
LAUREEN KAPIN:

Welcome, everyone, to Day 2 of the Safeguards and Trust Working Sessions. I thought yesterday went really well. It was really productive and we were able to recraft our discussion topics in a way that tees us up for a narrative that ties to our scope and mandate. What I want to do today is continue that effort. I thought this first session, since we have now gone through the process, that we can move perhaps a little more quickly towards figuring out where our remaining discussion paper topics will fit in with this new framework.

To that end, after dinner last night when I got back to the room, I took a shot at doing a mock-up of where I thought our remaining discussion paper topics might fit in. Alice, if you can scroll down past our scope and mandated highlighted language. Okay here.

The way I'm reading our tweet framework is instead of fitting all our discussion papers separately within these two topics, they have merged a little bit. And when I looked at the new high-level questions under our mandate, the Consumer Trust part and the Safeguards part, it seemed to me that the remaining discussion paper topics that we hadn't covered yesterday which were basically the safeguards issues, that those really fit into the high-level topic two as the New gTLD Program puts sufficient mechanisms in place to mitigate risk to the trustworthiness of the DNS.

What you'll see is then I have a list of topics underneath there. Those topics are a bit consolidated. As you recall, we had 11 discussion papers originally. When we looked those over, it seemed to me that some were duplicative of others and that they could be linked or consolidated –

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

merged, exactly Carlton – merged. So this list attempts to do that. What I want to let people do is take a look at that one by one to see if this makes sense to people. This is just my first stab at it so I thought that we could work on refining it together. What I can do is walk people through my initial thoughts about what topics can be merged together. That's what's on the table now.

Let me walk you through what I did so that there isn't confusion and folks aren't wondering about, "Where did my discussion paper topic go?" This has nothing removed, this has no work discarded, it's just slightly reorganized and merged in a way that makes sense to me, but what I want to do is make sure it makes sense to everyone. That's the topic on the table.

What I did then is, for 2A under what I'll say is our "safeguards" bucket. That's going to be a big bucket now, and it was our biggest bucket before also. We had our "consumer trust" bucket and our "safeguards" bucket. So under 2A, Calvin and I had both done discussion papers on implementation of the safeguards. Calvin had focused on the technical safeguards and I had focused on the GAC safeguards. By the way, Carlos, you had also focused on GAC safeguards, particularly Specification 11 which is in fact the way the GAC safeguards were implemented through the Registry Agreement. So all of these are GAC safeguards, and what I have proposed here is that all those topics would now live, so to speak, organizationally under 2A – "Have the safeguards been fully implemented?"

That's my proposal organizationally for where that lives. And Carlos, my observation when I looked at the work you had done on Specification 11

is that maybe that doesn't need to be an additional discussion paper topic, maybe what really needs to happen is the Specification 11 discussion needs to be incorporated in the discussion paper that I have worked on on implementation of the safeguards – that your work can be incorporated within that since my discussion paper went over the safeguards which includes Specification 11 and your work and thought can be added to that.

Carlton, did you want to say something, and then I want to hear what Carlos has to say. No, okay. Carlos, what do you think about that?

CARLOS RAUL GUTIERREZ:

Yes, I thought it was very interesting the segmentation that Jonathan did yesterday in green where he separated proactive measures by the agent, so to say, as opposed to prescribed conditions by the GAC. I don't know if you recall, and my question was, how do we separate that? Here we're mixing Specification 11 with voluntary PICS and so on. My impression yesterday was that he was trying to make a case for proposals by the agents to improve the system as opposed to prescribed. My question was, yesterday I asked if validation was proposed by the agents or it was dictated by the GAC. And now I see in the same line Spec 11 and voluntary PICS. So I want to ask group again if we want to separate these two type of new conditions as proactive conditions – Jonathan mentioned that – that would separate PICS from Specification 11 and if we want to treat them differently.

If we do so, then the question is do we proceed with this taxonomy or do we go straight for the agreement and use the agreement as the

head: okay, we have a new set of agreements. That's the result of the new round that the agreements had to be signed anew, new agreements had to be signed. There was a lot of discussion in the agreements where [well] discuss in the community or if they were imposed by staff. As far as I remember that was one issue. Do we use this structure or do we try to say, "Okay, we have new agreements. That's the result of the new gTLDs. Let's take a look at the agreements and let's look in the agreements which part were proactively proposed by the applicants through the application like Public Interest Commitments, etc. and some people say, 'Oh, it doesn't help. They can take them back, whatever.'" And then Specification 11 which was the Board's reaction to Beijing, etc.

So this is another way to look at the same – I'm not including anything else – but that separates clearly what we did yesterday was the first line "Promotion of consumer trust." Just to recall, Jonathan said this is the perceived trust. There we have a lot of data from the Nielsen report. And then we are now today in the "Effectiveness of safeguards," this is kind of like boring lawyers' crap. Where we cannot refer to data where we do have to do our own analysis somehow.

So I agree with you, this #2 we have to cover all these issues. I'm just asking if we will use this structure proposed by Jonathan yesterday in the green paper or not. Thank you.

LAUREEN KAPIN: I want to respond to you and then I also know that Drew has a comment. Alice, can you scroll down a minute. I just want to make sure I didn't cut something that I didn't intend to.

CARLOS RAUL GUTIERREZ: I just saw Drew. And then the Abuse area will be more the behavioral section, the third segment. Thank you.

LAUREEN KAPIN: Right. Okay, that's fine. You can scroll back up.

I think you raised a very good issue, Carlos, regarding the distinction between the Specification 11 Public Interest Commitments that were mandatory. We have to be very careful the way we phrase things because there are both mandatory Public Interest Commitments set forth in Specification 11 that everyone had to incorporate into their agreement. Those are Public Interest Commitments but they are mandatory. So we can't use Public Interest Commitments generally because then we don't know whether we're talking about the mandatory ones or the voluntary ones. And even within those, depending on what string we're talking about, you may have had additional mandatory Public Interest Commitments.

So I think when we are drilling down, Carlos, I absolutely agree with you that we need to be precise and separate in how we are handling this and I see it descending from the mandatory Public Interest Commitments that are applicable to all new gTLDs, the mandatory Public Interest Commitments that are applicable to certain sensitive and

highly regulated gTLDs, and then finally – and this is what Antonietta has been working on – the voluntary Public Interest Commitments.

So those are really three separate mini-buckets – pails. We’ve got our buckets and our pails. Those are three separate. And I agree with you, Carlos, that we need to treat those distinctly when we discuss those.

Drew, you had a comment.

DREW BAGLEY:

Yes, I was wondering what, particularly Carlos, what you thought about with the distinctions that you and Laureen just made would you want to also then add the 2013 RAA to the same analysis that the Specification 11 mandatory PICs would fall under? Because they would all be required to use registrars that are complying with this new Agreement. I’m thinking of that in the context of anti-abuse because of Section 3.18 and the proactive measures that registrars are required to take now.

CARLOS RAUL GUTIERREZ:

Yes, it’s a question. I have no opinion on that. It’s a question if we use the RAA 2013 as the framework. And then, and I said yesterday, I need a step between trust and abuse. So we have trust as a perceived level, then we have the analysis of the contract, and then I would feel safe to start talking about the relationship to abuse because that would give like the middle step. We start with the surveys, we analyze the contract, and then we jump to your area – one, two, three.

But it’s just a question number two: do we call it the contract, and then we separate by voluntary and prescribed? Or do we continue with this

taxonomy which is fine for us to work, but I don't know if it's so obvious for the final document or in any case before we go to the final document we will have to slice it and mix it again.

LAUREEN KAPIN: Okay. Carlton.

CARLTON SAMUELS: You recall that they were Category 1 Safeguards and some of the Category 1 Safeguards are actually embedded in the [RKRKA] Agreements. The registry was required to make agreements with their registrars that incorporated some of the Category 1 Safeguards. So we will have to discuss it in that context.

So Carlos, you're right – and Drew – about mentioning the Registry Agreements because there were some elements in that agreement that incorporate the Category 1 Safeguards. So you'd have to get to it in any event.

LAUREEN KAPIN: Yes. I agree with that. And Carlos, to your point, I think for the final document when we get to the point where we are knitting together the discussion papers, I think there's going to need to be flexibility. I agree with you that we're going to have to find ways in our narrative to connect things and link things. But for now I'm more concerned about making sure we just have a logical order for our discussion papers and making sure we have buy-ins that this sequence makes sense. But I agree with everything you've said, actually everything that Carlton and

Drew and Carlos have said about these distinctions between the different types of GAC safeguard advice and where it lives, which is in the Registry Agreement, which is in the downstream agreements between the registries and the registrars, and then also which is in the Specification 11 of the Registry agreement which is where many but not all of the GAC safeguard advice was incorporated.

So it's not the easiest thing structurally to understand, and I think as we are all going forward with our discussion papers, it's an obligation for us to be really precise about what we're talking about. We can't just talk about safeguard advice, we can't just talk about Public Interest Commitments, we can't just talk about Specification 11, because there are actually so many distinct strands, as you point out Carlos, between those categories.

Under Sub A, the work that's going to be done on that – Alice, can we edit this as we go along or do we need to change?

UNIDENTIFIED MALE: [inaudible].

LAUREEN KAPIN: That would be like magic. Yeah, I don't know either, but I'm thinking that I just want to try and incorporate our discussion as we go along because that way we'll have a document that is the result of our group discussion.

UNIDENTIFIED MALE: [inaudible]

LAUREEN KAPIN: Good. Let's scroll down then to where we were on our revised topics. I think that's the next page, one more.

Under Sub A, let's then – sorry, David. Go ahead, David.

DAVID TAYLOR: It was just on the structure of these. Looking at #2 which is basically implementation, whether it's complied, and then whether we've mitigated. I thought we do need to have a description of them which is maybe #1 and we should have A) description of safeguards so we define the safeguards we're talking about.

LAUREEN KAPIN: I think that's exactly right.

DAVID TAYLOR: It probably fits in A because obviously Carlton had done the summary of the safeguards which are the RPMs and that might help tie in with what Carlos was saying, so we just set the scene on what we are discussing down in #2.

LAUREEN KAPIN: So let's put a bracket as the second line under #2. So after those little stars let's skip a line and put a bracket.

DAVID TAYLOR: Although it could be under obviously #1 because that has it put in mechanism in place and then that's where we describe it.

LAUREEN KAPIN: I think "mechanisms" is maybe... Let's define the safeguards first because I think the mechanisms would be even broader than the safeguards. To my mind they would be. So "Put sufficient mechanisms in place to mitigate risk to the trustworthiness of the DNS." Let's put that bracket in #A because that's when we first talk about safeguards. Safeguards is all #2.

I'm sorry, Alice. Keep A the way it is, but then under A add a bracket. Where it says, "Laureen, Carlos, and Calvin," skip a line and then let's have "Safeguards include..."

DAVID TAYLOR: Laureen, perhaps it's as you say, if mechanisms is broader I'm just thinking we need to define – it's just "description of mechanisms" or "description of safeguards" just so we know. So I'd put that as early as we can in the whole, we're setting the scene with it that's all. So we're just making sure we list out –

LAUREEN KAPIN: Just to loop back though to what we just discussed with safeguards, let's capture that and then let's go back, David, to the broader category of mechanisms. So for safeguards that would include... I don't want to

refer to all the Category 1/Category2 because I find that nomenclature to be – we know what it means but no one else is going to know what it means. So let’s say, “Safeguards include GAC safeguards incorporated into the 2013 Registry Agreement,” and then “(Specification 11: Mandatory and voluntary Public Interest Commitments).” And then the Registrar Agreement and really I think it even lives in the Registrant agreement because the registrars are obligated to make their registrants do something, too. So, “and Registrar Agreements and Registrant Agreements.”

Does that capture the universe here? Yes?

Then I think what we need to do is go back to your point, David, which is What is the universe of mechanisms that we’re talking about? I see a time-out. Carlos, go ahead.

CARLOS RAUL GUTIERREZ: Before we move to – I wouldn’t call them GAC safeguards. I would call them safeguards. Based on GAC advice if you wanted to be more specific, but I don’t think we should call them GAC safeguards.

LAUREEN KAPIN: So what’s the difference between safeguards based on GAC advice and GAC safeguards?

CARLOS RAUL GUTIERREZ: Well the GAC made some suggestions and then they said they are not happy the way they were watered down and they’re still complaining.

LAUREEN KAPIN: That's fair enough. So let's call them –

CARLOS RAUL GUTIERREZ: And in the contract they are just called safeguards and that's it. So let's not jump into the assumption because we already are making some assumptions.

LAUREEN KAPIN: That's fair enough. So let's say, "Safeguards based on GAC advice," Alice, instead of "GAC safeguards."

Okay. So, David, let's go back to your point then. Under Sub 1 when we say "mechanisms" – and let's do the same definition exercise there. When we say "mechanisms" let's put a little bit of meat on the bones there that basically incorporates our discussion paper topics. Go ahead, David. Tell us your –

DAVID TAYLOR: I'd just put "RPMs and Safeguards" and keep it simple.

LAUREEN KAPIN: I think that's right. That is our universe.

CARLTON SAMUELS: I will tell you that I have been toying with the idea it is not universal for one, but there is a whole set of legal – outside of the RPMs – that could

be for example U.S. laws , cyber security, cyber squatting, laws. Some of those laws are replicated in other places. I don't know if we want to at least mention that there are national legal frameworks that exist.

