean they've reviewed them as part of the report but haven't taken any action on either go forward or not doing anything with them. But if you look on that though you can make a division as well in these recommendations where you see that on the first page it's all those recommendations that achieved unanimous consensus or rough consensus from the working group.

And on the page afterwards you see actually recommendations where there was no unanimous consensus or rough consensus from the working group. There was actually strong division in the last three recommendations and there I mean one of the options the council could consider is that as the working group didn't achieve consensus it's unlikely that the council would achieve consensus on these.

So the council might decide to just you know, acknowledge these recommendations but not take any action on them, highlighting the fact that of course any constituency or stakeholder group individually could still take items forward either those that maybe talk about issue reports by requesting an issue report or formulating a proposal that might take certain initiatives forward.

So that's just a suggestion and then actually there is a fourth category where there is one recommendation related to (gripe side) deceptive and/or offensive demeanings where and the working group actually recommended not to take any specific action at this stage. So I think that's again one where the council could just recognize and accept the recommendation as is but no further action is required at this stage.

Stephane Van Gelder: Thanks very much Marika So as you can see, there is a list of recommendations that I would suggest we now open the discussion by going

down this list and trying to find out if anyone has a view on what action the council actually wants to take.

And if you look at the first pages if we go back up to the first page in the first two items on that page, those two we probably don't need to discuss at this stage because staff are still working on those two. So I suggest that we move straight to the second page where as Marika explained just a minute again, there we can possibly decide to done of two things.

We can decide not to do anything, which is something that we're pretty good at, or we can decide that these recommendations having obtained unanimous consensus from the out of the working group, there is nothing more that the council would like to add at this stage.

So perhaps I could open up just this discussion on that second page or that document that we've handed out and is up on the screen and just to get a little feedback on your little feel for what the council wants to do on these two. Good discussion, thanks.

Marika Konings: Maybe just to highlight. On the first issue because basically it's right near the quest for ICANN compliance to provide information. So ICANN compliance did provide information.

I think they provided a linked to a report they're doing in relation to access to WhoIs servers. And as well there are plans going forward. So being there for the council just to say if they felt information was adequate, thank you very much for the information or if you feel that compliance isn't doing sufficient I guess you can put in a request saying well, we think this or that should be done as well.

On the second issue, the fake renewal notices I think the feedback that compliance provided there in a nutshell is basically a way of saying well, there are specific provisions in the REA that we can use to do anything about

this because in most cases it is actually not accredited registrars that are sending these fake renewal notices.

I think there was a discussion as well. I think some people in ITC mentioned that one day maybe to look at this would be if they are abusing the ICANN logo to go after IP infringement or other ways to address it. But as it current stands it's an issue that might not have a very clear solution. But then again at the same time the working group did recommend requesting an issue report on this issue to try to scope the problem and actually see whether it would fall within possible consensus policy approach or what could be done.

Because I think many recognized receiving many of those notices themselves that it is an issue and a problem.

Stephane Van Gelder: yes. Okay. Can I just - with the feedback from the group and compliance it does sound like there is not much more that the council should do on these at this stage. But as you said, if you go into the recommendations there is detail there that you can't just decide a blank unanimous action on them all on that page.

I mean there is for example the IPC suggestion that we look at potential IP infringements for road sites operating or posing as ICANN registrars might be something specific that we might want to push.

Marika Konings: Right. I think if you look at the recommendation I mean the fake renewal notice recommendation the two were tied together. So it was the first one where the working group actually recognized well, maybe there is something that compliance can do and we're not aware of it.

So before we want to request an issue report to scope out the issue, we first want to get information from ICANN compliance and based on that information if indeed they come back saying well, there is nothing we can do,

we then recommend the PDP to scope the issue and see what kind of provisions or what kind of approach could be taken.

Bu recognizing that I think is something that was also noted by many in the working group is indeed that even if you have a policy on fake renewal notices it might not necessarily get rid of the problem as many notices are also sent by those that are not credited registrars. And of course consensus policies only bind contracted parties with ICANN.

Stephane Van Gelder: Thanks. (Jonathan).

(Jonathan): Just one thing. I think my question (is partly) - I asked it before because (it was about) why fake renewal notices shouldn't be an issue. But I think the point here is that actually beyond registrars, those that have an interest in issuing fake renewals are those who might want to phish for credit card details to be issued, right?

Because at first site you would think that the only people interested in doing fake renewal notices might be someone interesting in capturing the domain but presumably the alternative to capturing the domain is capturing the customer credit card details, which is where it falls out of scope then.

Stephane Van Gelder: Thanks. (Christina).

(Christina): I guess I'm still trying to get my mind around this and this is the point that Marika just made namely that if it's the view of compliance and maybe I didn't understand this correctly.

But if it's the view of compliance that to the best of their knowledge the bulk of the problem is originating with entities that are not accredited registrars in the first instance, I'm not really quite sure what value there is in that case to going through the whole PDP process that isn't going to be binding on an entity that doesn't have a contract with ICANN in the first.

I guess I don't know if I'm missing something or not and I'm just wondering from a more quantitative perspective whether there has really ever been anything other than just kind of anecdotal review as to how big a problem is this, who is sending these? Because if it turns out that after having done that investigation that the problem is with ICANN accredited registrars or potentially resellers of ICANN accredited registrars then that's one thing.

But if it turns out that it's really unrelated entities then it takes us in a different direction. And it seems to me that given the limited resources and the limited time that we have that it would make sense to really figure out exactly what the nature of the problem is before doing to much else.

Stephane Van Gelder: Yes. I think that's something that we're in general agreement on is that at this stage there is probably not enough information. We don't really know who is doing it and that's the message that I think we got from the group as well is to take this further at this stage is a bit difficult because there is a lack of information as to specifically what's going on. So I had (Jeff).

(Jeff): Yes. I think what the papers if I remember correctly, the paper from compliance said that if it is a registrar or a reseller of a registrar then they can take action. They already have the means to do so under the existing RAA.

So it was basically what they were saying is for those complaints that they get from non-resellers or non-registrars there is nothing they can do about it. I'm not sure that that's necessarily the case. I mean yes, they can't contractually do something about it. But as I think (Christina) raised in a previous meeting they could go for infringement if they're using the logo.

I think ICANN could also publish a blacklist of entities that they find sort of like if you find malware sites out there you can go to Google and other places to find out that these guys are on a blacklist and you have basically like a scam

list. I think ICANN could maintain that. I'm not sure it's something that the council needs to look at because it's not really policy issues involved.

But I do think there are a bunch of things ICANN compliance can do and should do. Again it's not really a PDP but maybe just some sessions with ICANN compliance to talk about it might be a good idea. And I think Maggie is here to - she's listening to this. We talked to her on the phone but she's here for people. You want to raise your hand?

So for those who haven't met her in person, she's here and she's listening. And I think we could have some sessions back and forth but I don't think we should do a PDP on it.

Stephane Van Gelder: We did all meet in San Francisco.

(Jeff):   No, that was the registrar event.

Stephane Van Gelder: Was that registrars? Sorry. I'm getting confused. Hang on. I have Zahid next and then.

Zahid Jamil: Hi. Dealing with the scope of the problem of course if there is a party which doesn't have a primitive contract with ICANN contractual, compliance can't do much about it.

But I think also one of the things if I remember correctly and could be wrong, do correct me Marika, was also that one of the points raised by compliance was that there wasn't enough contractual teeth within the RAA to go after on this issue those that did have a contractual existence with them because it didn't provide for any sort of shall we say obligation in this regard?

And if you could correct me if I'm wrong on that and if that is the case, if that is the case then if there was a lack of these specific provisions within the RAA that does not mean that we should also actually have that in the new GTLD

RAAs and maybe that is going forward, looking forward we should definitely have those sort of provisions within the new RAA for the new GTLDs.

