

**ICANN  
Transcription  
IRTP Part D Working Group meeting  
Monday 9 September 2013 at 15:00 UTC**

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On page: <http://gns0.icann.org/calendar/#sep>

Attendees:

James Bladel - RrSG  
Chris Chaplow – CBUC  
Paul Diaz - RySG  
Avri Doria - NCSG  
Kristine Dorrain – NAF  
Angie Graves – CBUC  
Barbara Knight – RySG  
Bob Mountain – RySG  
Mikey O'Connor – ISPCP  
Graeme Bunton - RrSG

Apologies:

Holly Raiche – ALAC  
Volker Greimann - RrSG

ICANN staff:

Marika Konings  
Lars Hoffmann  
Julia Charvolen

Coordinator: I'd like to remind all participants this conference is being recorded. If you have any objections you may disconnect at this time.

You may begin.

Julia Charvolen: Thank you, (Kelly).

Good morning, good afternoon, good evening everyone. Welcome to the IRTPD Working Group Call on Monday 9th of September, 2013.

On the call today we have James Bladel, Chris Chaplow, Paul Diaz, Angie Graves, Barbara Knight, and Mikey O'Connor.

We have apologies from Holly Raiche and Volker Greimann.

And from staff we have Markia Konings, Lars Hoffman, and myself, (unintelligible).

May I please remind all participants to please state their names before speaking for transcript purposes.

Thank you very much, and over to you Mikey.

Mikey O'Connor: Thanks, Julia, and welcome to the call everybody. We'll do the usual deal where we take a look at the agenda and the statements of interest. I'm going to run the call today because James was not able to make it last week and he sort of wants to play catch-up, so I'll run the call.

As you can see we've got an agenda that's really sort of a repeat of last week's. We made a lot of progress today, or last time, and (unintelligible) re-go through that and just make sure that we're all comfortable with where we wound up and then carry on from there.

So I'll take a look at the agenda, and then if there's anything for Statements of Interest that you'd like to tell us about, this would be a good time to do that.

All right then. Saw Avri pop in to and then fall out of the Adobe chat. I hope she can rejoin us.

What's on your screen in front of you is a summary of the conversation - it's essentially a beginning draft of a section on - of the final - or the initial report on Charter Question C, and I think what we want to do is sort of repeat our discussion a bit and maybe clarify some points in here. So I think I'll just drag us through this paragraph-by-paragraph.

As just a reminder, this charter question is the one that says whether dispute options for registrants should be developed and implemented as part of the policy in the IRTP. Registrants currently depend on registrars to initiate a dispute on their behalf. And the first paragraph reflects essentially - oh James, go ahead. Jump right in.

James Bladel: Oh, sorry Mikey. I didn't mean to - I didn't know if you were going to take a queue. I didn't want to interrupt your flow there, but I just wanted to point out or reiterate some conversation that we had offline, which was that one of my concerns about this particular charter question - I actually think it's the most complex charter question that we have in this working group is that if someone is disputing a transfer which also included a change of registrant, then they would not be the registrant. And, they would be some sort of X-registrant or former registrant, or at least claiming to be that.

And so what we're really talking about here is whether it would be more of a dispute option open to the general public with some limitations? And, that's where I think this actually gets a little more complicated.

So - but I'll let you continue on. I just wanted to get that part on the record at the outset so we can have some context for our discussion.

Mikey O'Connor: Yes, I think that's great. And you know, I think that your introduction of the idea starts to hint at some of the ways that we might be able to address it, so a good one to get on a list of topics not to forget, because we do want to put some boundaries on this so that not just anybody on the planet can file one of these things. That would be a problem.

An so then with that, let me carry on with my little backgrounder, which is that in general there seems to be agreement that there should be some sort of mechanism for what is abbreviated RDNH, which in our part of the land in the old days was registered domain name holder, but we've got an interesting puzzler going on in the chat which the UDRP has the same acronym for reverse domain name hijacking. So there's another one for our punch list of things that we need to resolve through the Board.

And that might tie into the point that James just made, which is probably need some sort of term anyway like X-registrant, or former registrant, or claimant, or something, so people can put their thinking caps on.