LAUREEN KAPIN: I agree that those exist, and maybe that's something we would want to include, for example, in a footnote in whatever final paper results from this. But in terms of our discussion papers that wasn't implemented through the New gTLD Program, that exists alongside of.

CARLTON SAMUELS: I'm not insisting that it becomes a part of the discussion paper. I'm just saying that the reality is that there are those and we should at least put a flag in there for them.

DAVID TAYLOR: I agree with that. But it also actually ties in the same safeguards which many of those are based on national law where they've come from so we've got that same little footnote but I think we should certainly tip our hat to it. But it's not our remit to go into it.

LAUREEN KAPIN: Right. So I think we're all on the same page. So under Sub 1, Alice, the first line for "trust the mechanisms and trustworthiness," if we scroll up to the first one, let's just have, "mechanisms include." And let's put safeguards first because analytically not that they are more important,

David, but we're getting to those first. So let's just switch the order there.

Okay. Good.

Moving on then, our next topic would be – and just for clarity on about where we are with the discussion papers – we have now scooped up the discussion paper that Calvin did, the discussion paper that I did, and the discussion paper that Carlos did under this 2A category. That structurally is going to be where those topics live. Then my thoughts – go ahead, David.

DAVID TAYLOR:

Just logically, I think our 2A1 should go up into 1A because we're defining safeguards and we're talking about them as part of mechanisms, and mechanisms are what we talk about in #1. So I would have mechanisms include Safeguards and Rights Protection Mechanisms. Safeguards, we've got our definition. RPMs as well. Just put them in. And then #2 is clearer.

LAUREEN KAPIN:

I agree. Good. Okay. So are we all on board with that? Does that make sense?

DAVID TAYLOR:

And then we can have little 2 RPMs include TBC, we'll do that after.

LAUREEN KAPIN:

Okay, good.

What I see as coming next then since we've asked, "Have they been implemented?" The next logical question I think would be where Fabro has been focusing on, which is: have the new gTLD operators then complied with the safeguards? And there we have the sub-issues that I think the work of Fabro's group raised which is, there's a distinction between "What are the safeguards written into the contract?" and then, "Have they actually been enforced?" And that's why this language is here as written and as applied. Because we know that that is the topic that has generated a lot of discussion/concerns. We have them on paper but are they actually being enforced?

CARLOS RAUL GUTIERREZ:

Do we use "enforcement" or do we use the organizational title of "compliance"? Just a question.

LAUREEN KAPIN:

I think that's something we need to give some thought to how we phrase it. Let's give that some thought. Drew?

DREW BAGLEY:

I think I'm actually open to us using "Enforcement" if we're going to look at it broader than ICANN compliance. Then I think compliance falls into that enforcement category. Whereas I think we should only stick to "compliance" if we're just focused on ICANN compliance, and then of course we need to use the same vocabulary that is used. But as we think about it, I'm just trying to think are there different meanings of

enforcement other than ICANN compliance for these things that we're thinking of? Such as what we just mentioned with even the national laws or local laws.

DAVID TAYLOR:

To answer Drew's question, I think Drew picks up on a point that there's ICANN compliance and there's enforcement through the courts, but many of the RPMs are enforcement not the via compliance. So the PDDRP for instance, when we were preparing that on the IRT, when we were putting it together we wanted it to be a stick which ICANN would use and so it was an ICANN compliance and it became a brand owner enforcement mechanism. So that PDDRP is certainly in there and its enforcement, but it's not compliance per se. So it's not ground there.

LAUREEN KAPIN:

Would it be more precise, instead of saying, "as written as applies," to say, "as written and as enforced"? Realizing that enforcement, depending upon the context may include ICANN compliance, it may include alternate dispute resolution, it may include national laws. And the one little footnote that I would put there is our remit is looking at the mechanisms of the New gTLD Program and of course legal frameworks, national laws, police, the Federal Trade Commission in the U.S., that's not the New gTLD Program. So I just want to make sure we keep in scope. But on the other hand, alternate dispute resolutions that are mandated by the contracts in the New gTLD Program or a part of Rights Protection Mechanisms, those are within scope. I just want us to keep that distinction in mind.

Carlton.

CARLTON SAMUELS: That's precisely why I used "compliance" before "enforcement." Because the majority of them the first is a compliance issue before you get to the enforcement part of it.

LAUREEN KAPIN: I guess I think of compliance as part of enforcement. I think of ICANN compliance as an enforcement mechanism among others. That's me.

CALVIN BROWN: As a registry backend provider, when compliance issues are noticed you do tend to jump as if it's an enforcement notice.

LAUREEN KAPIN: Elaborate on that a little bit for me, Calvin.

CALVIN BROWN: I think I'm agreeing with you that it's part of the enforcement regime.

CARLTON SAMUELS: It's the action afterwards. Compliance is in my own [head]. Where the compliance comes in is we have an agreement and there is a framework of action that is associated with the agreement, and somebody [means] the referee puts up the flag and say, "You're outside of the boundaries

of that agreement and you should [hear] yourself. To me, that is about me enforcing compliance.

In Calvin's case, ICANN Compliance says to him that you are in violation of an agreement. It's all in the agreement. And he says, "Well, okay. I'm going to address it and I'm going to redress." And so he responds to that.

LAUREEN KAPIN: I'm not sure we're actually disagreeing with each other.

CARLTON SAMUELS: [Inaudible] level. Maybe not.

LAUREEN KAPIN: I think we're all in agreement. In certain cases, contractually I think ICANN Compliance is the first enforcement mechanism that there is other than someone making a complaint saying, "I don't think you're complying with the contract." The first enforcement mechanism there is would be ICANN Compliance. The reason I'm resisting using "compliance" there is because I think it's too narrow in that it is not the only enforcement mechanism that's in place via the New gTLD Program. There are also these alternate dispute resolution procedures for the Rights Protection Mechanisms, for example, that are outside ICANN Compliance. That's my thinking in agreeing with Drew's terminology that "enforcement" would be the umbrella to cover both ICANN Compliance and other mechanisms in place through the New gTLD Program.

So I don't think we're disagreeing, I think it's more what word you want to use for the broader category.

David?

DAVID TAYLOR:

I could play about with this a little bit but I think 2A "Have the safeguards been fully implemented?" whether they have or not is a compliance issue. So that is compliant, shall we say. "Have the new gTLD operators complied with the safeguards?" If they have or they haven't, that becomes a compliance issue.

So to me, we could have "Have the new gTLD operators complied with the safeguards" – and RPMs because that's what we've defined above – then we don't in a way have the red herring of enforcement which is causing a bit of an issue there but that doesn't change, to me, the principle. And I think your point is a valid one that compliance is one of the first enforcement mechanisms – an ICANN enforcement mechanism – as opposed to a third party enforcement mechanism.

FABRO STEIBEL:

Maybe what we're discussing here is the level of enforcement we have, and the second question is, were the players involved active somehow? So if you engage and then you comply and then you [enforce] and then you start the work, this is four levels of how to do it, and then we're discussing [is] compliance and [enforcement] and how they relate. But I think the real question is, is the TLD operators if they did their part.

So the first part, the implementing, is ICANN's part the implemented. And the second part is about, "Okay so those are the partners in the agreement. Have they done their part?" So I'm not sure if we have a problem with the wording, but the focus should be to look at what they have done and not exactly the result of the process is.

LAUREEN KAPIN:

So what I'm hearing is I think of the reflection of when we're talking about implementation, ICANN Compliance is a key part of that.

CARLTON SAMUELS:

In my head, I'm thinking if I have a framework and I say you are in violation, before I do anything bad to punish you and you say, "Oh, I'm so sorry. I missed it. I'll fix it." Then we're good. There is no enforcement action. You simply agree that we had an agreement and you stepped outside the boundaries.

Enforcement to me brings in this other level of punitive response. That's how I think of it.

FABRO STEIBEL:

Maybe we can throw in a real case. So let's get centralization of zone files access. So have zone files access been centralized? That's the question for A. Have they started the process of implementing? That's the question for A. And then let's say I haven't done it. The others have but I haven't done it. In any case, from the point of view of the actor or the registry operators, most of those have done it. Although there is one that hasn't done it and nothing was done about it. So most of them

have complied. So the actors complied. However, the implementation enforcement process is not complete because there is no mechanism for making those outsiders to comply with it.

LAUREEN KAPIN:

I'm just big picture here. I don't disagree with anything that's been said. I think implemented in a certain level means, was this safeguard actually put into the contract so people have to do something about it? That's implementation. The compliance issue then goes to whether there's teeth in that.

What we're trying to do here really is figure out the sequence for our discussion papers so we can divide up the work. I think as this evolves we can get into the nuances of the distinctions between what we mean by implementation and what we mean by the role that ICANN Compliance plays, and then what we mean by the role of possibly other enforcement mechanisms. But for now, I'm thinking we just want to focus on what order we're all going to do the work in.

Does this capture the order that we want to deal with these topics in, I think is my question for you.

Go ahead, Carlos.

CARLOS RAUL GUTIERREZ:

I just wanted to go back to Fabro's initial comment and to the order, so if we go to 2A we could restate, "Has GAC advice been implemented?" There we can discuss if GAC is happy or not, how it was implemented, how there was a difference between what GAC said what is today in the

contract. In A we're just at the contract level. And then we go into B, "Have the operators complied?" I'm looking at the verbs that we use in A and B and C to reflect that. It's a question, Fabro.

FABRO STEIBEL:

I don't have answers as well. Maybe we're looking at two things. The one is process of implementation and then let's say process impact. And then we have two types of impact – impact on gTLDs and impact on DNS. I'll suggest the reordering between points 2 and 3. So maybe 2A, 2B, 2C. 2A and 2B is about [process of] implementation. The first question is, "Have they been implemented?" The second question about, "Has actors involved engaged and complied?" And then the third question is, "Does it have teeth? Where there was a problem of compliance in engagement, has something been done?"

And then we have "Check it if the process has been completed and is perfect." One scenario is that everything has done perfectly. What was not was overrun and so on. And then we have, "Have these [efforts] have an impact?" And then we have two questions. Impact on gTLDs. And then you have question C and D. "Did they mitigate abuse in the TLDs?" And, "Did it mitigate risk involved in new gTLDs?" And then big question 3 would be the 3A and 3B. "Overall what kind of impact they have on the DNS system?"

I'm not sure it makes sense. Just throwing ideas. Two questions about the process and then two questions about impact. Two sets of questions.

LAUREEN KAPIN: You said a lot, Fabro, but I want to make sure I understand what you said. This starts from, “Have the safeguards” – which includes GAC advice, Carlos – the first question would be, “Has it been implemented?” I’m not sure I understand what you mean by process, I guess.

UNIDENTIFIED MALE: [inaudible]

LAUREEN KAPIN: Right, so how is that different from what’s being said there?

CARLTON SAMUELS: I’m following what Fabro says and I agree with him that A and B speaks to process. And then C and D speaks to actors’ impact. Impact and actors. If you take it in that framework, it flows.

LAUREEN KAPIN: Would then, for our internal purposes, would it help if we put a bracket after A and then a bracket after B here saying “process”? So it would be [Process Have the Safeguards been fully implemented?] [Process Have the new gTLD operators complied? And then C and D we could add [Impact] did the new Safeguards mitigate? Impact Did the new Rights Protections mitigate?

Does that make things more clear? Yes?

Drew?

DREW BAGLEY: But then Fabro you suggested adding one more – a third one – in between B and C.

FABRO STEIBEL: Where there was no compliance or enforcement – has something been done about it? Getting to the zone system – yes, ICANN said you must have a zone systems. B – one out of 100 complied with, but what about this one guy? And then this other one is, “Has something been done about the noncompliance/enforcement?”

LAUREEHN KAPIN: My question there is, Fabro, is that something we have data for? Because if we don't have any data for it we can raise it as an issue but I don't think it's a topic for our discussion papers. I think it's something that is included in the narrative, and really what I want to keep focusing on just this morning is how we're dividing up our discussion papers in light of our mandate and the data that we have? So I think it's an absolutely valid question that could be asked, but I don't think we're going to have a lot of data.

David, and then Drew.

DAVID TAYLOR: I was going to agree with Fabro on that one because I think it's a good point to add in there because basically we're saying have they been fully implemented, have they been complied with – as I said, those are

compliance issues – and if they haven't then what's ICANN done about it? If ICANN hasn't done anything about it because all the RPMs for instance have been integrated, there's nothing for them to do. But I'm pretty sure we've got data with Compliance because they have a lot of compliance data. It's one of the ones where I see we do have a lot of data. So I would have thought it's worth putting that in there as a number C, and we look at it and see what data there is.

LAUREEN KAPIN:

I think it's a sub-point to B, at least in my mind. Has it been complied with? And then it would be a little "i". What about noncompliance? We can get more precise, but I think that's the issue. What about noncompliance? So we can just put that as a placeholder there. What about noncompliance?

FABRO STEIBEL:

Maybe the question could be, "Are the Safeguards and Rights Protection Mechanisms under Compliance?" So we remove the actor from the questions and then we have two set of questions. One, "Have the actors complied?" So the registry operators in ICANN, have they complied? And the second one, "If they're not complied with, what has been done about it?" My suggestion is, on the question itself we remove the actor. We focus on the safeguards and mechanisms. They have been implemented, but are they being complied right now? So we look at actors and then we look at the end of the process.

