
ICANN70 | Virtual Community Forum - GAC Discussion on Rights Protection Mechanisms
Monday, March 22, 2021 - 16:30 to 17:30 EST

GULTEN TEPE: Gulten, this session can begin technical support team could you please start the recording.

Welcome to the GAC discussion on rights protection mechanisms session being held on Monday 22nd March we will not be doing a roll call for sake of time but GAC members attendance will be available in the annex of the GAC communique and minutes. May I remind the GAC representatives in the attendance, to indicate their presence by updating name to reflect their full name and affiliation.

If you would like to ask a question or make a comment please type it by starting and ending your sentence with question, or comment to allow all participants to see your request interpretation for GAC sessions include all 6 U.N. languages on Portuguese. Participants can select a language they wish to speak or listen to by clicking on the interpretation icon on the Zoom tool bar. Your microphone will be muted for the duration of the session unless you get into the queue to speak if you wish to speak please raise your hand in the Zoom room. When

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speaking please state your name for the record, and the language you will speak, if speaking a language other than English. Please speak clearly, and at a reasonable pace to allow for accurate interpretation, and also make sure to mute all your other devices.

Finally, this session like all other ICANN activities, is governed by ICANN expected standards of behavior. You will find the link in the chat for your reference. With that I would like to leave the floor to GAC Chair, Manal Ismail.

Manal, over to you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Gulden, and welcome back everyone I hope you enjoyed your breaks. During the coming hour we will discuss the final report on phase one of the review of all rights protection mechanisms in all gTLDs, with the separate specific focus on issues related to DNS abuse where we will be receiving a presentation from Japan also.

We will also be discussing next steps in preparation for Phase 2, which is set to review the new [inaudible]the session will be led

by our topic lead from WIPO Brian Beckham so over to you Brian, if you please.

BRIAN BECKHAM:

Thank you, Manal. Welcome, everyone. So, today we're going to cover on the rights protection updates 3 topics of the phase one working group report, the looking ahead as Manal mentioned to Phase 2, and then a brief update on the IGO curative work track, which as you will recall has been an outstanding topic for some time. If we could just move to the slide?

Next slide so just to recall for maybe people who followed there a little less closely, why we're here is that back in 2016 the GNSO policy development process to look at the rights protection mechanism the developed for new gTLDs. This was something that was requested and if we look a little bit further back in history part of the genesis for this type of review was, some of you may remember back I guess it was about ten years ago, there was a lot of attention on rights protection when new gTLD program was getting ready to launch, the core question being how would enforcement look in a greatly expanded domain name system so rights protection was a big topic. And it actually culminated in a meeting between the GAC and Board in in Brussels where some

issues are ironed out. One topic you see highlighted there in the middle of the screen is the trademark clearing house.

That was one-on-one of the rights protection mechanisms that was of significant interest to the GAC. The core question at the time was related to how different trademark offices undertake their examination processes so basically to kind of put everybody on a level playing field the resulting policy was that all trademark registrations would have to show approve of use to get into the trademark clearing-house and once you were in the trademark clearing-house there were different things you could do with your record in the trademark clearing house so I have highlighted that and the screen as a topic of interest to the GAC.

You may also remember back in Hyderabad, led by Mark Caravel there was a presentation by the analysis by the trademark clearing house in part due to a request from the GAC to look at how the trademark clearing house was operating once new gTLDs began to launch. So the other rights protection mechanisms were the URS, so we have in existence since 1999 a policy called the UDRP. This was created by WIPO and turn over to ICANN in 1999 who then adopted it as the first and longest standing consensus policy and it's been working well ever since but with new gTLDs

on the horizon at the time the question was basically would the EDRP scale across what was anticipated to be a greatly expanded name space.

So the idea of a quicker kind of little brother, if you will, to the EEDRP was created that's the URS in ICANN terminology and then you have the sunrise and claims noticed offered through TMCH the sunrise is if you have a record in TMCH based on a national trademark registration then you can actually get into the front of the queue if you're a brand owner to purchase a domain name ahead of the general public.

Then there's claims notice which is during the first I think it's 90 days of the launch after new gTLD then when registrants would look to register a name that corresponded to a match of a Mark in the trademark clearinghouse, they would notice a notice that would alert them and then you have the trademark post delegation dispute resolution procedure. That was a compliment to another suite of rights protection mechanisms. There is the pre delegation objections procedures. There was some community objection possibilities.