Anyway, the group notes that there's the possibility of some gaming, and we need to address that, and so just for purposes of today I think I'll use claimant. So the first and most important step would be to assure that the claimant used to be a legitimate registered domain name holder, and for him or her to build substantial record forming the basis of this TDRP.

And I think that was sort of the (unintelligible) - at least from my vantage point (unintelligible), that was one of the most interesting ideas that came out of the call last week that gives us some leverage that's solving some of these puzzlers, which is a notion that sort of like leading up to a court case, especially a court case at an appeal, there's this idea that there needs to be a record that the appeal process might not be granted if the record was insufficient to support it.

(Unintelligible) sort of brought that into the discussion and I liked it a lot. So that little bulleted list was sort of our preliminary try at that, and you know we can circle back to that.

We also talked a little bit about bringing the conversation around to the registry participation question which is one that came up earlier as well, and

I'm starting to warm up to the idea that you know if we could come up with a good list like this, and then leave the registries out of that list but still provide appropriate safeguards, I can get persuaded on that.

We talked a little bit about costs, and here again we had - I think (Christine) came up with some ideas that we may want to touch on.

And then on the next page, I'm going to skip the footnote because I don't want to take the whole call just repeating what we wrote, we eventually came down to the remaining questions. What would the steps be? What's the role of the registries? Can the registrar still launch it? That's a good question. Not a new one for me. And can potential costs be reduced by streamlining policy process.

So I think that's enough introduction. I sort of want to stop talking and let you talk for awhile and let a queue start to develop.

Let me circle back just as the - as a member of the group. Is anybody else on the call part of the group that was in the charter question drafting team with me? Because if you were, by all means chime in on this. But the issue that James raised is I think a friendly amendment kind of thing. We certainly - when we were writing this question weren't intending the risks that James is describing. We weren't intending to make this available to anybody. We were intending it for former registrants, ex-registrants, something like that.

And so James, I don't know if you've had a chance to think at all about ways to fix that puzzler, whether language like that would work, but to the extent that you have I'd love to hear your ideas. Go ahead.

James Bladel: So not a fix, but just more thought on that issue is that - oh first off, I think we should say that as written, the scenario where a person or organization remains the registered name holder but the transfer was to a registrar and not of their choosing, I think that that's essentially what we're talking about

disputing. But I think the intention was when we say dispute a transfer; we meant dispute a change of control of the domain name from one registrar to another.

And I think that that's where the language starts to fail us a little bit because you know as we mentioned there, former registrant challenging the new registrant. And I think one of the thoughts I had while I was mowing the grass this weekend, which was what - how do you determine the veracity of someone's claim to be a former registrant of a domain name? Because while there are third party services out there, none of them - those services and functions of Whois caching and archiving don't necessarily fall under the ICANN (remit).

I know that registrars have obligations under the current and new RAA to retain registrant records for domain names but only for a fixed time period, and only when the domain name transfers away. And I think that the European registrars are even pushing back on that and saying that they no longer have a commercial relationship with the registrants. You know, there's some restrictions on how long they can keep that data.

So I would be curious as to what the data retention requirements are for registries and whether they can help provide some sort of authoritative record of who used to be a registrant, because I think that's a challenge.

And then I think that the point of this question coming up might be the scenario where a registrar - someone wants to raise a TDRP but the registrar won't do that for them. They have an uncooperative registrar, and I think do we want to provide them some other options?

But I think the registrar plays an important role here because the registrar is essentially vouching for the claimant status as a former registrant. So I think that that is an important function of - or important consideration of why we want - might want to keep the registrar involved in this process.

So that's - I know that's not any fixes, Mikey. It's just some additional thoughts on it.

Mikey O'Connor: Well I think - you know, I'm quite attracted to (Kevin)'s idea because this series of essentially steps to build a record, because it seems to me that you know, I'm not sure we captured the list quite right. I think Step 1 is some sort of indication that - well, Step 1 is unchanged from the situation today. There has to be a demonstration that the registrar has been contacted about this issue and some sort of documentation that they were either unwilling or unable to respond or resolve it.

Then there's this additional series of steps. We'll leave out the issue of registry is in the chain right now and pick that up later (unintelligible), but there has to be further record built. And I think that safeguards could be built into that process to you know sort of address the issues that you're raising James.

