

Transcription ICANN Buenos Aires GDD Update Sunday 21 June 2015

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Volker Greimann: Again, good morning. My name is Volker Greimann. I'm the Vice Chair of the GNSO Council. I see that the recording has already started, thank you very much for that.

I would like to welcome everyone for this Sunday morning at this early hour to the GNSO weekend session. And I would like to welcome that GDD division, Akram, Cyrus, you know, everybody knows them.

Cyrus Namazi: There was a compliment in there, right?

Volker Greimann: Anyway I would like to start right away, we have a list of topics which I would hope we could bring up at the screen. These have been provided to Akram and Cyrus already so I think we should just get started and make this as the session as we can.

And of course I would be very remiss in not also welcoming Karen and Christine and Chris who are right next to Akram and Cyrus, welcome as well. Sorry.

So the list of topics that we have discussed and forwarded to you, three -- four main topics one of which is any other business which is of course the open floor with any questions and complaints that the counselors might raise to that GDD division staff.

So the first topic of the day is the status update on the GNSO implementation related projects, could you give us an update of where the current status of these is?

Cyrus Namazi: So good morning everyone. Cyrus Namazi with Global Domains Division of ICANN. And according to Volker everybody knows me. Just wanted to suggest may be a reshuffling of some of the items and perhaps suggest that we provide a status update on new gTLD program review and the implementation related projects, and the item Number 2 is a discussion then we can jump into that and follow that up with any other business.

Volker Greimann: That would be fine, sure, however you would like to structure it.

Cyrus Namazi: Thank you. So, Kaitlin, I think she's going to provide the implementation related updates.

Kaitlin Tubergen: This is Kaitlin Tubergen from GDD. There are some slides that accompany my update. Okay. The first item is UDRP locking. The updated the UDRP rules were announced in November 2014. Next slide. Thank you.

All ICANN accredited registrars and UDRP providers will be required to comply with the updated UDRP rules by July 31, 2015. Next is the additional Whois information policy which is IRTP-B Recommendation 8 and IRTP-C Recommendations 3. These recommendations have been incorporated into the additional Whois information policy which is binding on all registries and registrars starting on January 31, 2016. Although many registries and registrars appear to have voluntarily begun complying early.

Next slide please. IRTP-C Recommendations 1 and 2 which is the change of registrant policy and time limiting of FOAs. These recommendations were incorporated into the transfer policy which went out for public comment on March 30 of this year. Public comment closed May 16.

The implementation review team is currently discussing all comments received and we anticipate this process could be concluded a few weeks after the Buenos Aires ICANN meeting.

For thick Whois, for the first outcome of Recommendation 1, which is transition from thin to thick, the IRT will be meeting during ICANN 53 to discuss the findings of the legal review and start working out implementation details. That session will be held Wednesday, June 24 at 5:00 pm in Retiro B.

For the second outcome of Recommendation 1, which is the consistent labeling and display for all gTLD registries, ICANN staff will discuss implementation proposals and open issues with the IRT in connection with the work which has started on the rollout of RDAP and future replacement of the Whois protocol.

Update on Recommendation 3, which is the legal review. On June 8 ICANN staff delivered to the IRT a memorandum for consideration in relation to Recommendation 3 on a review of the law applicable to the transition of data from the thin to thick Whois model. For further details on this please attend the session on Wednesday.

Next slide please. For IGO INGO a call for IRT volunteers will be sent to the PDP mailing list and contracted parties stakeholder groups after the ICANN 53 meeting. Work with the IRT is expected to start within a few weeks of the call for volunteers.

Next is IRTP-D. A call for IRT volunteers was sent to the PDP mailing list a few weeks before the ICANN 53 meeting. Work with the IRT will commence a few weeks after this meeting.

And lastly, the privacy proxy services accreditation issues, GDD staff continues to monitor the efforts of the working group and have provided implementation notes to the policy team to share with the working group as it considers the other comments received on the initial report.

Volker Greimann: Thank you, Kaitlin for your presentation. We see that there is quite a lot of projects that we've kicked off that are moving ahead quite nicely. Are there any questions from the floor with regard to the current projects and their status that might have been left open? Seeing none I would like to yield to Cyrus for a comment.

Cyrus Namazi: Thank you, Volker. I just wanted to mention that we've actually posted a policy implementation calendar that has all of this information in it and we maintain it routinely with new information that comes in so you can have up to date info about the status of the different projects. Thank you.

Volker Greimann: Thank you, Cyrus. As we move the schedule around a little bit, I think next is the update on the new gTLD program activities. Who is going to make that? Karen? Okay, thank you very much.

Karen Lentz: Thank you. Thank you, Volker. Thank you Council. I am Karen Lentz from the Global Domains Division. And I was asked to speak about the - to give an update on the new gTLD program review activities. So I will focus on the highlights since we have met in Singapore. There is a session tomorrow which will go through the work that's been done in greater detail but I will try to hit on the highlights here.

So on this slide I think is most of you know, a lot of the review activities are focused around the tradition in the Affirmation of Commitments for a review of

the impact of the new gTLD program on competition, consumer trust and consumer choice which we will call CCT here.

The AOC provides that that review team will look at three things and the first being competition, consumer choice and consumer trust and that's the first bar that you see there. And with that there has been for some time and effort underway where the GNSO and ALAC recommended some metrics that could be collected and analyzed to help inform that review.