LAUREEN KAPIN: I think you need a subject. It's hard for me to remove... It becomes hard to understand if you remove the subject.

Alice, it's noncompliance rather than a [line]. I'm not enunciating.

That's a placeholder. We can refine the language ultimately, but at least conceptually. So it's non rather than non-compliance.

Drew.

DREW BAGLEY: I think based on the data we've already collected from your request to ICANN Compliance, we would already have some helpful data for this. But furthermore, even if we don't have data, to answer all of this I think that alone is worth discussing and is indicative of a greater issue because of the fact that we would have shown that we found that perhaps there was noncompliance and we had no idea what ever happened. And that alone I think would be important to explore. So I thought [Inaudible].

LAUREEN KAPIN: I think that's right. I think this hits issues that are important.

Okay, so moving on, I think we've captured then the elements and refinements of our discussion here and I see your hand, David. I just want to make sure I know where I am.

David, go ahead.

DAVID TAYLOR: Just thinking in B we've got "Have new gTLD operators complied with mechanisms, i.e. safeguards and RPMs," we should have it in A probably. "Have the safeguards been implemented? Have the safeguards and RPMs been implemented? I think it's an easy answer for the RPMs because it's yes. But it's still complete to have that question in there.

LAUREEN KAPIN: Sure, that's fine. What I'm hearing is basically for organizational purposes, I had initially in this trial balloon separated out the Rights Protection Mechanisms primarily because they're in a sense it's its own beast, so to speak. So that's why I had it separated out because it has been a separate topic. But certainly we can discuss them in sequence – safeguards, RPMs, safeguards, RPMs, as opposed to dealing just with RPMs separately. I think for discussion paper purposes you're going to be dealing with all of them, so to speak, David. But when we put it in a narrative portion we're going to be dividing the work that you've done and then putting it into this framework for narrative purposes.

DAVID TAYLOR: That makes complete sense. And I was just going to say there that we then do separate it out in C and D, which is actually one of my questions where we've got the safeguards mitigating DNS abuse and then, "Did the RPMs mitigate the risk" – and we discussed this definition previously, but "the risk involved expanding the gTLD program?" It's also the question of whether – and I can't recall on DNS Abuse whether cybersquatting comes under DNS abuse in definitions because obviously

there there's a slight overlap. It's all DNS abuse and are we separating out whether we want to keep it in. And I don't have a preference. I haven't thought about it.

CALVIN BROWN:

Yes, just following on that definition of DNS abuse, I think we're talking about DNS abuse by registrars? And I'm wondering if we should scope it as such because DNS abuse in my mind could also include things such as DDoS attacks and so forth which are outside the scope of what a registry/registrar or ICANN framework could prevent. So maybe adding DNS abuse by registrants.

LAUREEN KAPIN:

You raised a good point. There's a whole bunch of abuse that is not within the control of the players in the New gTLD Program, like outside attacks, Denial of Service attacks. So Drew, when you're thinking about the DNS abuse issues, I think Calvin's observations – and I'm not sure it needs to go in this question per se – but I'm thinking when we define it in the narrative, we probably need to be precise that what we're talking about is issues that connect to the New gTLD Program and the mechanisms in place to prevent DNS abuse rather than the DNS abuse writ at large, so to speak. So that would include all these outside players.

DREW BAGLEY:

I think this is pretty specific to registrants based on the definition of DNS abuse provided in the ICANN publication from this past spring. And so

also along the lines of questions from over here, it would not include cybersquatting then because that would fall under Intellectual Property and go in the Rights Protection Mechanism category.

So yes, the focus should be on registrants and DNS abuse as far as registrants setting up phishing sites, botnet command-and-control, malware hosting, and so on, but we still do have safeguards in place such as DNSSEC that we need to explore in some capacity. So we need to figure out where to put that. Also the prohibition on wildcarding. There's things like that that we definitely need to put somewhere.

LAUREEN KAPIN: I think those fall under [inaudible].

DREW BAGLEY: Those are not going to be huge categories to explore but –

LAUREEN KAPIN: Those are the technical safeguards which [inaudible].

DREW BAGLEY: So then we don't need those at all here. [Inaudible].

LAUREEN KAPIN: I think those right now are living in – and certainly we're describing them in A. That's going to be included in "Have they been implemented?" And the way this is set up, that will follow all along

except we will deal with them as a separate category – the Technical Safeguards category.

Fabro.

UNIDENTIFIED MALE:

Maybe you're looking here [at the] technology that Carlos mentioned yesterday and he circulate in the mail, which is ex ante and ex post.

So the first two questions that I said was about the process maybe is about mechanisms that we put in place so things don't have the ex ante. And then we have a list of safeguards and rights mechanisms that [this] should be in place. And then we're asking three questions about that. "Have they been implemented?" "Are compliance levels going well?" and "If no compliance, what about noncompliance?"

And then the other ones is about ex post. What if this would happen? If this would happen then we have to do something. In the first group we have very little freedom to choose what to check for accountability or not because if you put in contract ex ante, we need to check if they were done. This is for example the wildcard which we should [ban] it and so Orphaned Glues, ban it. We just need to know if they have been implemented, if operators have helped with that, and if not, what has been done.

And the other ones we have more freedom to say, "What kind of exposed risks we want to address?" And then we have DNS abuse, and then we have the Rights Protection Mechanisms on the extension. And this seems two bold ones to choose. So I would say we have the right

questions, but maybe the process and impact that Fabro suggested before, I'd to disagree with Fabro, and maybe this is the previous ex ante and ex post eventually.

FABRO STEIBEL:

I just want to make a clarification there. When we used that I was referring to the nice graph that David did. Where we have this clear separation is more on a historical basis like when we go into the RPMs we speak about RPMs for the legacy TLDs. They were developed along the way. Now we have new gTLDs and we have mechanisms put in place before there was a problem. So when we discussed that yesterday is that before the new gTLDs we were solving issues as they came along or developing protection mechanism based on experience. And what we have now with the new gTLDs, particularly in the case of Rights Protection Mechanisms, is very clear that we have come up with new things before trying them or not because there was a problem to solve. This was [by defined]. Yes, it was anticipating problems by design.

LAURENN KAPIN:

Okay. I like the process impact. I think that makes sense. I think that's more clear than ex post and ex ante. That's my thinking. I'm seeing nods.

Looking at this framework that is focusing on 2 now – 2 A, B, C, D, as we've refined it – does this capture what we need to capture?

Carlos.

CARLOS RAUL GUTIERREZ: I think it does. Just the wording of C has not been revised and we had it at some point more based on the delta – “Is the new gTLD going to increase abuse?” And I don’t know where we have this previous question. And then we can go to the safeguards. But the initial worry is that is okay, we’re going to have new gTLDs. Is it going to be better or worse for abuse? So I don’t remember if we have it higher up or not, but I need that before I can go into the next question – “Did the Safeguards help?”

So it assumes that the new gTLD increased abuse, the way it’s worded for me.

LAUREEN KAPIN: I think if we go up to the big question 2, which goes back to the mandate which is from the Affirmation of Commitments we are tasked with looking at “a review that will examine the extent to which the introduction or expansion of the gTLDs has promoted consumer trust, and the safeguards put in place to mitigate issues involved in the expansion of gTLDs.” That’s our mandate. So that’s why I think this language is phrased that way – “Has the New gTLD Program put sufficient mechanisms in place to mitigate risk to trustworthiness?” So that’s the big question.

The smaller question then that we get to in C is – I don’t think it assumes – I guess I see your point. Did the new safeguards mitigate DNS abuse? I think your point, Carlos, is, is that assuming that the gTLD program was going to increase DNS abuse. That’s what I hear you saying.

What do you think about that, Drew, in terms of phrasing? I know we're tackling these DNS abuse issues. I'm wondering phrasing-wise is there a more neutral way to say that without getting too wordy?

DREW BAGLEY:

To figure that out, I was just going to point out first that under C we would have the question you brought up, Carlos, about whether or not there was more or less DNS abuse in the new gTLD. As far as answering that question as it's worded now, I guess since we're using the term "mitigating" we're assuming there is going to be some DNS abuse by the way the question is written. Though we all know there is DNS abuse in new gTLDs, all gTLDs. I'm thinking out loud what would be the best nomenclature.

UNIDENTIFIED MALE:

[inaudible]

DREW BAGLEY:

We could do something much more neutral like, "What was the impact of the new safeguards on DNS abuse?"

LAUREEN KAPIN:

That's a good way to put it. Let's change it to that. "What was the impact of the new safeguards on DNS abuse?" That's a more neutral way to put it. Does that help?

Did you have a comment, David?

DAVID TAYLOR: It was almost an exact [in line] with what Drew just suggested there for that, and I was just going back as well just thinking [about] and obviously the big concern back in the Mexico ICANN meeting was the expansion of the DNS was going to provide this vast opportunity for abuse. So there's the recognition that there is abuse in the existing DNS and if we were going to expand it a thousand fold or whatever, you couldn't have that same level of abuse to that extent so you have to have some mechanisms which provided better protection in the new gTLDs than existed in the legacy TLDs. So I think that was obviously where [everybody] was going and the way that's where we've got to be measuring it. The goal is do new gTLDs have less abuse than legacy TLDs? And if not, I think it's a failure. Personally.

LAUREEN KAPIN: Okay. I think this is a good refinement. Taking one step back because I know we have Brian on the phone and I want to find out how long we have Brian on the phone in case we want to pivot and take advantage of the fact that we do have Brian on the phone. Brian, how long do we have you?

BRIAN AITCHISON: I will probably be on for another hour or so until my eyes start closing uncontrollably. But an hour, hour and a half.

LAUREEN KAPIN: Okay, that's good to know because what I want to do is also let folks pelt you with questions to the extent that it's needed in terms of any questions we have about where data related to these issues and our sub-questions live. So I'm going to put a pin on that and try and wrap up this conversation and allow for that. But I just wanted to ask you that question. Thanks for that information.

BRIAN AITCHISON: No problem. Thanks.

LAUREEN KAPIN: Okay. Are we happy then with this sequence and phrasing of the big issues, realizing now that in a certain way this doesn't map our discussion papers. I think that's okay but that aside, does this work as a phrasing of our questions and something that's going to set up a narrative? Yeah?

Fabro.

FABRO STEIBEL: It's not a strong suggestion, but maybe will resolve something. When we ask the question 3 "How [does efforts] impact?" We discussed the words. And then we said yesterday the words is really important. But then in the question 2 "Is sufficient mechanisms in place to mitigate risk?" Is raising awareness something relating to [mediating] risks? If not, we can just address awareness in 3 where we can see if people are aware or not. But if it is important, maybe we should have question 2 about awareness. "Have we put mechanism to raise awareness?" And

then we have the how people find out about the TLDs, what kind of [inaudible].

LAUREEN KAPIN: Can you scroll down, Alice, because I think we have those in [place].

FABRO STEIBEL: [Yes, they are] aware, but we're not asking if we have done something proactively to make them aware which would be the place in question 2.

LAUREEN KAPIN: I think, though, that the whole application and evaluation, the sort of separate sub-team that we're all on with the application and evaluation process, I think that's where a lot of our, "What have we done to raise awareness at least of the program to people who may be interested in buying on it," part of that is going to be grappled with there. But then I think in terms of how we're dealing with the issue, we are dealing with it in this third question and then.

Again, what we're tackling now is how we want to divide up the work. When we write it up, I agree with you, Fabro, that we can make a connection between the relationship between awareness and trust which is subjective – Do you trust it? – and objective – Is it trustworthy? So I think there are linkages we'll be able to connect, but for the purposes of how we're looking at what we have to do now in terms of looking at the data and establishing findings, I think this framework still works. We don't need to do this twice, so to speak. It's just in terms of

dividing up the work. But that doesn't mean in the narrative we can't draw that connection.

Just like Carlos has pointed out how important it's going to be for us to deal with not just the safeguards but with what conclusions you can draw about did they make a difference? It sounds like then we're satisfied with this.

Geo, what do you think? We haven't had a chance to hear from you and I want to make sure we are able to take your views into account.

GAONGLALWE MOSWEU:

I think that it's coming up alright really. I think for somebody reading the report from outside who's never heard of new gTLDs, it's sort of shapes it and puts it into context such that the person can ease into it. So I think we're heading in the right direction, yeah.

LAUREEN KAPIN:

And I think that's really important because my hope is – and I hope it's shared – this is something that isn't going to be inside baseball that someone who wants to learn a little bit about this who isn't in the ICANN world I'm hoping at the end of the day they'll be able to read this report and say, "I get it." Not that, "Oh, my goodness. There are all these acronyms and I don't understand what's going on." I'm hoping that at the end of the day we're going to come up with a final product that is user-friendly and people can understand. So that's why I think it's so important we try and come up with something that is logical and accessible. The narrative must flow.

Go ahead, Carlos.

CARLOS RAUL GUTIERREZ: Just to comment on Fabro #3. I would have asked to scroll up because we have this first black bold question. Thank you, Alice. If we go to the top of this page 4.

