ICANN Transcription
Next-Gen RDS PDP Working Group
Tuesday 30 August 2016 at 1600 UTC

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RDS PDP Working Group meeting on the Tuesday 30 August 2016 at 16:00 UTC. Although the
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https://community.icann.org/x/WxKsAw
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http://audio.icann.org/gnso/gnso-nextgen-rds-30aug16-en.mp3

Coordinator: The recordings are connected. You may now proceed.

Michelle DeSmyter: Great, thanks . Good morning, good afternoon and good evening.
Welcome to the GNSO Next Gen RDS PDP Working Group call on the 30th
of August, 2016 at 1600 UTC.

In the interest of time today there will be no roll call as we have quite a few
participants. Attendance will be taken via the Adobe connect room so if you're
only on the audio bridge today would you please let yourselves be known
now?

Marina Lewis: Hi, everyone. Marina Lewis on the audio bridge.

Michelle DeSmyter: Great. Thanks, Marina. I would also like to remind all participants please
pay your name before speaking for transcription purposes. Also keep your
phones and microphones on mute when not speaking to avoid any
background noise. With this I'll hand the call over to Chuck Gomes.

Chuck Gomes: Welcome everyone to our call this week as we end summer in the northern hemisphere. So looking forward to another productive meeting today. Let me first of all ask if anyone has a statement of interest update? Okay, not hearing or seeing anyone let's move on to agenda item 2, the - it's a brief one - the final text that we agreed to on the call last week for the problem statement was distributed for everyone to see.

And we don't need to go over that again. Let me just make two comments. Number one, if there is something drastically problematic in the problem statement in the months ahead we can always revisit that and most importantly the last paragraph says that the problem statement is meant as a tool to aid in discussion consistent with but not a constraint on the working group and its charter. So keep that in mind.

Thanks for all the effort on that. And hopefully that will be somewhat helpful in the work that we have ahead as we get closer to deliberation and in the liberation itself.

So going then to agenda item 3 on the work plan status update. You can see there in the agenda there is a link to that. It has been updated to reflect the latest changes we've agreed to over the last few months. And if any questions on that just send them to the list. We will go through that right now.

And later this week we will probably just distribute a redline version of that so that you can see the latest changes, and then next week if there are any questions we can discuss it again.

Okay going then to agenda item 4, which is our main focus today, and that is to continue reviewing some example use cases. And in that regard, before we get started with the first one from Elaine, let me say that the leadership team would like to wrap up use cases no later than our meeting next week, again noting that if we discover a use case that we need down the road

somewhere we can always do it, there's nothing preventing us from doing that. In fact, that would be encouraged.

So it's not as if we're closing the door permanently but for this set of meetings where we are specifically discussing use cases we'd like to wrap that up in the meeting next week. So if there are any additional use cases to the list of fairly representative of use cases that we've talked about and you want to submit that please do it by Friday of this week.

We don't have to have any more but if there are any that we don't cover today or that are new for our discussion please submit them to the working group by Friday and then be prepared to attend are working group meeting a week from now at the same time so that we can -- you can provide an overview and answer questions.

With that said I see that Elaine would like to maybe go second or third. And if it's okay, Beth, you're on, can we…

Beth Allegretti: Hi.

Chuck Gomes: Are you willing to go first?

Beth Allegretti: Yes, that's fine.

Chuck Gomes: Good. Good, okay, let's pull Beth's up, which is Number 23. And as soon as it comes up we'll let her give us a brief overview.

Beth Allegretti: There we go.

Chuck Gomes: Go ahead.

Beth Allegretti: Okay. So this is Beth Allegretti. So this is a use case for a merger and acquisition domain name portfolio due diligence situation. So this is where

Company A, the acquiring company, is buying, you know, Company B, the company that's been bought and is assessing the intellectual property assets of the Company B.

So the RDS comes into play here when Company A is confirming that domain name list and assessing the registration information and the status of every domain on the list.

So what happens here, what the RDS is used for, is Company A get the list from Company B. Company B then – Company A accesses the RDS to find out every bit of information about all those domain names, if it's accurate, consistent but more importantly to find the domains that Company B may not even know they own.

Often companies don't really track their domain names or maybe there is an employee that registered a domain and forgets to tell anybody. You know, I work in the -- at Fox Studios and we often have production assistance that registered domain names and sort of forget to tell people.

So what the RDS helps with is finding all of those domains that the company, Company B may not even be aware of. So what Company A would do is look at all the bits of information in the RDS and start doing a reverse Whois search to gather up the domains that contain that information.

So Company A would look at registrant, organization, address, emails, servers, any bit of the information there and then just try to put it all together. Would also use the RDS to run wildcard searches on domains that contain the company trademark so that the list can be pulled and then it can be assessed and verified.

And often Company B will be surprised comment doesn't even know they have half of those domains. So that's the use case for a merger and

acquisition. So if you are acquiring a company the RDS is used to identify domains owned by the company that's being acquired.

The stakeholders in this are, you know, registries, registrars, the third party Whois providers and the agent, so like law firms might run this instead of actual company. And then the data elements are all the bits of data included in the RDS. So that's pretty much it, it's a pretty simple one. And that's it.

Chuck Gomes: Thank you very much, Beth. This is Chuck again. So let's open it up for questions or comments and then, Beth, once people ask questions, if they raise their hand, you're perfectly free to just manage the queue if you'd like.

