

**Registrar Accreditation Agreement (RAA) DT
Sub Team B
TRANSCRIPTION
Monday 01 March 2010 at 18:00 UTC**

Note: The following is the output of transcribing from an audio recording of Registrar Accreditation Agreement (RAA) drafting team Sub Team B meeting on Wednesday Monday 01 March 2010 at 18:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:
<http://audio.icann.org/gnso/gnso-raa-b-20100301.mp3>

On page:

<http://gnso.icann.org/calendar/#mar>

Present for the teleconference:

Steve Metalitz - IPC – Chair
Tatyana Khramtsova – Registrar Stakeholder Group
Michele Neylon – Registrar Stakeholder Group
Cheryl Langdon-Orr - ALAC chair
Holly Raiche – At-Large
Shiva Muthusamy – At-Large
Philip Corwin – CBUC
Kristina Rosette – IPC
Marc Trachtenberg – IPC
Elisa Cooper

ICANN Staff

Margie Milam
Marika Konings
David Giza
Liz Gasster
Glen de Saint Gery

Absent apologies:

Paul Diaz – Registrar Stakeholder Group

Glen de Saint G ry: Shall I do a roll call for you Steve?

Steve Metalitz: Yes that would be great, thank you Glen.

Coordinator: Excuse me this is the conference coordinator. At this time the call is being recorded. Thank you.

Glen de Saint Géry: Thank you. Good morning, good afternoon, good evening everyone. On the RAA Team B call today we have Holly Raiche, Michele Neylon, Steve Metalitz, Tatyana Khramtsova and Siva Muthusamy and we're waiting to get Cheryl on the call.

And for Staff we have Liz Gasster, David Giza, Marika Konings, Margie Milam and Glen de Saint Géry, myself. Thank you Steve, off to you.

Steve Metalitz: Thank you. I see on the Adobe we also have Phil Corwin. I'm not sure you...

Glen de Saint Géry: Oh Phil Corwin, yes. He's not on the...

Steve Metalitz: On the phone.

Glen de Saint Géry: ...on the phone. That will be noted on the call.

Steve Metalitz: Well thanks everybody. I apologize that I didn't send out until about four hours ago the proposed agenda for the call and then I further apologize that I apparently sent it to the wrong list. I guess it went to the notify list which doesn't seem to get to anybody.

So I just sent it out again but I don't think you'll find any surprises in it. Just briefly my suggestion was that we complete our review under Tasks 1 and 2 of Items 5 through 8 on our chart.

I circulated a document six days ago I think with proposed priority rankings and asked for any feedback or comments on those. I did not see any so hopefully we can finalize those but if people have questions or concerns that would be Point 1.

Point 2 is we have to begin our discussion of Task 3 which is what should be the next steps, and I think we could at least start that discussion. And then before we conclude we need to kind of plot out our next - what we need to do in advance of our next meeting and also figure out approximately when our next meeting will be since we're skipping a week obviously for the Nairobi meeting.

But there is a lot that I think has to be done between the close of this meeting and the beginning of the next meeting so I just wanted to sketch that out briefly and then of course the discussion of scheduling the next meeting.

Were there other agenda items that people wanted to raise or can we consider this agenda approved? All right without objection we'll forge ahead on the agenda.

Okay on Categories or Items 5 through 8 first of all I should mention that we did just get a - an updated full chart from Margie reflecting the discussion on our last call.

I have not even had a chance to look at that so I hope everyone can take a look at that and circulate on the list any corrections. But I think the Staff has done a very good job of reflecting what's the basic points in the discussion so I'm pretty confident about that.

But of course we will all have a chance to go through the document - the full document before it's finalized. What I did on the 23rd was to just to excerpt from that larger document Items 5 through 8.

And you recall that back around the end of the year, the turn of the year, I had circulated some proposed priority rankings and kind of some organizational ideas on these - all of these.

At that time they were 6 through 9 but we went through a renumbering process so they're now 5 through 8. And I - all I've done here really is say high priority or low priority and sometimes there's a few words of explanation. But again I really was just taking this from the material I circulated and in some cases from feedback that Holly gave.

