

ABU DHABI – Competition, Consumer Trust, and Consumer Choice Review Team (CCT) Engagement Session  
Sunday, October 29, 2017 – 12:15 to 13:15 GST  
ICANN60 | Abu Dhabi, United Arab Emirates

UNIDENTIFIED FEMALE: 12:15 to 1:15, Competition, Consumer Trust, and Consumer Choice Review Team Engagement Session, Hall A, Section A.

JONATHAN ZUCK: Greetings and salutations, welcome to the CCT Review Team Engagement Session. Thanks all for coming. It looks a little bit like high school with everybody is sitting in the back rows instead of the front rows but we'll let that pass and try to speak to the cheap seats.

We had a day long face-to-face on Friday to sort of coordinate our various activities. Things are a little bit unique and that we released an interim report before for public comment and did it at such time when there were still three analyses if you will that were still in the field. One related to parking, one related to DNS abuse and one related to Rights Protection Mechanisms.

And so those things were going on in parallel and rather than just put the results of those things into the final report, we're going to,

---

**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.**

---

right after this meeting, release an addendum to that interim report, forget public comment on those new sections. And then incorporate all of the comments that you submitted thus far into a final report by the end of the year. Which is essential with that slide it says. And then who do I – where do I point this?

UNIDENTIFIED MALE: Scroll mode.

JONATHAN ZUCK: Oh, it's in scroll mode.

UNIDENTIFIED FEMALE: No, it just looks like it's in scroll mode, yeah.

UNIDENTIFIED MALE: Yeah.

UNIDENTIFIED MALE: Okay.

JONATHAN ZUCK: All right.

Session

---

UNIDENTIFIED MALE: [Inaudible] going to do the [inaudible].

JONATHAN ZUCK: Thank you.

UNIDENTIFIED FEMALE: Because it's a PDF.

JONATHAN ZUCK: Okay. Go ahead. All right.

So, just as a reminder, our mandate was to evaluate the impact of the New gTLD Program on Competition Consumer Trust and Consumer Choice. We're also supposed to look at the effectiveness of the application and evaluation process and of the safeguards. Our overarching goal was to be data-driven in our analyses and hopefully in our measures for success.

So as we make it through this last phase, we're trying to make sure that we provide sort of metrics to the extent possible to look at how the things we're recommending can have a positive impact on future Subsequent Procedures if they occur. And so the idea is to informed policy related to the further introduction of new gTLDs.

Next slide.

So just to give you a sense in March there, we submitted the draft report and we will now publish this addendum to the draft report – so not the whole report again, so we’re hoping only to get comments on the changes and hope to deliver the paper here by the end of the year or very early next year in January.

Next slide.

These were the new sections I talked about.

Go ahead, next slide.

So the first thing was about parked domains and all of you probably know that the majority of domains that are registered are parked in some way or another. They’re not the primary identifier for a website and there’s a lot of different definitions that could be used to define parking including being put on a monetized site but also just a pointer or they don’t resolve at all or they’re used just for e-mail, etc. And so there was difficulty in kind of narrowing that down and so we want the most expansive definition possible of parking.

Just to kind of look at whether or not there was a significant difference between parking behavior in the new gTLDs and the legacy gTLDs because our mandate again is really to focus on the impact of the New gTLD Program. And there was in fact a

difference, about a 20% difference between levels of parking in the legacy and new gTLDs.

And it's sort of up to you. It's sort of whether or not that's significant and should be dispositive in terms of whether it's within our scope to focus on but we did a little bit of work given that difference to look into what the impact would have been on market share calculations, on market concentration, etc. if we controlled for those parking numbers.

And the net result is that we end up with largely the same results. They're different. There's a downside calculation to market share in particular if you controlled for all of the domains that are parked by these definitions. But there's certainly plenty of hypotheses that support the notion that parked domains are actually good for the New gTLD Program because that level of speculation provides the bridge financing for smaller domains to survive, etc.

And so the net of this is that we ended up with essentially nothing to say. It's one of those things where even no result is a kind of result because everyone is going to have a very strong opinion about the importance or effects of parking on gTLDs. What we found as the data at this point wasn't there to support it and that it's probably a good area of research for the organization as a

whole and that's not really linked to the New gTLD Program but gTLDs overall.

And so our recommendation is to continue to collect data about it to facilitate future research, but in the end with a little soul searching we decided that was really outside of our scope because of how pervasive it was across the board.

So those are basically the net result of the parking paper. I look forward to you looking at it and commenting on it.

Next slide.