Beth Allegretti: Okay.

Chuck Gomes: If they raise their hand. And I think we just have one person, I think Marina is the only one that's on audio so, Marina, if you want to say something please speak up. So go ahead, we will let Michael start it and go ahead, Beth.

Beth Allegretti: Michael.

Chuck Gomes: And respond to him directly.

Beth Allegretti: Michael.

Chuck Gomes: Mike, are you on mute?

Beth Allegretti: No, he says no. Oh, will dial in. Okay.

Chuck Gomes: Okay.

Beth Allegretti: Maxim, stakeholders might include registrants, staff members acting as private persons when registered domains in their own name. So with that a

question or is that a statement about the information that might be included, a suggestion. Okay thanks.

Michele.

Michele Neylon: Mike Palage was ahead of me so I'll let him go first. Okay is dialing in, sorry.

Beth Allegretti: He's dialing in, yes.

Michele Neylon: As usual and kind of doing multiple things. I just think it's an interesting one, whether it's interacting with the RDS or Whois or whatever. I mean, as a registrar and as a hosting provider we see this kind of thing happening both in terms of trying to help our own clients and get to grips with their domains and also when the parent companies come along and try to resolve issues. So, I mean, it is something we see quite a bit of.

It does get a little bit complicated because from our perspective if you turned up say demanding that, you know, hand over something, something fox something dot whatever to us and the domain was registered to John Murphy with an address whatever down the road that could be a little bit complicated,

But, you know, if the employee is cooperating and being helpful and not being a total - a useless waste of space then it's not a problem. But we see a lot of it as well where the employees then have a falling out with their employer and then don't want to cooperate and we also see that happening with web designers and web developers, which makes for lots of headaches. Thanks.

Beth Allegretti: Agreed. Michael, are you on?

Mike Palage: I am now on, thank you very much.

Beth Allegretti: Okay good.

Mike Palage: So it's not so much a question perhaps just an additional contribution. So over the past 17 years in my involvement in the namespace I have used the data in the Whois for a variety of reasons mostly in the context of expert testimony. And Chuck, you may appreciate this from back in your NSI days. In one case it was a merger acquisition where there was -- it was contested as to who owns the underlying domain name which was the principal asset.

And in that point in time I actually had to work with Phil to get a subpoena to get all the old email records before you dump them as part of your migration over to the new RDS and EPP system. So I can attest that yes, I've used these in a number of expert testimony cases over the last 17 years.

Again, they are very important even when you may not have accurate information pointing to name servers where certain domain names may be clustered, actually goes into a number of the analytics and analysis. So I would not only say the merger acquisition but also in connection with expert testimony where I've used this system a number of times over the years.

Beth Allegretti: Great thanks. Andrew, your hand is up.

Andrew Sullivan: Yes, thank you. So I thought that was an interesting point that Michael just made but I think it's strictly speaking separate from the merger and acquisitions case, right, because for the merger and acquisition case an important feature here is that presumably the entities are cooperating with one another.

So just anticipating a little bit that case does not actually require authenticated, you know, any kind of gated thing or stuff like that. It would all be consistent with it because presumably, you know, the company that is being acquired is cooperating in the due diligence.

And if not then, you know, you've got a problem in your merger and acquisitions department. Whereas in the case of expert witnesses and so on

it seems to me the traditions are very different. That's a case where somebody is trying to find things out without necessarily having the cooperation of all the parties involved in the dispute.

So in the merger's case presumably, you know, you could anticipate that, you know, some sort of token or something could be offered from the to be acquired to the acquiring company whereas in the case of the expert testimony it's perhaps unlikely that the expert would be able to access that unless there were a court order or something like that. So I would want to make a distinction there. Thanks.

Beth Allegretti: Okay, is there any - are there any other questions? Chuck, should we move on? I see there's some chat stuff going on.

((Crosstalk))

Chuck Gomes: There is. Hopefully everybody is watching the chat. This is Chuck. And take a look at the chat and if it looks like questions are being asked and answered in the chat, interesting question was, do we need a use case for a new use case, again like I said I think before we started this one if somebody wants to prepare a use -- a new use case just please presented to the working group by Friday and be on our call next week so we can discuss it. So just remember that.

Is that -Mike, is that an old hand?

Mike Palage: Oh sorry, Chuck, yes, I apologize.

Chuck Gomes: No problem. We all do it. Michele.

Michele Neylon: Thanks Chuck. Michele for the record. Just commenting on a couple of things here. I mean, I think the use cases are interesting and as somebody mentioned in the chat and is something we definitely seem both as a registrar

acting for our own clients trying to help them to coordinate their domain portfolios, and as a registrar for the domains that have ended up with us through things, I mean, one of my own staff in a moment of wisdom, in large inverted commas, decided to register blacknight.solutions because he thought, quote unquote, that it would be a good idea that the company should have the domain name.

Of course he failed to mention this to anybody and went off and registered it with a competing registrar input Whois privacy on the domain name. And then decided to host it on his own account with us internally. I didn't speak to the person directly, one of his managers did, because if I'd spoken to the person to rectally it wouldn't have ended very well. But this kind of thing does happen a lot. It's messy. Thanks.