I think she was the only one that gave feedback on the list although we've talked about this several times and encouraged people to comment on the list. So I guess what I would do at this point since this is - again this document has been out since - for six days and I haven't seen any comments on it.

Let me just ask, did people have any issues they would like to raise on anything within - well let's just start with Item 5 on Privacy and Proxy Services. Were there any concerns or questions about the priority ranking that have - has been proposed on any of these items? Holly has her hand up. Go ahead.

Holly Raiche: It's really not about the priority, it's just have we thought about going through all the items because a lot of these things seem to overlap. And it would be really nice instead of having the number of items we've got here to collapse Item 5 which has got several items in it into like two or three items, because they really do seem to overlap.

Steve Metalitz: Okay yes. All right, I had proposed at least among the high priority items that there were really four categories here and I tried to reflect that in the notes on the right-hand side.

So they certainly - I mean, we haven't gone through reorganizing any of these. We've left all of the item numbers untouched. I do agree with you that once we get to the next step of actually trying to turn these into possible contract language there is a lot of overlap.

And I think also the fact when you see there are three Items 5.1 it's because they're basically covering the same ground in slightly different ways, which is fine and expected because they came from three different sources.

So were there some in particular that you thought were overlapping that wasn't reflected in the numbering or in the notes?

Holly Raiche: Probably with just rating them when you've got three different versions and they've all got the same priority and I'm just wondering what I'm going to have to sort through, what it is we're actually recommending and then confirm.

Steve Metalitz: Well I think - that's right. I think what we're - we're supposed to be identifying our topics and since all these three are on the same topic I think it makes sense for them to have the same priority.

That doesn't mean that, you know, obviously someone will have - farther down the line will have to decide even if we - even if it's accepted as high priority someone will have to decide do we actually want to put this in the RAA and then obviously specific wording would be crucial. But we're not really at that phase yet.

Holly Raiche: Okay that's fine.

Steve Metalitz: Any other comments on Number - Item 5? Okay let's move ahead then to Item 6 which deals with WHOIS issues. Again here what I've done is put in the notes column a high or a low as reflected in a email that I sent out and I think Holly had commented on earlier.

There are a couple of things. You'll notice for example on 6.5 I wasn't - I think it was 6.5 I wasn't sure about disclosure of WHOIS to law enforcement. I wasn't sure exactly how this would be reflected in the RAA, because that really is a question each country's law enforcement would have specific

procedures for obtaining information that's not publicly available for, you know, from the WHOIS database.

So I'm - I wasn't quite sure how we would include - how that would be reflected in the RAA. And then 6.8 again seemed to be kind of a compliance matter and we've tried to deal with those on a separate track.

It was basically requiring Registrars to send a copy of records related to particular compliance investigation. I don't want to say anything - I'm not contesting that point but it's just that it's more of a compliance issue than a - perhaps assumptions of contract issue.

But I think David Giza has raised his hand and I'd welcome any other comments on any of the items in 6 or on the priorities that have been tentatively assigned to them. David why don't you go ahead?

David Giza: Yes thank you Steve. I just wanted to make a quick comment on 6.8. I do agree this is an enforcement issue and I think under the amended 2009 RAA we now have some tools available to us that we want to use to address this.

So although Staff is still, you know, recommending that we incorporate this additional language, you know, into the RAA I think, you know, as a practical matter this is probably a medium or a low priority.

Steve Metalitz: Okay. Thank you. Any other comments on anything in Item 6? All right let's move on to Item 7. This deals with the reseller issues, some of which we have already talked a bit about.

But a lot of this as you'll see from the priority - tentative provisional priority rankings a lot of this applies - is disclosure requirements about disclosing the resellers to ICANN, disclosing to Registrant, you know, having - requiring resellers to disclose to Registrants who the Registrar is.

And I think if you look at 7.6 we've had some discussion about this I think in our first go through with the law enforcement people with (Bobby Flame), that anything requiring all resellers to do something it's going to be difficult because of the number of resellers or at least as far as substantive activity.

So I just noted that and put that in the - therefore in the lower priority but most of the others seems to be of relatively high priority. Any comments on anything in Section 7? Michele go ahead. Anybody else? Go ahead Michele.