So that was our recommendation. And so then I really want to get into the midyear topics here. So if you go to the next slide, I'm going to hand the microphone over to – oh, I can answer questions first, that's what it says on the slide. Does anybody have any questions about that? Right. It's not particularly exciting so I understand that.

So let's jump to the chase. I'm going to – Drew Bagley is going to pick up the conversation and talk about the DNS Abuse Report and the implications for our final report.

Session

---

JEAN-BAPTISTE DEROULEZ: Sorry, Jonathan. Sorry, Jonathan, there is a question in the chats from John McCormac from hosterstats.com. Has the paper being updated to replace WIN with TOP as Chinese gTLD.

JONATHAN ZUCK: WIN was removed. WIN was removed.

JEAN-BAPTISTE DEROULEZ: Thank you.

DREW BAGLEY: Thank you, Jonathan.

As Jonathan mentioned, one of the main parts of our paper that was still outstanding at the time of our summer draft was the section on DNS Abuse. And we looked at the DNS Abuse topic for a variety of reasons as part of our mandate in looking into the impact of the New gTLD Program on Consumer Trust and Safeguards.

And the underlying question for us with regard to DNS abuse was whether or not the new gTLD safeguards put in place prior to the initiation of the program were effective and mitigating and/or preventing DNS abuse in the new gTLDs.

Next slide, please.

As part of looking into this question, we of course have to use an operational definition for DNS abuse and DNS abuse does not have a universal definition in terms of an all-encompassing instant specific definition. However, we did have an underlying philosophical definition to use that was based upon research conducted on behalf of the CCT Review Team and submitted to us in July of 2016.

And from that, we operated within the confines of a definition that described abuse as the use of unique identifiers for cybercrime infrastructure directing or that directs users to websites that enable other types of crime and that may include fraud IP infringement, child exploitation and other forms of abuse.

However, that definition does not have universal acceptance into all the different types. So therefore, what we decided to focus on with regards to our research was only DNS abuse matters for which there was a consensus in the community that also was prohibited in the Registrant Agreements and that was measurable. Next slide, please.

So from that, we focused on phishing and malware, and then spam while not explicitly prohibited and while being a gray area, spam is a well-known conduit for both phishing and malware, and so therefore we also included spam in our research. Our



research kicked off in August of last year and then the final report from that DNS Abuse study was submitted to the community in August of this year and so many of you may have seen it during the public comment period for the study. Next slide, please.

The study looked at the overall accounts and the rates of DNS abuse from January 1<sup>st</sup>, 2014 through the end of 2016 because this was the period after which the first new gTLDs had been delegated and then up until the end of last year when the research was commissioned until.

And as part of the methodology, what the research relied upon were zone files and WHOIS records, as well as 11 distinct blacklist feeds related to phishing, malware, and spam. In addition to the quantitative analysis from that data, the researchers also engaged in an analysis of what factors were correlated with the various TLDs and registrars for which they saw high or low levels of DNS abuse. Next slide, please.

The overall conclusion in looking at the impact of the new gTLDs on the DNS as a whole is that there was not an overall increase in the quantity of abuse for all gTLDs as part of the introduction of the New gTLD Program. And prior to the introduction of the New gTLD Program, some of the fears that were laid by putting into place these safeguards was perhaps that any expansion of the DNS would lead to a total overall increase in abuse.

So we did not see that. However, we in fact saw that the safeguards put in place is part of the New gTLD Program did not on their own stop or prevent abuse from happening. So the new gTLDs like the legacy gTLDs suffer from abuse, although it really depends on the zone and it depends on a lot of different factors with regard to the registration policies, price, and the size of the zone.

As more new gTLDs came online since 2014, the trend has been that there is an increase in the numbers of phishing and malware domains in new gTLDs. Whereas this number still does not match the overall number in Legacy gTLDs, but for spam in particular what was interesting is that it appears that there is a migration of [miscreant] using spam going from – using Legacy gTLDs to new gTLDs because we now see higher overall numbers of spam-related domain names in new gTLDs than in legacy gTLDs.

In terms of rates of abuse, which is looking at the actual size of a zone and the number of instances of abuse in that zone, that tells a bit of a different story. And so by the end of 2016, after many more new gTLDs were delegated than in the beginning of 2014, the rates of abuse in new and legacy gTLDs were about the same. They became very similar.

But the way in which abuse is done is a bit different, so Legacy gTLDs are more commonly associated with compromised

legitimate domain names being used for abuse whereas with new gTLDs, the trend seems to be that there are more malicious registrations, meaning domain names registered with the actual intent and purpose of committing abuse.