Chuck Gomes: Thanks Michelle. Are there any other questions or comments before we move on? Okay. While we're waiting to see Andrew's comments in the chat there could you please bring up the use case number 18 by Elaine? She is now with us and ready to go over that. And we will pause just a second here for everyone to read Andrew's comment in the chat.

And then now that's up, Elaine, you're up. Please give us an overview of this use case. And again, like with Beth, feel free to manage that hands raised and so forth directly so that I don't have to get in the way.

Elaine Pruis: Okay. Can you hear me all right? Can you guys hear me?

Chuck Gomes: Yes we can. You're a little bit soft that we can hear you.

Elaine Pruis: Okay. All right I will speak up. So my name is Elaine Pruis. I'm the VP of operations at Donuts and we manage 190 some new TLDs. I've been in the industry for more than 15 years so have had experience with Whois. The new gTLD space, the old space, the CCs, obviously not public by contract the way the Gs are, but regardless they've had Whois as well.

So one of the ways that we use Whois in our company, and I know many other people do in other companies, not specifically registry operators but anybody around the domain business is to gain business intelligence. So that might be looking for a specific pattern of registration, it might be trying to explain a run on number of domains coming out of China. There is all sorts of bigger events that happen than a single company or a single registrant getting domains and we examine the Whois in order to sort out what that might be.

So I wrote up a sample business case, this is just one of many, many ways that Whois is used by analysts, economists, researchers, marketing managers. In my Whois use case a market economist has been hired to review the impact in respect of a marketing program where a registry operator is giving away domain names for free.

So you might be interested in knowing if that cannibalized registrations in other TLDs or did, you know, your usual domain or registrants run over to the free one and scoop up as many as they could before it was done.

So I don't need to read the use case to everyone but generally it's just a matter of taking a look at bulk of data which can be accessed either through slow download of, you know, the public facing Whois or a cooperative registry operator could pass that over to the analyst. So it's taking a look at that bulk data, looking for patterns and trying to discern whether or not that program was effective in the way that it had been designed.

So that's my summary. Does anybody have any questions about that particular use case or BI in general business intelligence, in general for Whois?

Chuck Gomes: Elaine, this is Chuck. Let me started off and hopefully others will jump in. This isn't something that would just be used by registries or registrars but I

assume it would be -- could be used by other businesses as well. Is that correct?

Elaine Pruis: Absolutely, yes. So any social media group might use Whois to look at, you know, who is active on the Internet, who is selling things that have to do with shoes, who is, you know, just in general it's a great resource of information to look for a particular data to help advise marketing plans, you know, which market to enter.

So you might have like a startup company is trying to distribute some new app looking at which domain registrant have similar types of product and how do they distribute.

Chuck Gomes: Thank you very much, Elaine. This is Chuck. And note that Steve gives another example of, like you just said, there are uses by other businesses besides registries and registrars and he gives a nice example in the chat if you haven't seen that. Go ahead, Andrew.

Andrew Sullivan: Oh thanks. So what isn't clear to me from this case is whether the RDS itself is actually needed for this. So in particular I'm wondering, and this might be just a friendly amendment that actually making the distinction between the active content or part or whatever and other uses is a little bit easier with the RDS, right? I mean because you could evaluate that by just testing in the DNS and then, you know, downloading the pages or connecting and sort of trying to map the services at a given domain name.

So you could do most of this analysis actually without looking in the RDS today. But it might be a little bit harder and so you might want to, I mean, maybe this is just gilding the lily, I do really care, but it strikes me that there is a possible argument here at least for somebody who says well you don't need the RDS for this. And so you might want to talk about, you know, how that would be somewhat easier. Thanks.

Elaine Pruis: Thanks, Andrew. So, yes, I think a good case for how you couldn't expose some of this information via DNS would be so the DNS is great for looking at name servers that you can't see the location of the registrant. So if you're trying to figure out which media market to launch a campaign in, you know, where are domain buyers located, they want to be very smart with their media spend so by using the Whois and looking at the number of registrations in a particular city or zip code or state or country you can make smarter decisions that way.

Chuck Gomes: This is Chuck again. Are there any other questions or comments? Again, I assume everybody is watching the chat. Good discussion going on there. Go ahead Michele.

Michele Neylon: Thanks. Michele. I mean, as we've discussed previously I don't think kind of, you know, arguing against the use case while interesting it isn't really appropriate because, I mean, we have to just accept this is a use case; this is what people do whether we like it or dislike it. We can say, I suppose, that we don't like it because arguing against it isn't going to help us too much. I mean, we have this with the – around the CAs and a few other things. I'm not sure exactly how we thread that needle.

But looking at, you know, Whois data the way that Elaine is talking, I mean, it's an interesting idea but surely you then end up with a huge number of domain names that are registered in Arizona and a few other places where there are Whois privacy proxy services that are going to completely skew your results. I mean, I don't see how is doing that going to help you? I'm just a bit confused by that.

Elaine Pruis: Yes, that's true. So of course the privacy and proxy data wouldn't help inform the location of a particular registrant. But that's generally about 20% of registrations in the new TLDs anyway so you've still got a pretty significant sample size.

Chuck Gomes: Any other questions or comments for Elaine? Okay, again we will watch the chat. Why don't we bring up the next use case for Marina, the business domain names? And in the meantime everybody can watch the chat and see what's going on there. And Marina is on audio only so I will watch the Adobe for you, Marina. And once we get to questions and answers assist you in that.