A question on IPR, if it's - when I look at the fake renewals I do see ICANN's logo on most of them. So the question I would ask compliance very simply, would be that when somebody does send this to you what actions have you taken on the IPR issue in itself? If nothing else you don't have a contractual nexus or a contract. Has contractual compliance at least sort of gotten to okay, ICANN will now take enforcement action against the breach of this IPR? So three very sort of various questions.

Stephane Van Gelder: Thanks Zahid. As we do have people from compliance here, I've asked Pam is here as well. So if you do want to come up and speak to this that is probably helpful. Thank you.

Pam Little: Hi everyone. Thank you. I think what everyone was saying was basically correct. You know, in response from compliance basically we're saying at the moment our approach is sort of reactive rather than proactive.

I mean people send these kinds of email basically as spam, right? At the moment we don't have the new GTLD program. There are some sites that are sending out emails pre-registration, right? So how do we stop this? If something is more to me a consumer protection area, if there is something that the ICANN accredited registrar has done, engaged in, that is a violation of the RAA we certainly can do something about it.

But at the moment we are only reacting to those matters that are brought to our attention. We don't just go out to them like doing it very proactive sort of consumer alert like (Jeff) has suggested. We can look into that. We'd be happy to look into that. And so I think the proposal to have further discussion with compliance or further information from compliance is feasible.

One word of caution is the matters that are brought to our attention, to compliance's attention probably would be kind of a drop in the ocean. How many people really know the existence of ICANN or then actually for that matter of attention would be to me quite as proportionate? The matters are actually brought to our attention and those who are victims of those fake renewal notices.

So I'm not saying even if we can give you what compliance we have in the past for a certain period of time it may not still give you the true picture or the picture won't be representative of what's the scale or nature of the problem.

Stephane Van Gelder: Thanks Pam. Does that sound feasible to you for example to work just picking up on (Jeff)'s idea to work on something like blacklist or a list of I mean that would fall on compliance's shoulders I suppose to try and dress up a list of the actors that have come to your attention that are doing this kind of thing. But I'm wondering if you're budgeted or equipped to do something like that.

Pam Little: That certainly is a challenge. I think we would welcome the opportunity to discuss suggestions that the community might have or GNSO council members might have.

The problem is some of these laws would be subject to local jurisdiction and local laws. It might be unlawful to send a particular type of email, a particular type of language in one country, it may not be in another country. Right? So the idea of a blacklist you know, we can explore. But I'm saying there are certain legal complexities and issues we need to take into account.

And as the report said, the RAA report said, most of what they said in those fake renewal notices is actually true. It's not like it's totally untrue that they should trick people who read the emails to believe that they should pay this amount so they can renew them and then ended up in a registrar they didn't desire in the first place.

Stephane Van Gelder: So it is abuse but it may not be abuse that you can...

Pam Little: Exactly. It may be abuse but not unlawful or maybe not a violation of the RAA.

Stephane Van Gelder: Okay. Thank you. Hang on. I did have a list. I have Marika next. Did you want to say something and then Michele, (Jonathan) and Zahid.

Marika Konings: Yes. This is Marika. We're having some issues with Adobe Connect and there is an upgrade and that's why people are being kicked out and it's really nothing you can do.

Because I actually wanted to read a comment that was made in the Adobe Connect by Berry Cobb with a member of the working group and I have to paraphrase. I think what he said was basically like it looks like we need data on this issue and what other way is there to get data if not a PDP to really scope the issue?

Stephane Van Gelder: Scope the issue first and then a PDP perhaps. So Michele, sorry.

Michele Neylon: Thanks Stephane. Michele here. Just a couple of things, as a registrar the false renewal notice, fake renewal notice - whatever you want to call them, are a huge issue.

I mean I get a lot of complaints from our clients about this and I would be very, very concerned if the GNSO didn't take some kind of action even if it were just a case of suggesting that ICANN have issued an advisory notice or something. Inaction in this area from my perspective would actually scare me. Going to I think I'm not sure about this gentleman's name, is it Zahid? Sorry. You made a couple of comments there which confused me a little bit.

You're talking about new RAAs for new TLDs. I don't actually know what you're talking about.

Zahid Jamil: Can I respond to that? Thank you. When the new GTLD comes about when there are going to be registry agreements would amendments to the RAA assist with this?

For instance one I think that Pam Little in her letters wrote was that the advice you sent was that since this was a third party issue resellers who are contracted with registrars if so let me read this out to you in a second. It is worth noting that ICANN cannot take enforcement action directly against a registrar's resellers or any third party if a fake renewal notice is sent by resellers or the third party.

So with regard to third parties, that's fine but what if there is a reseller of a registrar? Is there an agreement between the registrar and the reseller? And if there is, could we through the RAA enforce the registrars to have contractual obligation between their resellers and if this issue comes up and you find that this reseller belongs to a particular registrar then you could take action, instruct action to the registrar to take action against the reseller.

And if he doesn't then you can have an action against the registrar - something like that. That happens in sort of data protection issues, the third parties are basically controlled through these mechanisms.

Michele Neylon: You're asking under the current RAA can we do it?

Zahid Jamil: I know that we cannot because that's the advice that Pam has given. But if we were to go for an RAA amendment and especially looking at new GTLDs coming up, this would be an issue that would have to be dealt with. So I just wanted to see if Pam would think that that would help. Anyway, I hope that responds.

Pam Little: Even under the current RAA, which is the 2009 version I'm talking to, we can enforce it (next gen) step of conduct for resale through the accredited registrar, right?

But there are only certain mandatory provisions that a registrar needs to flow down to their resellers at the moment. And I don't believe this is one of those things that is expressly covered, right? But maybe we could - I thought there's a proposal that only ICANN accredited bodies can be the resellers. I don't think that would be feasible.

We would have to change thousands of resellers to deal with. So maybe there will be some more conduct by resellers that we can consider including in the newer version or next version of the RAA, right, that specifically covers this type of behavior.

Stephane Van Gelder: Thanks. Hang on Zahid, I'll put you back in the queue if you want to. (Jeff) wants to speak up on this because (Christina) was first. I just proposed that we go over time slightly on this. It's good discussion and I don't want to interrupt it so we'll probably go over time slightly on this topic. I have (Christina) next.

(Christina): I agree with Berry that I think we need some more data here. But the idea of initiating a PDP for the purpose of doing that frankly gives me a big headache. And I guess what I would like to get a sense from is what other data collection options are there.

I mean for example Michele, are you - do you have a way or would it be possible for when you get complaints or concerns from your customers to collate those and send those on to compliance so that they have whether it's a copy of the notice or just basic information as to the company that it came from or the like?

And would that be something that for example the registrar stakeholder group might be in a position to kind of oversee or encourage its members to really collect that information and forward it on to compliance? Because I would imagine that candidly of the various stakeholder groups it would probably be of greatest concern and of interest to you all.

And you're in the best position I would think to have access to that information. There may be other ways to do it. But I would like us to talk about is to see if there is a way to get that information in a way that would allow us to make some more informed decisions without having to first start a PDP.

Stephane Van Gelder: Actually I'd rather not put you on the spot and get an answer from - yes. Let's - I'd rather I mean there are registrar reps on the council that maybe want to - Adrian?

Adrian Kinderis: In principle I don't see too much of an issue with that. I'm not sure where Michele is going. I think registrars certainly are incentivized as they have an interest here.

So we could certainly go on and have a chat about that and bring that up amongst our group but I don't on the surface, Michele looking at me funny or is that just a standard look?

Michele Neylon: Everybody has to look at you funny, otherwise it just wouldn't work.

Adrian Kinderis: Okay. Normally there's a clown suit involved. But so yes, we'll take that away and see what we can get but at the end of the day I think the toughest part is about the what next?

The (dotter) is helpful but it's the what sort of stick - how you wield the stick afterwards, which is going to be the tricky part. But if we can get the (dotter) and help out then let's do that.

(Christina):	Great. And to the extent that it's possible to do that type of information collection and one component of information that could be collected would be is the company from which or the entity from which the notice originates, is it a reseller?