The puzzler about length of time is interesting. Do you have a sense of what that length of time is? Is it like a week, or a year, or a decade? Especially...

James Bladel: Occurrence - I'm sorry to jump in. This is James speaking for the record. For occurrence, (unintelligible) three years after the domain name has expired or transferred away. I think that some - and I'm probably misunderstanding or misstating this issue. I don't know if Volker's - Volker's not on the call today.

But during RAA negotiations, it was pointed out that some European registrars may have difficulty meeting the data retention requirements because they no longer have a commercial relationship once a registrant leaves them as a customer. That you know their ability to continue to hold that data is I guess restricted or something like that.

So it's three years, but you know it really depends on if there's any kind of statute of limitations imposed on whatever process or appeals mechanism we develop.

Mikey O'Connor: Yes, okay. So I think we have to put that on the puzzler pile and just do a little research to find out what those are. So I'm going to put that in the pile of questions yet to be answered. Maybe give that one off to Lars and Marika to do a little research on to see where we're at.

But I want to sort of presume that puzzler away for the moment. You know, I think that though the issue that you're raising James is one that intuitive at least I feel like we could figure out a way to address, and I wouldn't want to sink this whole thing.

I think one of the - and maybe let me just amplify. One of the things that the charter is - the drafters of this question felt pretty strongly is that in general, the IRTP PDP, the whole pile is primarily - or at least has a strong underlying goal of protecting registrants from being abused by recalcitrant registrars.

And so this is one of the ones that we did put in the more difficult to resolve (pile) - more contentious (pile). We tended to push these later into the process, which in hind sight I think turns out to be a pretty good decision because we've got a pretty good record leading up to it.

I want to check and make sure that this is not in - you know, likely to completely sink the idea that we want to provide an avenue for the former registrant to essentially have a process by which they can appeal either a decision that they think is unfair or a registrar that's simply not answering them.

Are you in that place, James, and using this issue as a way to achieve that end? Or are you simply looking for a way to do this that doesn't create an unimplementable process?



James Bladel: Is it okay to jump in on that Mikey?

Mikey O'Connor: Yes, go ahead.

James Bladel: So I think what we need to do then is just maybe tighten up Step 1 of this, if we adopt something along the principles here that are listed that I think Step 1 is where that needs - that chat needs to occur.

And we can say something like you know, "Hey. I went to my registrar and they wouldn't dispute this transfer for me. They refused to." But so long as you can demonstrate that the reason was other than the reason of we, the registrar, have no record that this person ever - was ever associated with this domain name while it was under our sponsorship, or this domain was never under our sponsorship. If it's something really basically - you know, something fundamentally throwing the claim out the window, I think the registrar can do that.

I don't think that the registrar just wasn't really feeling very interested in talking to (Barbara) that day, so therefore we just let them off the hook, and I don't think that's a legitimate reason.

But I think that if a registrar comes back with something along the lines of you know we have no record of this person ever being involved and we didn't sponsor this domain name, or something along those lines, I think that that sanity check needs to occur in Step 1, and that would probably resolve my concerns.

Mikey O'Connor: How about if it happened not in Step - well, it certainly could happen in Step 1. I would expect that. But that it also happens in Step 2. Then for purposes of this discussion, (unintelligible)...

((Crosstalk))

James Bladel: Well, I think registries - yes.

Mikey O'Connor: No. I'm going to skip the registry for now. I'm going to go to Step 2 being compliant and that compliance gets a hold of the registrar and asks the registrar those questions. And then the registrar says, "No. we've never heard of this person." That that would be the place that that sanity check would take place so that the registrant has an avenue other than the registrar. They elicit that information. That's sort of where I'm thinking the safeguard takes place.

And so it would stop cold if the compliance folks went to the registrar and the registrar said, "Look. We never heard of Mikey. Just this complete unknown to us." And you know, then we get to the question that you're raising, James, which is, "Well, where does compliance get that data?" And, I think that's one that we need some research on just to make sure that we're not putting compliance in a situation where if you go to the registrar, the registrar says, "We've never heard of Mikey," and there's no data independent of the registrar by which they can confirm or deny that claim.

But I think that's one that we need a little research on.