Michele Neylon: Did we ever get a satisfactory definition for what constitutes a reseller?

Steve Metalitz: That's a good question and I don't know whether anything in the 2009 version of the RAA addresses this because it does refer to resellers.

Michele Neylon: It refers to them but, I mean, David would be, well I always considered David to be the expert in such matters since he's the one who's meant to beat me over the head if I break the rules, but indeed he's familiar with the rules.

I don't recall there being any definition of a reseller which I think is part of the problem with the entire Section 7 here, because without a definition of a reseller I can't possibly comment.

Steve Metalitz: That's a good point. David do you have any reaction to that? I don't think there is a definition of reseller in the current RAA and I think it does make sense that you'd have to have at least some type of - some understanding of what you're - what is in that category before you could look at some of these on the merits. David and then Kristina has her hand up so...

David Giza: Yes Steve, in the define terms section there isn't a precise definition of reseller but as you read through the agreement I do recall and I'll go through the document now as we're talking, but I do recall that there is an attempt to categorize a reseller but I don't think it's as clear as saying something such as, you know, reseller means or reseller is.

Steve Metalitz: Okay thank you. Kristina?

Kristina Rosette: I'm just following up on David's suggestion. I think even if there's no formal definition in the 2009 agreement, if there are definitions that have been used in effect as a working definition I think it would be helpful to see those. And I know that I don't know that it's within our scope but it certainly should be an issue that we should flag for future work.

I know that the vertical integration Drafting Team came up against a similar problem, namely that, you know, notwithstanding several years of discussion there's apparently no one definition of vertical integration that's relied on.

And I think going forward it's going to make this work a lot more difficult if we don't have one.

Steve Metalitz: Okay thank you Kristina. I think that point is well taken and I think it's within our scope. I mean, perhaps we should just add here a 7.0, Definition of Reseller, because I think it is hard to evaluate some of these substantively.

And I think without knowing that and while I think many of us might have the same definition in mind, it's probably a term that you can't just assume that everybody understands what it means.

I do see that in the existing agreement in 3.12 it says, "If Registrar enters into an agreement with a reseller of Registrar services to provide Registrar services," quote reseller unquote.

So that tells you something that a Registrar - a reseller would be somebody with whom a Registrar has an agreement to provide Registrar services which is a defined term.

And whether that would be enough or whether you would need a more precise definition I don't know. But I think if you're going to spell out more detailed requirements for resellers it probably makes sense to have a formal definition I suppose.

Any other comments on this point? Okay well then let's - if we can let's add a 7.0 that says Definition of Reseller if Needed and that would be a high priority. And then note that the priorities on the other items under 7 could change depending on the definition of reseller.

Any other comments on Number 7? All right, Number 8 which is Termination of the RAA, and some of this has to do with particular types of activities that ought to lead to termination of some people and then there was also a - I think there was some procedural issues.

I notice on 8.4 about the Registrar disqualification procedure there was some question about what is the status of the Registrar disqualification procedure. I mean, I guess it's peripherally related to what we've been doing because if someone who is disqualified for being a Registrar then presumably they can't - you'd have to terminate the Registrar Accreditation Agreement applicable to them since they would no longer be qualified.

But I guess it's worth asking Staff if you have any information on the status of the disqualification procedure, because I know a draft had been posted quite some months ago and I didn't know where - whether there was any further update on that. Dave or anybody else on the Staff? Dave I'll call on you to respond to that.

David Giza: Yes, Steve as far as I know the procedure is still under review. I don't believe it's been, you know, officially approved but I can double check with Tim Cole to, you know, to get an answer to that question.

And I don't know if the Policy Team, you know, knows anything more about that issue.

Steve Metalitz: Well if they do, if they're on the call please speak up.

Margie Milam: Oh yes it's Margie. No I don't. I don't have any information in that regard.

Steve Metalitz: Okay. Thank you. Okay well then leaving that one aside were there questions about the prioritization or any other comments on anything in Item 8?

And again some of these have to do with procedural issues. There's a point about the appeals process - shortening the appeals process and - but most of them have to do with particular grounds for terminating the RAA - terminating RAA agreement.