So we have the issues. We concentrated on the second one. My question is, a whole perception if this #3 should go under the first chapter: "Has the New gTLD Program promoted consumer trust in the Domain Name System?" This is my understanding of Jonathan's suggestion yesterday is that we have trust as perceived, and then we have trust as working out details, safeguards, mechanisms, and so on. So does #3 remain down there or do we move it up to this very first chapter between the first and the second overall questions?

So I don't lose Fabro's comment. Because his perception issue is my understanding that this perception issue we have some data at least from the survey, very well structured, baseline, against a year later, registrants versus consumers, that's a little bit what we discussed yesterday in the first session with Dave from Nielsen. I just wanted to comment that. Thank you.

LAUREEN KAPIN: What I hear you asking then, Fabro, is whether we should deal with these subjective issues of consumer trust and perception when we're putting this all together, whether that comes first – which I think is a fair question. And originally I think when I was thinking about this, to me it

comes first. But people can agree or disagree on that. And I'm not even sure we need to come to rest with that now. I think we just need to deal with the issues and making sure we have the data, but I think it's a fair point. What do people think? Should we when we're ordering this put the perception issues first?

CARLOS RAUL GUTIERREZ:

I think it's very important that we have the data and our only recommendation would focus, "Okay, we have to do the Nielsen again. When?" In one year or in three years or after so and so many strings have been registered or something like that? So there we're just discussing what's available. We have the data. There is a process established. I assume it's going to be Nielsen again, and our recommendation will be limited to doing it – keep comparing it to the baseline, to the previous one, and you can improve here and there the questions, make the reporting better understandable. So it's pretty mechanical work that we have to do to sell the Nielsen studies because I also doubt everybody will be sitting and looking at the Nielsen studies the way George suggested yesterday running the numbers again. I think we have to resume, give the bottom line of the study and make very concise recommendations on perception.

It might be that the people must be better aware and ICANN has to promote the mechanism and the windows for complaints or things like that, but it's very, very, down to earth, very precise and it's very important the report looks good.

LAUREEN KAPIN:

I agree with you, Carlos. Any further thoughts just about sequence here? Do we want to sequence these perception issues about consumer trust which right now are in 3? Can you scroll down to 3, Alice? There we go.

“Have the efforts had an impact on...” Right now the way it’s phrased, 3 comes last because it has this, “Have these efforts had an impact?” what I would suggest is, for now we put a pin on that and we all agree that we can come back to this issue about whether we want it to come first or come last, but that it’s an issue. It’s not set in stone. Yes? Fair enough?

Fabro?

FABRO STEIBEL:

Maybe a way to reason about it is – question 1 and 2 are definitely related, but what’s the relationship with question 3? This is how the world is, the perception. By the way, this is what we have done. Are these two related? The way we phrase here, we say, “We have done this and this, and by the way, this is what we achieved.” So we kind of suggest [the coincidence] between safeguards and mechanisms and the [express] of trust. Although it’s a [inaudible] that’s not strong.

So maybe it might be two ways. I think we should decide later if it comes at the bottom or at the beginning, but maybe the key question is, what relationship of piece 3 with piece 1 and 2?

LAUREEN KAPIN: Right. I agree with you. And I think as our work develops in this, that will inform our decision ultimately about what sequence we want to use. So the sequence won't affect our progression with the work, but we will come back to this issue of, once we have done the work what makes the most sense in terms of how we order our narrative.

Carlos.

CARLOS RAUL GUTIERREZ: The proof is in the abuse, in our data.

LAUREEN KAPIN: Right, and the DNS data is something we don't have yet.

CARLOS RAUL GUTIERREZ: Because even if the perception is good, if the data on abuse is horrible –

LAUREEN KAPIN: Right. So we'll see what the data shows.

DAVID TAYLOR: It's highly likely that the reality is going to be different to the public perception because the public perception is going to be limited to their exposure which depends if you're a user or registrant and it depends if you look at the data. So obviously if you've been scammed on one TLD once in your life, your perception is, it's all bad.

LAUREEN KAPIN: [Inaudible] your point.

CARLOS RAUL GUTIERREZ: Which brings me to the question, when are we going to have the abuse data?

LAUREEN KAPIN: Unfortunately, we're not going to be able to answer that question now. But it's an important question.

Okay. Let's switch topics now. We're scheduled for a break at 10:15, so let's spend our remaining half hour switching topics and moving on to our discussion papers and data issues. This afternoon I want to talk about our discussion papers and our sub-questions to make sure that the questions we're asking relate to our mandate. But while we have Brian on the phone, what I'd like to do is go through our existing discussion paper topics, not as it's been reformulated here, but looking back at what we've already done and giving us an opportunity to go through our discussion papers one by one so that we can take advantage of Brian and Antonietta to make sure that we know where the data is. I think that's an important exercise.

It may be that we all know where the data is and that's great and fine and dandy. And if that's the case, it should be a quick conversation. But I want to make sure that everyone has a sense either of where the data is or where we expect it to be. Or if the answer is, "We're not going to have data on that," then we should know the answer to that question, too.

Let's get our brains around that topic. We can actually keep on the same paper, Alice, because that includes all the sub-questions right at the end. Let's scroll down to later on in this. What I tried to do in this paper – scroll up to the top of this. Yeah, okay good.

This is the draft basically that captures all the sub-questions that each of you asked in your discussion papers. Sometimes it's consolidated if I thought that people's discussion papers were duplicative I basically captured your sub-questions under the same high-level question. But for purposes of data, we can start with Carlton's paper here – "Are consumers aware of new gTLDs?" And Carlton, I want to give you the chance now that you've worked on the issue to make sure that you know where the data lives on this and ask any questions you may have about data sources.

If you don't have any questions, that's fine. But that's what my intent here is to do, is to go through each person's discussion paper and the work they've done and make sure we know where the data sources are, or if there are additional data sources.

CARLTON SAMUELS:

I think we have pretty much all we need to make a decent stab at this. Brian did a very good paper that has a lot of historical data, and the authoritative data that we have from the surveys – wave 1, wave 2 – that's where most of the compelling data information that we can actually attest to is coming from.

LAUREEN KAPIN: I know where the Nielsen data lives and this is just for educating me, Carlton, when you're talking about Brian's paper, which of Brian's work product relates to awareness?

CARLTON SAMUELS: Brian did a paper that look at the awareness issue, and they quoted several of the studies, surveys, that were done previously. They were limited in terms of coverage and so on, but they certainly gave you a sense of what methodology might be useful in employing them. That's how I looked at them.

LAUREEN KAPIN: Is that on our wiki under the "Awareness?"

CARLTON SAMUELS: Yes.

LAUREEN KAPIN: Good. I just want to make sure everything's living where it needs to be. Good.

CARLTON SAMUELS: And I actually circulated it again because I used it to look at methodologies. It was very good in terms of looking at the various surveys that have been done, usually by private entities for very specific purposes, but methodologies that they employed were good to look at to see whether or not they were robust enough.

LAUREEN KAPIN: Okay, good. So then scrolling down to question 2 – “Do consumers trust new gTLDs?” I was grappling with that topic and it struck me that most of the pertinent data is living in the Nielsen surveys. Brian, is there additional material that we should be looking at on this consumer trust issue that you think is important?

BRIAN AITCHISON: [Inaudible] same thing that the Nielsen study is really about as good as you’re going to get. It’s kind of a weird question to ask – is there trust in new gTLDs? It’s become sort of second nature to us but it’s not a question that’s asked out there in the real world, so to speak, from what I can tell. The Nielsen study is really a very rich source of what you’re looking for I would suggest. Thanks.

LAUREEN KAPIN: Thank you. Okay.

DREW BAGLEY: Along those lines, there was a Department of Commerce study from a little over a year ago that looked into consumer trust, and I don’t know if it was consumer trust of the DNS or how it was broken down exactly, but I know that the headline that came out of it – and it may have been only focused on Americans – but it was something that a quarter of Internet users – and it may have only been American Internet users – had changed their behavior due to cybercrime. Their online purchasing behavior and what not. So there might be other studies like that. I know

we have our reading list and stuff, but there might be a few other things that would help get at this whole trust thing besides the Nielsen.

LAUREEN KAPIN:

Trust for the DNS as a whole rather than the new gTLDs. So is that something you can point out for us? If you find it, then let's get it to our team so that can go on the wiki. At the very least, it could be something that we point out if not as a primary source then as a secondary source, something either in a footnote or some sort of observation. Yeah, let's get that.

Then moving on to... Let's scroll down to start getting into our safeguards bucket. This safeguards implementation issue is going to deal with GAC safeguards, technical safeguards, and then reconfigured RPMS that – since we've separated out RPMS I won't deal with that now. In terms of GAC safeguards, this actually was a challenging topic and I know Carlos knows this as well because he has grappled with this. Information for GAC safeguard implementation really lives in a lot of different places.

It starts off at the communiqué level, primary Beijing and then thereafter. And then there's the whole series of GAC-Board correspondence and charts. Then there are the registry and registrar and registrant agreements. Then there is the GAC effectiveness of advice study. And what I found in going through this is that – and I know Carlos also was experiencing the same challenges – is how do you deal with this question objectively? Because in a certain sense, you were looking at what was the GAC advice and then what did the actual

language in the contracts end up being, and then what's your opinion about the difference between the two. So it has an objective and subjective component.

But it strikes me that we have the factual information about this. The challenge is that it's in many different places and you do have to interpret. That said, I don't think that the data is missing, it's just a matter of pulling it all together. I think we have all the information, it just does become a little bit of a challenge to pull it all together. But I don't know that we're missing anything.

Carlos?

CARLOS RAUL GUTIERREZ:

I agree with you about these different levels. We have a very good record of the correspondence level because the follow-up of the GAC is just if the Board reacted or not – if they acknowledged the advice and then if they are happy with implementation which is very hard to measure because the GAC made some subjective valuation of the implementation. So it's very difficult to get a good discussion out of that level.

But of course we have the contracts. And we have the full discussion of the New Registry Contract of 2013 that I don't know who is analyzing. And last week I was very surprised to learn that the number of registries has been greatly reduced since the new contract came out, at least for the Latin American region. So I don't know if that's a relevant data point that we should track because it was used in the Latin America study as a negative point.

LAUREEN KAPIN: I think in terms of the Review Team as a whole, I'm not sure it's a consumer trust/safeguard to mitigate risk issue.

CARLOS RAUL GUTIERREZ: Sure. Point well taken. And second, if those particular new gTLDs that are under #1 or #2 safeguards will have less strings registered than other ones. That's in the end the proof. If that gives a negative impact. If all these restrictions end up being a positive filter or a negative filter, I don't know how to measure it. But in the end if we continue with all these levels that you mentioned – correspondence level, contract level, and then number of registrations, are we going to go that deep and say, "Okay, somebody should check in three years if .bank has a lot of banks or not or health or doctors or kids or whatever we have in these categories." Because in the end we have to look at that.

LAUREEN KAPIN: You get to perhaps what is big picture a huge issue which is the cost-benefit analysis at the end of the day. So yes, the cost-benefit analysis I think writ at large might be something that the team as a whole, not our Consumer Trust and Safeguards Sub-Team but our Review Team as a whole, at the end of the report I anticipate there's probably going to be some comments about cost-benefits as a whole. So I take your point, Carlos.

That said, in terms of data I think we have the data that we need in terms of the implementation issues.

Go ahead, Carlos.

CARLOS RAUL GUTIERREZ: Just to finish this discussion, one possible result might be that yes, we have very little registrations in these highly regulated segments, but then we have no abuse. That would be the cost-benefit analysis. And then the abuse people should keep track of that when you analyze that not to forget that we have Category 1 and Category 2, to be able to break it up down to that level because that would be the real cost-benefit analysis now that you as a lawyer gave me the hint.

LAUREEN KAPIN: I think that's an excellent point that we need to keep in mind for our abuse data collection that we're going to be very interested in the levels of abuse between gTLDs that have more or less mitigation mechanisms in place – going from the voluntary Public Interest Commitments which have a robust verification and validation process to gTLDs that have the least amount of restrictions.

Okay. Calvin, for the technical safeguards – can we scroll down so we get to the CB and now can we scroll up a little bit. I just want to capture the technical safeguards under Calvin's initials. Right after Carlos.

So Calvin, for your technical safeguards, do you have the data that you need to look at to assess whether the technical safeguards have been implemented?

CALVIN BROWN: The short answer is yes, but what most of it has been reduced to the contracts and so you can just simply go to the contracts. Taking it a little bit further, I believe that we'd need to touch on ICANN Compliance to see if there has been compliance with those contractual obligations. I suspect we're going to have to touch ICANN Compliance for some more data there. But that's where I suspect you'll find those things.

LAUREEN KAPIN: I know that ICANN Compliance in terms of their information on the ICANN website is actually one of the most robust places where ICANN has a lot of information. Have you had an opportunity to look at the information they have publicly available to see what relates to the technical safeguards issues?

CALVIN BROWN: No, not yet. What I've done is I've only gotten through to the contractual side and I've spoken to our Compliance Team as well. My internal Compliance Team have been quite useful in pointing out how strict ICANN Compliance can be. So I haven't looked at that yet, unfortunately. I do suspect that it is going to be comprehensive.

LAUREEN KAPIN: I think that would be the natural next step then, Calvin, is to look at the compliance data that's publicly available and then to know that we have opportunities to communicate directly with ICANN Compliance both who have been very willing to work with us if we have additional information needs. So what I would say is look at the data that's publicly

available first, and then identify if there's going to be any additional information you need so that we can approach ICANN Compliance to obtain that information.