Is it a party that as far as anyone knows has no connection either directly to ICANN or with an accredited registrar? I mean I think that's a really helpful piece of information for figuring out which way do we go on this.

Adrian Kinderis:	Yes. I think the only stumbling block could be clearly this is registrars doing it to other registrars. Then when we go back to our group there may be some concern about well, you're only (dotting) all of us in and it could well be folks doing that sort of behavior from within our stakeholder group. So that may be a little bit tricky for us to sort of navigate. But I don't see any harm in trying.

Stephane Van Gelder:	Good discussion thanks. Michele, I'll get back to you if you want to say something to this. I have (Jeff) next. Michele if you want to be in the queue afterwards, (Jonathan) and Zahid.

(Jeff):	So Pam, just a quick question just to make sure - a question and a comment after to make sure I heard you correctly. Under the existing RAA if a reseller engages in activity that a registrar would not be able to engage in, you do have the authority or do you have the authority to go after the registrar?

Pamela Little:	We would seek the registrar to intervene because we can't enforce against the reseller right? But we would obviously reach out to the registrar and say hey, one of your resellers is doing this and that. You should look into it and deal with it.

(Jeff):	And if the registrar didn't do anything what would you do?

Pam Little:	Sorry?

(Jeff):   And if the registrar said no, I don't want to deal with it?

Pam Little: I think it's a bit difficult to answer that question in a general fashion depending on what the circumstances and what the facts are.

(Jeff):   I don't understand why that's difficult. In other words if a reseller engages in activity that a registrar would not be able to engage in would it violate the RAA?

                  It should be a pretty easy answer that there is a breach of the agreement. So what I'm hearing and what I didn't like in the tone of the letter and what I'm hearing too is that ultimately a renewal comes through a registrar. Yes it may start with a reseller but ultimately the name and the registry records is of the registrar.

                  Therefore if a reseller is doing anything that a registrar would not otherwise be allowed to do then you have the authority to go after the registrar if it fails to take action against its own reseller. And if you don't then that's a huge problem in the industry for all of us.

Stephane Van Gelder: I think we might have to push this even more and probably run over and take over the next session. But Michele, you were next.

Michele Neylon: Thanks. Yes. One thing that does concern me a little bit is I'm hearing people talking about making changes to the RAA in order to deal with this and other issues whereas the RAA that is there at the moment already has a very, very clear set of conditions related to the actions of resellers, etcetera, just as (Jeff) said.

                  The issue as I understand it is that there is nothing in the RAA that prevents false advertising, which is basically the issue at stake here when it comes to the false renewal notices. So unless there is some way of putting an advisory

from ICANN about these things might be helpful in my personal opinion. But I'm really very, very concerned about these suggestions about making changes to the RAA to introduce things related to resellers, which actually won't make any difference because there is nothing in the RAA about those anyway.

Stephane Van Gelder: (Jonathan).

(Jonathan):   Thanks Stephane. I suppose for me there are two points. One is one of principle and that's this issue of if it's within the RAA then in some way what I thought I heard from Pam was that there was only a way in which it could be - it was somehow ring fenced by the RAA.

However, the issue - just because it isn't a compliance issue strictly for behavior within the RAA doesn't mean it should be something that ICANN takes a step away from. So the understanding I got was that you would enforce something if it were strictly within the bounds of the RAA but you would leave it well alone if it wasn't.

And for me that was a cause of concern if it was flagrant (lawless) for example. So that's the one thing that was the point that just because it wasn't a compliance issue per se within the RAA shouldn't mean it should be left alone. And I just wondered if you had a comment on that and I had a second question.

Pam Little: Yes. I think that I also will respond to your comment and (Jeff)'s comment and question. Basically when I said what I did is because depending on who is sending it and where he's sending from, right?

Let's say it's a reseller in I don't know, a jurisdiction where the sending of that type of email is legitimate. It may be misleading or deceptive to the readers but it's legitimate. So what do you do in those circumstances, right? So that's why I say it's not easy just to say yes, is it a violation of the RAA or not.

(Jeff): So I think the simple answer is I'm not talking about law as far as about what the law of the jurisdiction is. If a reseller is doing something that if the registrar were doing would breach the agreement then it doesn't matter what the law or the jurisdiction is. It matters that that is a violation of the agreement. In other words, you cannot subcontract to an entity to do something that you otherwise wouldn't be entitled to do. So forget the law about it and forget about what the law of the jurisdiction is. It's the contract.

Pam Little: Sure. So (Jeff), from some of the sample notices I've read, I think it's not clear whether it is actually something that is prohibited under the RAA. That's what I'm saying, right? And as I said, reports that most of the content is actually correct. It's just people get tricked to transfer their names out to the gaining registrar.

(Jeff): So that's something we may want to address as a group.

Michele Neylon: Can I?

Stephane Van Gelder: Yes. (Jonathan), you had a second point? And I might just want to push it over to (James) who was on the working group, is a registrar and so may be able to enlighten this discussion further.

(Jonathan): Okay. So my comment here Stephane is specifically to the point that Pam has made about being tricked to renew or not. For me these renewal notices, these so called fake renewal notices might be driven towards one of two motivations.

One is securing the renewal of the domain name to another registrar and the other is simply phishing for credit card details. Now it's clear that if it were simply phishing for credit card details that's outside of the remits of the RAA per se. But my point one is that I think that ICANN still can't afford to ignore that simply because it's outside of a compliant issue with the RAA.

However, the minute that there is a renewal involved it must by definition involve some form of entity within the contracted party chain and it is a compliance issue. So it's either driving towards a renewal in which case it's very firmly within the compliance area or it's not driving towards a renewal in which case it's still an area of concern for ICANN even if it's not strictly a compliance issue per se.

Stephane Van Gelder: Thanks (Jonathan). (James), do you want to just say a few words from the working group and then I'll get back in the queue? Thanks.

(James): Sure. Thanks Stephane. And hopefully we can put some clarity on this though it'll probably just irreparably make it even more confusing but we struggled with this issue quite extensively on the working group as you might imagine.

This is not a simple issue as it might appear initially on the surface. I think that going back to (Christina)'s original point, we need some data. We need some definitions. We need some help with this issue that this would have to come in front of any work with compliance or any work on drafting new policies or initiating PDPs.

I think that's getting carts way in front of horses. I think that the registrar stakeholder group can help with this in terms of drafting maybe some definitions about what they're seeing because it impacts their customers. I think that the key element of this that we came upon was deception. These folks sending out these messages are not dumb.

They are putting all of their full disclosures in there in tiny one-point fonts on the backside of the documents. So these are very deceptive but yet still technically legitimate messages that are going out there. So I think perhaps going back to I think Stephane it was one of your earlier statements about let's maybe put this on the plate of the registrar stakeholder group and get

their ideas and thoughts about how we can put some boundaries around this and go forward.

Stephane Van Gelder: Thanks very much (James), that is helpful. So in the queue then I have Zahid, Adrian, Michele again I think and (Jamie). So Zahid.

Zahid Jamil: Thank you. Well, I guess at least we can all agree that there are issues that are coming out of this and there seems to be a level of some agreement, some disagreement, definitely merits some work to be done in this area.

What's interesting is that we're now discussing what is fake and what is legal and what is not legal. And I think I agree with Pam looking at some of the research myself, it depends on the jurisdiction. It depends on whether in a particular jurisdiction this is consumer protection law violation. And is it criminalized? Is it not? Is it just misrepresentation?

So those aspects need to be sort of fleshed out in some sort of a report. I do agree with her studying the RAA that yes, this is a problem. The third party (properly contract) issue is a (lacuna) or is arguably (lacuna) within the RAA. And so that may be again an issue that could be discussed in an issues report if we were to do this or data collection sort of effort that was to be gone into.

The other aspect was IP. So I still would like to see what compliance would like to say well, have you taken any actions with regard to IP violations against third parties? Because that definitely is a right that ICANN has. And if it hasn't, could that be made part of some sort of an issues report to see what actions can be taken and what is the measure of action that can be taken for an IP violation for ICANN's trademark for instance?