In principle, if that data was available, would you be okay with that? If we let this happen twice? Basically once at the registrar, clearly yes. If the registrar is emphatic and it says, "Dear Registrant, we've never heard of you. Go away." And the registrant says, "Wait. You know, I - that's not right," then they need an avenue to challenge that.

And if they challenge it - you know if they lie and say, "I really was," when in fact they weren't, that compliance gets to figure that out, or the registry, or somebody else so that we have somebody besides the registrar in the loop.

I heard you wincing at that. I'll let you wince and then I'll go to Lars and then come back to you if you want.

Lars, go ahead.

Lars Hoffman: This is Lars. Thanks. I just have a quick question. Do you envision these four steps to be that you first - if you are claiming, you contact your original registrar first and what you ask them is to launch the TDFP for you and you only get to step two and three if they don't?

Mikey O'Connor: No. No, that's not it.

Lars Hoffman: That's what James said, you know, how you see this.

Mikey O'Connor: Let me try it and then James can correct me. My vision of step one is that step one is precisely what happens today. I, as the registrant, go to my registrar and try to convince them of my claim and the registrar presuming my claim is true, then the registrar goes to work, they contact the other registrar, they presumably fail, then it's entirely possible for the registrar to continue to launch the TDFP. We would not disrupt that process, but this would be added on as an avenue, an additional where the registrant to pursue in those events - I would hope very unlikely events when the registrant either is unwilling to do that and the former registrant really feels - I'm sorry, I'm reversing terms. You know, feels that they have been wronged and they need an appeal. Is that an old one or new?

James, is that consistent with sort of the way you'd envision this? The rest of you, don't be shy. This isn't just the Mikey and James show. By all means, jump in and steer me right, here. Back to you, James.

James Bladel: I feel like I opened this can of worms, so I'm on the hook to undo it, but I'll take the first bite, I guess. In general, I mean, I think that's right. I'm not trying to cause a problem here. I'm just thinking this from factual terms at the registrar. You know, hey, I'm (Joe Smith) from nowhere, Indiana and I believe I had an original claim to Google.com, and I want you, registrar, under ICANN

compliance, to initiate this process or I'm going to escalate it to whatever channel is available. There are weird situations - well, let's just face it - there are weird people out there, you know, that will abuse processes like this. Yes.

Mikey O'Connor: I mean, let's step that case along because it seems to me that, you know, (Joe) grab a sandwich, from Indiana, goes to you and you guys blow him off and say, "That's nuts." You in your reply perhaps say something along the lines, of course you're always welcome to take this up with ICANN compliance, however we strongly advise you to be judicious of your use of that channel because ICANN compliance will take an equally dim view - oh, what do they call it - I want to say spurious, but that's not it. When you file a lawsuit - there's a legal term for that. I don't know.

James Bladel: Frivolous.

Mikey O'Conner: There we go. Thank you, thank you. I would even be willing, actually quite keen, to work some sort of sanction for frivolous use of this into the policy. I think at the same time, registrants need to be protected, so do registrars need to be protected from, you know, essentially being subjected to legal DDoS attack and that's certainly not fair to registrars. Kristine, welcome to the queue. Take it away.

Kristine Dorrain: Hi, yes this is Kristine. My only comment as far as the, you know, the registrar doesn't feel that this is a legitimate claim, so you can go ahead and take it up with ICANN's compliance if you want. It's going to be a little bit circular because ICANN compliance basically requires all sort of complaints with respect to any of these policies to go through their ticketing system and their ticketing system is going to send an automated E-mail to the registrar and say, "Someone just complained that there was an unlawful transfer", so it's going to dump the problem back in the registrar's lap to start with.

I like the four steps. I think it's good. I just think at some point, maybe there's a way to streamline that because otherwise, you're going to go to the

registrar and the reported registrar is going to go to ICANN and it'll go right back to the registrar. So, just one little practical thought.

Mikey O'Connor: Yes. That's definitely one for the punch list of the flow of this that we need to iron out because we don't want a circular process for sure. I think I saw James agreeing with you and I agree as well. That's a very well taken point. Barbara and then James.

Barbara Knight: Thank you, Mikey. This is Barbara. My main concern - I apologize, I actually had a couple of interruptions just now that I wasn't expecting, so if this was discussed, just let me know. I guess the concern I would have is where there are privacy services being used and do registrars even have the ability to see the underlying registrant data in those particular instances.