That led into an implementation advisory group which made some recommendations on specific metrics to help inform that including a consumer survey and an economic study which are both two-phase projects.

The next part in the AOC but that team is asked to look at is the effectiveness of the application evaluation process. So we're calling that the program implementation reviews and that is also underway where the staff is looking at various elements of the program and how they were operated in terms of efficiency, effectiveness, consistency and a number of things like that.

The third area and that the team is asked to look at is the safeguards that were put in place to mitigate some issues or sorry potential issues that could arise from the expansion of the name space. And so we also have a number of review activities around the rights protection mechanisms in particular.

You'll also see on the bottom in parallel we are kicking off a -- in the area of security and stability a study on the impact of the program on the root zone system which will look at the technical elements and impact of having a lot more TLDs within the root system.

Next slide. So here is kind of where we are on all of these items. Under the CCT metrics area we completed Phase 1 of the consumer survey that was published at the end of May and will go through that in greater detail

tomorrow. It asks questions about consumer perceptions, awareness of TLDs, their experiences with abuses such as malware, phishing, etcetera.

We also have kicked off the economic study in March and we've been in the phase of data collection and analysis. We've collected quite a bit of data from contracted parties as well as looking at a lot of data on pricing and other factors that's publicly available. So our target for that report is August that we will have an update in tomorrow's session on the findings to some of the findings to date.

Finally, on the rest of the metrics which cover things like, you know, number of IDN registrations, some analysis of UDRP decisions, geographic distribution of registrants, a number of those things that we have data collected for and those will be housed on a dashboard which is very close to being ready so we have that - expect to have that available in July.

Moving to the program implementation aspects, this is also in progress. Our expectation for that is that report will be able to be posted for public comment in September. That is a staff kind of self-assessment of the operational aspect of the program. It essentially goes through the phases in a similar way to the Applicant Guidebook and that it focuses on for example evaluation, objection processes and looks at each of those areas to determine what we can gain from that experience.

And I actually want to mention that I should have maybe titled this slide something else because though many of these activities are focused around the CCT review and will be inputs to that, they also serve some other purposes which I'll talk about.

But in terms of the program implementation review, one of the things we expect to get from that, in addition to the input to the CCT team, is that we've documented the staff experience in implementing the program and, you know, when it gets to the point where we are developing a new application

process or an improved application process that will be a point of reference so it looks at things like, you know, very sort of big picture issues about, you know, dealing with - involving discussions in the community and as well as sort of details like applicants having difficulty with banking charges when paying fees. So you can look forward to that report in September.

The last point there on rights protection mechanisms, so we have completed a public comment period on the draft report that was published. We did complete the summary analysis of public comment that's posted and we are currently updating the paper based on that comment.

The RPM review we also think will serve a couple of purposes in addition to supporting the CCT team. One being it's a little bit of a precursor to the independent review of the trademark clearing house which we've committed to do and which the GAC had requested. They will also, we think, be an input to the issue report that the GNSO has requests for an October I believe which is looking at all RPMs, not just the new ones, so it includes the UDRP in addition to the new RPMs that are covered in this report.

Next slide. So this is the session we have tomorrow. I forgot to mention on the previous slide we've also been following the work of the GNSO discussion group and understand there's some consideration of next steps here at this meeting so we are very interested in that.

And the new gTLD program review session is tomorrow afternoon. It's a two-hour session and even that I think will be hard to pack in all the information that we have because there's a lot going on so I hope that you can join us there. Thank you.

Volker Greimann: Thank you, Karen. I think we have a very good overview of the progress on the review channels and to review progress that the first round of new gTLDs (unintelligible) into the program. And there is a timeline which is very speedy I would comment on, that is I think September - the first reports will be out so

that's a good sign. I think we look forward to seeing those reports and interpreting them.

You rightly say that we have a motion on the table for this week which is to request an issue report. This will of course -- the work that comes out of that will also work with the reports that we receive and the AOC reviews that also take place at the same time, although the timing is still at issue here. So this is something that is very important for this work as well and we're looking forward to seeing the results of that. I think by the time of the next meeting we should already have the first report in hand.

Are there any questions for this? Bret.

Bret Fausett: Thank you, Karen that was very helpful. What is your best estimate right now as to when we might open a subsequent round for new applications? If you could ballpark it within a year.

Karen Lentz: Thanks, Bret. So it's, you know, it's very difficult to speculate. I think that some of the, you know, some of the previous commitments to review sort of carried the expectation that they would be a prerequisite to having a future round. For example, in particular the study on the root, you know, the impact on the stability of the root.

So I think -- that I think is, you know, probably an 18 month process and, you know, estimating at the long end, by the time you do this study, have public comment, have whatever discussions you need to have on it. So that I think would put us probably around the end of 2017 which would be the probably earliest possible time frame.

Bret Fausett: Can I ask a question follow up? Has ICANN, and maybe if it hasn't maybe we should, create a project management plan that works toward that goal and puts those things in the critical path including the work that we're going to do as the GNSO and puts it on a chart so we can have some -- and I know that

timelines moved in the ICANN process all the time but at least we can start to put things down on the board and watch them.

Karen Lentz: Thanks, Bret. Yes, I think we can. I think that's something that we are in the process of building, you know, because we do, you know, have these review activities planned and scheduled. We also know that there are, you know, other efforts going on in the community which we want to coordinate with those processes. And so I think we are still started getting a handle on, you know, what groups are working on what and what their sort of time frames and processes are.