Marina Lewis: Super. Thanks, Chuck. Marina Lewis for the record. And I apologize in advance to all, I hope you can hear me okay, hear me clearly. Unfortunately, it's another Tuesday morning commute in the San Francisco Bay area and I'm still on the road so I will try to speak clearly and loudly but if there are any problems please let me know.

So the use case that I drafted is for a domain name acquisition within the context of a bankruptcy proceeding. And I chose a bankruptcy proceeding for a couple of reasons. One, because this exact situation actually happened to me in real life a few years ago with very interesting consequences that I will share with you momentarily. So it certainly was good to talk about what I know.

And second of all, I chose it because a bankruptcy situation is unique to other types of acquisitions or transactions including the one that Beth just described a few minutes ago in that in the course of a bankruptcy proceeding or a transaction that's taking place you generally don't have parties who are cooperating. In fact, one half of the negotiating side is usually either nonexistent or fired or laid off or in jail so you can't really rely on the other side to give you information that is necessarily accurate or complete.

So I will just go over really quickly here the facts that I've listed in the use case. And this is a situation where a company wishes to purchase assets from a bankruptcy trustee from a now defunct company that has a bankruptcy. And so again I am making the distinction where you are acquiring assets as opposed to the entity itself.

So again you've got no staff. There are no employees or anybody else really left that the company who can speak to the accuracy of the assets and their validity. And in fact in the case that I dealt with, we didn't have anybody from the bankrupt company, we had only kind of a very surly bankruptcy trustee who really didn't like me calling any more than I needed to.

So what this does is this puts the onus on the acquiring company to do their homework and to really check out assets such as patents, trademarks, real estate, other types of assets to make sure that there is, one, a clear chain of title, that this trustee or this bankruptcy - bankrupt company had actually some asset to sell. And also to make sure that the asset itself is still living and valid, which again in this case was rather interesting.

In a nutshell, my client had sought to purchase assets including trademarks and copyrights and four domain names from a company that was defunct. And in our situation, unfortunately, they have listed out the assets, including the four domain names, but because so much time had wound through the bankruptcy proceeding, items, you know, had been shifted back and forth between different lawyers, by the time they got to our plate the client had already released, specifically to mind, the client had already signed off on everything and the domain names had expired two months prior.

And that's because nobody at the bankrupt company had bothered to renew the domain name prior to the sale of the asset. So I had to dive in and quickly, you know, first of all see what was going on with these domain names. And I ended up having to spend a year trying to convince the registrar that we did indeed have a bill of sale, that there was actually a legitimate transfer of assets.

But in an ideal world, you know, this could happen differently if you have information available up front. Now again in my situation, had I been able to do this use case is how I would have liked to have seen it turn out. You get the domain names, you go and you check the RDS, which is our Whois. I

want to verify first of all that the person selling the assets actually has title to the asset itself, in other words are you the registrant or is there somebody else from your organization.

And two, what is the status of the domain name? Is it a pending delete status? I mean, I, again, most of the people on my own team or the people that the corporate lawyers who had handled it really before my firm nobody knew to look for any of this. You know, if you'd said pending delete status to them they just would have given you dear in headlights. And again many lawyers don't know what that is.

So it's important to be able to have access to that kind of information so that I can check and make sure that my client is actually getting the benefit of their bargain, which in this case they essentially paid money for a domain name that was no good. I mean, it was expired by the time they ever got it. And again, by the time it got to my desk it was already past the redemption period and somebody else had actually renewed the domain name. So we ended up having to put a snap on it and wait a year and pay more money to get it on a backorder.

So I guess the point that I want to make from this is that if we look at domain name registrations as legitimate intangible assets to be bought and sold and any courts and many jurisdictions have found that they are, and many of the people on this working group would agree that they do constitute legitimate assets and again we can agree or disagree in terms of domain investing or whether somebody is reselling it, we can agree or not.

But if they're going to be treated as assets then we should treat them as assets and that means that we need to have information available so I can, one, do a title search. It's no different than if I were selling a piece of real property. I would hire a title company to make sure that the seller has actual clean title to the property. And can sell it to me.

And, two, I want to make sure there are no encumbrances or there are other types of, you know, action items due. You know, for instance, a renewal date. You know, I would be willing to take a poll and see how many corporate lawyers actually know that domain names expire. I wouldn't expect them to know that, that's not what they do; that's what we do.

So again it's important to be able to have access to that information. If we're going to treat domain names as assets, which again means that we need to have access to the registrant data, we need to have access to expiration dates and term limits.

So I welcome any questions or comments.

Chuck Gomes: Thank you very much, Marina. So it's now open for questions and comments. And again, I'll manage the queue since Marina is not in Adobe. Please raise your hand and then I will read any comments in the chat related to this use case as well.

Marina Lewis: Awesome. Thanks Chuck.

Chuck Gomes: Richard Padilla is typing so I'll - and he's just responding to a comment that Michele made about spam.

Marina Lewis: My horror story was just obviously so impactful that everybody agrees with me and there's no dispute so this is awesome. Beware the trials of which I have warned ye.

Chuck Gomes: Any questions or comments on this use case? I'll pause. This is Chuck again. And I'll pause just to see if there are any. Feel free to jump in if you have any questions or comments. Nice job on the – on writing up the use case, Marina, and in presenting it to us.