There was experienced similarity objection possibilities, and there were legal rights objection possibilities, and then public interest so they're kind of the corollary of the pre delegation legal rights objection option for trademark matters was the trademark PDP the trademark post delegation process meant for the event that there would be basically a bad actor registry who was complicit in if cybersquatting a way to address that body if you will shutting off widespread systemic infringement at the tap.

So back in 2016 the GNSO kicked off a review of the rights protection mechanisms specifically geared towards new gTLDs and decided to then look later down the road and that actual moment is slowly getting in front of us at the EDRP. Back in, back in -- on the 10th of February of 2021 the -- you see there on the screen that in November of 2020 the final report which was 4 and a half years of work in this new gTLD RPM PDP was presented to the council.

There was a presentation by John MCLEAN the GNSO council liaison to the rights protection working group was on the call on the 11th of January the link to the slides is on the GNSO calendar web page and that presentation by John goes in much more detail than I think is necessary here tonight. So I -- recommend if

there's need for more detail to have a look or listen to the slides from John's presentation on the 11th of January.

So the report was approved by the council and it's now turned over to the Board, and so -- a question opportunity to the GAC whether there's need to to flag any specific policy concerns, so if we could move to the next slide, I will walk through some of the highlights, over all, there were 35 phase one recommendations, you can see they're broken into a couple of buckets there. A number were recommendations to maintain the status quo.

A number were to modify what we in the working group called operational practices, then there were 15 that were recommendations to create new policies and procedures, and one recommendation, which also goes back to the trademark clearing house interest of the GAC to overarching data collection to help inform future policy efforts. I would say for those recommendations to create new policies and procedures as well as the operational practices, nothing, nothing really earth shatteringly new.

Really more in the realm of sort of smoothing off some rough edges based on experiences learned over the couple of years that

these rights protection mechanisms were in operation. Next slide. So this, this is basically a high-level overview of the recommendations that were to maintain the status quo. The one that I've highlighted in particular was -- and we'll get to the sort of, the corollary to this was not to create a challenge mechanism relating to premium and reserve names. There were some concerns raised by brand owners that some of the premium names seemed to unfairly target them at higher prices than the general sunrise and general availability.

But ultimately the working group saw that although there were some valid concerns raised it was outside the working group's remit to get into pricing questions so there was a recommendation that whatever, whatever sunrise policies for example a new gTLD registry operator would launch, with the caveat that no policy came out of this working group that would touch the ability to have different practices and pricing regimes was that those, those specific mechanisms shouldn't be run in a way that went against the spirit of the rights protection program. Next slide please.

So this is, this is high-level overview, and again, all of these come out of the report, the 35 recommendations those are listed

obviously in the report which is -- there's link to the report in the briefing materials, and the presentation by John MAKALEAN goes through these one by one in much more detail but as you can see there these are the recommendations for the URS and TMCH to basically modify some of the existing operational practices so these were really just to pick one example, was in the bottom right-hand corner there that the data base provider or TMCH which is IBM would maintain industry standard levels of redundancy, you know, up times so it seems obvious this was something where some registrars or registries had flagged some concerns maybe with some lag times so it was just suggested that we kind of codify the desire to have that fully operational and having SLAs.

Next slide. The -- on the sunrise and trademark claims proposals to modify existing operational practices, the one that I wanted to highlight of particular importance is that trademark claims notice. As I mentioned earlier, this is a notice that for a limited time window when a new gTLD launches a prospective registrant would get a notice that there was a potential clash between the domain name they were seeking and a record that was recorded in the trademark clearing house.

And it was felt that this, this notice -- it's about a one page document, that it was a little hard to unpack for a lay person. It had some kind of specific legal terms relating to trademark law and potential fair use and so it was quickly identified as one of the areas where -- in terms of being accessible that the group recommended to make this claims notice more understandable and user friendly that was -- I would say probably the most quickly identified and most supported recommendation in I would say the entire working group. So that was, that was seen as a positive. A positive development that came out of this.

Obviously this will get turned over to assume it's approved by the Board, to an implementation team to actually redraft that, and so there were some specific recommendations about how to go about some outreach to make sure that the -- all of the bases were covered to make sure that it really was as understandable to a non-specialist as possible to avoid a potential chilling effect scaring someone off when they see some you know scary looking terms put in front of them when they're trying to register a domain name.