And so, you know, we have started a partial schedule if you want to call it that, for the things we know about. But I think you know, for example, if there is a PDP initiated and we understand the scope of work that will help to build, you know, sort of coordinate the topics and so forth.

Volker Greimann: Thank you, Karen. Thank you, Bret. Jeff, please go ahead.

Jeff Neuman: Who is that tall? I mean seriously except for Volker and Krista. I guess my question is pretty simple question, are any of the staff reviews dependent on the AOC review or are you guys waiting for the outcome of the AOC review to conduct your own reviews?

Karen Lentz: Thanks, Jeff. So, no, I think we think about it a little bit the other way around in that the staff work is, you know, meant to help inform the community discussions that occur so we're not looking for that.

Jeff Neuman: Thanks. I just raised it because that was an issue that was discussed yesterday with the GNSO as to whether we should wait for the AOC reviews or whether we should conduct our reviews before the AOC review is complete. And I think that helps. Thanks.

Volker Greimann: Thank you, Jeff. Any further questions on this topic? Then I would like to move to the last drafted formulated topic that we have on the agenda before we ask the any other questions. The perspective on the role of the bilateral contract negotiations, or as it's called policy development.

This was a topic that was debated yesterday on this floor as well that there has been a certain concern that staff has or is from time to time pushing through topics that would be subject normally to a policy development process such as the introduction of the URS for legacy TLDs such as the requirement of having signed the 2013 RAA in the registry agreements (unintelligible) for the new gTLDs.

These are all topics that would normally be subject to a mandate from the GNSO but staff has undertaken to introduce them without such a mandate. And we would like to see your perspectives on that.

Akram Atallah: Thank you, Volker. So thank you for having us here, first of all, and thank you for coming to this meeting. I would start by saying that we understand that the new gTLD program is a progress - progression to the previous gTLDs that we've launched and that the community came up with a more robust and better ways of doing some RPMs in the new gTLD program.

And we start from the position that basically these were already policies that were developed by the community and they were put in the new gTLD program when legacy TLDs came to renew their contract and they've asked to actually be on the new -- on the new contract. We did not push anybody to accept URS or not accept URS, actually it came in and we put the new contract for them.

They negotiated some terms and we accepted it. Now of course absolutely if the community comes up with a new policy then we will automatically abide by it and the contracts will be abiding by it. So if that GNSO comes up with a policy deciding that the URS should not apply to the legacy TLDs that will be

de facto accepted. So I think it's pretty much just operational and not actually something that we are pushing for on this instance on the URS or that we forced legacy TLDs to accept these terms in order for them to get on the new contract even. So I hope that clarifies it a little bit more.

Volker Greimann: Seen that firsthand I would like to yield to James for the first question.

James Bladel: Hi, thanks. Thanks, Akram, Cyrus. Good to see you guys. A couple of questions on this point. So you're saying that this was a voluntary adoption or in negotiation by those registries, they agreed to take on that URS and I think there was the PICS as well was another element of the new gTLD program that they moved into their agreements? Okay.

Because I was part of the group that came up with URS back in -- help me -- 2009, 2010. And I think at that time we were very clear that it would not apply to legacy TLDs in the absence of a PDP. So I was a little surprised. I don't have a problem with the URS either, you know, as registrars or personally. I think that we have a procedural problem because now we have this being sort of percolating into other agreements where it was never intended to go.

At the same time we have different interests that are asking to change the URS so there is a concern that not only is it now being unevenly applied to different TLDs at different times but we could actually end up with multiple versions or variants of the URS in the way that it's being implemented or defined within the contract. So that's a concern, when something bypasses the GNSO it kind of becomes a free-for-all and it becomes sort of a back of the napkin policy instead of something formal that we can all look at and agree upon.

So this is -- I'm not speaking for registrars or for the council, I'm just speaking for myself here is that to get everybody on the same page it's important that these things follow the prescriptive policy development process so that we -- so that we're all working from the same sheet of music.

Volker Greimann: Thank you, James. I think the same applies also to the introduction of the 2013 RAA in the Registry agreement which was never a part of the new gTLD program as was envisioned by the community. The new registrar agreement at that time was still very much in - still - well in its fetal stage so to say so nobody at that time had any thoughts of incorporating it or making it mandatory, so that was clearly a staff led initiative as well. Michele.

Michele Neylon: Yeah, thanks Volker. Michele Neylon for the record. Just following on from James's comments, I mean, the concern I think with some of this is around the fact that if you look at where the new TLD contract came from, I mean, if the contract and it's a series of processes and steps and RPMs and a whole bunch of other things which are designed to start something new, to launch from zero with zero domain names, zero businesses affected, zero registrants.

Whereas pushing something like that, a lot of the elements within that contract onto an existing TLD, which could have anything from a couple of hundred to hundreds of thousands if not millions of domain names and existing businesses, it's a bit of a disjoint.

Now to say that -- that registries are coming along and kind of baking to be -- to take on a whole load of extra work does sound a little strange to me. I mean I've heard from several sources that they haven't exactly been baking to adopt these things but okay.

The concern that James has raised and others of us have been discussing is that there are elements within that contract that weren't really subject to policy. And now with this change of contract coming through that you are opening up a kind of issue there. So for example around the URS as it wasn't subject to a PDP it could be changed at the moment without going through that and then you're adding it into a contract which is affecting existing registrants.