The other question I have relating to this is if it does end up on step two where we're talking of clearance at the registry, in the case of VeriSign, we're a thin registrar. We don't have registrant data. I'm not sure how we address something like that. Going forward, all the new details obviously will be fixed, but in today's world, we know that not everybody is fixed. The same would apply as well. If a proxy service is being used, registries have absolutely no insight into the underlying data.

Mikey O'Connor: Yes. I think the general heading, and I think yours is a good one to add to that punch list, is verification of authenticity of the registrant's claim. James, take it away.

James Bladel: Thanks, Mikey. James speaking. Just to address a subset of Barbara's question - if the privacy service obfuscated the registrant data or substituted its own data as a proxy service, then that proxy service would be the registrant and that claim would be probably rejected. If it was an affiliated privacy or proxy service, I would think the registrar could have or could get at that underlying data, but if it was unaffiliated, then they would need to treat the privacy service as the previous registrar.

I don't know if that helps or not, but you know, I think going back to Kristine's point, Mikey, that was what I was trying to say in step one. We need to short circuit that infinite loop that she described where it just goes from registrar to ICANN and back. That's why I was thinking if we could have some sort of a sanity check there that says that this is where registrar could raise a flag and say, "We didn't proceed with this because this is the frivolous claim.

Mikey O'Connor: Yes, I think that's right. I think we need that built in for sure. I think the privacy thing raises an interesting abuse factor, which is I find a really tasty domain name that's under privacy and especially if it's, in many cases, I can figure out where it's under privacy, I would play games by claiming ownership of a name that would be very hard for anybody to verify because it's a privacy provider being used. That's another use case that we need to explore and figure out how we're going to deal with that.

I guess where I'm at - I see nobody in the queue - if anyone wants to chime in, by all means, go ahead. I want to kind of circle back around to the general idea where I see us working on our certainly valid and correct issues that we need to figure out the answers to, but present to me at least showstoppers yet. Is there anybody that's essentially opposed to this idea in principal, assuming we get the details right? I think we've got to presume that away until we've got into the details. If somebody is essentially saying, "No, the process ought to stop at registrar's period, this is probably a good time to hear that." James, go ahead.

James Bladel: So I'm not opposed to the idea entirely. I'm opposed to any recommendation that removes a registrar entirely. I am not necessarily opposed to a process that goes beyond a registrar's involvement, but just to be clear, any wrinkle or flavor or iteration of this that would remove the registrar from the loop entirely, I think I would be opposed to that.

Mikey O'Connor: I would agree with that, so you've got two votes on that one anyway. Kristine, go ahead.

Kristine Dorrain: Hi, thanks. This is Kristine from NAFF. Yes, I was going to mention, I also do not opposed of this. I think this is a good start and I do not disagree that the registrar should be included in some way. I just wanted to make it clear that whatever we decide to do as far as that registrar contact, we need to assume that the majority of registrars do not have the size and sophistication of Go Daddy for instance.

So, we need to make sure that - and I know because I just came off the UDRP lock working group where the entire team - you know, the process was doing with the unsophisticated registers that have absolutely no idea of what to do when there is a problem. The bigger registrars, you know, the ones that are conscientious and are trying to solve problems proactively are not the ones that these solutions need to be targeted to.

I just wanted to make sure that when we come up with a solution, that we make sure that we know that we're talking, you know, one and two man operations that have no idea how to act, so when we're going to come up with a recommendation, we need to consider that as well. That's my only thought with respect to including the registrars.

Mikey O'Connor: Yes, I think that's a good - and Barbara is agreeing with you as well, Kristine. I think that's a good design criteria to put in this that we need to acknowledge that, you know, probably the most burdened by this will be the less sophisticated registrars. Chris, go ahead.

Chris Chaplow: Thanks, Mikey. No, I just wanted to check on support for this, as I said earlier. I think it's the solution that's - we're not ripping the whole engine apart and completely putting it back together, really. It's the simplest and probably the most effective solution of just putting this iterative loop in right at the

beginning, probably a good idea if we advise compliance as soon as possible of this and just check this feedback coming from them.