CALVIN BROWN:

Sure. Just to give you a practical example, for instance, [has it] been implemented, the short answer is yes, it has been implemented but then it goes further, there's obligations to keep your WHOIS servers up and available X percentage of time and if it goes down then Compliance will check. I'm not sure if we want to go to that extent on this particular issue, as an example. How far do we want to go into this?

I suspect we probably want to look at an overview type thing, so some kind of generally high-level compliance report where so many incidents were generated a result in such an amount of time, result in X number of compliance notices, something like that. I need to do a bit more work before I can –

LAUREEN KAPIN:

I think that's exactly the right approach, to look and see what we have and then based on what we have, determine what the best approach is. Your instincts about taking a high-level look and summarizing the data I think is a good one. And then I think if after looking at the data there are any hot button issues you think we need to delve into further, then we can approach that one step at a time. But I think your instincts are right and that you'll be able to come up with something even more specific once you've had a chance to look at that. But it sounds like at

least right now, you're not aware of anything we need to ask for at this point in time in terms of data.

CALVIN BROWN: That's correct. Nothing that I believe that isn't available.

Drew BAGLEY: Sorry, just to chime in on one thing. Calvin, I was wondering do you know much about the data available for centralized access to the zone file? Because I know I looked into that earlier in the summer and maybe Brian can chime in to correct me if I'm wrong, but I don't recall that statistics were readily available on that as far as whether everyone was doing it or not doing it. That might be something where only if there was a complaint there would be data. I don't know if you've looked into that or if Brian might be able to chime in on that one.

CALVIN BROWN: Basically, the way it works currently is people request access. If you do not grant or not grant access then it escalates into a compliance notice I think, if I remember correctly. I was at one stage actually managing this for our organization and if you disallow access then there is an appeal mechanism or a complaints mechanism on that, and I must confess that of all the ones that I disallowed when I was actually running that process I don't think a single one raised a complaint. And it was quite obvious that the people were not giving full details such as proper names and addresses and so forth. And those were the ones we

disallowed whereas if on the face of it, it was a legitimate request, then...

So I'm not sure. Maybe Brian can answer if there's a bit more data on that. I need to have a look on that level.

BRIAN AITCHISON:

Sure. I can say a few things on it. As far as the CZDS is concerned, Calvin is right. What we can get numbers on is the aggregate number of zone file access passwords, and Calvin was right to say that there's a lot of problems with that – people inputting names like Mickey Mouse and requesting a zone file access.

Just in general regarding complaints related to these technical safeguards, there's not really rich sources of data on it. You tend to get very low to no complaints about any of this so it doesn't really give you that much. That could, in and of itself, be a result depending on how you spin it or present it in your narratives. You can say, "Well, there's no complaints." That might tell you something. But it's not very satisfying I suppose. There's the Compliance page where you can get the reports and we also have our CCT Metrics page which I believe Antonietta's put up on the Adobe Connect chat. Both of them, in fact.

LAUREEN KAPIN:

Thanks, Brian. Okay. This is actually a good stopping point which magically coincides with our break time. So let's take a 15 minute break and resume at 10:30.

[BREAK]

LAUREEN KAPIN: Okay, so before we left on the break we had reached Fabro's paper and this paper deals with, "Have the new gTLD operators complied with the safeguards?" So the topic on the table, Fabro, is do you have the data that you need to move forward?

FABRO STEIBEL: The sub-questions I have previously done. I don't think they work anymore because we break down the questions into one. And the answer we saw overlapping with what Calvin was presenting the previous questions. Maybe what it's good to discuss – Alice, can you show the breakdown? I got the [nine papers]. We did an exercise of what a safeguard was [intend] and has been introduced or not just below. Just go down a little bit.

So I reviewed everything we have researched [inaudible] but by far the table [we did] is the best thing to address the data. It will be there in a minute.

What you see that I did is that I took the nine safeguards and I said have they been [inaudible] have they complied, yes or no. And what kind of quality data we have. Good quality data, incoming data which means that we're going to have good quality, and well basically not good quality data or just the fact that something has been done but we don't know if it has had an effect or not.

Alice, does it have anything below?

The DNS report had lots of information that we need. Seven out of nine safeguards observed they're fully implemented. Three of them are based on good data – the centralization of zone file systems, the DNSSEC, the [.com and .net] registrant/registrar [level of] abuse contracts. Two of them we do have data but more incoming data is coming and will help the case. The [Inaudible] operators and prohibition of wildcarding. And two are based on implementation record which would be the [expected registry] security request process and the removal of Orphaned Glue records.

So at the top, seven of nine – three of them are based on good data – centralization, zone files, DNSSEC, and [.com and .net] registrar/registant [level of] abuse contract. Two of them waiting for incoming data – that's registry operators and prohibition of wildcarding.

LAUREEN KAPIN: Let me just ask you a quick question, Fabro. For “waiting for incoming data,” is that data that you are expecting to get? When you say “waiting” I'm wondering, will we have it or we just don't have it now?

FABRO STEIBEL: Below I think is part of the data that we ordered already.

LAUREEN KAPIN: With who?

FABRO STEIBEL: For [vet] registry operations we're waiting for ICANN Registry Services and ICANN Compliance [say] statistics on this. This is what was written here, and then for the prohibition of wildcarding, including 2013 [REMs] waiting for ICANN's Compliance statistics on this one. We can just double-check if it's something being done by ICANN, if not, [I'll] review them.

LAUREEN KAPIN: That's what I want to make sure, when we say waiting for incoming data, I'm wondering is this something that has already been requested. Because I don't want us just waiting for something we haven't asked for. But I think Calvin has a comment.

CALVIN BROWN: Yes, on those two particular points – [vetting] registry operators and prohibition of wildcarding that's here – [inaudible] what I've done.

LAUREEN KAPIN: Yes, absolutely. And we're going to that overlap because I think there's an identical overlap and that you and Fabro will eventually connect so that Fabro's not redoing what you have already done, Calvin.

Going back to the data question then. Who do you think made this request to ICANN Compliance, Fabro?

FABRO STEIBEL: I don't think we have made the request.

LAUREEN KAPIN: Okay. So do we need to make a request? Is this an action item?

FABRO STEIBEL: Drew, what do you think? Do you have an opinion on that?

DREW BAGLEY: The only data we've received so far from ICANN Compliance is the data that Lauren requested. I think we're going to, by the end of today we'll probably have a few more requests for ICANN Compliance, I imagine stemming not only from your paper but from others. So yes, I think this is an action item.

LAUREEN KAPIN: Can we list this as an action item and Fabro and Calvin together, can you work on formulating a request to ICANN Compliance about what data you would need to assess whether there's been compliance with these two sub-issues.

And then, Alice, should we work through Antonietta or Eleeza? Who should we work through to get the request to ICANN Compliance?

ALICE JANSEN: I know Eleeza is working on compiling a spreadsheet of all of the data requests from these meetings. So we'll relay that to her.

LAUREEN KAPIN: Okay. Fabro and Calvin, to get it to you and then it will wend its way.

DREW BAGLEY: I need to check an old e-mail. Earlier in the summer I had put in a request to find out what data existed for these items. I can't remember the person's name, but anyway, Brian ended up taking it over because I didn't get a response from that person. So then Brian did write me back. I need to track down, I just need to double check that e-mail. It's not an e-mail with data, it's just an e-mail with information about what data is available.

LAUREEN KAPIN: So maybe when you track that down, you can send that e-mail to Fabro and Calvin just so they're in the know and that informs them when they make that request.

Just as an aside, the information that Drew is referring to that I asked of ICANN Compliance, that's information that we have access to but it's not final information and it's not public information yet. Because I know ICANN Compliance wants to make sure that it was accurate and categorized properly before it's made public. So I just want everyone to know that when Drew is referring to that, it's information we have but it's not on our wiki because it's not in final form yet. That said, I don't think it pertains specifically to this issue but I just wanted to be mindful of that.

FABRO STEIBEL:

And then just thinking out loud here, we might ask three data questions which one of those first has been implemented and that we have the data ready [and yes]. The second one is the level of compliance and as far as we know, yes, it has been compliance. But for the cases where there's no compliance, what has been done. So for example, we have DNSSEC we have nine out of 1,202 that they were not compliant.

I would say the program is implemented because it's a very, very, low percentage, but we would need to know what happens with the nine that are not compliant. Maybe it doesn't exist anymore, good case. Maybe they are huge ones not compliant, bad case. So I would say [a] further this request me and Calvin should detail this noncompliance cases if we have the data. If not, [inaudible].

LAUREEN KAPIN:

It may be that in addition to making the request, you may want to have a conversation with Maggie beforehand so you understand what basically the Compliance group has and what they don't. Because that'll probably help you formulate your request. So maybe you and Calvin could work on scheduling a phone call just so you know what's there and what isn't.

FABRO STEIBEL:

Very good. One is [part] implemented – required Thick WHOIS records. The research is done on that. It's a major hot topic, [inaudible] for disputed topic. And the fact that the other areas of reviewing and addressing it. So we might have data on that, but that might be all the data so all the source of data might be with other teams. We might

need to require exactly how do we say if it's accountable or not, the level of compliance. For sure it's been implemented. This is why it's [part] implemented. But is it enough and is it sufficient? This is something we need to address. So either we go to the top and be implemented or maybe we go to not implemented or stay it where it is.

And the other one is create [inaudible] framework for high security zones. There is one thing there is optional and is ongoing process as far as I could research. So we do have news on that, it's being implemented but has not been implemented yet.

LAUREEN KAPIN:

I'm not understanding that when you say it's been implemented but it's not been implemented. What do you mean by that?

CALVIN BROWN:

When I did my research on this I came across two draft proposals for this, and nothing more than that. So as far as I can tell, it looks like it was something that was stillborn and may still get somewhere but probably not any time soon. It doesn't look like something that is going to require us to answer questions on because it just simply looks like there were at least two different drafts and nothing has happened since. So if somebody wanted to do that, they would have to take those drafts through the whole process the [inaudible] driven processes and so forth.

CARLTON SAMUELS:

I agree with Calvin. I was looking at that because that was part of the one of the things I thought Rights Protection Mechanisms. What I found is that there was a tentative agreement in the Registry Constituency, that it would have been implemented. And there was supposed to be a draft set up and there were people who had different views of the world and it broke into two camps.

So while we have an agreement in principle, nothing has moved so far and I doubt if there is going to be anything... Because some of the people are saying, "Well, you already have DNSSEC and if we have to put in a new layer of security and this involves some DNSSEC implementations too, then the cost..." and they're talking about the cost, the cost, the cost, the cost. That's where it is.

LAUREEN KAPIN:

So it sounds like this is something we're going to need to describe, and basically that's going to be our data is to describe the status which sounds like a reasonable approach.

FABRO STEIBEL:

I consider that it's not implemented, I think what I meant to say is that it's not as clear as the others because it doesn't have a timeline or doesn't have a clear... It hasn't started yet. So I think that the describing approach is better than the data. I look at it how the DNS Abuse report refers to it, and they say, "How do we provide an enhanced and controlled framework for TLDs with increasing potential of malicious conduct?" And this is when we refer to that.

So I think something under discussion and then or do it in the report [is] just say what's the status of the debate.

LAUREEN KAPIN:

I think that's right, and there are GAC safeguards issues that fall into this same category where something has been flagged for further implementation/discussions. That also deals actually with how you report and monitor security issues within the gTLD framework. There are ongoing discussions about how to do that. So I think we're going to have several categories that are basically the subject of further implementation discussions, and our task really is going to be just to describe what the status is. That will be the data.

Okay. So Fabro, it sounds like we've covered your issues, and also as to the duplication I think what we're going to want to do, I think at the end of this process we're going to be tweaking the groups we're working together on with these issues and certain people are going to be teaming up who weren't teaming up before, and this discussion reinforces that. Fabro and Calvin are going to get together so that they are not duplicating efforts and working together on these issues.

Carlton, I think actually you're also doing work on this area regarding procedures to enforce the safeguards. What's your assessment of whether you have the data you need to look into those topics?

CARLTON SAMUELS:

We do have the procedures as best as we can [find] we know them. They come out of the agreements and they've been defined. As to

whether have they been invoked, that's where you want to see if you have data on whether or not they are invoked, and I don't have a good sense of where I can find that. So we're still looking.

LAUREEN KAPIN: Is that something that staff can help you with?

CARLTON SAMUELS: Compliance, yes. If you notice I'd [make] said that we ask staff to see if we could find anything about the PICDRP and the other one. So that's what we are missing – whether or not they've been invoked.

LAUREEN KAPIN: I don't know the answer to that offhand, but ICANN Compliance could. I thought I had recalled hearing at some point in time that the PICDRP hadn't been invoked but that's just anecdotal and I don't know if that's accurate or not but I think what this reinforces is, like Fabro and Calvin, an action item is for Carlton to connect with ICANN Compliance to see what information they have.

I would first look at the website to see if there's any information on if you haven't already. You may have already.