I mean, it's just -- it's a matter of concern so I'm not sure exactly where we're going to go with this but I think it's something that needs to be discussed.
Thanks.

Volker Greimann: Thank you, Michele. Next in the queue is Thomas and then Phil.

Thomas Rickert: Yes, this is Thomas Rickert for the record. I just like to say that nothing keeps a registry away from using URS or UDRP, even if they are not obliged to, there are examples out there in the market where players do that on a voluntary basis. So they can go out and advertise to their customers that they're using these mechanisms.

I think it creates an unfortunate precedent to say the least ICANN, by contract potentially erodes the enormous policy efforts that are happening in the community to help legacy TLDs or to find ways for legacy TLDs to adopt new standards. I think IGO INGO protection is one of these examples.

So if we create precedents there is an expectation potentially in the market that we don't need to do transition planning for legacy TLDs because we can all do that by voluntary or pressured agreements, whatever the anchor might be. But I guess that the perception from the wider community is not ideal.

Volker Greimann: Yes, thank you, Thomas. And I would like to state that if you want to jump in and respond at any time please feel free. I'm not trying to follow the queue and leave you out of that so anytime you want to say anything.

((Crosstalk))

Akram Atallah: So, I mean, I don't want to sound like we don't care about this but if the GNSO would like to give us guidance on these things, you know, please get a -- give us some guidance on how you would like us to do this. But my understanding is that every registry negotiates its contract independently.

And as long as we comply with the policies that exist that a registry could ask for a additional services in their contract, could do different things in their contract.

If the GNSO would like to decide on every contract negotiation, okay, let's go figure out how we can do that. But I think that we have a role here and our role is to make sure that new contracts are compliant within GNSO policy and allow businesses to do what they need to do to be able to carry their business and move forward on the registry side.

If there is something that the GNSO feels like needs to be addressed I think that we should pretty much address it clearly and make sure that there is a policy on that so that we can comply with that. And I'm struggling a little bit with the issue because I'm not seeing it coming from the registries when negotiated their contracts with us. I think that some of them felt that they wanted to be competitive in the marketplace and the new marketplace is a new gTLD and they didn't want to be left behind.

Some of them voluntarily accepted these terms and said yes, we want to step up to the new gTLD contract obligations. And they made these commitments publicly. And so now we are being blamed for working with you guys to give you what you want. And okay so how do we win here? I'm struggling with that. But I'm listening and if you guys want to give us advice on this we would appreciate it. Thank you.

Volker Greimann: Thank you, Akram. Just to pass on to next in the queue, Phil.

Phil Corwin: Thank you. Phil Corwin from the Business Constituency. The Business Constituency will be filing a comment later today expressing - noting that the constituency would probably, through a PDP, support the URS becoming a consensus policy. And the BC also might support changes in that URS once the staff issues report is received this fall, policy staff asked for a six month delay, but we don't have the benefit of that report.

However, the notice for dotTravel and the dotCat and dotPro notices are identical, says, "With a view to increase the consistency of registry agreements across the TLDs I can has proposed that the renewed agreement contain the PDT RP and the URS." So it looks like it came from ICANN and it shows up in Travel and then Pro and Cat it looks like a consensus policy, it quacks like a consensus policy.

It looks like something that ICANN is enforcing and there's been no PDP. And this is significant because if you connect the dots these are rather small TLDs but it would, you know, there were some big ones coming (unintelligible) in the next few years with over 100 million total registrants. And it's something that just properly should be done.

It is a major policy. And I just wanted to echo what James said personally, while I wasn't an official member of the IRT - the (ST) IRT I was very much involved as the RPMs for the new TLD were created and asked several times if we accept these for the new TLDs does that mean they will be imposed on the incumbent TLDs when they come up for renewal? And was assured by participants in those groups and by staff in charge of the program, and no, these are just implementation details. They cannot be imposed on legacy TLDs without a PDP and become a consensus policy.

There's a little bit of a bait and switch feeling here about those of us who participated in good faith in the development of the RPMs. It's not to say there's anything wrong or that they can't be improved by just before they're imposed on legacy TLDs which have far more registrants than the new ones there should be the proper process to consider all of the potential issues and then make a decision. Thank you.

Volker Greimann: Thank you, Phil. Did you want to come back on that or...

((Crosstalk))

Akram Atallah: The only thing I would say is that I'm struggling with the idea of -- that we -- a registry cannot do anything unless there is a PDP on it. I think that, you know, the fine issue here is if a registry wants to do something and we don't see harm or if we think that it would be good to do something and the registry sees no issue with that now we cannot do it unless there is a PDP. And that's the nuance that I'm not getting.

Now if there is a PDP on something and the registry doesn't want to do it or we want to do the opposite of that I agree with you 100%, that's not acceptable. So the nuance that we are paralyzed unless a PDP isn't there, even though we both agreed that we want to do something, ICANN, which represents the community and the negotiating of the contract, and the registry who's, you know, willing to do something if we both agreed that that is a good thing to do, we want to do it, now we can do it.

That's the only thing that I'm not very clear on. If that's where we want to get to or not but...