Next slide. In terms of the recommendations for new policies and procedures for the URS a couple that I wanted to flag in particular

because a lot of them were reasonably obvious you know things like providing guidance panelists. The things I wanted to flag, and this goes really to kind of the concept of due process and fairness were that -- and the first one at the top left corner there this is really a, KNOCK on from the GDPR.

Nowadays it's more difficult than in the past to ascertain the identity of a registrant so that the complainant in one of these URS cases if they don't actually know the identity of the registrant because in the public WHOIS it would say name redacted for example, then they would only be required to put name redacted in their complaint as the name of the registrant. Excuse me, and then once the, once the provider got that information from the registrar, then the complaining party would have an opportunity to update their proceedings.

Therefore a kind of corresponding register for the similar reason of the kind of emergence of privacy norms like under the GDPR that panelists would have the discretion to redact names from the published decisions in these URS cases so normally speaking, in the past the name of the registrant would be put in the initial complaint then that would be also reflected in the public decision, but of course with new privacy regimes around the

world then there's been an increased understanding that there should be an ability of a recreational registrant to request that their name be redacted and not published in a public decision and that was reflected in this recommendation of the working group.

Again, under the kind of general concept of accessibility and fairness, one of the questions in a global dispute resolution process such as the URS is accessibility, you may have a registrant from one part of the world, and a brand owner complaining from another part of the world. They might not speak the same language so over the years of managing EDRP cases, a certain processes were created to basically give the parties opportunity to make arguments as to why they believe that a certain lack should be applicable and ultimately the panelists appointed to the case is vested with the discretion how to answer that question.

And so the recommendation of the working group was basically to take the experience that has been gained from the EDRP, in terms of the language of proceedings question, and incorporate that into the URS because that's been -- that's emerged over the years as a kind of an understood practice. The... then a kind of a

corresponding recommendation if you will, that the provider should translate the notice of complaint into the language of the registration agreement, which is provided to them by the registrar, so again these were recommendations really geared towards accessibility fairness, due process.

Next slide. I mentioned earlier that there were some concerns raised about by some brand own there's felt they were unfairly targeted in some of the pricing schemes with reserve names list, but the working group felt it was outside its remit to really tackle that question head on because it got into pricing questions, so the recommendation for the new policy under the sunrise was that registry operators shouldn't operate their TLD in a way that would have the effect of circumventing the mandatory RPMs like the sunrise it seems fairly self-evident it was something that the working group felt it was important to record in terms of a new policy for future rounds.

Next slide. I should mention on the previous slide -- we can stay here -- but on the previous slide there was at the top a sort of a footnote if you will that these 35 recommendations all but one got unanimous support, got full consensus and one got just plain consensus so there was a minority statement put in on a

somewhat technical aspect of trademark law concerning the definition of certain types of trademarks word marks stylized marks. Word plus design marks. Trademarks that might be either in kind of a generic font versus something in a scripted font and because there's different practices from different national offers around the world it was difficult for the working group to land on a single definition but there was one group of stakeholders who thought that -- to submitted a minority statement attempting to provide such a definition, but the working group over all didn't support that.

I mentioned earlier the -- the GAC looking into rights protections generally back in the pre-launch phase for new gTLDs and then of course the request to look at the trademark clearing house specifically after there was -- I think it was 735 gTLDs had launched so that was actually presented to the GAC in Hyderabad and so this recommendation from the working group kind of picks up where that left off and it goes far beyond the trademark clearing house.

It goes to all of the RPMs and makes some recommendations for certain data collection practices to inform future policy reviews. Next slide. My apologies and my apologies for the interpreters.

So, I mentioned earlier that the that the final report was adopted back in November by the working group. It was turned over to the council who approved it in February, and now you see here that it is out for public comment per the ICANN bylaws. And then the Board would vote on the council approved recommendations. So really the question, the question to the GAC was whether there's a need to flag any specific policy concerns.

Obviously this is something where individual GAC members would, you know take their own views, but what I've tried to do is cover some of the prior GAC positions for example I mentioned the position on the trademark [inaudible] level playing field so it looks like from those early days of the heavy GAC involvement in the rights protection question prior to the new gTLD round launched then a lot of those questions were ironed out and this working group really looked back over the experience of these RPMs in practice of new gTLDs launched, and made some small adjustments based on those experiences.