Any comments on these? Okay well thanks everyone and what I think we need to do to round out Tasks 1 and 2 is, you know, we'll take these out of italics, what's in the notes area and with the changes that we've talked about here we'll have one document that Staff will circulate.

And I would ask everybody just to take a careful look at that to make sure that we've captured everything correctly. I know we've had discussions over a period of several weeks - many weeks on this but I have been trying to keep an eye on the versions as they come through.

And I think again this has been captured pretty accurately but let's - one of our homework assignments will be if we can ask the Staff to put out the revised version as soon as possible, and then everyone will have a chance to look at it and make sure that it's correct. Margie did you want to be recognized?

Margie Milam: Yes, I'll go ahead and do that. I'll include the comments that you sent around as well so that we have a complete document.

Steve Metalitz: Okay great. All right, now that brings us to Task 3 which is to recommend next steps. Again as I see our report will consist of all three of these items and we've pretty much - we know what we want to say I think on 1 and 2.

Obviously this is all subject to everybody reviewing whatever draft report is prepared. But on Item 3 we have not really had much discussion about next steps.

It seems to me that there's obviously a couple of different ways that this could be approached. One is, you know, you could take some of these high priority items and - well first of all, you know, you could take some of these high priority items and start to put them through a Policy Development Process of some kind.

But again in most cases we haven't identified consensus policy issues that would necessitate that approach on most of these points. Another possibility would simply be to turn this over to the Staff and say, "Okay here's our best list of topics and priorities, and now you figure out how you're going to work with the Registrars to try to get some of this stuff incorporated into the next version of the RAA."

That might be another priority, excuse me, another option. I guess in my thinking about this it's sort of a two step process. One would be first that we might ask or that the Council because obviously this is the Council's decision at this stage, might ask the Staff to draft contract language on the high priority items to the extent that there isn't potential contract language already drafted.

The Staff when it made its submission to this process in many cases gave actual contract language. Most of the other submissions didn't, from the law enforcement, from the IPC, from Danny Younger and others.

So you would need to kind of try to come up with contract - at least the first draft of contract language to - so that people would know specifically what we were looking at.

And the step - the second step might be for a negotiating team - we're a Drafting Team here to try to identify some of these topics but perhaps the next step would be the formation of a negotiating team and you would want obviously Registrars on that team.

You would want ICANN Staff on that team and you'd want people from a perspective of Registrants and third party interests that are affected by the RAA.

So those might come from the Commercial Stakeholder Group, the Non-Commercial Stakeholder Group, the ALAC. You'd have to figure out, you know, what - how you populate that part of the team and then turn that team to work on these topics with this proposed contract language and see what could be developed.

I'm just throwing that out as a two step process that we could recommend to the Council, first the - reducing a lot of this or at least the high priority items to contract language or first draft contract language, and then forming a negotiating team and asking them to report back in some period of time.

I see Cheryl has her hand up and welcome Cheryl, and Holly also wants to be recognized so let's start with those two speakers and go from there. Thank you. Cheryl.

Cheryl Langdon-Orr: Thank you Steve. Just needed to have back in the record and just to remind ourselves as we're getting to next steps, that yes we certainly do need to explore which of some of those options that you've just outlined might be worthwhile and nice, productive. But we do need to remember that whilst the

charter organizations for this Work Group's activities is clearly the GNSO Council, it is working in conjunction with the ALAC.

And it might be a very appropriate time to formally at the next steps point inquire, and I do mean formally, not just via the ALAC members to - as part of the Work Group, some sort of feedback or response. And doing that during the Nairobi meeting might be an ideal opportunity since it is a joint Work Group activity in that sense.

Steve Metalitz: Okay thank you. Holly?

Holly Raiche: I think I want to repeat what I said before which is before we take the next step which is the drafting contract language and so forth, I really do think we've got to go through all the areas and just say because for instance in the 8.1 you've got three versions of the same thing.

What is it we actually as a group agree is the recommendation? Because right now we've got the possibility of several recommendations and I think before we put Staff to work maybe we need to do the work to say what we're really recommending is as follows on all of these topics.