We did not see a strong correlation between the use of privacy and proxy services for abuse, however, we did see that privacy and proxy services are used more commonly in Legacy gTLDs because that was one of the things we looked at, too. Next slide, please.

So what this slide shows is the total overall numbers of abuse, so not the rate of abuse, not factoring in the size of the TLD. But the total overall numbers from three of the blacklist, three of the 11 blacklists that the researchers used. And as you can see from these, you see that upward trend I was describing a moment ago with regard to the new gTLDs and a constant level of abuse in terms of overall numbers for legacy gTLDs and the DNS as a whole.

However, as you see, by the end of 2016, this rise in total overall numbers is something that is a bit alarming in the sense that we now see that new gTLDs in their volume are starting to reach the levels of legacy gTLDs. Next slide, please.

Here – so the last slide was phishing domain names. These are malware hosting domain names and you see a similar trend. In these two blacklists, you see that starting out when there are very few new gTLDs delegated, the number of malicious registrations linked to malware is much lower and then by the end of 2016, starting to catch up to the rate of legacy gTLDs. And as you can see with legacy gTLDs, that number is fairly constant. Next slide, please.

And then this tells a story with spam and spam is an important vector for delivering phishing attacks or launching large scale phishing campaigns for delivering malware. That’s why this trend is very troubling but what we are seeing is that in new gTLDs, there’s a migration perhaps as you see on the chart, you can see it particularly on the second chart, you can see that there’s a dip in the number of legacy gTLDs used for spam while the number of new gTLDs used for spam actually goes beyond that for legacy gTLDs by the end of 2016. So for whatever reason, which we’ll get into potential factors in a second, there is that migration. Next slide, please.

Now looking at the actual rates, these charts look a bit different where you can see that there are spikes potentially associated with actual phishing campaigns and so that can lead to an artificial spike for a period of time that might not be part of an

overlying trend. However, nonetheless what the story does tell is that with the rate of abuse with phishing, new gTLDs have pretty much caught up to legacy gTLDs when you factor in the size of a TLD in the number of domain names being used for phishing. Next slide, please.

Similar with malware hosting and again, this is one where overall you see a pretty consistent rate with legacy gTLDs and when you do see a dip, it's at the same time that a dip is occurring with new gTLDs and that for a large part of 2016, new gTLDs had in fact surpassed legacy gTLDs in terms of the rates of domain names being used for malware hosting. Next slide, please.

Then the final chart looking at spam again but instead with regard to absolute numbers, looking at the rate and this is where not only did absolute numbers surpassed legacy gTLDs. But here, you can see that the rate is much higher with new gTLDs being used for spam. Next slide, please.

Now, something that the study really demonstrated and that I alluded to in my earlier comments is that new gTLDs are not inherently abusive or inherently non-abusive. And instead, of course, abuse really depends on the nature of the TLD itself and abuse is largely concentrated. And so, in looking at just the rates in the fourth quarter of 2016 alone, these two lists show what the top new gTLDs were for rates of abuse.

So for these blacklist of domain names, you can see that something like .science, which is a very, very large TLD relative to some of the others has a high rate of abuse. However, so do some of the smaller ones when you look at something like .study, which only has a mere fraction of the domain names as that have many domain names and yet has a very high rate of abuse. Next slide, please.

From the factors that the researchers as well as through our own analysis with the Review Team that we are able to pinpoint and draw conclusions from for why DNS abuse was happening in certain TLDs and not others or with certain registrar operators and not others is we found that there is a strong relationship between the degree to which registration restrictions are imposed and the level of abuse. So if it's very difficult to register a domain name, naturally, you are going to see fewer instances of abuse in that zone.

Similarly, what we did see is that where there was abuse, we noticed that those operators associated with high levels of abuse also were associated with low prices. With that said just to be clear, the study do not explicitly collect pricing data and look at pricing. Instead, this was looked at after the fact when looking at the price for which domain names by that operator were generally offered.

Because to look at price overall systematically and statistically, we of course would have to factor in promotions and as well as the degrees to which prices varied amongst all resellers and registrars and whatnots, so we're not able to do that for the study. But that's something where we think that's very important to look at more in the future because price really does matter.

Also another trend that we saw when looking at very specific instances of abuse associated with certain operators is there were high instances in which trademark infringement was used as a vehicle for abuse. So trademark infringement on its own might not be abuse. However, we saw high degrees of use of Apple trademarks, for example, associated with a particular registrar for which the majority of their registrations during a given period were actually abusive. And so there were permutations off of the word iPhone or other Apple trademarks. Next slide, please.