So obviously like I say it's for GAC members to come to views on this, but it looks like those, those concerns, those questions that are had come up over the years had been addressed through the various policy processes and there's no surprises, are no new

issues here. Next slide. I can maybe pause for questions, and I note that Mary [inaudible] has put in the chat a small clarification that the public comment phase has not actually opened yet. Of course that opportunity would be open as well as the vehicle of GAC advice through communiques, we can take any specific questions now, or obviously any time offline.

Otherwise, maybe in the interests of time because I do want to spend a little bit of time looking ahead at Phase 2. The EDRP review, and to give a very brief update on the IGO topic and then our colleagues from Japan want to present some questions and a proposal on the DNS abuse topic. So maybe with that we could move to the next slide. And next. Obviously, the text is very small. The point is not to read this. This is a handout from the Abu Dhabi meeting that we provided for the GAC looking at the potential EDRP review, so I just wanted to remind of the fact that we had provided this briefing note, and of course this is referenced in the briefing packet.

Next slide. So the -- we were just talking about the first phase of review which is the rights protection mechanism that were developed specifically for the new gTLD program. Most of the registrations however are in incumbent TLDs and the EDRP I

mentioned early why was that was created by WIPO in 1998 and 1999 it was adopted by ICANN as the first consensus policy. At its core it's trademark based rights protection mechanism and the reason it's so important especially as the world is working, and shopping, having virtual conferences on-line. Is that with the up-tick in the use of all the, you know various tools that the Internet provide us, there's been a lot of infringement.

I don't mean to drag on a discussion about DNS abuse but at least for EDRP cases we actually at WIPO had had our busiest year ever in 2020. And so far, this year in 2021 we are at 20% ahead of our already record 2020 year. So we are seeing a lot of cases. Obviously, this is a very narrow, narrow set of a certain type of trademark related abuse but at least in terms of the cases we see. The they are not only not going away. They're on the rise, and at the end of the day you know, this is a tool where brand owners can reclaim domain names from infringers that are out to you know trick consumers.

There's a lot of different types of cases but ultimately this is, this is a consumer protection tool so, this is just a little bit of history, I've gone over the creation of the EDRP. Just to mention that without the EDRP brand owners would be forced to go to different

courts around the world so I think it's safe to say you would have a lot of these cases that would go unaddressed because it simply wouldn't be possible to be engaged in if court litigation in foreign jurisdictions all of the time. We, just this past year we hit our 50,000EDRP case that's obviously a big milestone.

Next slide. So the EDRP the kind of obvious benefit is for the brand owners who file the cases, but it also helps assist national carts by reducing the burdens and them. It protects consumers and provides predictability for the domain after-market and ultimately it benefits ICANN and contracted parties by keeping them out of these disputes. The 50,000 case its filed with us are 50,000 complaints that haven't landed at the doorstep of one of those parties. Obviously, we are aware that there's a lot of other disputes in their inboxes but we like to think that this is a benefit for all of the different actors in this ecosystem.

It's also been used as a basis for many, many, many, many national ccTLD domains. Several dozen have just adopted the EDRP wholesale so any changes through the EDRP through an ICANN process that would raise questions, what do those national domains do, do they then make corresponding changes? Do they leave things under the current EDRP regime? So it has a ripple

effect even for those other ccTLDs who have adopted small variations obviously whatever would come out of an ICANN policy review would have an impact on parties outside of that ecosystem in the national ccTLD space. Next slide.

These are -- and these references in the bylaws by the way are in the briefing materials. No need to read them in any detail here. The core take away is the question of when you have an existing body such as WIPO who after all created the EDRP in the first place. What's the kind of interplay between those external bodies and ICANN and its Board and its policy processes.

Next slide, in fact, picking up on this Marks, which is a European association of trademark owners wrote a letter to ICANN's Board to this question, asking ICANN to picking on the sections of the ICANN bylaws asking whether -- when it policy processes come together is there a way short of the normal kind of GNSO charter turning over to a working group to for example have a body such as WIPO commission a white paper, if you will, to outline some of the potential options for the review. We have 20 years of experience running this.

We create the jurisprudence overview used by parties around the world so the question is really, would it be useful to build on that experience to kind of help shape the discussion going forward? One of the reasons I think that is particularly relevant now is the prior working group spent 4 and a half years, wrestling with some tough questions and it's hard to say looking in the rear-view mirror whether that would have you know -- how that would have worked out differently had the charter been shaped differently but there's widespread recognition in the community and especially in the working group.