I like the idea about advisory and I guess we should all discuss what the registrars should do sending out advisories to their customers. And at the very least if we do go to an issues report it'll have both - it'll cover collection of

data but it will also address the issue of the legal analysis with regard to resellers, the RAA, whether we have or can reach out to third parties.

And what is the consumer protection law, sort of unfair, deceptive trade practices issues? So I don't see a problem with going into an issues report. It seems like everybody has agreed that there are issues that need to be discussed, data needs to be collected. It looks like in my opinion at least we're moving towards that.

Stephane Van Gelder: Thanks. Adrian.

Adrian Kinderis: Yes. I had a question for (James) just with respect to the working group. Did you consider what other CCTLDs have done to combat this issue and what resolutions they came to to stamping this out?

(James): Am I clear to respond?

Stephane Van Gelder: Yes.

(James): Okay. We did look at some of them Adrian. There wasn't a lot of meat there. However, since this working group has concluded there was something going on I believe with (Nominat) and DotUK that probably warrants some further study.

Adrian Kinderis: The reason I ask is because I know and Donald you had this significantly. I'm just thinking that maybe we should also reach out to the CCNSO in some way and talk to them to see what their experiences are because I know Donald, we stamped it out fairly easily.

And actually the way we did it was to remove expiry dates in WhoIs because then no one knew when to send out the notices, right because normally people send them out just before the name comes up for renewal. So it's just

one way. I'm not saying that's necessarily a solution here. But there are other ways to go about this.

And maybe you can get some of that good data from the CCs that are dealing with this issue also.

Stephane Van Gelder: Thank you. Michele.

Michele Neylon: Just wrapping up, I'm not going to say anything awfully exciting. The thing with the fake renewals is that they tend to target the tech innocent. So putting up or having blacklists on ICANN Web sites is pretty much pointless.

They're not going to know who ICANN are. They're not going to Google for the names of these companies. The ones that have had that we get a lot of and our clients get a lot of all come from the same company. As (James) said, they do include all the information except you'd need to have very, very good eyesight to read all of it because it's going to be in a tiny font down at the bottom.

And they have already been called out by the advertising standards authority in the UK. I have asked our clients to report them to the advertising standards authority in Ireland. The thing is that if the only people who don't get these renewal notices are people who are using privacy and proxy services. As a registrar we don't offer that to our clients.

So they get thousands of them and it ends up where I lose business because of it which does concern me.

Stephane Van Gelder: Thank you. (Jaime).

(Jaime):   I'm a little bit confused here and I don't mind admitting my difficulty both with English and with some technicalities or subtleties of this issue. But I have two questions, one is for Michele and the other is for Pam.

Michele said that there is no need to modify the RAA but at the same time he said that there is nothing there about false information or false propaganda. That's where ICANN could act on the registrar if the reseller has sent the fake renewal notices. And the question for Pam is how is something that is fake can be legitimate? I don't understand that.

Stephane Van Gelder: Pam, do you want to?

Pam Little: Yes. I'm sorry. The fake renewal notices is a term everyone used in the report. That's why we just continue to use that terminology and I think a number of us here have already acknowledged that no clear definition and what (James) actually alluded to, that we need definition.

These are really misleading and deceptive messages, email. So we just view the renewal notice as a kind of common (latitude) to call this problem.

Stephane Van Gelder: Is that good (Jaime)? Does that answer your question? I have Zahid next and then (James).

Zahid Jamil: I'm just actually offering some of the experience and the sort of lessons learned at the registry level. We missed some of the accredited registrar - I mean actually sorry, let me put it this way.

We're witnessing a reseller which is also an IP or law firms based in China, they have engagement with multiple registrars. So when they're sending out fake renewal or new registration notices, they are actually trying to cut this on two sides, I mean either one hand with the clients and also on the other with multiple registrars.

So that's the reality and how this business gets done. And until the clients get this sort of fake or new registration notice before they are taking any action which means that before they are paying this reseller or this agency, nothing

is legal I mean to both parties because no action is being taken. So that's one. Then from time to time we receive IP law firms talk directly to the registry because in this days' registry they all have the sunrise process.

So the registry will have the connection directly with the IP law firms and sometimes they come to talk to us what happened and how this and what caused this sort of premium charges for this service. So we always sort of - I mean I shouldn't say always but from time to time we advise them go work with the accredited registrars I mean most of the time.

If you choose to work with a reseller then that reseller could be a trademark office or sort of an agency who is handling trademark registration or domain registration. It's their own choices but we can only at the registry level advise them to go through an ICANN accredited registrar just (to be sure).

Stephane Van Gelder: Thanks Zahid. That's very useful. What I propose to do here because we've still got a lot of discussion on this apparently and it is good discussion. I think we're all relieved and happy to be having this discussion.

I also think it's very helpful for the people on the working group are here. So I've had a chat with Marika who is going to present the next part of our agenda on the best practices. We may push that to Wednesday if that is convenient for everyone. Just let this discussion carry on. So if there is no problem with that, if there is a problem with that just let me know. And I had (James) next.

(James):   Except I just very quickly wanted to respond to ((Jaime))'s question of how could something be both a fake and be characterized as legitimate and I think Pam got that so you're fine there? Okay.

Because it is a legitimate transfer offer disguised as a renewal notice I think is probably the best way. And this is why we need some definition work.

(Jaime):   What I am missing is Michele's answer.

Stephane Van Gelder: He's ready, raring to go. But I have Zahid next so if he can just wait five more seconds, let's just get Zahid in there and then (McKailey).

Zahid Jamil: I think I'll just pick up on the (vast) point. That's what I wanted to say. I mean there's fraudulent and fake. There is deceptive and there's unfair treat or (deceptive) practices. And they're three different things all together.

So it's not, you know, it can't belong under one heading of fake renewal notices. And that's where she gets into a problem. How do I take action? They are three different types of things.

And you're lumping them into one packet. And that's, I think I'm going to take the point that was just made.

Man: (McKailey).

(McKailey):   Okay, well just to reply or try to reply to the thing about the RAA. First off, the, anything - the key thing is that anything that is binding to a registrar is equally binding to the resellers under the RAA.

There is no need to make changes. It's covered under the 2009 RAA. I think Jeff already mentioned that earlier. Is that clear? Okay.

Now I think under, for, under the 2001 RAA it wasn't clear, which is where a lot of this kind of legacy concern that people have. And I think some people still keep forgetting that most registrars are under the 2009 RAA.

The other thing I suppose is that if there's a change in consensus policy, then it would be binding to registrars. And personally I view that as being the place to make these changes rather than tinkering with the contract because the contract is something which is quite static.

You shouldn't mess around with it. I look at it in terms of like almost like a constitution, which at least in my country is not something that you change that often.

Other countries might be different. But at least in my own one, we wouldn't. I would say the consensus policy being the area. And as (Siheed) said, it is a bit messy because you've got misleading. You've got fake. You've got fraud, those different things.

I do take issue with people keep on talking about emails, releasing to all these bank renewal notices. Because the ones we see are not coming electronically. They're physical. They're hard copy. They look professional.

And they confuse the hell out of a lot of our clients simply because the kind of clients who get confused, they are small to medium size companies, possibly bigger.

They have somebody who is Web savvy who might have signed up for domains hosting and other services who knows how to, you know, use a computer, turn it on and pay online.

But then the accounts department are the ones who are dealing with everything in paper. They're getting these paper notices. And as (Jane) says, it's a valid transfer request because it's following the actual process and everything else.

And, you know, people get trapped who are, they're not stupid. You know, it's just, it's incredibly misleading. It's false advertising, sharp business practice.

There's a lot of things you can say. But the thing is it is an issue. It is something that causes a headache for me personally and for my clients. I can't speak for all registrars unfortunately.

Man: Thank you.

Man: You want to come back on this?