CARLTON SAMUELS: I have looked. There's nothing there. Here's the thing, the first step is you make a complaint and ICANN are [standing] to investigate the complaint. If they don't think there's any [standing] it goes away. That's

it. They're not compelled to publish the fact that they got a complaint. So that's where the distance is between whether or not to take... In my view, when you make a complaint that actually invokes the PICDRP. That was one question. I think it does because the first step is you must make a complaint and ICANN was satisfied [themselves] that you have standing and then they go to it. That's the problem we have with it.

LAUREEN KAPIN:

I think there's two separate issues here. One is a data issue about finding out at least from ICANN's perspective, whether you agree with that perspective or not, whether this procedure has been invoked and if it has been invoked what was the outcome. The second issue may be reflections on this process – how user friendly it is, how effective it is. The GAC has – I know you know – provided input on possible challenges with the PICDRP. I think those are separate issues, and both of them may be things that we want to address but I just want to separate out the data issue from the evaluation issue.

CARLTON SAMUELS;

Based on current process, what is the record for PICDRP instantiations? How many of them you have? And then we assess that, and after that we start looking at some of the issues surrounding that from some of the constituencies. I have to tell you that in this one, the ALAC is pushing very hard that we should be careful and we actually give them some feedback. Just so you know.

UNIDENTIFIED FEMALE: On the data for the PICDRP I just wanted to confirm what you were saying earlier that there haven't been any complaint filings on the PICDRPs.

CARLTON SAMUELS: Yes, we have not seen any record of complaints filed, but what we're not sure about at least from our perspective is when do you start measuring a complaint filed?

LAUREEN KAPIN: So I think this is probably, again, an action item where at least you want to have a conversation with ICANN Compliance to find out their perspective on it and that would be a starting point.

DAVID TAYLOR: Going back to Fabro's Google Doc, I might have missed that first but I think it was when it was all very small so I was trying to grapple with what I was seeing. I think the first things I read on the top right in the comments you'd put about whether a registry operator was behaving. Is that right?

That tied into the Trademark PDDRP, I'm presuming because I was looking at the wording in your comment and it sounded very familiar to the Trademark PDDRP. Is that where you'd got it? I was just wondering does the Trademark PDDRP [is] coming in here as well?

LAUREEN KAPIN: No. Because right now I'm going through people's previously existing discussion papers and we're only talking about whether people have the data they need to answer the questions that they've started delving into. So it doesn't involve the RPMs right now.

UNIDENTIFIED MALE: [inaudible]

LAUREEN KAPIN: The main question that Fabro wrote to is, "Have the new gTLD operators complied with the safeguards?" But it did not include RPMs because you're dealing with RPMs. So it's the other safeguards.

Then I think we reach Drew's discussion paper about the safeguards mitigating DNS abuse. And again, this is our prior phrasing and here I think I've consolidated Drew's topics about safeguards and abuse with the Public Interest Commitments as well. I think this was both questions. Let's start with Drew about data sources for this which may recap some of our prior discussions but just so we have this in context.

DREW BAGLEY: I think that – and I know these questions are going to change a bit when we tweak this up – but I think just looking at the first two listed up there we've already established that we have the sources for that because we were talking about which safeguards exist so we'll be able to look at that for sure.

In terms of anything dealing with the instances of DNS abuse or the rate of abuse, we're going to definitely be reliant on the DNS Abuse study because that's where we're going to get percentages and actual numbers of abuse of registrations in new gTLDs versus legacy gTLDs. And depending on which vendor is picked and how that whole thing works out, [that] will depend on I guess exactly what that analysis looks like in terms of the other variables. But there could be some things that we're actually applying after we get the data.

So for example, if we're not able to get retail price data matched up, we still might be able to after the fact just with public data from maybe new gTLD stats or something else we might be able to draw some conclusions about whether lower prices contribute to higher rates of abuse in new gTLDs even if you have all these safeguards and what not. With the DNS Abuse study we'll be able to look at any correlations between registrars and resellers and then look at other safeguard components. I really think for all of this stuff we're going to basically need to do the homework ahead of time about which registries employ voluntary PICs versus just the mandatory PICs versus being restricted in some other way. We can look at all of those things I guess ahead of time. We already have the data for categorizing it.

UNIDENTIFIED MALE: [inaudible]

DREW BAGLEY: Right. Yeah, so I guess the DNS Abuse study is the only outstanding thing I can think of thinking out loud that we would be waiting for. Does

anybody else have any thoughts of anything else that might already exist or anything that you think that the Abuse study would not cover?

FABRO STEIBEL:

Just throwing ideas. I would imagine a critic comes to what we've done and look at that. For sure we're not looking at all the prices issues or not all the registrar resellers, somehow we are presenting a partial picture of it. I was just thinking that we should be careful to address issues that are [generally] major and try to avoid things that might be perceived as biased. They won't be biased, but just perceived. We're definitely going to point fingers now. And then people might be, "Why this report?" and "Why me?" So we need objective criteria to say what's our rationale to understand price against this? What are the common? How do you define the common? And so on.

DREW BAGLEY:

Right. So we won't know exactly how... We're going to be able to interpret the analysis in the way that works best for the report as far as what's relevant in picking that out of it. But part of the point of the DNS Abuse study is to get a vendor to determine the frequency and the overlap of all these things, and we can make a decision later about which language we use and we don't even need to call out registrars or resellers by name.

But if we find that, for example, let's say there were high levels of abuse in certain new gTLDs and we noticed that the common thread actually was the registrar being used. There was a link to the abuse in it and it made therefore the TLD itself less relevant and let's say in that

subcategory two of the 20 TLDs we were focused on that seemed very abusive two of them even employed voluntary PIC and there are all these other things. And maybe we would see, “Oh, but it was a common registrar that registered all of these domain names,” and so that seems to be the common thread so there’s some breakdown in the process there. And then we could look at that and it might be – and this is once again depending on what a vendor comes back to us and is able to do – but then if we had pricing data and then we also noticed that registrar had cheaper prices than all of the other registrars, we wouldn’t need to call out the registrar by name or anything like that but that would be indicative of something where even with safeguards in place maybe \$1 domain names still led to abuse of registrations and trumped all these other things.

I don’t know. We’ll get to it later in the afternoon when we work on sub-questions, but just in terms of data sources I still think those data sources are important because that’s going to help us better understand whether the safeguards have worked or haven’t worked or whether there are other factors that would need to be included in subsequent rounds.

DAVID TAYLOR:

On the DNS abuse and the definition of it, are we looking at criminal activity in effect, and so it’s just for me to [latch on] the boundary, and so phishing falls into DNS abuse. What about counterfeiting? Because that’s where, I’m just looking at the overlap and trying to figure out where we go because that’s criminal but it’s on brands so it’s RPMs but you’ve got specific mechanisms like Nominet will have something

specific which isn't an RPM per se but it's that borderline stuff and you're fast track taking it down when it's not necessarily [a] brand that's doing something bad you're taking down the domain name which is a brand, and so brand owners will go for that method as opposed to the UDRP which takes 45 days, etc. So I'm just thinking how that fits in with overlap.

DREW BAGLEY:

For consistency purposes, my intention is for us to use the definition provided in the ICANN study from April on DNS abuse, and so that's the study that Brian worked on. And so I think for consistency's sake we cite that. I don't have it right in front of me but basically that focuses on phishing, malware hosting, botnet command-and-control. Definitely this might not be accurate, but perhaps high volume spam to the point that it could be doing DDoS but not spam broadly since that's subject to much more interpretation, but I don't think that that definition included your example of counterfeit goods unless the counterfeit situation was also falling into one of those other categories which sometimes it is.

I think for purposes of consistency, clarity, and to ensure that we're not doing something that's much too subjective, this is going to be narrower in scope than what actually exists as far as problems in the real world.

DAVID TAYLOR:

That was my – not the concern but obviously it's how we capture everything and do we capture everything and just not have something falling through. For instance, if I'm not looking at anti-counterfeiting, it's a criminal thing and that's not necessarily what you're going after with

an RPM and you're not looking at either then we end up with counterfeiting falling through. And as a working group, the anti-counterfeiting were to, it says, "Well, why wasn't this considered?" Just so we know what we're doing and just how we cover it really.

DREW BAGLEY:

All of us can look into this but off the top of your head you know of any good sources of counterfeiting data or anyone else, then that's something where I think it would be much easier to include that. Though I still don't think we would include it under abuse, but then we could at least get the vendor to look at it if we actually had a source of counterfeiting data that could be a separate stream of analysis. Because at that point you're just matching up known counterfeit domain names with the zone files and the historical WHOIS and looking for patterns.

That's something I don't know off the top of my head.

DAVID TAYLOR:

There is the Anti-counterfeiting Working Group which has been within ICANN for quite a while. I don't know how active that is currently but I know there's quite a bit of data there. So that might be something we could add in to look at.

DREW BAGLEY:

Okay. I guess an action item would be to see which sources exist. And then for discussion purposes I still think we would treat that distinct from the other types of abuse – the phishing and the other activities.

LAUREEN KAPIN:

I just have a question in terms of scope. When we're looking at this in terms of the safeguards, how does that bind our scopes, so to speak? I just want to make sure we're not including the world of any sort of criminal activity which we wouldn't be able to, nor should we I think, cover every type of abuse that exists out there. I think we're probably bound by how the safeguards are actually incorporated in the contracts in terms of GAC advice. And I'm wondering if that 2011 paper used a definition that was based in the contract language in terms of the language and specifications 3. Blah, blah, blah, blah, blah. I don't know the answer to that.

I'm just raising the question of scope. What is going to be in the scope of things we should be addressing? Because that is the particular safeguard that was recommended by the GAC.

DAVID TAYLOR:

Completely agree. That was my main reason for raising it is, is it in scope? Should we look at it? It was just not so we've actually looked at it and gone, "This is out of scope so we're not going to look at it." But we've at least covered it and it's clear. We don't want to get criticism down the line when somebody says, "Well, why didn't you look at it? It's abuse. It's this." And you have that issue. So it's just really that we define whether we look at it, and if we do who looks at it?

DREW BAGLEY:

I think we need to stay within, as far as anything that would go under the abuse heading, we need to stay with a very narrow definition of what is an abuse of the terms of service in such a clear-cut manner which these other things are. Granted there's definitely no universal definition of abuse in general but these other things that are required to be in the contracts and for which domain names can be suspended relatively quickly for, those are a lot easier to cover under the category of abuse.

That's what that paper from a couple months ago used as the definition so I think we should definitely do that for abuse. Anything dealing with counterfeiting then you're also getting into online pharmacies and all these other things that are completely based on national law, and with that said like you were saying, there's still issues so maybe the right approach is not to completely ignore them but it should be treated differently and we need to figure out what the questions would be and what we could actually discuss. Because it's not something where... Maybe we could get data on the number of complaints based on allegations of counterfeits, that allegations go up. I don't know. What are your thoughts?

DAVID TAYLOR:

My thought is we should probably not go into it because I think it opens up a lot and you'll see in some of my questions when I through on the RPMs one of them I raised, so we look at trademark infringement, do we look at copyright infringement? And that opens up a whole discussion which could take us half a year to write a paper on and try

and get data. It is really one of how to define, and that's really the only reason for mentioning it.

DREW BAGLEY: Okay. I've been operating under the assumption that counterfeit complaints would not be included in this category unless we're talking about something that also has an overlap with one of the other categories.

CARLOS RAUL GUTIERREZ: I don't know if I missed something, but when we go to consumer trust and we talk about abuse I was strongly assuming that we were talking about consumer behavior.

LAUREEN KAPIN: We're just talking about people's discussion paper sub-questions and whether they have data sources for those questions. We're not talking about the higher level issues of what connects to what. That can be a separate conversation later on. The only thing we're talking about now is I'm asking people, going through each person's discussion paper and raising the issue. Do you have the data you need to answer the sub-questions you asked? So that's all that's on the table right now.

CARLOS RAUL GUTIERREZ: Okay, and I worry that under 2 – rate of abuse it's all related to registries and registrars, not to behavior. Pricing? We're in a competition discussion. Pricing is a very competition issue. So I'm

shocked about this relationship of abusive behavior and contract conditions here. Because for me, all this is very, very, relevant for the competition but seeing it in the abuse chapter, I'm a little bit surprised.

DREW BAGLEY: There's been studies done in the past and there's a known correlation between price and abuse, meaning that domain names that are given away for free generally you'll see higher rates of abuse. Because then the barrier of entry will be lower for the cybercriminal.

CARLOS RAUL GUTIERREZ: [Inaudible] but the barrier of entry is lower for everybody. That's what I mean [inaudible]. Yes, but this is a very important competition issue as well. Compliance issues [inaudible].

DREW BAGLEY: They're looking at price but in a different context. I'm just explaining the context within abuse. I'm not sure how competition covering price from a competition standpoint would at all [inaudible].

CARLOS RAUL GUTIERREZ: I full understand, it's just a question the horse before the cart or the cart before the horse, what I'm asking here.

CARLTON SAMUELS: I just want to raise a flag. In terms of consumer trust and as Carlos said we are focused here on registrants and abuse, but the consumer trust

issue goes a little further. For example, even if we don't delve in detail I don't think you could... Consumer behavior comes, and the trust issue they come together around some things like the situation with the online pharmacies and so on. I can tell you that in the At-Large world there is a very strongly held view that ICANN has a duty of care for, and the registrar/registry [constituency] has a duty of care to curb abuse from counterfeiting and from pharma behaviors.