I think just another go around is necessary before we ask people to do the additional work.

Steve Metalitz: So a go - on those...

Holly Raiche: Yes on - because, I mean, if you look at 5.1 we've got three 5.1s, you know, and let's work through what is it we're - we as a group are comfortable saying and what is the priority - what do we as a group think is the high priority?

And then we can ask the people to draft but because we've got in many cases there are close to duplication to the same thing, let's not have three recommendations for language that's very similar to each other.

Steve Metalitz: Yes that's a good point. I think in a situation like that you could have a couple of options. One would be you could draft options. You could say, you know, it could be bracketed text that could be included or not included.

The other would be in some cases you can draft something that encompasses all three. But I think that's a good point and I guess the - I suppose we would focus first on all those that have the same number, because basically that meant the Staff went through and kind of lumped them together and that might be at least a place to start on that process.

Kristina has her hand up. Does anybody else want to be recognized at this point? Go ahead Kristina.

Kristina Rosette: Just following up on Holly's point but from a slightly different direction. I think it would be helpful just scrolling through here for example, there's an awful lot of these that are marked as high priority.

And as a practical matter you can't do all of them simultaneously. And given that we were kind of going through section by section, it may be that once we for example recluster this in such a way so we can see all the high priority items together, and that we may want to adjust or at least within high priority kind of indicate which is first phase, second phase, third phase, if there needs to be that kind of ranking. Because I just think as a practical matter trying to figure out what you do with this next, if everything is a high priority where do you start?

Steve Metalitz: Good point. Thank you. Does anybody else have a comment on this? Okay well what - and what Kristina said and Holly have said I hear one good word that I don't think I've heard before which is reclustering.

We need to - we may need to look at these to see if the ones that really do cover the same topic or an overlapping topic really are packaged together. I think in some cases they are and perhaps in some cases they are not.

And some of my comments on some of these I think where I tried to put together, you know, all the ones that dealt with the reveal function for a proxy service for example was kind of a first rather inarticulate attempt to do reclustering.

So maybe one step that has to happen between now and our next meeting is the reclustering, and then as Kristina points out that could help us to reduce the number of high priority items.

I agree with you. Most of the items here are - we do - I think probably the majority are assigned to high priority and that may or may not be feasible. So maybe that would be a useful exercise.

Any other comments on this? I guess this then raises the question of, you know, getting to what our next steps are. It raises the question of who can do this in the next couple of weeks?

And I assume the Staff is going to be pretty - fairly occupied with the Nairobi meeting and some of the other work involved there. So I guess I'd first ask the Staff, I mean, obviously Margie's going to send out a full, consolidated document without reclustering.

That could - that'd be done very easily. But Margie is this something that Staff would take on in terms of trying to identify the areas of overlap more specifically, or is that something that you want - it'd make more sense for subteam members to do? I'm asking Margie but I'm really kind of directing this to the Staff in general.

Margie Milam: Well sure and I'm the one that kind of consolidated them and gave them the numbering. It's been a while since I've looked at it. I think it's going to be hard without input from the Working Group members.

Maybe we would break out into a little subgroup, you know, just for that, you know, exercise.

Steve Metalitz: Yes okay. That could be done. Since I'm not going to Nairobi and so I have a little bit of time that some of - others will be spending on airplanes and in meetings although I'll be participating remotely in some of these meetings.

So I'd be glad to try my hand at the recluster exercise and circulate something. Would any others want to try their hand at it or simply kind of react to what I send out?

Holly has raised her hand. Go ahead Holly. I don't know whether you're raising your hand to volunteer or to say something else but go ahead.

Holly Raiche: No I thought I'd volunteer. It'll probably be a - it won't be a detailed thing but it's going to be on the face of it just going through and saying, "I think things are the same thing or they're close enough. What is it that we mean?"

You know, it's not going to be wildly detailed or philosophical but it could be a help to say, you know, this is really what we're asking. And actually it may mean following on Kristina's point if we have actually fewer recommendations, it's going to be easier to deal with without having these huge priorities, not that many priorities and then high and they actually not quite the problem.

Steve Metalitz: Right. That's a good point because we may be saying the same thing, high priority four times and we only need to say it once.