Man: Yes. But there is something missing either in consensus policy or in the RAA about false advertising or not.

(McKailey):   Possibly. I mean I don't know. Is it ICANN's role to decide what is considered false advertising? And if we were to define false advertising, are these companies just going to come up with new and interesting ways to get around that? Because at the moment the kind of renewal notices that they get clearly states that they are not renewal notices.

                        But they're clearly stated in tiny font down at the bottom. So they actually manage to circumvent, they actually put on there in black and white stating what they are and what they aren't. However, a normal person won't read the small print.

Man: It seems that we have an issue here where we cannot do what we are best. And that is doing nothing.

Man: I agree. Thank you.

Man: So I have Alan and (Siheed) next. And just to pick up, sorry, on your point Jaime. Marika's asked me, she's saying this is great discussion, very useful to the group. But she would like an action item at the end, a concrete action item.

Alan Greenberg: Just one small point. With regard to what (McKailey) was saying about the 2009 RAA, it's quite clear in law resellers have the obligations that are passing on to them by the registrar.

That is nothing disappears because it is sub-contracted. The difference in the 2009 RAA from the previous one is it makes some requirements explicit. I believe it makes requirements about notices and something else explicit.

One could read that. And I have been told that some people do read that. That the items that are not listed in this specific list, the laundry, the short laundry list in 2009 RAA are therefore excluded from their responsibilities.

So I would suggest, I - the things we're talking about here may well be covered or may not. I'm not sure. But there is an interpretation of the 2009 RAA that says by listing some of the items that are passed on, others are (implicitly) not. So one might want to take a look at that.

Man: Thank you, (Siheed).

(Siheed):   Thank you, you know, consumer protection standards, whether they be with respect to fake renewal, (unintelligible) or anything else are pretty much set. They're there in many countries can they can be used.

And it would be difficult to say that well, you know, we don't know what we're dealing with. And what do we really define it as?

I hear a division of views with respect to what the RAA agreement does in regards to third parties. And some people say that it's there in the agreement. And some people are saying it's not.

It may be useful for someone to point to a particular clause in the agreement. And say well this clause says you can go after the third parties. And if somebody can identify that I think would be helpful for the discussion.

In any case, even if that does continue to lead to an argument that well I can't use this clause. It's not sufficient. It doesn't deal with all these circumstances we have to come up with.

And I think we're really sort of left at the last action item, which Marika was asking for. I think we need to move to an issues report that deals with all these various issues, one, collection of data, identifying where the problem is and then looking at the legal issues and how to address them.

Man: Kristina.

Kristina Rosette: Okay, I really, really don't want us to do an issues report until we have data. So my suggestion would be not to volunteer my colleagues and registrar stakeholder group.

But my suggestion Marika for a follow-up might be for you to consult with them. Get a sense as to the extent that they think it's possible for them to collect some of this data when they think they might be in a position to have enough of it so that its worth analyzing.

And that maybe we just calendar this for, you know, three months from now.

Man: The feeling I'm getting is that there's a desire to do something. And to get some more data without going the full hog and starting the PDP process, which would be as we all know quite resource intensive.

So Marika is that a sufficient action item for you to go back to either the group or the registrar stakeholder group and see what data collection possibilities there are so that we can further enlighten this discussion?

Marika Konings: Yes. I'm happy to do so. And I can (arrange) with (James) and then (McKayla) on that. And I guess it might be helpful as well if, you know, they have any further input on like definitions or, you know, possible next steps.

Or what might be further needed maybe before launching into PDP. I guess that would be helpful as well for that follow-up discussion.

Man: Great okay. If there's no more discussion on those two reqs then we'll just follow through the document.

                So if you turn to the next page, this was the set of items that Marika mentioned earlier on as to not having had any work on them - done on them yet.

                And you have a column here indicating what this other group, the group's discussions, what they came back with in terms of consensus.

                So there again we have the question of what are the next steps that we'd like to see as a council on these? The possibility being once again if the group itself was unable to reach consensus is there con - is it likely that anyone else would?

                So on those items that no consensus was reached on, should we just drop them? Should we push them aside? Should we request more work to be done on them?

                So those items are on the Page 3 and Page 4 of Marika's document. Is there anything that you want to add Marika? Okay, any discussion on this or any suggestions onto next steps - as to next steps? Can you do it?

Marika Konings: Yes just maybe one quick look here. I think on some of them, you know, ways for what might be quite easy or, you know, might not require such a long discussion as on the previous one.

                I think the first one deals specifically with who has access. And actually, you know, ask the council to determine what additional research and process is maybe needed to ensure that who is data is accessible in an appropriate, reliable and (enforced line) consistent fashion.

And the council should consider how this might relate to other who is efforts. I think that a who is question. And, you know, looking at Liz, I don't know if she has any suggestions on how that might link or whether that's something maybe that, you know, need some further consideration to see how to might fold in some of the other who is activities that are going on.

Or whether this is an issue that maybe should wait until some of those studies are maybe completed that might feed into this. And I don't know, I'm looking as well at some of the (wrap) working group members, if they have any specific views on that one.

Do you just want me to go through it and then people can come back to the (designs)? So if take Renewal Notices 2, we already spoke about that. This is the request for an issue report.

Now the third issue is another issue on collection and dissemination of best practices where the working group recommends that the GNSO and the larger ICANN community in general create and support structured funded mechanisms for the collection and maintenance of best practices.

And this is actually an item that I think links together with the discussion we might now have on Wednesday on this discussion paper on best practices to address malicious abuse.

Where I think as part of that effort, I think the idea would be to create some kind of mechanism that would support best practices in that area. Which might be, you know, might be - serve as a model for any kind of follow-up effort, that we try to develop a model that could apply for other areas as well.

So there's an area where the council might choose to wait for that effort to complete to see if what comes out of that effort might be used in this context as a general model for dealing with best practices.

The next one is a cross TLD registration scam. And I think that rates to where you get as well notice to saying hey, you owned a .com domain name. But you should also register it in all these other TLDs because otherwise others might do it for you.

And, you know, the working group recommends that the GNSO monitor for cross TLD registration scam abuse in the GTLD space. And coordinate research with the community to determine the nature and extent of the problem.

The working group believes this issue warrants review. But notes there is not enough data at this time to warrant an issue report of PDP. It is an area where, you know, the council doesn't really have any existing mechanisms to monitor or review.

So that might warrant some discussion on how that might be done to Kristina.

Kristina Rosette: With regard to the cross TLD registration scam, this is a significant problem that, with a particular CCTLD that many trademark owners receive these.

It's my understanding that some of the association's (INTA) information have already done some data collection on this. So it might be worth reaching out, Claudio, to get a sense as to what information they already have.

I can tell you that it is restricted to one CC - almost exclusively to one CCTLD in particular. So, you know, that alone may make it far from representative.

But it's a fairly common, I probably get (some) emails a day from clients, is this a scam? Yes, you know, next email.

Man: Thanks (Jess).

(Jess): Yes, I agree with Kristina. It's a problem. I haven't found that it's not necessarily one CCTLD it's associated with, but usually three or four. In fact, I just got one on June 17 that was one of those scams.

I do think that this is not a GNSO issue alone. That any work we do on this has to be with the CCTLDs. It's not really subject - it's not really an issue for them under their formal PDPs.

But perhaps this is something that we can have a session with them or discuss with them at some point about what they do or if they have any ideas. But this is not a GNSO only issue.

Stephane Van Gelder: This session for this meeting and there's a full agenda there already, if we can fit that in then we will. It is a good item that - possibly to have as a discussion with them. Any further comments on this or do you want to finish the list, Marika?

Marika Konings: Yes, happy to continue the list. So the next issue, which was also labeled a matter issue, uniformity of reporting where the working group recommend for the GNSO and the larger ICANN community in general, create and support uniform reporting mechanisms, processes. I'm trying to remember as well. I'm looking (James) and Mikey who are talking and I think Mikey was someone who was spearheading this one. What were we talking about exactly? We were talking about uniform reporting processes?