That the charter for that working group was not fully refined, and it made the work of the working group more difficult probably than it needed to be so this really gets to this question, this falls a little bit under the PDP 3.0 rubric. You know, is there a way that we can better empower working groups to get off to a good start and not tie their hands with wonky charters from the beginning?

Next slide. So, we're in the pre rechartering phase for Phase 2 which would look at the EDRP on he what I want to really get out of this was to get this question out there, to say, you know, what's the best way we can question the best information if in front of a new working GRO up in terms of the new charter. In terms of a

potentially a briefing paper from an expert body like WIPO to make the policy process as smoothed as possible. It's not to say there won't be some tough issues with, with different views, that have to be ironed out but how can we make that as efficient as possible for the Phase 2 work that's going to likely kick-off in this calendar year?

Next slide. So I'm mindful of the time and I want to give sufficient time to the delegation from Japan to make its presentation. The on the topic of IGOs you may remember there was a working group who looked at the question of protection of IGO names and acronyms in the DNS. The core issue is that unlike brand owners who can use the EDRP IGOs there's -- their rights. Their identifiers are accounted for in a different way than trademarks are under the Paris convention so whereas a brand owner would go to a national office and obtain a registration certificate, IGOs aren't in the practice of doing that because of a specific nuance to the Paishes convention so because IGOs have the threshold question of accessing the EDRP.

The question came up how can we reflect the Paris convention which the particular provision -- was developed in the DNS. How can we take the SPIRT that have and reflect it in today's domain

name system. So the prior working group came out with some recommendations that didn't quite match the concerns raised by IGOs and the GAC over the years. So the council rechartered a new work track to look at this question which has just started a few weeks ago it's been led by Chris Disspain and we're wrestling in that working group with some procedural questions of how do we kind of best match the expectations of the GAC and the IGOs with the charter that the GNSO council has given us and that's something that we're working through.

And I think it would be premature to say how that would workout, but the question fundamentally is there sufficient flexibility in the view of the working group to come up with solutions that meet the problem statement that's in front of them? Or is there a need to go back to the council and say we've done a rough look at this.

We think that the chartered is maybe a little too narrow, so we want to see if there's room to update that chart ear little bit to more squarely give us some flexibility to answer the problem statement. So it's a question that the working group is wrestling, and I think it's maybe early days to say one way or the other whether the working group feels there's sufficient flexibility in the existing charter or there's need to go back to the council.

I think generally there's an openness and willingness to try to test the waters if it you will, to see if there's not a possibility of consensus in that work track to get to a solution, and then say, if there's a strong possibility of consensus then that could be presented to the council as we tried to color within the lines of the charter and we came up with this, that maybe stretches things a little bit, but they came up with a solution.

So the question is would that be kind of receiving the council's blessing or would they say well, we tried to put those constraints on you, and they got stretched too far and we can't accept this register. So we are being ably led by Chris Disspain if had that effort and it's very much a would, in progress. We've had 3 work track meetings so very early days. We have 20 minutes left and I would like to -- unless there are any burning questions, and we can certainly pick some of this up offline or in different sessions, but I think maybe it's best to turn over to Japan to hear from them on their specific presentation on DNS abuse.

SHINYA TAHATA:

Hello. Can you hear me. Okay, thank you very much. Thank you very much. Today I would like at first, I would like to express my

appreciation to the GAC chair vice-chairs and the GAC secretariat members for giving me this opportunity to speak. In this presentation I would like to propose that GAC begins discussion of measures to ensure the compliance of registries and registrars with the contractual obligations to domain names used for privacy websites. Piracy websites are causing severe damage to Japanese economy. For example while of [inaudible] Japanese animation has become popular around the world.

On the other hand a notorious piracy REB sight called MANGAMURA is illegally posting the content of comic books on-line. This website has caused an economic loss of about 2.7 billion dollars to the publishing industries. This mechanisms behind piracy websites are becoming more and more complex, year by year. In some cases it is difficult to identify the administrators of these websites. Next slides, please.

GULTEN TEPE:

Shinya, while I'm moving the slides may I ask you to move a little bit far from the microphone.

SHINYA TAHATA:

Story is that, okay.

GULTEN TEPE: That's much better thank you so much.