I quite agree that it's a rabbit hole. You might not wish to go too far down in the warren. But you need to raise a flag about it. I will tell you that the At-Large constituency are going to find it very strange that we're sitting here, and this has been part of their mantra for many years, and we didn't at least raise the flag about that. I just wanted to raise the flag and go on record for that.

DREW BAGLEY:

So Carlton, could you take that a step further and point to data you think that we would be able to use if we were going to go down, as you described it, the rabbit hole, if we were going to do that.

CARLTON SAMUELS:

Yes, there's indicative data that has been collected and I just need to get it from Garth and them that's been working on this issue for many years. For example, there's a whole catalog of complaints that's been filed by At-Large people about these and they have provided the data to Compliance. I know of them there's been a huge brouhaha in the At-Large about this ALAC. When I was [sitting] in ALAC every month, we

had to fighting off claims of strike-strike-strike-strike-strike. Nobody's listening to us. Nobody's taking our research seriously.

So we do have qualified research. We do have data that you can bring to bear on it. And is just a mention, just to be complete, I would not suggest that you go down that hole. But just to be complete.

LAUREEN KAPIN:

That's a fair point. So maybe you and Drew can connect so that there is at least a reference to that without getting into, as you say, a rabbit hole, a very controversial topic that we're not going to be able to come to rest on.

CARLTON SAMUELS:

And just let me say why it's the rabbit hole. We recognize that there are national laws that are involved here. And we recognize that the enforcement of national law is uneven at best. And we recognize that there are different ways to invoke response from the national authorities. And because it's uneven and because there are different standards that different what the due process requirements are, you don't really want to delve too deeply into it. There's some real substantive issues why that could take you two years and a day if you get too far down into that. That's the whole point of not going too far because there's some really substantive issues about jurisdictional issues and about legal frameworks and so on.

FABRO STEIBEL:

I was checking the DNS Abuse document for definition. It doesn't include RPMs or anything like that. And they are quite polite in the way they define it because they are looking for a working definition to address some topics. And they even say that, "Well, in the New gTLD Program we remain open for consideration by the CCTRT to define exactly what kind of definition they want to use and how to define it." That said, maybe it's a topic for us to discuss what kind of definition of DNS abuse we are using. Just to come along with one definition we want to use. It won't be perfect but might be needed to clarify the high-level questions and the data.

I think the data for this case – rate of abuse – is very important because I see one of the bullet points in the second page – Summary of Findings – pointing that. What is the rate of abuse for legacy and the TLDs. There's no way we're not making a quote about it. Either it's higher, lower, or the same. What it means, it depends.

What I like about the rationale here is that we're looking at what factors appear to contribute. It seems that we have good reasons to work price as a factor and the data can be really good for that. For popularity, the data is good for that. And the restricted terms of use, might be good for that. I think that would be a bad plan to use that for RPMs because defining factors for RPMs is tricky and opens a Pandora Box. So this would be one argument to don't include RPMs as part of abuse.

I'm just wondering if common registrar reseller it's a factor or is a reality. Let's say we point to the five top abusers. Is this a factor that we can address or we're just pointing fingers? If we find the top 10 and they have a common characteristic – they all come from Brazil – then

we can say that address [is an] issue. Geographic needs is necessary but maybe not pointing fingers. But [other three], I think we have good factors. It's just a perception.

LAUREEN KAPIN:

I'm going to let Drew respond also but just to jump in here, as I understand it, first of all we don't have this data. So these are suppositions about what the data may show in terms of a correlation – not causation but a correlation – that there may be certain factors that correlate to high levels of abuse. And as I understand what Drew is doing, he now is supposing that these may be certain factors which the data may prove that or may not. These may change and some may drop out, but I don't want people getting hung up on this being solid. This is just a list right now of potential correlations that may or may not be proved out.

Let me let Drew respond and then go back to Carlos.

DREW BAGLEY:

The reason why these are listed now is because we need to attempt to ensure that the vendor can actually produce data on these things. If after the fact, let's say we didn't have price because we never asked for price, and after the fact we can't distinguish any patterns as to why there's tons of abuse in certain areas and not others we might ask ourselves, "Oh, was that it?" But if we didn't have the vendor collect the data to begin with we couldn't even look at that.

So as Laureen said, the attempt is just to draw correlations and then from that we'll do our analysis. And so what might end up going into the analysis it might be that we're not able to explain it. We might say there were levels of abuse sometimes in TLDs that were very restrictive and there would be the same levels in these other ones with no restrictions and there were no common registrars or any commonalities of this or that, so the intention is certainly not to finger point or anything, but I think that we need to collect as many data points as possible and then look for as many correlations as possible to better understand what we're really looking for and whether the safeguards actually did anything to prevent abuse.

CARLOS RAUL GUTIERREZ:

Yes, I think correlations are nice but immediately after correlation the question is so what comes. I agree with Fabro that finger pointing is dangerous. I would include restrictive terms of use as a danger of finger pointing because this has to be dealt under the contract, not on the abuse one. So we have to be careful what the registries and registrars see, otherwise we will be yelled at heavily if we present the result in a finger pointing way.

LAUREEN KAPIN:

Yes, absolutely we need to keep that in mind. Okay. So it sounds like we are hoping then that the DNS abuse data that we're seeking may help us answer these questions and then we're going to be in the sensitive position of figuring out how to 1) analyze the data and then, 2) write it

up and interpret it. And I think there's been an acknowledgement that that's going to be a sensitive issue.

Drew.

DREW BAGLEY: We do need to have consensus going forward on what definition of abuse we're going to use.

LAUREEN KAPIN: Let's have that as an action item, but I think what I'd like you to take the first stab at, Drew, is coming up with a definition that is in fact based on the safeguards. Because again, going back to our mandate, we're looking at the safeguards put in place to mitigate issues involved in the expansion of gTLDs. So yes, the world of abuse is a big world, but the smaller world we're concerned with is the safeguards put in place to mitigate issues involved in the expansion of the gTLDs. So I think our definition of abuse has to relate to those safeguards put in place related to the expansion as a mitigation measure. So that's what we need to keep in mind.

Perhaps, Drew, you can propose something and then we can have a discussion about that. But I just want us to keep that focus in mind because otherwise we could be involved in something that's much broader than our mandate.

Carlos.

CARLOS RAUL GUTIERREZ: Yes, just another data point. In the documents we revised we had two huge documents by Symantec, and Symantec as far as I remember has a separate chapter for DNS abuse. I don't know if that's helpful or not but that's another line we might want to take into account. They really separated DNS abuse from other types of abuse. You might agree or not to that but that's another reference.

LAUREEN KAPIN: Thank you, Carlos. Is there anything else we need to touch on to close out this issue, Drew, in terms of what data you need and now the issue that has been raised about scope and definition?

DREW BAGLEY: I would say at this time no, but this will be contingent upon the definition of abuse, so if the definition of abuse expands, it could expand to the point after we reach our consensus that we decide we do need data from other sources. But basically all I would see is that the data has to exist for us to be able to even, if we worked under an expanded definition, for us to even operate with such a definition for one. So that could even be part of the justification for us operating under a narrower definition.

But at this time I don't see any other need for data other than what we would get from the DNS Abuse study, nor do I see any current data that we can use except these smaller scale studies that have been done that would be used for purposes of providing a background and more of a literature review. I don't know if anyone else has anything else, but in closing I'd say I don't really have any other data requests at this time.

LAUREEN KAPIN:

Now we're at the Public Interest Commitments. Carlton, are these your sub-questions or are these someone else's sub-questions? Those are yours. That's what I thought.

In terms of the Public Interest Commitments, that is something that Antonietta has some data compiled already and will be adding to that. Carlton, what data sources do you anticipate needing to answer your sub-questions on this?

CARLTON SAMUELS:

As you know, there are a couple of levels that we have to look at. There's the Registry Agreements that incorporates all the PICs and out of that there's some data points that you extract from that as some of those data points are being tracked by ICANN Compliance. Then there are data points that come from the Registrar Agreements that is [between] the registry and the registrars. And there are data points that come from the registrar-registrant relationship.

The ones from the registrar-registrant relationships are probably the most problematic in terms of capturing data because one of the things that we don't have now is the compliance data set does not extend as far to the registrar-registrant relationship so far. So that's the one that we don't know for sure what the elements are.

All the others you have data points that can be collected because of enforcement of the contractual obligations. There is a question as to whether or not the data points we have are actually fit for purpose. Do

they actually give us the kind of information we would need to ensure that we know that they're working right? Are they collecting the right bits and pieces?

LAUREEN KAPIN: And when you say "they" who do you mean?

CARLTON SAMUELS: Compliance. It is the team. The registry or the registrar is supposed to collect some data. Data is then passed up. There's a set of them that is part of the compliance mechanism that you have to pass up to ICANN Compliance. And those are fairly easy to track. But the question is, are they the right ones that we're looking at? That's the problem with that set.

And then there is a set which don't have much oversight of and that is the registrant-registrar ones. Things like in the Registrant Agreements you'd notice that there was a [flow] through from not being able to support malware, etc. [of] all of those. And those are generating complaints. We don't know how the complaints are being managed and so on. Those are the ones that we have a real problem with.

FABRO STEIBEL: So many ideas. You have two questions and what types and what restrictions were imposed? Maybe the way to phrase it is to separate according to the high level questions we did and then maybe it will be easier to define what kind of data we need. What type of PICs were incorporated? This is a very good question. And one kind of data we

could have is how many PICs affect how many contracts or how many relationships? So some PICs will affect all involved, some of PICs will involve part of them.

CARLTON SAMUELS: You're right. We recognize that there are different effects on them. There are ones that affect the registry, and it's the paired agreements now it's between pairs.

LAUREEN KAPIN: You're talking past each other I think. I think what Fabro's talking about are the difference between the Public Interest Commitments that are applicable to all generic top-level domains versus the subset of Public Interest Commitments that are only applicable to the highly regulated domains, and then the voluntary Public Interest Commitments which are the smallest set altogether. That's a separate topic than what you're talking about, Carlton.

CARLTON SAMUELS: I was talking about impacts on groups.

FABRO STEIBEL: I was thinking about how to better describe them. So maybe collating them according to applies to all, applies to a group or is voluntary, and then we can describe what should have happened.

Then the second question would love to have answers is, have they been followed? It's mandatory that they follow this PIC, however how many have indeed followed? I'm not sure if we have this data but it would be good to know if they [are worth] not only implemented, but if they have a compliance. And if they don't have a compliance then ask [in] what scenarios are not.

And I like very much the distinction between [reduced trends] and [used] restrictions. Because I think it would go well with what Drew is doing. And then maybe a last suggestion is to move this question 3 to Drew. So he has factor of DNS abuse and maybe PICs is one of the factors he could address.

CARLTON SAMUELS:

[Inaudible] I'm hearing you, you [want the one] you want to have them categorized and those that are specific to all gTLDs, all new gTLDs, for specific groups of gTLDs, and so on. So we can do that. So we can add to that. And then you wanted to – I don't remember the next bit.

LAUREEN KAPIN:

[Inaudible] regulated. The Public Interest Commitments associated with –

CARLTON SAMUELS:

[Any other] notes that reflect it?

LAUREEN KAPIN: Yeah. And I'm taking these notes. We're actually having a hybrid discussion now about reformulating our sub-questions which we'll also do in the afternoon. But I'm taking notes on it, and what I'd like to do, Carlton, is we can loop back to this specifically in the afternoon as we refine the sub-questions, but rest assured that I'm taking notes on this so that when we get to the afternoon we'll be able to put it in the document.

CARLTON SAMUELS: Good. I like that. I still need to know the second bit [now], Fabro.

LAUREEN KAPIN: The Public Interest Commitments associated with the sensitive regulated gTLDs, and then the voluntary Public Interest Commitments which certain registry operators took on voluntarily. So those are three categories.

FABRO STEIBEL: Maybe it's about point 3. What were the DNS [queues] rate of new gTLDs that employed the various types of PICs? It's a very similar question for what Drew is doing. Maybe it was just putting two debates together. This is a perfect question for maybe Drew. He has price, he has terms of use, and might PICs be another factor that he could look at? But it continues the debate what kind of data we have to discuss that. So if the data that Drew has has also information about the PICs, if he can cross edit, then we will have that information. If not, maybe we

need to think a way to how to have the DNS abuse rates cross [stabbed] with PICs.

LAUREEN KAPIN:

As I understand it, what Drew is contemplating is broad categories. He's basically going to be requesting zone files from every domain that's out there. And once we know the registry involved for that domain that we know, then we can always look up their Registry Agreement and see exactly what Public Interest Commitments they have. So I think we can mesh that together. That data, assuming we have the DNS Abuse study data, as soon as we know what registry operator is in charge of that domain then we look at the Registry Agreement and we know what Public Interest Commitments they have. So we would be able to marry that up.

FABRO STEIBEL:

And we need also the time frame of the data because the PICs were being implemented.

LAUREEN KAPIN:

Yes.

DAVID TAYLOR:

I thought you can just search on the ICANN website, can't you and just drop down PICs and it just lists every TLD with a PIC so you can click on to find out which PIC is which TLD so [inaudible].

LAUREEN KAPIN: Yes, it's easily identified.

CARLTON SAMUELS: Fabro, you said something about the frequency of the [inaudible] of the data. I'm missing the connection.