Mikey O'Connor: You know, I was one of those - this is Mikey, I was one of those kids in school who never listened during class. Could you repeat the question please?

Marika Konings: It's the second matter issue that the (WRAP) working group recommended on creating and supporting uniform reporting processes, trying to remember as well exactly what we meant with that one?

Stephane Van Gelder: Just skip over that one for now.

Marika Konings: Okay, I can look back - I mean I think there was, you know, a way indeed that would be more uniformity in the way reporting would be done but I'll check back on that one.

Then there was another one, rough consensus recommendation and (unintelligible) domain (skyping) and pasting. It's unclear to what extent the main (skyping) happens and the (WRAP) working group doesn't recommend policy development at this time. Again, here, they recommend that the Council monitor the issue and consider next steps if conditions warrant.

So the two recommendations here that basically ask the Council to monitor and review and I think we might have some discussion at some point how for those kind of recommendations, what kind of mechanism the Council has or should have to follow up or say, well, you know, we don't think that's part of what we're supposed to here for an issue. You know, communities should come and raise it with us.

And then on the next page, those are all the recommendations where there was, you know, strong support or significant opposition or basically just two complete opposite view. The first one relates to uniformity of contracts where one view supported the creation of an issue report to evaluate whether a minimum baseline of registration abuse provision should be created for all in scope ICANN agreements and if created how such language would be structured. And the opposite view was that wasn't required and there shouldn't be an issue report on that.

The other recommendation here relates to a gripes side deceptive and our offensive domain names where there was one recommendation where registries would be encouraged to develop internal best practices that would restrict the registration of offensive strings in order to mitigate the potential harm to consumers and children. And the other view was that that

recommendation should be turned down and registries shouldn't be requested to develop such internal best practices.

And then the last recommendation, which was where there was divided support, it was relating as well to cyber squatting where there was one view that support initiation of a policy development process where question and issue report to investigate the appropriateness and effectiveness of how any rights protection mechanisms that are developed elsewhere in a community, such as the new (unintelligible) program can be applied to the problem of cyber squatting and in the current gTLD space and (unintelligible) basically saying, well, this is premature and should first wait to see how those new mechanisms are working in practice before any PDP is an issue on that issue.

Stephane Van Gelder: Thanks very much, what, you know - bring to the Council's attention, the fact that several of these are recommendations to initiate at least an issues report, which may lead to PDP process. So we, you know, this is something that we should look at carefully.

There are a number of potential PDPs that we could be embarking upon and one of the things that we might want to do at the wrap-up on Thursday is try and list those areas where PDP - where we might be starting a PDP just a bit more clarity on those. But so either we can add discussion now on those various items or we can go away, think about it, ask Marika to do the - just a short point of view on the best practices now because that is coming out - this as well. So it leads into it pretty well. So it's up to you.

Let's just see if there's discussion on those and if there's not we'll take it away, think about it for a while and ask you to do the best practices. So I don't see any hands up so I think - if you can just give us a brief - no, no. We'll just keep this session as one. And there were two other - there was - no, we've done all the rest so, yes, if can just give Marika five seconds to load that presentation.

So this was one of - I think it was the third one on Page 3.

Man: Yes, that's it.

Stephane Van Gelder: I'm just referring to the list and saying that the best practices was the third item on Page 3.

Marika Konings: No, it's not. That is actually one that might be linked to this effort but the recommendation's on the first page, the one that...

Stephane Van Gelder: Okay, thank you.

Marika Konings: It's the malicious (unintelligible) title or...

Man: Well, we already approved going forward.

Marika Konings: Yes, yes. This is the malicious use of the domain names, Recommendation 1, it's on the first page. What I was referring to is that there's another recommendation related to best practices overall that might benefit from waiting for this effort to complete for, you know - might have already a model that next effort could benefit from.

So just jumping into this one. So yes, I think the background, we don't need to discuss anymore. Comes from the Registration Views Policy Working Group. This is actually on the meeting in February that the Council agreed to request items that - for a discussion paper on this topic. This is basically what comes straight from that resolution and was also in the Registration of Views Policy Working Group report, what such an (unintelligible) should include but not limited to. I'm not going through each of these, just give a few seconds to read through those.

So, you know, just to recap before going actually into the outline, initially our intent was to release the paper before the Singapore meeting but due to workload, you know, we weren't able to finalize it.

But instead of waiting and not doing anything with it we thought it might be a good idea to actually bring to you our, you know, initial thinking or broad outline of the issues that we are considering as part of this discussion paper to really get your input on, you know, are we thinking along the right lines, are there any issues where we're forgetting that should be included, and get that feedback so we can actually finalize the report and get it back to you hopefully sooner rather than later.

So on a general notice, I think the recommendation itself said that, you know, we should look at the creation of best practices. So the first question we're actually asking ourselves, like, do we really need to create best practices? Shouldn't we first have a look and see what is actually out there?

So what are the existing initial best practices and, you know, how would they fit with this effort and we'll come back to it later. I don't know if Steve Sheng is actually here because he's helped me on that effort and he can provide more details on that if you like.

And then along that, considering the scope and applicability of those industry best practices, you know, should any kind of (unintelligible) in this regard, should it - you know, make divisions between, you know, kind of registries or registrars that might be helped by these best practices. Would you for example have a set of best practices that would be applicable to big registries or small registrars or new gTLD registries. Is there any kind of that foresee or would that be helpful in any kind of context? Or would we just look at developing, you know, these are best practices for everyone?

We're talking about non-binding best practices but again there's no real definition in the Registration Abuse Working Group report or the resolution of

what this non-binding nature means. You could look at different kind of non-binding best practices for example, just the kind of where you just put them out and say, here, you know, do whatever with it, whatever you want.

You could, for example, look at it as seals of approval kind of best practices, you know, those registrars that adopt the best practices get a specific seal that shows that they have adopted those best practices.

You could look, for example, an inclusion of the code of conduct for registrars and registries were you say, well, you know, we think as part of a code of conduct these should be part of, you know, how registries and registrars operate. You could look at a model as well where they are non-binding but once adopted and you do enforce them and, you know, audit them and make sure that they are followed.

And so there are different ways you could look at the non-binding nature and I guess that's, again, you know, a discussion item and more further input, you know, is welcomed and needed. As well, what could be the role of ICANN in this context? I mean I think now we're in the process of facilitating the discussion on this, you know, writing the discussion paper but there are other things that ICANN could do in this context.

You know, maintaining best practices, you know, looking at ways of endorsing, providing incentives, publishing these, keeping them up to date, you know, revising, providing training, and for example, enforcing. If you would go to a model where, you know, people that adopt them, they are enforceable at that stage, we need as well the mechanism to actually enforce those. So there are different, you know, options there that would need to be considered.

So then as well the resolution itself talks about, you know, how such an initiative should be undertaken. So they're looking at ICANN resources, you know, beyond the normal policy, staff support for such an initiative. What

other kind of resources are required? You know, do you need - would experts be needed? Should ICANN set up specific mechanisms to, you know, maintain best practices from them?

The resolution also talks about the community process but, again, no real details are provided there so I mean next steps would consider as well how would such a community process look? Would you go for the standard working group that looks at these issues and works them through?

You might consider as well looking more at, you know, advisory kind of group where you really invite experts, for example, members from (ASAC) or those that have been involved in developing best practices and other environments to, you know, provide advice to the Council on how such, you know, best practices model could look and how you make it work. So again, that's an issue that needs further consideration.

Security and trust, something that the (WRAP) working group talks about as well. You know, you might need specific mechanisms to exchange information or experiences but something that needs to be taken to (unintelligible) as well and any further discussions in this area.

The scope of the best practices effort, I mean as you saw on the previous slide, there were a number of subjects that were identified by the (WRAP) working group that should be considered. There might be other areas - if you, you know, you'll see on the next page as we've identified already a number of best practices from the - that are derived from different papers and initiatives from - you know, within ICANN such as (ASAC) or other groups like APWG that might be applicable. And on the base of that, we find as well as some other areas that might be suitable for inclusion.