((Crosstalk))

Chuck Gomes: Mike Palage says I agree with Marina and can attest to similar problems involving bankruptcy cases. And Vicky Scheckler says I agree with the general principle that we should consider the domain an asset.

Marina Lewis: You know, I'll just respond really quickly. And thank you guys, both, for your comments. As to Victoria's comment, I do want to say I won't necessarily take a position in this use case or I should say more specifically the purpose of this use case was not to take a particular position on whether or not domain name registration should or should not be assets, rather I'm taking the position that because the – at least, you know, from what I can see in terms of the industry, the law, user experiences, people seem to be treating them as assets.

And therefore because people are treating them as assets I think that - I should say rather, people consider them to be assets, we should therefore treat them as assets and provide the necessary infrastructure and directory service to be able to verify the value and the status of that asset. So again I appreciate the comments. I agree with both. I just wanted to finesse that a little bit.

Chuck Gomes: This is Chuck again. Thanks, Marina. And VA is of the opinion that they are assets. Alan, you're up. Go ahead.

Alan Greenberg: Thank you very much. Marina actually said what I was going to say but to elaborate just a little bit, we've recently had a case where there was a question whether a ccTLD was an asset or not. And, you know, essentially we're in the same overall ballpark. And I think the answer is whether it is technically an asset in legal terms or not since they are treated as something that can be sold and has value, then we have to – fact we have to acknowledge that.

You know, an asset normally I think, although I may be wrong, is technically owned. Clearly domain names are not owned in that context because they're effectively leased. But regardless, they're treated as assets by bankruptcy administrator, if no one else, therefore we have to – we can't ignore that fact. Thank you.

Chuck Gomes: Thanks, Alan. Make sure if you're not talking to mute your phones. Hearing quite a bit of background noise right now. So everyone please mute your phones if you're not talking. And I'll turn it over to VA.

Vaibhav Aggarwal: Yes, hi. Thanks, Chuck. This is Vaibhav Aggarwal for the record. Yes, domains are assets. There's a very big domain name industry. I work with a lot of venture capitalists and I work with a lot of startups around the world. And I have noticed lately that there is an asset value in the balance sheet and the overall valuations of the companies – digital assets that they own.

And it's not just limited to the corp – others are the corp assessments anymore. The domain names, ccTLDs being part of that businesses come (unintelligible) business. So for example a global organization (unintelligible) Fox Studios, everyone's in there, for example, everyone has a (unintelligible) and that (IM) is considered to be an asset for them. When they go to a (unintelligible) region they always have an asset-based domain name which is, again, a ccTLD besides the generic domain name.

So it's definitely an asset, not just limited and limited to the corp. It has to be treated – ccTLDs or gTLDs, it is absolutely part of the balance sheets and part of the overall valuations of the companies as digital assets to the virtual assets are actually treated as assets around the world. Thank you.

Chuck Gomes: Thank you, VA. This is Chuck again. And, Marina, I won't read all the chat because there's a lot of chat about whether it's an asset or not with quite a bit of support that it is. Just like VA just said. But Jeff Eckhaus makes an

interesting point, I think this working group should steer clear of whether it's an asset or not. And several people agreed with him on that.

And it may be that we – it doesn't matter, when we do our deliberations, we'll find out I guess when we get into deliberations whether it's an asset or not. We may be able to do our deliberating. So we'll see as we move forward.

Stephanie said, "Since ICANN in general has steered clear of that one I don't see that we have any choice in the matter. Hardly within our remit." And Maxim – do we see similar worldwide approach and he doubts that. So lots of great chat. You may want to go back and look at the chat for this, Marina, when it's available for your particular use case.

Alan, you're up again.

Alan Greenberg: Thank you very much. I would strongly suggest we do not want to use the term "asset" or declare domain names an asset. If we do, we're in a situation where a court could decide against us and invalidate the other things that are in our recommendations and in the policy that ensues from it.

If we say because it's an asset such and such is true and a court decides it is not an asset in some jurisdiction, we have a big problem. Stay clear of it. Thank you.

Chuck Gomes: Good point, Alan, thank you. Michele, you're up.

Michele Neylon: It's Michele for the record. One of those rare occasions where Alan and I actually agree. I think the use case where a domain is treated as an asset is valid and is something that we should definitely look at. But we shouldn't be going down the path of getting into complicated discussions about whether a domain name is an asset or not, as others have pointed out. It's messy. It's complicated. It's – and it's out of scope. I mean, who cares realistically? For

the purposes of this thing we could say, look some people treat them as assets, they do this move on. Thanks.

Chuck Gomes: Thank you, Michele. And Stephanie says, "More like black holes," in response to Mike's comment that domain names are like light. Dual crux of both a wave and particle. So again, the chat's really interesting, Marina, so please take a look at that when you can.

And Stephanie comments that it was meant as a joke. All the physicists on the group need not respond. Okay.

Marina Lewis: Thanks, Chuck.

((Crosstalk))

Chuck Gomes: …jump in just a second. Maxim says, "Should we recommend to add to implications, might be limited to local legal practice." And go ahead and jump in, Marina.

Marina Lewis: Okay, thanks so much, Chuck. I appreciate it. I just got to my desk so I'm logging on now so I get to see all the really great comments. I did want to respond, again, you know, people have made several comments about whether or not we should consider it an asset. And I appreciate that debate on the subject because, again, it's not something that has been settled one way or the other.