I would've thought a letter at the end of it - a letter from compliance to the registrar requires - instructing them to proceed to the out pave would, you know, 99 percent of the cases I would've thought would be sold to this. It seems like common sense, but that formality, you know, if there is a registrar that has a less than fair attitude, that would make them sit up, it would escalate it within their organization and start the resolution. Yes, thanks.

Mikey O'Connor: So, I'm starting to wonder - James, let me check signals with you as co-chair - you know, in the last one, we drew a bunch of use case pictures that helped us sort of work through this. Would that be sort of a next step? Maybe a little group goes off and tries to draw it out to various scenarios and likely steps along the way. I know we flushed a lot of marks out of the process when we did that with the change of registrant process. Go ahead.

James Bladel: So you know, I mean, I don't think that there's - I think the only danger in doing that is that it tends to take up a lot of time, but I think that it might be overkill. I think we can actually, you know, I think this is something that we can solve ourselves, maybe in between calls.

Mikey O'Connor: Yes, and maybe just do it in text for the first try.

James Bladel: Yes.

Mikey O'Connor: You know, clearly the steps that we've got in here aren't right, so I would certainly be willing - maybe just the two of this, just go back and forth a few times on writing that little bulleted list for next time.

James Bladel: I would be okay with that. I think Paul Diaz is disagreeing with something that we just said or maybe it's an older...



Mikey O'Connor: No, he left. He had to scoot out.

James Bladel: Oh, that's a do not disturb. Okay, I'm sorry. I thought it was disagree.

Mikey O'Connor: No, he mentioned in a private chat to me that he had to scoot off, so he just got dragged away. Okay, well why don't we do that? Why don't James and I take a little action item to sort of bash away on a little revision of that series of steps? I think that's probably enough on charter C until we've had that chance to take a look at that. Is there anything else on charter C that people want to talk about before I nudge us along to D? It's about 20 minutes to the top of the hour, so we've got a little time left. Lars, go ahead.

Lars Hoffman: Thanks, Mikey. It's Lars. Just a very quick question - do you want me to contact compliance already or should I wait until you and James have flushed out something?

Mikey O'Connor: Let's wait. I think compliance tends - at least in prior iteration to this, they tend to like things that are a little better baked than this one is. We'll just...

James Bladel: One question though perhaps that Lars could help with, if I could jump in on that, would be to have a better understanding of the data retention requirements for current and new TLD registers.

Mikey O'Connor: Yes, that's true. I agree. Okay, Lars is on board with it. Okay, anything else on C for this call? Going once, going twice. Okay, onto D - D is the one that talks about requirements of best practices for registrars to make information on transfer dispute resolution options available to registrars. Again, the sort of summary is that there's a pretty broad agreement that something like this should get put in place. We kind of tied it to what happens in C. Let's leave that for now. We've got a little list of questions. Who should define what those are and what's included?

I think the second bullet in the remaining questions is you know, really what information should be included and where. I'm not sure we got the ICANN hosted, although. I can't really remember in the conversation well enough. Maybe we did include that it was best hosted at ICANN so then everybody could point out that that's what that middle paragraph is about. James, just sort of another back to you - this is sort of your first time seeing it since you weren't able to join us last week, but by no means should it be limited to James.

Is anybody uncomfortable with the direction that we're headed here? It would be a good time to talk about that, I think. Good. Well, so that one is more or less to bed. James is agreeing. We seem to be headed in the right direction there.

So, that kind of gets through this agenda unless people have other things to do. I'm not terribly adverse to just letting this out a little bit early. James, depending on your immediately following meeting, do you just want to hang on and we can beat out a draft of the bullet point right now? We could just do it on the call?

James Bladel: Sorry, Mikey. It's going to have to be, I would say looking more like Wednesday.

Mikey O'Connor: Okay, fine.

James Bladel: Yes, we'll have to chat about that. Sorry about that.

Mikey O'Connor: No worries. So I've got 15 minutes - oh, what a treat. Okay, I think that's it, folks. I think we'll end the call a little early today and James and I will come back to you with a slightly revised version of that list and try to beat on that and maybe we'll sort of hammer on that a little bit and then move onto the next charter question, which is E, in the next call. With that, I'll call it quits. Thanks, gang.

END