FABRO STEIBEL: I might be wrong but Drew's data will have a timeframe that may be today or may be in the past at some point. So depending on where we collect the data, some PICs might be in place or not. So this is just to look at, let's say if you get the data from two years ago and then we look for a PIC introduced today, we wouldn't have it just to keep in mind.

DAVID TAYLOR: Stupid question. How do we anticipate getting the data as to whether a PIC's being used correctly? Because I don't get that because ICANN Compliance I don't think – correct me, I may be wrong on this. It's not my area at all – but ICANN Compliance will only have data if they receive a PICDRP asking them to look into it and [the] other 30-day period or something like that. So ICANN Compliance aren't going to have any data on whether the PIC's being correctly used or not. So the only way you could do that would be to look at the TLD, look at the PIC, and have someone review the registrations within it. So if you wanted a project for staff to keep them busy for five years, that sounds to me the perfect one. So I'm not sure where we're going on this.

LAUREEN KAPIN:

No, and I agree with you. I think it's important for us in terms of our scope to figure out what we're actually going to be able to do. So as Fabro points out, a task we would be able to do is gather some data that talks about the numbers of the Public Interest Commitments in these different categories, gather data that talks about whatever complaints are out there, and perhaps there's some additional data that is found in the constituency correspondence that identifies certain hot topics that may relate to abuse issues in general. But will we as a sub-team be able to deal with issues about whether things are actually working as intended in the real world? I think that, as you identified, David, that might be a five-year project that could keep people spinning their wheels for a long time but I don't think it's something we're going to be able to do in our timeframe. I don't even know how we would even gather data for that because it would live in so many disparate places there would be a challenging task.

Go ahead, Carlton.

CARLTON SAMUELS:

Remember that PICs come in different bundles, and in the agreements themselves they are data points that [we] are supposed to capture some of those PICs. They are in the agreements. So we can look at those. I quite agree that it would be difficult for us, given the stretch we are looking at, to make a determination as to how well the PICs are doing from those data points. But there are some of them that you

could see straight away simply not reflecting what was intended. There are a couple of them.

UNIDENTIFIED FEMALE: [inaudible]

CARLTON SAMUELS: I can't off the top of my head. I'm scratching on my head to remember which ones. But there are a couple that have been identified by the At-Large as relevant to look at again. I can go back and look at it but we do have some preliminary questions about those. If you look at the data point and you say, "What is the intent?" And you can make a judgement saying this won't do because it's outside of what you're actually trying to collect.

DAVID TAYLOR: I'm trying to think, I think one of the big ones is whether you're operating as a closed or an open TLD, and then you can see what domain names are in there and then take a view as to whether that TLD is operating in an open manner as it's claiming to do or whether it's in a closed manner. But again, I think the way it's set out where there's nothing [I can write] on that, it's for third parties to find that out, point to a TLD that's not being operated correctly and file a PICDRP. So the fact that there's no PICDRPs means no one else has spotted it.

So if we go into any of these and ALAC looks at it again, that's the third party body which goes into, "We're just going to go over and look for our own interest." Effectively, you need to file a PICDRP for it to be

looked at correctly otherwise we might be coming through saying, “Oh, look. This looks like it hasn’t been evaluated or judged.” Again, I think to me it’s just a bit of a dead end for data presently. But we should still have it but I think in two years we’ll have data maybe.

CARLTON SAMUELS: Actually that’s one of the reasons why the way the PICDRP is invoked has been of issue for the At-Large because there’s [inaudible] effect evidence that this is the case you just brought up. But then you still have to go to ICANN and you still have to get an investigation and you still... That’s one of the ones, for example.

DAVID TAYLOR: That would be great if ALAC does it.

FABRO STEIBEL: Think about making arguments to supports David point of view. Are we looking to the real world? Yes, but not to all real world. We are selective in how we look at it. We are less selective about the process, and then we’re addressing the PIC process because we’re looking if they were implemented and there was a contract and those who should abide by the PIC are abiding or not [with] the descriptive analysis of clicking the website and look at it.

If in the real world they have in fact or not been implemented, then we have the authority to say, “Look, we’re looking at safeguards. We’re looking RPMs or for impact and so on, but for PICs, no.” It’s too micro compare to the workload we’ll need to look at all of them. But we

recommend others to look at it. So then we have an argument to don't enter on the implementation of PICs but just looking at the process. Not the impact but just the process.

DAVID TAYLOR: I think we can state something to the effect that there have been no PICDRPs to date but we strongly encourage third parties to be looking at this and making sure that whatever PICs have been promised are in fact being enforced – or not enforced, but the registry is actually doing what it's saying it's doing – public interest.

LAUREEN KAPIN: Okay. So then in terms of data, let's move on to you, David, and the Rights Protection Mechanisms and whether the data that you expect to come in through the study that you've been focusing on whether that will in fact enable you to answer the sub-questions you've posed or are there additional sources we need to either try and obtain or need to realize that we're not going to get it at this point. So those three things.

DAVID TAYLOR: The sources which we've got currently for this are the compilation of procedure related sources and the compilation of impact, safeguards, and PICs related sources. So I went through those and neither of them come up with anything in particular for RPMs. You've got there's the 2015 Compliance Annual Report which does mention the UDRP and registrars, but that's a little off point for the rest of the RPMs. So I couldn't see anything going through those. I may have missed it.

And the compilation of the impact of safeguards and PICs again is quite specific. That's your GAC advice mitigating risk of DNS name collisions, etc. So to my mind there's very little informational data there which we've got. Hence, the concentration on the INTA Impact study with the great concern that it will happen but it will happen too late.

UNIDENTIFIED FEMALE: [inaudible]

DAVID TAYLOR: That's a very good question. We don't have a confirmed timeline yet. The goal, I was pushing for it saying I'd like the impact study to go out so that we got the data back September/October. It looks that the best we're going to hope for is December/end of the year.

There's been a few discussions on that. The good thing is INTA do want to do it and it'll be a proper study. It's not an INTA owned study, it's an INTA independent study that they'll push out to a vendor. So that side is all good. I do have a great concern it comes in too late, and they don't want to push it forward for the purposes of ICANN, and I'm just stressing if we get the data then we can obviously build it into our report and if we don't get the data then we can't, which is the problem.

So I do hope we get the data. So I'm going to try and keep as close to that as I can to get it. Otherwise, we've got some other sources I think where we can go to WIPO and there's something [inaudible] this is the WIPO observations on new gTLD dispute resolution mechanisms. There's a few papers out there so that's where I was starting to have a

look at alternative sources which I can pull in to the pile to start looking. Otherwise, it's anecdotal evidence. It comes through a lot of it.

But we will get stats I think from the providers, and that goes to my earlier point yesterday about the pre-delegation RPMs, the legal rights objection that the ICC, the ICDR, that the providers themselves can provide some data which we can then use and perhaps with some analysis which we can discard or use as we wish. So that's my goal to go to them.

LAUREEN KAPIN:

So can we work – and when I say we I mean “you” – can you work with our ICANN team to make sure that for example this WIPO paper and then some of the other data sources that you've just identified, that as we get our hands on this, whether it's a link or whether it's something that's transmitted to us, that then that gets to our staff so that it can go on the wiki under this topic just so it's there and we know where it lives. Because you've identified now a slew of things, none of which I think we actually have at present –

DAVID TAYLOR:

No, the ones I've mentioned are all the stuff which we've already got which aren't helpful. I've only mentioned that one WIPO and that's the only one I've found. So it's early days. I'll do some more digging.

LAUREEN KAPIN:

Right. I just want to make sure as you identify it and get your hands on it that then it makes its way to the wiki page. And I think my big question

is to you, David, which you've already answered partially which is, if the INTA study does not happen in the timeframe that's going to sync with our ability to use it, then what's our default plan? And what I'm hearing you say is our default may rely on these other sources of data. But I sense that if that happens, your sub-questions may need to be retooled to be at a higher level, more superficial. Right now they're very in-depth which would be the optimal scenario. But I just want to make sure we have a plan B.

DAVID TAYLOR:

Absolutely. And I've put I think it's not up here but it's 16 or 17 sub-questions which is really just throwing out quite wide so for discussion tomorrow so we can understand where we're going on some of these perhaps. But true those, it was to have those in mind and then just dig for data basically which we can identify which can answer those and then some of those questions we'll have to ignore if there's no data. And then hopefully point it out in the INTA impact study.

But again, what's a little bit hard is – again, it's chicken and egg – is while I think we can have some input to the INTA impact study in terms of questions, hence we have to identify the questions, hence you have to know what source is already out there. So you kind of have to do the review to identify the questions to add them into the impact study but not delay it. So talking about horse and cart and chicken and egg. You're kind of in a little bit of a circle where the Plan B is what's out there and we make use of it.

LAUREEN KAPIN:

Okay. Carlton?

CARLTON SAMUELS:

Just to say that some of the RPMs you'll have, for example, DDRPs and the URS you have two providers of those services. And whatever the INTA's going to do, they're going to use those as baseline for most of that because they are the only two providers. So INTA will be doing interpretive studies of the baseline data that they get from WIPO and the other one, the Commerce Team of commerce people and so on I think. So as I look at the questions and most of those you are going to get from that baseline data. What INTA will do is that they will triage the data much quicker and probably better than we could.

DAVID TAYLOR:

I think the INTA impact study it's not going to the providers. The INTA impact study is going to brand owners and members of INTA. So it's a different pool to the providers, hence that was why I was saying my goal is to go to WIPO and obviously National Arbitration Forum for the [URS], etc. and to get whatever data we can from them because that's published data so we can use that data.

But it's a different source that's going to be in complete parallel to the INTA impact study which isn't getting the data from that, it's going to the members of INTA for their [deception] so it's the public – the registrant brand [inaudible].

CARLTON SAMUELS: I misunderstood that because that was my original thought because I was looking at it, too. I linked to all of the WIPO data and the URS data, but I didn't know that.

FABRO STEIBEL: Just one scenario that came to my mind. In a short period of time there will be a WIPO study that will have brilliant data about the impact of RPMs at some point. So the data they might screw up. Fine, they don't have the big data but one scenario is that they have it. And when they have it they're probably going to look at our report and they're probably going to have [words data] they do have because they have a methodology for that.

I'm just thinking about the Plan C. I'm not sure if it's possible. But [we're looking at] RPMs in two ways – describe the process and implementation of it, and the impact. And the data for the impact is where we are short of data. And if you look at how we defined the high-level questions, RPMs is really highlighted and the impact of RPMs is really highlighted there. What if we think about a Plan C where we don't have the data for impact and we know good data is coming next, and then we reduce the scope of RPMs in the report so we focus on the implementation, on the process, and not as much as impact.

I'm not sure if it's a good idea, but I'm just looking at a scenario where maybe we can complete and get good data on the impact and we don't have it.

DAVID TAYLOR:

Thanks, Fabro. I completely agree with that and I think you're absolutely right that WIPO will do something incredibly thorough based on their data. I think they'll wait until they've got enough data so this is a bit premature. But there is data out there for sure. We know exactly how many URSs are filed, how many UDRPs. We can compare to what it was in previous years. I've got all that data so that's easy data to find.

I think where it becomes interesting to me is it ties into the review which is going on at the Trademark Clearinghouse and those other things because they're looking at the data of whether the Trademark Clearinghouse is satisfactory. So there you've got duplicate work so exactly the same point you're just saying there – we flag it and we say, “Well, wait and see for that to come through,” because when is that due? When is the URS review due? And people are going to have to look to the data.

Again, it really comes down to timings. And I think the point with the INTA impact study ties into what we were saying before. I think on that split [inaudible] discussion with Carlos is we've got the true data and we've got the registrants and the consumer's perception which is their perception based on what they've seen. So the INTA brand owner's perception will be based on what they've seen. So if a brand owner's filed two UDRPs with success and lost the URS, they will probably conclude that the URS is not very good. But it may be that they shouldn't have filed a URS and they've been badly advised.

So you take a lot of the data with a pinch of salt but you can still see globally who's using what and what the success rates are and have the success rates changed. So I think there's enough data to make some

initial conclusions but I would certainly be looking in that to be pointing out to the future and when we've got more data, and hence which is what we're doing anyway in another review of this in one year, two years.

LAUREEN KAPIN:

Just to wrap up this topic, let me flag as an action item that David is going to connect with ICANN staff to fork over all this data you're identifying and have to make sure that that's living in our list of data sources. And then to a certain extent we're just going to have to sit tight and see how things pan out, and that's going to inform how we approach this and the depth we're able to approach it.

Let it not be said that I only impose restrictions without also bestowing gifts. This is a natural stopping point for us. So even though we are before the official lunch break time, I am bestowing upon you 15 extra minutes of free liberation and let's meet back here at 1:15.

What I want to turn to for the afternoon is talk about our sub-questions in light of our conversations and refinements whether we need to retool some of our sub-questions – I suspect that we may. Let's have those conversations. And then what I hope to come up with as the final part of our discussion point is to talk about, in light of our adjustments, what teams now make sense to tackle the different sub-papers. So just to get us a little more organized now that we've retooled things. So that's my game plan.

If folks have other suggestions we can take it up after lunch. And for now, good work. I think these were very helpful discussions and let's take a break. Thanks, everyone.

[END OF TRANSCRIPTION]