And I'm looking as well at resellers, you know. We spoke already about the forming of principle, of course, the scope of such an initiative is limited to ICANN accredited registrars and registries but, you know, this initiative might

also want to consider how the adoption of best practices can be promoted visa vie resellers as they're often involved in those processes as well, that's another question that we're - we want to raise.

Then there's some other issues that weren't specifically called out in the resolution or in the (WRAP) working group report but that, you know, through our internal discussions and thinking about this issue, you know, we want to include and brace for further consideration. Such for example, there are many industries that have best practices that have systems in place for developing them, for promoting them, for enforcing them. So we might want to look at those industry best practices and see whether those are applicable or could be, you know, adapted in a way that would suit the domain name industry.

We would need to look at well, the level of granularity that would be provided. How much in detail do you want to go in these best practices? How broad do you want to keep them? How do you want to manage the updating and ongoing improvement?

As we're looking at, you know, malicious abuse the scenario where things change very rapidly, how can you make sure that, you know, best practices that you've put a lot of effort in developing and creating that they're not, you know, immediately outdated and no longer of use?

And as well, sensitivity that organizations might have in disclosing practices that they're using, either, you know, for competitive reasons or for reasons that - you know, if you put out how you're addressing abuse, you know, the abuser of course has a path as well how they can maybe avoid those. While at the same time, I think there are many researchers that are sharing a lot of information because many assume as well that, you know, the bad guys already know how things can be addressed and what ways are around it so no use of hiding that.

I think very important as well, like, once, you know, we come to agreement on what those best - how those best practices should look - you know, what can be done to promote those best practices and disseminate them among interested parties, I think very important as well to, you know, measure effectiveness. As well, any specific incentives that can be provided to promote the adoption.

I think we should look as well at, you know, how can we get other ICANN bodies and as well working groups easy access to those best practices and how can best practices be added, for example, come out of certain working groups because we've seen several working groups that are actually, you know, (unintelligible) consensus policy recommendations also provide best practices recommendations but the current model we don't really have a home for them apart from saying, we think this is great, you know, do something with it.

And I think very important as well, any effort in this regard would need to look at, you know, measuring the adoption grade and actual effectiveness of those best practices. It's very nice to have best practices out there but if no one adopts them or if at the end of the day they turn out to be non-effective for addressing the abuse they were intended to address, you know, changes need to be made.

And then there were some other questions that were raised in the context like, you know, you need to look at well a means to identify and verify trusted abuse reporters. How can you make sure that someone's reporting abuse is saying who they are? And then it links, as well, to the question of liability.

If, you know, someone actually to take down websites, how can you make sure that, you know, the person is trusted abuse reporters and how can you deal with situations where you might, you know, take down the wrong site? And I think there are some efforts in other environments going on that might feed into these kind of discussion points.

So I don't know if these here - although I'll just quickly cover this. I said, Steve Sheng has helped on this specific part of the discussion paper that we're working on. So basically looking at the preliminary inventory of best practices. So these are the sources of, you know, the different documents that he has looked at that might provide a staring point for such an initiative of looking at best practices and categorizing those.

So there's several (ASAC) reports, the APWG has put out an anti-fishing best practices report. He's looked as well at various policies that are - currently exist at different registries and registrars. There's some methods that came out of the (Configa) Working Group and MAWG Working Group also provided some anti-fishing best practices for ISPs and mailbox providers.

So on the basis of that review he actually distilled a number of best practices and, again, you know, we're not saying that these should be the best practices that need to be adopted or implemented or enforced. We're just saying based on what is already out there, these are some of the best practices that, you know, don't need to be developed on a separate basis.

This is work that has already been done by other bodies, you know, either within ICANN or, I think, as well with ICANN participants and some of the other groups that any such initiative might benefit from without having to reinvent the wheel.

This is I think my last slide so just as a next steps, you know, the idea of this presentation to get your views and input. And I know it's a lot to digest so, you know, I don't expect all of you now to share your views and give points but please, if you have any items you think we should consider or any specific views on the times we've presented here, you know, feel free to send that to me in an email or, you know, talk to me during the week.

We'll also have a workshop on Thursday from 11:00 to 12:30 where a couple of you will, you know, present your view from your perspective so we have, I think, from the different parts of the community, you know, we have contracted parties, non-contracted parties, people that have been involved in developed of best practices and other environments participate in that session to give, you know, their perspective on this issue.

So based on those discussions we hope to, you know, take all that input, you know, update the reports as well as propose some concrete stats for the GNSO Council to consider as next steps, you know, going forward on this initiative and submit the paper.

Stephane Van Gelder: Thank you very much for that Marika, very useful. So I see some hands going up. So we'll have a quick discussion on this. And just a reminder that the next session that we're going to have is also one where I expect there will be good discussion. It's a format that we're trying here which is kind of an open discussion session where we plan to discussion our motions and possibly other things so - and that's due to start in nine minutes. We'll have a short break in between but - and then we'll have our working lunch.

So can I take a few - I had Christina first and then (Wolf) and (Jamie). Christina?

Christina Rodriguez: Marika, can you go back to the slide that had the table of the best practices that have - okay, yes, this one. In its current form, does the discussion paper go through each of these and identify or measure or report on the acceptance and application of these best practices by the intended group? And if not why not?

Marika Konings: I don't think it does because we don't have that information. I think for some - I don't know - again, we need to defer to Steve but what I recall it basically explains, you know, what the best practices about or who was developed but I don't think we have access to that information by whom it was adopted or...

Christina Rodriguez: Because from my perspective I think it would be very helpful to have a sense as to the extent that there already are best practices out there that have been developed by other organizations for members of the community before we start our own effort.

Let's find out to what extent what's already out there being adopted because I guess at a certain level my initial reaction is I'm not sure I see the utility of spending more time on this if there's already this whole laundry list out there that hasn't been adopted. And again that's, you know, maybe that gets into the question of the enforcement point that you raised, which I'm still not clear on but we can talk about.

Marika Konings: Right, I think these come all from documents that have been developed in different context. So what the - I think what we've done so far is basically try to distill from those different documents what might be best practices that could be considered in this context. And agree, I think if, you know, we feel that these are the right ones there's no need to rewrite them but you still need to look at a mechanism of so how do you promote these, how do you indeed measure how these are adopted and by whom, and, you know, are they affective, are they achieving the goal that you set yourself out to do.

Christina Rodriguez: Right, and I didn't meant to suggest that we should use these instead of - or say, you know, we love this APWG best practice, the top one, we're going to apply that here. I'm not saying that at all. What I'm saying is let's find out to what extent it's actually being implemented as a best practice by the intended audience because if it's not then let's find out why not before we start going down the road of making our own recommendations for best practices.

Stephane Van Gelder: Yes, (Jeff)?

(Jeff):   Yes, I think there's a misunderstanding here. These are categories of practices. These are not - they have not - ICANN staff has not said these are

best practices. Nobody has made an evaluation as whether these are best practices or not. These here are categories. In other words, if you look at the third from the bottom, PIR Affiliates Newstar and GoDaddy have anti-abuse policies.

Whether they are "best practices" or not is not something that's ever been evaluated. I'd like to think that Newstar's implementing something that's best practice. So I think there's a little bit - this list is not - this is what ICANN staff has determined to be best practices. This list is a list of categories of the types of practices that a group can look into to see whether they would recommend that others implement those if that makes...

Christina Rodriguez: That's fine, that's fine.

(Jeff): So there's not enforced initiatives that - yes, so I...

Christina Rodriguez: That clarification is helpful but I still think, for example, if APWG has a recommendation, whether or not ICANN is saying it's a best practice, if APWG was saying, here is our recommended best practice for investigating domain registration's name service, blah, blah, blah, if that's what APWG has identified as its own best practice let's find out to what extent it's actually been adopted before we start thinking about whether or not it makes sense to have our own iteration of it.