And so, from all of this, we developed a series of recommendations looking at what we could do to shore up the shortcomings of the safeguards put in place by the New gTLD Program and prevent the sort of systemic unabated abuse we saw as a result of this research.

Our approach in looking at this and factoring in our overall analysis, as well as our analysis with other Consumer Safeguard

Issues and Consumer Trust Issues was to really see what we could do to take a carrot and a stick approach to incentivize good proactive behavior with regard to anti-abuse so that registrars and registries would be more incentivized to actually take action before the fact instead of merely waiting for abuse complaints to come in. And also to ensure as we've mentioned as a Review Team for the past two years to ensure that we are helping to inject this data-driven approach to policymaking within ICANN as it relates to DNS abuse. And as part of that, we're calling for ongoing collection similar to what we were able accomplish with this study.

We're also looking for ways with our recommendations to further empower ICANN Compliance to take action with regard to operators that are associated with these very high levels of unabated abuse for which they seem to not be doing anything about it and for which there seems to be no remedy under current policies. Next slide, please.

And the slide basically reiterates what I just said, so next slide, please. I'll get into the recommendations. So, so far in this draft report that Jonathan mentioned will be released after this ICANN meeting. We have made four recommendations and we look forward to the community's input during the public comment period.



So first of all, we're recommending that ICANN encourage proactive anti-abuse measures by looking into various incentives including financial incentives such as, for example, fee discounts that could be used to encourage the adoption of best practices related to proactive anti-abuse. We are not being overly prescriptive in our recommendation as to what this would look like, but we believe the community of course should look at things related to some of our findings such as when I described that there were these registrations that looked so obviously like phishing registrations with regard to the trademark infringement on Apple products and yet there seemed to be no manual review of those registrations before they were permitted before the domain went live and before they were allowed to be used.

There are various things like that that could be done. There's obviously repeat actors that are able to register domain names even after they've gotten suspended. And then also, there is a large degree of potential for abuse when you have operators such as what we saw with a registrar that allowed for 2,000 domain registrations at once and would even create the Domain Generation Algorithm, the DGAs for you.

So basically, when there are instances like that, perhaps that's something that might not be a best practice and might enable

abuse in cybercrime and not discourage at and so we really are calling on the community to look into all of these things.

At the same time of giving those incentives, we also want to further empower ICANN as an organization to not merely wait until a single instance abuse complaint comes in to do something about abuse. But instead and particularly in light of the fact that ICANN will now be empowered with the DAAR program data, we want there to be a means through which systemic unabated high rates of abuse associated with single entities could be looked at by ICANN, and proactively, ICANN could start investigating that, why that abuse exist and there of course should be a rebuttable presumption because sometimes we understand that an operator themselves might be a victim of abuse.

But nonetheless, we really want to start shifting the model and believe the community should look at that as a safeguard, so ICANN can do something about some of the operators that the study showcased where they were – one was associated with 93% of their domain names being abusive over the course of a year. And we don't think trends like that should be able to exist because it impacts the entire Internet and hurts all of us. Next slide, please.

Also, we think that as part of what I mentioned with ongoing data efforts that there should be more of an effort not only to collect

data but also to publish analysis about this data so that the community is actually getting informed and actionable information with regard to DNS abuse, which can inform policymaking, as well as some of the actions I just described that ICANN or members of the community might take.

Lastly, another recommendation we have for which the majority of the team was in favor but for which we did not have universal consensus was the creation of a DNS Abuse Dispute-Resolution Policy. So similar to other dispute-resolution procedures, this would provide yet another means for enforcement against operators that might not be doing anything at all about abuse and for which there was not already recourse through either encouraging the proactive behavior I described or through ICANN Compliance being able to do something about it. So therefore, if you had someone that actually was themselves a victim, they would then have another forum. This is another way that we're thinking that the community could respond to what we're seeing with this data.

With that said, I will stand by for any questions and then pass the baton to my colleague here, David Taylor.

DAVID TAYLOR: Yes, Drew. There is a question in the chat from John McCormac from hosterstats.com. Will ICANN take action against the abusive registrars based on this report paper? Will Compliance for sure be brought to their own registries that facilitate such abusive registrars and activity?

JONATHAN ZUCK: Thank John for your question. I think that that's a question for ICANN and we're trying to put tools in place for ICANN to take direct action in a more holistic way than they are able to today. So whether or not that will be the case is a function of whether or not our recommendations are accepted by the board and implemented by the staff and the spirit of which pursued by Contractual Compliance. So I think that's a longer-term question about – but what we're trying to do with these recommendations is empower compliance to look at single actors more holistically.

Did you want to say something? Okay.