Volker Greimann: Thank you, Akram. Just before a move back to the queue which is Heather, Jeff, David, James and Greg, just a brief comment. I think any registry can, without part of the contract, implement a new policy for itself and say for example, we want to have that URS even though we're not up for renewal, we want to have that as a policy because we like it.

Having this baked into the contract renewal leaves a bad aftertaste with some people who might get the impression that this is something forced upon the registry by ICANN staff in order to get a smooth renewal. Cyrus.

Cyrus Namazi: Thank you, Volker. I think hearing everyone making the comments that they've made, and I thank you for that comment leads me to believe that there is a disconnect here between what we've done and what the perception is by some council members perhaps and some in the community. There has

been no imposition of URS has Phil mentioned or as Michele mentions.
There's been no one begging for it.

This is just the types of things that occurs in the course of negotiation. We've indicated to legacy TLDs whose contract has been up for negotiation, that we have a preference for them to move to the new form but there has been no enforcement of the inclusion of URS, it's just been something that we've suggested and they've taken a.

We post these for the public to see to be able to comment on but by no means have we crossed the line to say you must sign-up for URS. And I think this perhaps is where the disconnect is, we have not done such a thing. So it's important to note that.

Volker Greimann: Thank you, Cyrus. I'll just move down the queue which is now Heather.
Please go ahead.

Heather Forrest: Thank you, Volker. Heather Forrest. I want to make it very clear that the views that you've heard from some of the councilors this morning are not universally shared within the GNSO. The IPC has submitted comments on this. And it's a good opportunity to highlight some key points there. In particular we are not dealing with consensus policy in relation to legacy TLDs.

And there's no requirement that in order to adopt something in its contractual relationship with ICANN that something has to be consensus policy for these gTLDs -- the Legacy gTLDs. And we are at risk here of interfering -- if the situation is as you say that there hasn't been any strong arming here, then we are interfering with a contractual relationship and a voluntary uptake of responsibilities and we wouldn't want to interfere with that process. Thank you.

Volker Greimann: Quite right, Heather. Next is Jeff.

Jeff Neuman: Yeah thanks. This is Jeff Neuman. I actually want to side here with ICANN on this one. If a registry wants to voluntarily agree -- it's a first go on, tweet it. If a registry wants to voluntarily agree to adopt a rights protection mechanism that are a bug and beyond what's required they should have every right to do so. Donuts did so with the Donuts protected marks list, (Right Side) did it as well with -- they use the same acronym but I forgot what it stands for, probably domains protected marks list.

And others have adopted PICS and other things that protect rights protection mechanisms. DotUS adopted the URS voluntarily for their country code top-level domain. And they understand the concern is, especially from Phil, you've done a number of articles on this and I've gotten a lot of signatories to it.

If your concern is about dotCom and dotNet can go to VeriSign, tell VeriSign not to adopt it. They're in this room, they're all around. If you don't want them to adopt it tell them not to voluntarily adopt it. And like ICANN said they can't force anyone to adopt it.

If any of the registries, Travel, Cat - and I'm forgetting the third - Pro - is it Pro? If they come forward and they say yes, we were forced by ICANN to do it, we don't want to do it at all then that's one thing. Then we can have evidence that it's imposed.

But until that comes in we have to assume that it was voluntary and any registry that wants to voluntarily adopt rights protection mechanisms must have the ability to do so at their discretion unless the GNSO Council through the GNSO community comes up and decides a different policy. To do otherwise, as Heather said, is to interfere with the contractual relationship and to basically do away with the registry's right to actually go above and beyond. So I actually have to side with ICANN and say that registries should have that right to do that.

Volker Greimann: Thank you, Jeff.

Cyrus Namazi: I never thought I would live to see a day like this actually, just so you know for the record.

Volker Greimann: Yeah, I think the day is saved for you guys, right? Next in the queue is David, and I have an online question, then James, Greg, and Marilyn.

David Cake: Okay, well, I'm going to disagree with Jeff they're actually. I think there is a real issue here between voluntary adoption and ICANN in training that in contract. I should thank Jeff for mentioning the GPML which led globally protected marks list idea because that's an excellent example where a policy that was explicitly rejected by the ICANN consensus policy process suddenly via the PICS mechanism got incorporated into, you know, contracts. And now ICANN is expected to enforce, somehow, a policy that actually explicitly rejects it as community policy.

Similarly if we had a PDP and we said no, we do not think the URS should be adopted, you know, in any way enforced on legacy TLDs, well that's fine. If the legacy TLD wants to adopt it but then ICANN putting into contractual arrangements something that, you know, I mean, I'm not saying that's happened that we could end up in that process.

When ICANN jumps in and puts into contractual arrangements things that we have not determined through policy process it is assuming the outcome of that policy process in some way. If they want to respect that URS fine, but ICANN saying and you should put that into a contract, you know, unilaterally without any policy asking them to do so is a different case. So, I mean, if dotTravel wants to have the URS, fine. If ICANN says you should put that in your contract that's not fine, it is ICANN presuming the outcome of the policy process.

And ICANN should not - I mean, should not put itself in the position where it'll end up enforcing something that not only is not part of a policy process but may end up being a counter to it if we have one that explicitly says we should not do this. I mean, we should - I think we're all agreed that they actually a policy process to decide whether applying the URS to legacy TLDs might be a good idea but if ICANN has put it in the contract it's presumed the outcome of that policy process, what if we decide it's a bad idea and you find yourself in the position of contractually enforcing something that the consensus policy process has said you shouldn't?