(Jeff): Well, I think what - so what APWG has come out with on paper saying, we think registries should do A, B, C, and D. It's not best practices for what APWG does itself. AP - right, so we need to evaluate whether, A, we think APWG's recommendations are credible or not, I think they are but, you know, we need to go through that whole thing to see whether these indeed are - just because one group says they think this is best practices or not doesn't mean that others may agree or disagree.

Christina Rodriguez: But that's fine, let's know that I guess is my point before we start our own effort of trying to develop our own best practices if - you know, let's say for purposes of discussion here that the vast majority of members of the registrar stakeholder group have decided for whatever reason not to do this, I'd like to find out why before we start thinking about whether we want to recommend in this category of subject area our own best practice.

Because there's no point in reinventing the wheel if the wheel that we invent is not going to work just like the original one does.

Stephane Van Gelder: Okay, can I move down the queue. I have (Wolf), then (Jamie), then (Jeff) - you've just spoken, Margie, Wendy, and Michele. (Wolf)?

(Wolf):   No thank you, I was - that was my question.

Stephane Van Gelder: Okay, thank you. (Jamie)?

(Jaime):   I have a consideration and then a question that - and I would address not only to Marika but to all of us. I think when there's issue about best practices come around it involves us to ask that what is the technical aspect that I think is covered by those - by (unintelligible).

But the main issue here is the issue about efficacy or effectiveness and this is not technical, this is about enforcement. And I think the incentive is not enough, feel is not enough. Some kind of punishment, mild it can be as necessary. And I ask if ICANN could put on an ethics council or something like that that would operate in an effective, reactive mode since we are not proactive.

We can effectively reactive so responding to the community through a formal mechanism of - how can I say, the word is missing from me but somebody that could feel that some of this published best practices is not being followed by some of the registrars or registries or the contracted parties could ask

ICANN to - or this ethics council to take some action that could be a mild - some form of - in front of the ARAA or something like that. I - my question is, is this kind of thing possible or not? Am I just...

Stephane Van Gelder: I don't know who you're expecting an answer from. I can tell you that there's a few funny faces around the room hearing your suggestion but some of them probably enjoy it and others don't. But I think an ethics council, punishment for people that don't follow best practices is far out of the reach of this topic. But perhaps others want to speak to that. We'll see as we work down the queue. (Jeff), I had you next.

(Jeff):   Yes, (unintelligible), I just want to remind everyone what the resolution of the Council passed, which is a development of non-binding best practices. So the concept of punishment is not in there and that kind of goes against the whole nature of developing best practices. Right, so we - and I also want to caution that even though Marika used the term best practices in all this, no one's made a determination as to whether these are truly the best practices or not, that's something that we all need to kind of determine.

And I heard what you said Christina, if the APWG is recommending something, I think your comment was, well, we should find out who's implementing that or why. I think the issue is APWG - I would say that most registrars are probably not implementing the APWG recommendations, not because they don't want to, not because they don't - it's never been presented to them as something to follow.

Just because the APWG put something on it's website that's saying we think this is the best - or we think these are things that registries and registrars should do doesn't mean anyone's going to go, well, the APWG, we should now do it.

But, you know, right. So okay, it's a non-binding nature. I will say with respect to registries, at least with the APWG, some of their recommendations that

were developed, I think, were a little unrealistic. Again, Newstar's got a very effective anti-abuse policy. We don't implement the APWG because we don't think it's very realistic that they tried to put in a bunch of third parties in there and dispute resolutions and things that just weren't - I'll give you an example.

APWG recommended essentially that registries basically take in what APWG says is malware and then take down the site. And it recommended that registries did not necessarily have to perform independent verification of the APWG results. Newstar came out after that recommendation and said, no, we will not adhere to that because Newstar wants to independently verify any result before we take down any websites for malware, that's against the APWG recommendation but we found that it works quite effectively.

So you'll find lots of different things. So I understand what you're saying that we should look at the APWG recommendations but I don't think it's a matter of saying who's following it and why. I think it's just one input into many of a whole discussion process.

Stephane Van Gelder: Okay, I still have a number of people in the queue. We're over time. Can I ask you to be extremely brief and I'm cutting the queue off here. So I have Margie, Wendy, Michele, and Mikey).

Margie Milam: Okay, it's hard to be brief but we'll talk about it more in the workshop. I guess one of the questions we had as staff is really what is a best practice. And I agree with what (Jeff) was saying that a lot of the things that are on this list are practices, not necessarily best practices yet. And if you look at the definition of what a best practice is is something that's been generally accepted, proven over time, you know, accepted in an industry.

And so as we've tackled this issue of how do you develop best practices we actually took a look at other industries to see what - you know, what other industries, for example, the telecomm industry has done to develop best practices. And it's expensive. I mean - and some of you who work in other

industries know that it's not as simple as just putting a list together and saying, here it is, go follow it.

And even the (ASAC) recommendations, if you talk to (ASAC) members they may not necessarily say it's a best practice. They might say it is a practice and they'd like to see how it's implemented in the industry and what the adoption rate is and what the problems are but, you know, we have to be really careful with, you know, definitions and terminology because when we talk about something like best practices it's a very specific thing and we want to make sure we're all on the same page.

And so, you know, I'd like to probably address other issues like the non-binding but we can talk about that more in the workshop. It's just it's not a simple project. And what we're really trying to show with the slide deck is the complexity of the issues that we're really talking about here.

Stephane Van Gelder: Thanks, Wendy?

Wendy Seltzer: Thanks, I think there are a lot of different ways of conceiving this challenge and I would suggest that we think of ICANN as perhaps a convening spot for people to discuss good practices and to share experiences around those practices but not try for ICANN to enforce any set of practices as best practices.

Among the practices that I would like from a registrant's perspective to add to the list would be transparency around the response to complaints and transparency toward the registrant about under what terms might they lose the domain or lose access to a domain for the registrant's interest in stability and security of access to that domain name.

Stephane Van Gelder: Michele?

Michele Neylon: I just - speaking to Christina's comments there about best practices, I mean with all due respect Christina, as a registrar, it's impossible for us to know about every single possible recommendation that APWG may or may not have made over the last 15 years or whatever length of time. I mean the problem - from - as a registrar, I can keep track of certain things.

If ICANN put something up on their website, if (ASAC) puts something up on their section of the ICANN website I might not even see it but there's no way for me to track every single recommendation that's come out of APWG or otherwise. I mean we might be doing things that they might have suggested or might not for reasons that (Jeff) has outlined as well but there's no way for us to know because it's just - there's nothing that we...

Christina Rodriquez: And that's important to have, I mean if the answer is is that it's a communication issue, that people just don't know about it, but now that I know about it maybe I'll do it. I'm just trying to make sure that we don't go down a rabbit hole here. In other words, let's make sure that we're actually embarking on an effort that is going to add some real value and utility.

Stephane Van Gelder: Okay, this is not discussion. We are out of time. So Mikey, do you want to close us off and then we'll move on to the next session? Thank you.

Mikey O'Connor: Thanks Stephane, this is Mikey. I was on the working group along with (James) and what we were trying to do with this was start something new, start something safe, start something controllable where the organizations that meet at ICANN, registrars, registries, registrants, etc. could find some safe, neutral ground to start building something that's not in policy but that could dramatically improve the effectiveness of the organization as a whole.

So I think that this deck is a great example of showing why this is complicated but let's make sure that we don't get confused when those lists of best practices are up there. Those are examples of best practices. They are not a list of recommended best practices. What we're trying to create here is a

process whereby these organizations can meet and openly discuss things without the pressure of policy being created. So it's sort of creating another tier in the organization here, that's all.

Stephane Van Gelder: Thank you, thank you all for some very good discussion around this. Let's just have a five - very short, five-minute break and then we'll move into our general discussion session. So we'll end this session now operator and start again in five minutes. Thank you.

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