MAGUY SERAD: Good afternoon. This is Maguy Serad, ICANN Contractual Compliance. Thank you for the question. To emphasize what also – this is CCRT effort and team that's underway. ICANN Contractual Compliance already observes and monitors all types of blogs, reports that are publicly available in the community and we do

follow-up and follow through when we are alarmed by some of those reports.

We do follow in what we call an inquiry process because statistical data for us is numbers. So when we are looking at the reports, we do follow with inquiries. Have you seen it? What are you doing? How are you protecting the ecosystem? The challenge is sometimes lack of specificity of evidence because the responses can come back. If it's the registrar saying, "Yes, I'm doing it." But if it's not a specific domain, sometimes it's difficult to insist, "Here's a domain. What are you doing about it?" From registries, we have stronger empowerment because we also can ask for the big reports and their Specification 11 (3)(b), which talks about their security reports.

So, I answered your question, John, in a bit of a long approach but we are actively monitoring and we look forward to additional input from the CCT Review Team and feedback about some of the opportunities that we might have and reports available to us.

FARZANEH BADIEI:

I'm Farzaneh Badiei, NCUC. NCUC is Non-Commercial Users Constituency. I was wondering how you came up with the definition of DNS abuse in the first place because a proactive ICANN to combat DNS abuse is a good idea only when you have a

very limited definition of DNS abuse, which relates to technical matters. Otherwise, it can be abused by other for other purposes such as copyright. Thank you.

DREW BAGLEY:

So with regard to how we looked at DNS Abuse in the context in which our recommendations were made, I'll refer you back to one of the earlier slides. We looked only at the technical abuse aspects for which there were consensus and for which the behavior was explicitly prohibited in agreements and then additionally spam because of its direct relationship and strong correlation with being a delivery mechanism for phishing and malware hosting.

So our recommendations on the one hand are focused on the sort of technical abuse, the degree to which any of that would be expanded would of course be up to the community to further define abuse beyond what's already in these policies that exist today. And is of course something that we understand is – at this point, something for which there is no universal definition once you get into all those other areas dealing with – as you were mentioning Intellectual Property issues.

EDMON CHUNG:

Edmon Chung here. I really like the idea of kind of fee reduction but we probably shouldn't call it that way. We can probably

create a pile of money for credit that if certain registries are doing proactive work that they can somehow claim that credit. It could still be based on the number of domains that they operate but fee reduction is a very different area to discuss I guess in the ICANN context.

Do you wanted to respond?

DREW BAGLEY:

Yeah. So in our actual – in the language of the recommendation itself, we are not that prescriptive. And so instead, we say that the community should look at incentives such as financial – or including financial incentives.

EDMON CHUNG:

Right.

DREW BAGLEY:

So I would actually encourage you with your input, that would be terrific if you could participate in the public comment period to perhaps share some specific ideas you might have about that because that would be meaningful.

EDMON CHUNG: Sure. And looking at the list that you have where the larger damage is if for lack of better word to describe it, there are often TLDs that do would feel that impact would make a difference if there are financial incentives, their policies will change. I'm just looking at some of them and I think it will make an effect, so I want to make that point.

The other thing that you mentioned about the dispute process, I guess you're just trying to say certain registries or registrars to dispute against those registries or registrars.

What about the other way around that that create framework that for other people for those abuse tracking places to actually send the registry information to suspend certain names or did you consider the reverse? I mean, rather than saying, "Hey, registry and registrar, you're bad," creating mechanism on the reverse so that someone can tell the registry and registrar, "Hey, shut these names down and create a mechanism that way." Kind of like the UDRP, right?

The UDRP – those dispute resolution programs are not targeting registries and registrars like you're doing bad. They're targeting the actual abuse that's happening and saying, "Hey, these are the abuses," and the registries take those things down, right? I mean, that – I'm just wondering if you thought about it at the reverse way.



DREW BAGLEY: So actually, the way it is worded and perhaps I wasn't as clear in explaining it. The way it is proposed is actually something very similar to the UDRP.

EDMON CHUNG: Okay. So it's not targeting the registry and registrar but it's actually targeting the – that's great then. I mistook what you mentioned. And the look is behind you.

DAVID TAYLOR: Thank you, Drew. I don't like being described as the brains behind anything.

Well, as it's set out, it's the – I mean, potentially the UDRP, the domain name and abuse dispute resolution, which it is aimed as we've set it out as going after the registry so it's more like a PDDRP equivalent. So that's sort of the idea but it's only a registry who has misbehaved and has not reacted and so enables an impacted party or an abused party to take proceedings, so it's really something which you're suggesting out.