Akram Atallah: If the consensus policy says that we should not enforce the URS then it becomes policy and it becomes contractual obligation automatically. So what the GNSO has to do is to actually make a policy and then it becomes de facto contractual obligation for everybody.

David Cake: I'm just saying the timing of those, perhaps we make the policy then you decide what goes into the contract rather than the other way around.

Volker Greimann: I think this is a good summary of what many have expressed yesterday although this is not universally shared of course. Next question is from online, Maxim Alzoba, "Does it mean that the (EBERO) system is also implemented for these TLDs or is this not part of the negotiations?" So...

Akram Atallah: I think it depends. I don't think that the (EBERO) - I think the (EBERO) was for five years from the new gTLD inception so it probably doesn't apply. I think we took it out, is that correct? But every contract is separate and there are red lines between the old and the new and, you know, so we can see what every contract has in it.

So I can tell you like there is no sunrise requirement so legacy TLDs, although they are in the new gTLD. So I mean, these are things that we do - that you do case-by-case so.

Volker Greimann: Thank you, Akram. I hope this answers the question. Next in queue is James followed by Greg and then Marilyn.

James Bladel: Thanks. James here. I actually want to agree with Jeff Neuman a little bit except for the part where he backs up ICANN because, you know, I just - I have to keep with my reputation.

But, no, generally I agree that, you know, the PDP is not the only exclusive path to adopting changes in either a registry agreement or registrars for that matter. I think that this particular -- and maybe my concern is a little different and maybe a little nuanced, but I'm concerned that the problem I have with registries adopting things like DPML and other things is that as the number of registries proliferates, the number of various implementations and flavors of implementations proliferates.

And that if we were to, as the Council say we like the URS, we want to improve it, enhance it, change it or whatever, now we have to wait for these three registries to come up for renewal again perhaps or explicitly make a modification that the new URS replaces the one that's in their existing contracts, you see it gets complicated when there are multiple versions of things out into the wild. And that's one of my concerns when we do this route, this piecemeal route rather than going through a blanket PDP.

But I, just again, you know, if we can get -- we're all talking around the folks that are asking apparently volunteering to have this in their agreement, if we can get them to say yeah, this is fine by us then this is a nonissue except for the version control issue that I'm raising.

The second part is are there other elements of the new gTLD program that you would like to see incorporated in legacy TLDs at renewal? And if so what do you think those might be?

Akram Atallah: I don't think that there are - that we are picking and choosing things. I think that for us we believe that the new -- again, I think from our perspective is getting to the new form is any operational thing that makes things a lot easier because if we can have one form agreement at least one base form agreement that we can apply for all of the registries.

And given that we're going to have over 1000 gTLDs it will actually benefit us operationally. We are not saying oh you need to have this one, this one is okay, I mean, we're not picking and choosing these items other than the ones that are like basically obvious that they legacy TLD would not have a sunrise obligation since they've been in operation for a very long time. (EBERO) is a five-year thing so probably it doesn't apply.

You know, this kind of clean things that are only for a period of time when you're introducing a new gTLD. Other than that we're not, you know, we would like everybody to be on the same contract as the new gTLDs because it's operationally easier. Now if the registry says to us well I can't do it, my situation is this way, we're not saying no comment you don't get your contract renewed unless you do this. I mean, that's not what's going on. So I hope this is - I think we're making a bigger issue out of this but we are willing to listen.

And I think your version issue is a very important issue. We don't want to make it harder on the other partners on the registrar side to implement things by having all of these different versions of things. But the URS itself is not a version issue because it's a URS and you either implemented or you don't. When various improvements to the URS I think they go across the board. So I hope that it's...

((Crosstalk))

James Bladel: But it goes through a PDP.

Akram Atallah: Yeah, absolutely.

James Bladel: It's possible that someone could negotiate a better URS - a differing URS.

Akram Atallah: Well they could also do it without negotiating it.

James Bladel: Right.

Akram Atallah: Okay, you know, so.

James Bladel: Right, well that's what we're trying to prevent.

Akram Atallah: Yeah, yeah.

Volker Greimann: Thank you, James. Thank you, Akram. Seeing that we're moving up to the top of the hour I just have to ask if you have some - a little more time that we could use so we can work through the queue because Teresa and Jonathan are both also running late. Okay? Okay then next in queue there is Greg.

Greg Shatan: Thank you. Greg Shatan, President of the Intellectual Property Constituency for the record. You know, listening to this I hear a few odd things. First, seem to be led like to remind everyone that that U in URS stands for uniform so the idea of a better URS or a differing URS is an oxymoron. The idea is that it's uniform. If somebody is going to get into some other things that it's not going to be the URS, it's going to be another system.

So I think the idea of having it in the contract is to keep the uniform. And I think it's also rather cannot idea that you could adopt it at any time except when you're in contractual negotiation with ICANN. I don't see the distinction between the two. And indeed if you are signing on to the Uniform Rapid Suspension system, even if you were to do it voluntarily, seems like that would probably be something that might be subject to a contractual amendments rather than something that - like the DPML that is just dealt with

as an internal policy. So again, the idea that it, you know, can't be dealt with in contract seems to me to be peculiar.

Last, if we are concerned about optics the optics of certain registries attempting to discipline unruly members of their industry has terrible optics from a competition perspective. And at the bottom, you know, URS can be seen as a competitive aspect.