Certainly in the United States our courts are all over the map. Most seem to be coming down that it is an intangible asset but, you know, many others haven't weighed in at all.

And I do like Alan's comment, I think it was Alan that made the comment initially after I spoke, and, you know, I agree in the sense that if they haven't

been legally codified as assets certainly many are treating them as assets and so if nothing else they are – they're likely to be considered de facto.

The point I want to raise though is because we're also getting some comments back as far as whether or not we should even consider the issue. Michele says, "Come on, who cares?" Some people do, some people don't. You know, and again I don't want to, you know, stir the pie any more than I necessarily need to here. But I think that it is important and it is valuable to make the determination because this is philosophically a big divide in what we do.

I mean, there are people who, you know, you've got – the Phil Corwin's of the world who say these are absolutely assets, there is a huge domain name industry. People have, you know, invested, you know, millions, you know, X, you know, times whatever, you know, of, you know, amounts of money in resources, in creating these domain portfolios. They are absolutely assets.

And then we've also got a very vocal contingent that says, you know, I don't know what their feeling necessarily is on assets, but they look at a domain name registration as sort of, you know, like a pseudo identity. And, you know, to, you know, shield a person, you know, and all sorts of privacy concerns.

But I feel like we sort of have a couple of different diverging viewpoints on this. And again, you know, I'll just say from my – in my own perspective, I'm not married to the idea that they have to be domain name assets. You know, I run into – sorry Phil – I run into domain investors that I thought were – that were unscrupulous, that did speak to, you know, engage in practices I didn't personally agree with.

You know, I don't know if I'm necessarily ready to throw out the baby with the proverbial bathwater and say well that's it, you can't have domain name and these are not assets. What I'm saying, though, is that if we are going to do that, if we are going to look at these as assets that are worth money and they

certainly are to many, many people and organizations, then that means that we need to be able to provide infrastructure and framework to evaluate the value of those assets just like we would any other asset.

And that would seem to fly in the face of a lot of the folks who think that we should really be looking at this more from a privacy standpoint. You know, you've got, you know, X, you know, Joe Blow out in, you know, some country with an oppressive regime, and (unintelligible) here, you know, some people argue that this person, you know, needs to have a lot of privacy, that this, you know, whatever, you know, whatever some of the reasons we've had here.

But they're not talking about asset ownership, they're talking about a person's identity. And to me we do need to think about whether or not we look at domain names as assets because I don't think you can have those two philosophical scenarios existing in the same universe. I mean, you're either in the public sphere or you're not.

You know, a domain name is either – I'm not sure how I'd really characterize it but it's either, you know, it's a sample of sort of like the digital public space or it's something very private and tied to an individual. So, you know, again I don't want to necessarily muddy the waters to, you know, so short before the end of our call. You know, but the whole point of bringing this to people's attention is because I feel like we are going to be debating this much more because, you know, as the old saying goes, with rights come responsibility.

And if you want to be able to seek the monetary value of a domain name I expect to be able to see information in that RDS that I can use to verify the legitimacy of that whatever the domain name, the asset, however you want to classify it. Well again, that's flying in the face of people who want privacy. So if there's going to be an issue with how we consider domain names we should probably talk about it now not two years down the road.

Chuck Gomes: Thank you, Marina. Before I jump to the queue again with Rod and Michele, I want to just comment on something that VA said. He said, "Domaining is not part of the business here but organizational ownership is." If you'll indulge me for a minute I have to think back to the 90s when at Network Solutions.

We desperately tried to even avoid using the term "owner" of a domain name. And of course it's all related to a lot of what we're talking about with regard to assets and so forgive me for indulging in that regression there. But let me jump to Rod.

Rod Rasmussen: Thanks, Chuck. Rod Rasmussen here. And this is, yes, there is a really good chat going on, decided to jump on the call instead of dumping on the chat. But this raises some really interesting stuff. And we didn't really get too much into this particular aspect in the EWG so I'm finding this really interesting. And it really ties to what's the purpose of domain names, not what is the purpose of domain name registration data.

But when you think about it the purpose of domain names kind of drives the purpose for needing registration data around them to some extent. So I think it's actually an interesting discussion. And I'd add a couple other purposes that are – that have not been brought up because we have this – this system where you have what I would consider an asset like Google.com that's probably worth, I don't know, billions of dollars, versus a throwaway domain name that somebody used in some advertising campaign and they wanted it to cost like, you know, nothing, right, to – and so it's got almost no value other than a transitive value at the time.

And then you have domain names being used purely for Internet infrastructure, for kind of the plumbing of the Internet as it were that aren't tied to any intrinsic kind of commerce or trademark or anything like that but they're important and necessary to make the whole system work. So, you know, how do you classify those?

But again, you know, you have different needs for information around those kinds of domain names, let's say, it's being used for DNS servers or email infrastructure or something like that. Well I have lots of need for potential technical contacts there versus if I'm doing an M&A or some sort of trademark dispute thing, I need ownership information. So the kind of the what – how domains get used themselves drives what kind of information you might want to have around them.

So it's – it might be an interesting vector to kind of have a kind of a little crib sheet of or matrix of what different domain uses – the uses of the domains themselves are to help make sure we've covered the various use cases and things like that.