But I actually like what you're saying there as the reversal. I think that's a great comment to put in because its options, it's an extra

Session

---

stick to be able to just deal with the really bad operators. That's all.

JONATHAN ZUCK: Be sure and clearly identify yourself for the scribes. Thank you.

UNIDENTIFIED MALE: [Inaudible], [Neustar]. So I had a question regarding the way you gathered your statistics over time for the legacy gTLDs and new gTLDs. Did you separate when you looked at abusive domain names, did you separate new registrations in the legacy gTLDs and compared those over time with new gTLDs? Because my concern is that you might have missed any technical trends or hosting trends that might have emerged over that period of time. It would have unfairly skew the results towards new gTLDs.

DREW BAGLEY: So, all right, is your question that we look at Legacy gTLDs being registered after that January 14<sup>th</sup> date distinguish that?

UNIDENTIFIED MALE: Yeah.

Session

---

DREW BAGLEY: And I guess you're alluding to perhaps old instances of WordPress or something being associated something before and all kinds of things.

UNIDENTIFIED MALE: Yeah, yeah. Or even the reverse way you might consider more new domains would be provided with those services [inaudible].

DREW BAGLEY: So I believe the researchers did in fact account for those registration dates in looking at that and the actual research paper itself explains that methodology but I know that that was discussed exactly what your alluding to.

UNIDENTIFIED MALE: Okay, so that's accounted for?

DREW BAGLEY: Yeah.

FARZANEH BADIEI: Is there a time for me to add? I've got other question.

Thank you for the answer and I checked the report and I did understand you mentioned of copyright or anything like that that

could be framed as DNS abuse. But we are concerned because – and this is not directly related to the report or your team. This is something that I think Contractual Compliance should respond to. I saw that they are here, so I’m just seeking the opportunity.

In a blog post in October, they announced enhanced monthly reporting referring to CCT review and CCT report and the GAC report. And they said that if they’ve enhanced reporting on the subject of registrar-related domain name system abuse complaints such as spam, blah, blah, blah, counterfeiting, pharmaceutical fraudulent and deceptive practices trademark or copyright infringement.

So they relied on your report and they communicate of GAC to enhance their reporting and they have DNS abuse. And in their paragraph that they talk about DNS abuse, they mentioned copyright. So –

DREW BAGLEY:

So with what you’re referring to and I don’t want to get too into the weeds in that and do not want to speak on behalf of ICANN Compliance. But that enhanced reporting is with regards to what the subject matter of a complaint was. So I could have a complaint about something completely unrelated to – I could complain about David right here and then that could be then the

whole category of complaints because probably a lot of people complain about him that would be reported on that would necessarily make a valid complaint one way or another. But I would let ICANN Compliance to answer that and perhaps not in this forum because we need to get to David's part of the CCT Review report.

FARZANEH BADIEI:

Sure. I understand what that means but I think it is very concerning that they have framed DNS Abuse. They mentioned DNS Abuse and they also mentioned copyright and trademark infringement in the same paragraph kind of framing it as DNS Abuse but that's something that Contractual Compliance should respond to. Thank you.

MAGUY SERAD:

I [inaudible] for just one minute. We took the definitions from the contracts themselves. The recommendation we followed from the CCTRT as Drew was trying to explain is what level of data is requested. So it's two separate things and I'll take it offline with you if you need some more.

JONATHAN ZUCK: Thanks. Let's move on to David Taylor to talk about the Rights Protection.

DAVID TAYLOR: Thanks, Jonathan. Thanks, Drew. Next slide and if we can on the RPM.

So we know that it's been in this new Rights Protection Mechanisms specifically developed for the new gTLD process and the CCT Review Team basically sought to examine whether these RPMs actually have helped encourage a safe environment and whether they promote a consumer trust, but also sought to measure the cost impact of the New gTLD Program on Intellectual Property owners unless we were trying to get really from data as opposed to the large amounts of anecdotal evidence one way the other that exists.

So how do we go about it? We looked at the CCT metrics reporting. We said about with the INTA impact study, which has provided and that's something which is one of the main reasons that this section of the report is being put out for public comment.

Now, the previous ICANN Rights Protection Mechanism review and then there's been the independent review, the Trademark Clearinghouse report and [parallel] work obviously we'd be

looking at with the RPM Working Group just ongoing at the moment. Next slide if we can.

So with the INTA survey, many brand owners – we're especially concerned about this expansion of the DNS and the likely additional and increased costs in enforcing IP rights. So there was a need to assess whether those additional costs and efforts to protect the trademarks in the DNS have actually panned out.