SHINYA TAHATA: Thank you so much. Yeah. Thank you very much. And so, I continue my presentation. . In order to... the piracy websites the Japanese government announce it's comprehensive menu against on-line piracy in October 2019. And it is moving forward with these actions [inaudible] Japanese telecommunication [inaudible] announced its MIC policy menu of anti-piracy measures on the Internet in December 2020.

However, despite various efforts in Japan the economic damage caused by piracy website to Japanese publish industry is increasing. Of we think the Internet is the international infrastructure and global solution is essential for effective counter measures to tackle this problem. Next slide please. ICANN contracts encourage provisions that registries and the registrars shall take appropriate measures against abuse.

For example, the registry agreement includes a provision that requires registrars to include in their registration agreement a provision prohibiting illegal activities, including piracy,

trademark and copyright infringement. It is -- it also provides consequences for such activities, including suspension of the domain names, also [inaudible] accreditation agreement requires registrars to investigate and respond approximately -- sorry, appropriately to any reports of abuse, RAA also stipulates that piracy, privacy and proxy provide us should publish a point of contact for some parties wishing to report abuse.

The registry agreement includes the provision that requires registrars to include in their registration agreement, provisions prohibiting registrar name [inaudible] from piracy trademark or copyright infringement many we believe that having registries and registrars comply with each agreement would be the best and most appropriate way to deal with abuse of domain names. Next slide please.

However, in fact, there are some cases that registries, registrars and the privacy I and proxy providers are showing embodied addresses as dedicated abuse point of contact and don't respond to reports of abuse. Therefore, we need to ensure that registries and the registrars comply with their contracts. We also believe that domain names of piracy websites should also be handled in

the same way and best on the provisions of contracts. Today, Japan [inaudible] propose that GAC begin discussions on finding appropriate measures to deal with domain names used for piracy websites. Thank you very much for your time.

MANAL ISMAIL, GAC CHAIR: Thank you very much Japan for the presentation, and Brian also WIPO for the earlier presentation, and now, allow me to open the floor if there are any questions or comments on either of the presentations. The so yes Brian please.

BRIAN BECKHAM: Thank you Manal. Thank you, Shinya. I wanted to just share a little perspective or ask a question, we've obviously there's a lot of discussion around the topic of DNS abuse, that of course in more of a technical perspective and this piracy you mentioned is a different type of abuse where it's being recognized that that discussing this issue is something that is right for conversations outside of that more technical framework, and so the question has come to us a number of times at WIPO over the years, of whether there could be the possibility of taking the model of the EDRP, and applying that to copyright piracy website.

And it's a question that a number of people both from the rights holder community, and the contracted party community, have privately raised over the years. I know there were, there are programs, are and I see deMarks in the chat who's very familiar with the trusted notifier programs run by some registries where there's opportunity to take down piracy websites but of course that's a very narrow way to address this through a very limited number of private parties.

So just wanted to mention in terms of the dilemma that you've identified one of the questions could be, and it's a very whether it would be more appropriately raised in a forum like ICANN or WIPO but the idea of applying the model of the EDRP for copyright because today the EDRP is geared specifically towards trademarks and just to be clear, I'm not suggesting that this should be part of the Phase 2 review. That's going to be complicated enough, but whether there might be some lessons learned for this copyright.

SHINYA TAHATA:

Thank you, Brian, for your good comments, and your questions. May I just -- I want to clarify, your question it's regarding the kind

of content or the way to overcome this problem. Or something like that.

BRIAN BECKHAM: Yes exactly so the broad are I the concept is to take the idea of the EDRP which at its core it is globally accessible which for example in the U.S. you have the DMCA but for Japanese copyright hold there's may not be available to them so it the question of taking a global mechanism that operates across borders having clear criteria that parties invoke, for a decision that is out sourced to a subject matter expert which would then be implemented by one of the parties in the DNS ecosystem.

SHINYA TAHATA: Thank you very much. And so a Japanese publishing industry already have working groups, but not in -- only in Japan. Maybe if we can -- our expert can talk together it might be good idea to facilitate this discussion. Maybe. So -- and then so -- A.

MANAL ISMAIL, GAC CHAIR: Please, please go ahead. Request ahead I didn't mean to interrupt you.

SHINYA TAHATA: Thank you very much. Thank you very much. So actually today, we don't have any concrete proposal today, but our intention it's this copy right issue is also big issues, in the maybe not only in Japan but also... so we I think might be good idea to talk together with many stakeholders so, yeah, that's all. So --

MANAL ISMAIL, GAC CHAIR: Thank you very much Shinya and thank you very much Brian for your question as well. Of any other comments or questions?