And, you know, one last final point is that assets are different in different jurisdictions in the physical real world too. It depends on the laws of the country you're in as to what can be considered an asset or not or whether even the state owns it or not so those are the last out there. Thanks.

Chuck Gomes: Thanks, Rod. Michele, you're up.

Michele Neylon: Thanks. Michele for the record. Just to think, you know, people need to bear in mind, you know, just because a group of people – organizations want to have access to a lot of data to be able to prove, quote unquote, value, ownership or other terms that they're comfortable with that doesn't mean that that cannot coexist with the scenario whereby a lot of domain names don't have all of that information published to the public.

I mean, the ccTLDs in many cases, solved this problem years ago. Why it is so hard for people to realize that, you know, that it can be solved and that the two can coexist has always confused me. I mean, I take the case of, say, dotFR, Blacknight.fr has public Whois, which shows exactly which entity it is registered to and assuming the damn record is up to date, it should be, should be my company, whereas mneylon.fr you won't find any details on

that. At all. I mean, you'll find the namerservers and the rest of the, quote unquote, public Whois is practically nonexistent.

Or the case of, say, dotCat or dotTell, which are two gTLDs, where they've managed to differentiate between them. So, I mean, as Rod says, it comes back to what people are using the domains for rather than what can or cannot be done in terms of how the data is displayed. So I just think, you know, that there's no reason why you cannot have the two side by side.

If I as a private individual want to have quote unquote, privacy and not publish huge amounts of data, that's my choice. And if you as a company want to publish huge amounts of data, that's your choice. I just don't see why the two can't sit side by side. Thanks.

Chuck Gomes: Thank you, Michele. Just a ton of chat going on that I won't try and cover. This is Chuck speaking. And so quite a lively discussion there. But again, we don't need to resolve whether a domain name is an asset or not or whether it's owned or rented or leased or whatever. There are – there's been a lot of debate about those kind of things over the years and I'm sure it will continue. Hopefully it won't hamper our work going forward. And we'll see as we do go forward. Any other questions or comments on Marina's use case?

Okay, then let's move on to the next use case, Number 22, find domains registered by miscreant. And Rod is going to give us an overview. And, Rod, welcome to the call. Thank you for joining us. And again, you're in the Adobe so after you give your overview please feel free to manage the queue in terms of hands raised and so forth so I won't get in the way there. Go ahead, Rod.

Rod Rasmussen: Okay thanks, Chuck. Rod Rasmussen again. So this use case is fairly straightforward and I think has been covered in other areas so don't want to spend too much time on it. But the idea here is that you've got a domain that's been – or you've got some information that's tied to some sort of mis,

you know, miscreant, it could be illegal or abusive or what have you behavior that's going on.

And you're trying to identify other domains that are – that may be – have been created or being managed by that same person or group or what have you. And so, you know, the idea here is that you take information that has been published, that is – that can be found to be unique to that individual or group. Typically, they don't put their own names in such instances.

But we've had many cases where because they're using templates or software that generates things and they have a credit card account that's tied to a particular name or something like that they end up using the same information over and over again to register names.

And that – and I actually included in the email I sent that in as a recent case where we're tracking very successfully all the new domains that are being created and used for particular exploit sites by one particular group.

And by a combination of looking at zone files and then – and which is the DNS entries for a couple of the new TLDs that they happen to be abusing and then their own registration information which is – could be a street address tied to a city and a town that, you know, may or may not make sense, we're able to basically, you know, block all their infrastructure ahead of time and put together, you know, the kind of – the pre – the whole package so that we're finding these things.

And also you can use this to build cases where you've found some form of abuse. You might tie that to some profile online and then be able to take other information tied to that profile, so an email address or phone number different than what information you have, then go back to the database, you know, to the data you have available and see if there's anything else that's tied there.

So, you know, this, you know, similar to the trademark and research case except we're looking for, you know, abusive behavior or illegal behavior instead of, you know, infringing marks. But same kind of idea where you're looking for those telltales.

Typically, you've put this together as supporting evidence, not something that you would directly use in a court case necessarily. But you were able to then, you know, monitor activities and things that are being done using those other domain names and take appropriate action.

That's pretty much it. Any questions on this I'd be happy to discuss.

Michele, you have your hand up.

Michele Neylon: Thanks. Yes, it's Michele again for the record. It's interesting because we were dealing with this kind of issue from our side as the registrar of record because we were being targeted by – we don't know whether it was a single person or a group of people who kept on registering dodgy domains through us and trying to do all sorts of interesting things, mainly not paying us, in other words using stolen credit cards or compromised PayPal accounts.

But the problem we ran into was that they – it was a kind of a pattern that we were – we found not so much exact reusing the same details. So I mean, that they would make the same mistake in every phone number and they would use a similar pattern for the creation of a throwaway email address in each instance. Harder to track but, you know, that was what we were kind of trying to do was come up with a kind of a fingerprint to recognize them. Thanks.

Rod Rasmussen: Thanks, Michele. Anybody else? I think people pretty much understand this one, Chuck, so I'll turn it back over to you.

Chuck Gomes: Thanks, Rod. Appreciate it very much. Could we – I know that Rob is not on the call or he wasn't earlier anyway. And it doesn't look like he's on the call.

So certainly not in Adobe. So could we bring up his – the examples. He didn't exactly present a use case but rather shared some examples. And we've been having trouble connecting with Rob and getting him on a call. So I thought it might be helpful if we bring up his examples and the – you should have the ability to control the – how large the font is so make sure you use that and scroll yourself on this because you do have scroll control.