Why the INTA? Well, it's well placed to respond 6,600 trademark owners and professionals across 190 countries so it's a good base to be looking at and seeking their input. And they're asked to capture costs over the past two years, 2015, 2016, 33 respondents including one nonprofit replied, which was low without a doubt. It was a very onerous questionnaire and compiling the data to respond will certainly identify there's a significant task and as well quite a bit of the information was fairly confidential. So that's part of the reasons. And so with only 33 responses, we'd be looking at this as an indicative of trends as opposed to trends themselves.

The key takeaways are all in the paper, so this is just highlighting some of them. The main reason of the 90% of the brand owners registering new gTLDs was not a choice. It was defensive. No real surprise there. Tying it with our earlier session, they were commonly parked, most of the domain names that were

identified and then the New gTLD Program itself, there were certainly an increasing cost for brand owners to defend the trademarks.

If we'll look at the disputes, it's really interesting that 75% of cases brought involved privacy and proxy services and there were also issues with incomplete WHOIS. But the key thing where you want the bottom there, the RPM is generally considered to being helpful in mitigating that came through. So there is at least a positive side to that. Next slide if we can.

Submitting onto the metrics and tracking the actual number of UDRPs filed across all providers via UDRP and URS. What we can say is that it's clear that they've increased considerably since the introduction of new gTLDs. Between 2013 when the first TLD was in the root and 2016 last year we've seen the 36% increase in cases, again, across all the providers. It much depends on the baseline if you look at an average baseline of the 2012, 2013 – 36% becomes 25% but it's still going up and it's clear that year on year, it's going up.

But that in itself isn't surprising because domain names are increasing. There's more domain names in the root. There's more second level domain names with new gTLDs. So really the more pertinent question is whether there's proportionally more trademark infringements in new gTLDs than in Legacy TLDs.



Now, we don't have ICANN metric data on that on the breakdown of use of the UDRP for instance [inaudible] use of the UDRP and new gTLDs as opposed to the use in legacy TLDs. So we turn to WIPO statistics as the major provider and those are public and so from there, we can see that the answer is yes, that there is proportionately more trademark abuse. You got 18.6% of the WIPO gTLD caseload involved new gTLDs and 14% involves legacy TLDs – sorry, compared to 14% of the gTLD registrations being new gTLDs. So there is more. But it's not massively more and a lot of people thought this would be a free for all.

So again now, that's one of the things to look out with data that meaning the URS, the Clearinghouse, etc. are helping or not but it's still higher.

Talking about the URS there, it's not proven popular but that's quite clear. The case numbers are flat. You can see there in 2014, you've got 231 cases, 215, 213 cases and 216, 222 cases. So it is really pretty flat and around 5% of total cases. But of course, UDRPs and URS cases are only part of the overall costs of enforcement to brand owners. Next slide, please.

So the conclusions and you can read this in the report. As I've said there, we do have increasing number of disputes since the introduction of new gTLDs and trademark owners are using a variety of means to deal with the abusive registrations and we've

got more trademark infringement presently in new gTLDs than in Legacy TLDs.

Important to note the present [inaudible] because year on year, this will change. I'm quite sure this is early days, whatever, we've only got a couple of years of data, so another two, three, four, five years is going to get us see what's going on.

The impact study itself was very useful and one of the recommendations we were wanting that to be repeated regularly and then the URS being questionable in value compared to the UDRP and the Clearinghouse as well, we're recommending a cost benefit analysis on that.

So if we move on to the recommendations, the first one there, Recommendation 40 is the impact study repeating at regular intervals to see the evolution of the time. And the next impact study there we're saying should be completed with 18 months after the issuance of our final report.

Next slide please, Recommendation 41 being the full review of the URS. And again, the main reason for this is the uptake in URS appearing to be quite low and below expectations and also noting that there's the PDP review of all the RPMs ongoing, so we want to keep a close eye out on that. Next slide, please.

And Recommendation 42, which is the cost-benefits analysis of the Clearinghouse. And when you go back to the independent review of the Trademark Clearinghouse services report, that wasn't able to make definitive conclusions due to – as I expressed at data limitations and they specifically noted it was unable to perform a cost benefit analysis survey and that's the thing which we think needs to be done.

I'm happy to take questions. Thank you.

EDMON CHUNG:

Thank you David for the fully update. It's interesting and I wonder you mentioned a point about the last few years with the new gTLDs at slightly higher percentage in terms of the WIPO numbers. I wonder if you could compare it with when UDRP was first introduced. I mean, there would have been a bump in terms of cases and then it slowed down a little bit and then I guess leveled and maybe off.