SUSAN ANTHONY: This is Susan Anthony. I have a question for Shinya and Brian in asking my question I am not take as position but I hope to bring forth further discussion and guidance on this issue. I think everyone agrees that copyright piracy and trademark counter fitting is scourges, but the other question is, whose responsibility is it? And there have been some articles in the press recently which have said the issue really lies with the web hosting providers, not with those who register and administer domain names.

And I think that is this the stumbling block for many people here.
How would you each respond to that please? Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much Susan. So who would like to go first?

BRIAN BECKHAM: Yeah, thank you Susan it's Brian. It's fair question, and I think then that look go it's a web host. If it's an ISP. If it's a registrar, it -- the -- the point I was making or the question I was asking was not so much who would be the actor that would implement this decision. It may very well be the web host and I think that's one of the themes that's come up through these DNS abuse discussions is that there's a certain types of behavior that there's, there's a need to address that is outside of some of the frameworks that have been established.

So the -- so to answer your question that you may very well be right that it's not a registry or registrar, but that -- that I think still leaves open the question -- there seems to be, I would say a kind of a recognition that there's infringing behavior that is -- it's not met by the existing [inaudible] geared towards trademark.

It's not met by the more technical DNS abuse framework so how do we, how do we come up with a proposal, a solution to this question? And so, looking at you know through my lens of managing the EDRP and seeing how successful that's been to help brand owners tackle this problem in a global fashion, that to me raises the question whether that model can't be applied towards the copyright problem, so it may very well be for a different actor but I think the question of a kind of a globally accessible extra judicial al mechanism is still worth looking at.

MANAL ISMAIL, GAC CHAIR: Thank you Brian. Shinya, would you like to add or.

SHINYA TAHATA: Yes.

MANAL ISMAIL, GAC CHAIR: Go ahead.

SHINYA TAHATA: Thank you very much. So we understand there are some cases that the other mystery is private domain changes for domain names frequently that makes it difficult to identify the web

administrators. They [inaudible]we need to strengthen the enforcement of measures made by registries and registrars within the scope of contracts. ICANN contracts as well as those by Web servers.

And we also think it is necessary to consider approaches for registries and registrars to enable them to identify [inaudible]reported websites are piracy sites or not. We can refer to each country's best practices including south of Japan to tackle this had problem. So and furthermore from the viewpoint of contract share compliance... on the registries and the registrars we can discuss measures to strength he be the enforcement of audits such as checking compliance or age provisions. Thank you very much.

MANAL ISMAIL, GAC CHAIR: Thank you very much Shinya and Brian. Any follow up? Or any other questions? I see none, so any final comments from Brian or Shinya? Is anything before we conclude?

SPEAKER: Maybe one from me which is in terms of the EDRP review the Phase 2 it's been a success; it's been running for 20 years. We

have managed 50,000 cases at WIPO, and our message is let's be careful about making adjustments. There's a whole body of case law that's developed around this and so this is why we've kind of opened the question about whether there's a way to best inform the charter for this new phase of the working group to make sure that we're careful about you know any changes being really thought through, and to empower the working group to have as much of a good foundation as is possible.

There's a lot of resources out there. And so there's a good foundation to build on, and so our message is to be careful making adjustments. It's working well for all of the different ICANN stakeholders, and we believe it's worth taking a very considered approach to make sure that it keeps working for the next 20 years.

MANAL ISMAIL, GAC CHAIR: Thank you very much Brian, and Shinya. Any final remarks before we conclude?

SHINYA TAHATA: Thank you very much miss Manal, so we have nothing more today, thank you very much.

MANAL ISMAIL, GAC CHAIR: So thanks again. Thank you very much Brian for a very informative presentation and thank you very much Shinya for sharing the Japanese experience. I'm sure other governments can relate as well and thank you everyone for your attention and participation. It's been a long day today, so thank you very much. This concludes our discussions of the day.

I appreciate your time and active engagement; we will be starting tomorrow at 900 Cancun time. 1400UTC but before the official start the GAC leadership will brief those disadvantaged by the time zone on what they missed on day one, and this will be at 12:45UTC, and until then, please stay safe and have a good rest of the day.

The meeting is adjourned.

[END OF TRANSCRIPT]