I just wanted to open it up, I'm not going to go over his examples but are there any of the examples that Rob shared quite some time ago now that anybody would like to discuss? That – each one brief and just let us know which one you're looking at so that everybody can scroll to that. Michele.

Michele Neylon: Yes, this is Michele for the record. The – my email stopped working at the weekend, one as well I can totally relate to, and just very briefly we've actually had this happen more than once where they contact us saying, my email stopped working at the weekend. And when we look into it further we discover that the domain had expired like six months earlier but it took them until to realize that it had stopped working, which always does make us laugh.

But it is – the cases he's kind of trying to outline there are the kinds of things that we see quite often. They're very, very common. People do things like they will register the domain name with one company and then they host the Website somewhere else and they assume that the hosting and the domain name are the same thing so they'll renew the domain – renew the hosting for the domain or they'll renew the domain but they don't renew both. So if one breaks then the other breaks.

If anybody has any difficulty understanding some of these examples he's given as a registrar and a hosting provider I'm more than happy to talk them through. Thanks.

Chuck Gomes: Thanks, a lot, Michele. That's helpful. And so notice that he was talking about example Number 1 that Rob gave. And there are quite a few examples if you

scroll down. Total of nine I think. But again I'll just pause for a minute or so just to see – give you a chance to glance at those if you haven't looked at them in a while. And see if there are any questions or comments whether there are any discussion on these.

Okay well then let's go on then and – not sure what that is but thankfully it went away. So this is Chuck speaking. And I don't think we have any other use cases that have been presented to the group, correct me if I'm wrong on that. Although Olevie has suggested one in our email, I think earlier today or at least I saw it earlier today. And so I'll say the same thing to all of you that I said to him.

If there is one that you think would be useful including a couple possibilities that Steve Metalitz suggested in the chat today, all I would ask is that you prepare the use case following the template that everybody's been using and send it to the working group by the end of this week so by Friday.

And then we will discuss those, so we would like you to be on the call next week at this time. And discuss those. If there are none presented, then we will move on in our work and the leadership team will be providing some information on the agenda for next week including any additional use cases that might be presented to us this week.

So that said, so in other words we will wrap up the current discussion of use cases next week. Again, if we discover one that's vital to our work down the road we can still have a discussion of it.

So next then is to talk about ICANN 57. Hopefully all of you have seen the Doodle poll that was sent out yesterday. So on the first day of the ICANN meetings in Hyderabad, which is November 3, there will be two working groups – four hour working group sessions. One by our working group, and one for the subsequent procedures for new gTLDs working group.

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One will start at 9:00 am and go to 1:00 pm local time. And the other one will start at 2:00 pm and go until 6:00 local time. So the other group has requested the afternoon session because one of their co-chairs isn't flying in until that morning. And so the leadership team for our working group is just trying to see if there's really any significant difference either by in-person participants or remote participants.

For those in the Americas time zones, the remote participation will be undesirable for either one just for different groups depending on whether you're towards the west or the east in the Americas. So I think there's about 20 people that have responded so far. We'd like as many as possible to respond so that we can see whether it really matters. I'm fine with accommodating the other working group and ours going in the morning. For those of us that will be seriously jet-lagged it's probably better to not be in the afternoon where it really this you.

But at the same time, if it affects participation either in person or remotely we'd like to get an indication of that. So that we can make a decision on this, we're asking that everyone respond to the Doodle poll by tomorrow and then the leadership team will take a look at it and make a decision so that the schedule can be finalized and the other working group can plan accordingly as well.

Does anyone have any questions in this regard? Or comments? Okay. All right so please respond to the Doodle poll by tomorrow and then we'll take a look at the data and see if there are any significant advantages one way or the other based on those who are participating. We obviously can look at the membership in terms of geographic region but that doesn't necessarily help us if people aren't planning to participate or if we don't know whether they're going to be in person or remote. So this poll will hopefully give us some information.

And it does. If it ended right now it does give a little bit of information that might be helpful to us in making a decision there. So again those of you who haven't participated, please do. We'll appreciate that very much.

Our next meeting is next Tuesday at this same time. And the leadership team will be sending out an agenda on that meeting. We won't know any use cases to discuss until the end of the week but we'll put a placeholder in there and if there are not we've already discussed the next steps according to pretty much what was decided by the working group in Helsinki. So you'll see that probably in the next couple days the planned agenda for that meeting, again, with a placeholder for any additional use cases that might come in.

Is there anything else that I need to cover before we adjourn this meeting? And, Lisa, by the way, sends her apologies, she's – this week having to deal with some things in support of her mom. And but she is behind the scenes keeping up on things so she'll hopefully be joining us next week. And she's still working on the triage work with Susan.

Okay, not seeing anything else I actually can give you 15 minutes or so back of this 90-minute meeting. Thanks for the great discussion not only audibly but in the chat; it was really good and hopefully everyone found that valuable. Have a good rest of the day and a good rest of the week. We'll talk again not only on the list but in our meeting next week. Meeting adjourned. And the recording can stop.

Michelle DeSmyter: Great. Thank you so much. Again, the meeting has been adjourned. Operator, please stop the recordings, disconnect all remaining lines. Everyone, enjoy the remainder of your day.

END