Maybe that comparison of the initial date might be more revealing of what exactly is happening because we're introducing this and we compare it back in I think 2000, 2001, 2003, that might be interesting.

---

DAVID TAYLOR: Yeah, thanks, Edmon. And I agree completely. We have – that is the curve. You’ve got something – the first year was 1999 and I think it was one dispute then because it came in at the very end of the year. And so there was a significant jump the next year fairly enough. But you’ve got that it did go up and it peaked than it dropped around the 2003 area and then it went up again and it’s been going up ever since.

EDMON CHUNG: Right.

DAVID TAYLOR: But I think it’s interesting enough because you would have thought that the URS would have done something similar for instance. We’ve got three years of URS and you expect sort of a gradual increase as people get to use it and get to know it, which is one of the things where it’s interesting that stayed flat whilst the UDRP goes up. So you’ve got clear, a choice there is made between the two as an effective mechanism.

EDMON CHUNG: My second question is precisely on that. Did you dig deeper on – because they are not useful as in the Trademark holders lost the case more or why did you dig deeper, why that’s the case?

DAVID TAYLOR:

We've certainly dug deep to the extent that we got the anecdotal evidence in the INTA survey and many discussions on this, which is obviously it's the PDP Working Group are just going to start looking at the URS and asking these exact same questions, so I don't want to preempt that.

But it is certainly, to my mind, just one of the people on the IRT when we propose the – that's the Implementation Recommendation Team back in 2009 and we proposed the URS. It was designed then as something, which was fast, cheap and that the trademark owner couldn't have the attention of the domain name. So it wasn't the way that a trademark owner could be abusive and go and get a domain name quickly while everyone was sleeping at Christmas. That was the whole idea.

If you could get it quickly, it would potentially be unfair. It could easily be abused but if you'll not actually take the domain name, that doesn't work. So the idea was if there was DNS Abuse, if there was things going on, you could deal with it quickly and it could be appealed if you went after some big brand, etc.

So that side of things I think it's never really being used for that and it went through the process within ICANN and it's come out something, which is it is more complex to use than the UDRP

although it's cheaper, so it's hard to explain. And I think when you look at brand owners, they sort of go, "We don't understand the difference but if we can't have the domain name, it seems pointless."

So it's really a different piece. It wasn't designed for what it's been used for and I think people have had a few difficulties using it.

**JEAN-BAPTISTE DEROULEZ:** And David, we have two questions from Kathy Kleiman in the chats. Does the Review Team report expressly reflect some of the limitations of the INTA studies that there were only 33 responses of [inaudible] 96 questionnaire send out and that's 52% of responses were from companies with revenues over \$5 billion? This raise many questions by users reviewing it. It would seem that those questions should be raised by CCTRT as well with it.

**DAVID TAYLOR:** Yes, thanks, Kathy. Yup, we do note in the report that there's only 33 responses and that that was low and hence while we looked at it, this has just been indicative of trends as opposed to actually saying this is a trend and we hope that is a sort of thing that is fixed in a subsequent impact study.

Session

---

JEAN-BAPTISTE DEROULEZ: Okay. And second question from Kathy Kleiman. On what basis was the idea that the URS should be used more? Just wondering what the evidentiary basis was for this recommendation.

DAVID TAYLOR: I'm not sure I'm understanding recommendation to use it more, that's not a recommendation.

JONATHAN ZUCK: I think there wasn't just [inaudible] that they use more and observation that it wasn't.

DAVID TAYLOR: Yeah. It's a surprise that it's not being used as much because of the fact that it was a cheaper, faster thing and most people think it would be more popular than it is today, that's all, and it's flat at 5% of cases.

JEAN-BAPTISTE DEROULEZ: Thank you.

JONATHAN ZUCK: Any other questions on this or any other topic?

UNIDENTIFIED MALE: Okay. I would like to encourage everybody.

JONATHAN ZUCK: Oh, wait. So we will be releasing this interim update to the interim draft report that addresses these three issues of parking, DNS Abuse and Rights Protection. So please take a look at that and make comments on it and we are meanwhile incorporating all the comments from the previous public comment. Yes, a question?

JEAN-BAPTISTE DEROULEZ: Yes. There is a question from Lori Schulman, more of a comment. The URS remedy is not satisfactory to brand owners, why it may not be used?

JONATHAN ZUCK: Okay. It wasn't a question but thanks Lori for confirming David's assessment that didn't turn out to be the panacea that the IP owners thought it would be.

All right. So please take a look at this addendum and comment and we're working together a report out to you in the next few months. Thank you very much.



Session

**EN**

---

**[END OF TRANSCRIPTION]**