Clearly for a dotTravel which is not exactly, you know, swamped - overtaken dotCom in popularity, the idea of something that's seen by consumers as being a competitive advantage and putting them more kind of on market in terms of their terms, which is something that competitors often try to do, being off market is not generally seen to be good unless it's seen to be better for your intended consumers, then those who are offering things.

So this is -- it seems to me like this is good clean competition, good clean contractual negotiations and that while there may be some who are standing on principle, there may be others who don't like the URS and are using this as a way to try to keep it ring fenced.

And, you know, lastly consensus policy is something that once it's defined is unilaterally, you know, it's developed by the community and improved but after that it becomes de facto unilaterally imposed in contract. Agreeing to things on a contract by contract basis isn't in conflict with the concept of consensus policy. So from my point of view, you know, I agree with Jeff and our comments submitted supports the actions here. It's clearly an it's our understanding that this is result of free negotiations which again we support. Thank you.

Volker Greimann: Thank you, Greg. Just been informed that Theresa Swinehart has arrived so I would hate to cut this discussion short but I would say that we draw a line under the current queue and after that just ask if you have any other business

that you would like to mention to us. Next in queue is Marilyn then Avri, Heather, Phil and Stephanie (unintelligible). Please go ahead Marilyn.

Marilyn Cade: Thank you. My name is Marilyn Cade. I'm going to make three quick comments. One is I think it's really important to remember what a wonderful model that we have all created in a form of self-governance and the use of contracts as opposed to relying on national laws and regulations that have to be modified on a country by country basis. So that's point number one.

Point number two is I do think it's important to remember that uniform does have a requirement that there be a certain amount of uniformity and predictability. And in moving to an environment where there are over 1000 gTLDs predictability and understandability is important to the registrants as well, not just to the suppliers.

Registrars and registries will have the burden of dealing with too much diversity in the contracts but so do the registrants. And I just want to reinforce that point. So whatever we do I hope we're going to remember that if you have to register or feel you have to register in multiple gTLDs and ccTLDs and you have a huge diversity of contracts in each of them you, inside your company, have to also put a compliance mechanism in place to make sure that your team who is registering names are adhering to the diversity. So there's a baseline of interest here on the part of the registrants as users as well.

And my final point I'm going to make you something about the use of standard operating practices. That in another part of the world that I live in we developed technical standards. And I think perhaps we need to be thinking about thinking that the policies that we are developing also have to have a certain amount of standardization to them if they're going to continue to scale.

Volker Greimann: Thank you, Marilyn. I think you raise some interesting points there. Next in queue is Avri.

Avri Doria: Thank you. Avri Doria speaking. I too actually support the notion of purely voluntary RPMs. In fact the original policy that the new gTLD program that we are all in came up with was indeed that it would be just purely voluntary RPMs. Somehow or other that eroded. I'm not sure I remember which PDP ever decided that there would be mandatory RPMs of any sort either for new or old gTLDs but perhaps somebody can tell me which PDP that was established in.

But we have basically eroded over time this whole notion of purely voluntary RPMs. So you asked if GDD should be paralyzed if they wish to institute a policy that has not been through a PDP. And I would say most definitely, yes. The answer to that is pretty much an unequivocal yes.

Now we've sort of entered a gray area here where you're saying that well now these incumbents are instituting these things voluntarily but when there are incentives of various sorts or fee reductions or what have you for these voluntary impositions of RPMs one can ask is that an incentive or is that just an offer they can't be refused?

David Cake: Thank you, Avri. I think Heather is next in the queue.

Heather Forrest: Thank you very much. Heather Forrest. I just wanted to pick up on the comments that David made indicating that the community rejected the various RPMs so that somehow prevents their voluntary adoption. Question 29, I went back and looked at the language just to be absolutely certain so that I don't say something stupid here. Always allowed applicants to declare their RPMs. It was never a tick box exercise, it was never a how do you go about implementing that consensus policy RPMs.

Question 29, a complete answer should include at a minimum the registry operator must offer a sunrise period at a trademark claim service, at a minimum. I mean, that language is useless if it doesn't mean you can go

ahead and do other things. I realize we're talking about legacy TLDs but I wanted to make that point quite clear. Thank you.

David Cake: Yeah, and just to - I have no problem with the GPML idea of a voluntary option it's only with ICANN enforcing something that's rejected as policy. Next was Phil, I think.

Phil Corwin: Thank you. Speaking for myself now just listening to this, I think just -- well two things, one, I don't disagree with the notion that a registry can propose things that are not consensus policy to be in the contract. I have to think - I can't think of a clear example now that there may be instances where a registry would propose a provision that ICANN would say no, that's against the public interest or there's something wrong with it. So there would have to be some parameters on that just as a general principle.

But I think for this Council we're going to have to consider now -- I don't know what's going to happen with these contracts, the comment period on Travel closes today, on Cat and Pro later in the month. But now that URS is at both new TLDs and legacy TLDs and the way the specific contract provision is written any change in the URS would apply to those legacy TLDs as well as new ones.

This Council is going to have to consider the question of after we receive the staff issues report in September on the issues involved with the RPMs and consider it - and we know there are going to be many suggestions for changing them in various ways -- whether that process should be the informal process used for the new TLDs of implementation teams or whether now that we've had the experience, the new program is several years old and legacy TLDs are involved as well whether any changes to those RPMs are going to require a formal PDP since the registries affected by any changes will be - go beyond the new TLD program.

Thank you and this Council can consider that question as we are - over the coming months and once we receive the issues report. Thank you.

Volker Greimann: Thank you, Phil. Next I have Stephanie and Marilia, you added yourself to the queue after I drew a line on it so if you could be brief after that?

Stephanie Perrin: Thank you. Stephanie Perrin for the record. This is a naïve question. I'm learning as I hear all these interventions. But I'm puzzled, if we except that the contract is basically a policy instrument that has been agreed through various PDPs what goes into it then I'm puzzled as to how ICANN staff and the other contracting party can then basically picked from a smorgasbord or buffet of possible things to put in the contract.

The proposal was made that - well the GNSO want to review contracts and I would say definitely not. But surely GNSO does want to know that the contracts are following set protocols for certain types of registries, contracted parties. And I don't -- I'm puzzled as to why a multi-stakeholder organization would forget that there are other stakeholders that might have a view as to what's being included once the two parties get together because there are other parties here that have an interest in what goes into that contract.

Phil mentioned a moment ago that he couldn't think of an example, well I can think of 20 examples in the data protection and human rights area where ICANN has not set policy but the contracting party might decide to do something that we would have a determined the on. And so I think it's inappropriate and I'm obviously not surprised because I'm never surprised when I find something that hasn't been particularly harmonized, I think my version of harmonized is different than Marilyn's version.

But it does seem to me that there should be limits as to how much freewheeling goes on in his contracting business once the PDPs have set certain things in place. Thank you.

Volker Greimann: Thank you, Stephanie. Marilia.

Marilia Maciel: Thank you, Volker, for your flexibility for allowing me to speak. I'll be brief. I think that there is a reason why things are done through that PDP and one of them is to listen to the community and to assess the consequences of what we are doing. And I don't think that we have assessed the consequences enough to unilaterally enforce URS at this point. And many comments have been raised and good points in the discussion. So I would ask us to take a step back on this decision.

From a governance standpoint I think that it's very important to agree and respect what has been agreed and also what has not been agreed yet and this is something that we have not agreed upon yet. And continuing on the idea that Greg has raised respecting and remaining faithful to what we believe is good policies and not picking and choosing the policies that we prefer, I would like to ask you a question, maybe not to answer now but to include in your following report.

What is the part of the JAS report that has been implemented? And what are the concrete measures that you are taking to facilitate applications for the new gTLDs from the developing regions of the world? Thank you.

Cyrus Namazi: Which JAS report?

Marilia Maciel: The report that has been produced some years ago with measures to facilitate the application for new gTLDs from developing regions and underserved regions of the world. I did not hear something about this so maybe if you could include in your next presentation would be nice. Thank you.

Volker Greimann: Thank you. I think this is entirely new topic that I think should be worth discussing. And if you want to come back to the community on that may be in writing in some form or shape or at the next meeting that would be perfect.

I think we heard a very spirited discussion, I heard a lot of different viewpoints. One position I did not yet here and that is that of the registrant. I mean it is one thing to have a policy implemented and imposed on TLDs that have not yet launched however, ICANN taking a position, and even if it's just suggesting that you would like or prefer a registry to adopt a certain policy or a certain mechanism that is not yet a policy, impacts the registrant - impacts the registrants in the existing TLDs.

And I would ask or suggest that ICANN take that into consideration when making such a suggestion because of course the registry is free to adopt it and suggest it itself but ICANN taking a position towards that I think is the wrong approach. ICANN should always look at all the parties involved, all the interests involved. And the registrants that have a domain name that are suddenly - that suddenly find themselves on a new regime because ICANN has taken a position or ICANN has suggested that it might be wise for the registry operator to adopt a certain mechanism might not be the right approach.

If you have any last comments I would like to yield the floor to you.

Akram Atallah: Other than I have to run to another meeting but I appreciate actually all the different opinions that were presented. I think that I want to make sure that everybody knows that ICANN is always complying and making sure that the PDP process is followed. And we make sure that whatever we put in the new contracts when they are negotiated complies with that PDP process.

I never suggested that we should implement new policies in the contract, to the contrary I think that there is some confusion in the discussions that's been happening between the fact that a registry put something in the contract versus it doesn't does not necessarily mean it cannot do these things outside of the ICANN contract. So the URS was implemented by ccTLDs, they don't have a contract with ICANN.

A registry could actually implement registration policies that will actually affect the registrant in certain ways and agree on implementations with their, you know, with their registrars that are not in the registry agreement and they still, you know, could have a similar effect to having it in the registry agreement.

So it's not - it's not all in one place and that's the place where everybody should focus on having everything. And the other point is that there are a lot of things in the contract that don't fall under the PDP process. So, you know, there is - the contract as many pages and the area that is a PDP area is defined and well thought out by the community and so there are a lots of things that get negotiated in the contract outside of these areas as well.

So I hope that clarifies that we are talking about a lot of issues here and not just one. And I hope that we can get to a consensus on that. And we will be more than happy to support the consensus and implemented. Thank you.

Volker Greimann: Thank you, Akram. I think we had a good discussion here, a good meeting and I must apologize for imposing on your time more than was originally foreseen. Thank you for your time. And I would like to ask Theresa to come forward and then we can move on to the next topic.

END