Holly Raiche: Yes exactly. Exactly.

Steve Metalitz: Okay well if you want to take the first cut at that and then I'd be glad to respond on the list and - or offline, whatever's more convenient for you and then we can get something circulated to the larger group for their review.

Holly Raiche: Okay. I don't promise to do anything before the next three days. Is that okay?

Steve Metalitz: It's fine with me. I think in terms of our next - well let me just say, this again is completing Tasks 1 and 2 of - that were assigned to us. What about in regard to Task 3?

How do we - do people have other ideas about how we ought to be proceeding here, or would it make sense to write up what I've said here for example about some of the options and get people's reactions on the list?

So let me ask for any feedback on how we approach or ought to approach Task 3 over the next couple weeks. Margie I think you have your hand...

Margie Milam: Yes actually I was going to bring up a different issue.

Steve Metalitz: Okay.

Margie Milam: In providing an update to the GNSO Council in Nairobi, you know, the question is would you want to raise some of these issues there. And Steve, the question for you is would you like to call in for that to provide the update?

Steve Metalitz: I'm planning to do that and I think I got something from Glen about a written update. Again that would be very brief. I don't - I would not want to do a real detailed essay but...

Margie Milam: Yes I think that's great.

Steve Metalitz: The current plan is to call in.

Margie Milam: Okay.

Steve Metalitz: If that doesn't happen or doesn't materialize I'm going to assume that others who are there could handle that or Margie you can just provide the brief update, or if there are others who are there. But my current plan is to call in. I've got it on the calendar.

Margie Milam: Okay perfect.

Steve Metalitz: Okay. All right but getting back to Task 3 does anybody have other ideas at this point about options for next steps or would it be more, excuse me, would people be more comfortable reacting to a written, you know, written document? David?

David Giza: Yes Steve, I would definitely favor, you know, reacting to a written document at this point. I think if we could - if the group can complete the consolidation work ahead that should begin to short cycle the drafting work that Staff's going to be asked to conduct, particularly since that drafting work is not something that can be unilaterally handled by contractual compliance.

And so we'll need to work with legal as well as with the Registrar liaison team and perhaps others when we finally reach the point where we're putting some straw man provisions together, you know, for purposes of submitting those to a negotiating team.

So I like the ideas put forth and, you know, and support the, you know, the path forward as it's been described.

Steve Metalitz: Okay, any other comments on Task 3? Kristina has stated that she agrees with David. Okay well I will try my hand at that and then Holly will take the first cut at reclustering and we will make sure that something is circulated on that, not within the next few days but hopefully perhaps some time next week.

Now this brings us really to the scheduling of our next call. I think if you look back at the timetable we said, you know, this meeting is taking place a week early from our bi-weekly schedule because of Nairobi.

So we could try to again come together in two weeks but I don't know whether people who are traveling to Nairobi, some of them might actually be spending a little more time in Kenya and therefore may not be back so soon.

So I wonder if it makes sense to try to in our next Doodle poll try to look at some dates late in the week of the 15th, perhaps on the 18th or 19th and we're spilling over into early the following week.

Do people know, you know, and particularly those who are traveling to Nairobi do you know if - it's the week of the 15th going to be totally out for you or is it at least possible that we could find some dates and times that will work? Any reactions to that? Michele.

Michele Neylon: You do realize that the 17th is a bad idea for me.

Steve Metalitz: Pardon me? Of course. Okay okay.

Holly Raiche: Yes, whatever is that because I don't understand. Michele I don't understand.

Michele Neylon: Listen now. I'll explain it to you really slowly shall I?

Steve Metalitz: Okay we've got that one as a no go zone but beyond that any other comments on this? If not I will work with Gisella to get a Doodle out again. We'll try to get it out very soon so that we can get this date fixed and everyone will have it on their calendars.

And then over time, during the time between now and the next meeting you should be seeing at least two documents, one would be - first of all you'll be seeing from Margie the final - the full compilation.

And second you'll be seeing from Holly and/or me the reclustering document and then you'll be seeing from me a proposal on Task 3. So those are the things you have to look forward to in your Doodle.

Okay is there anything else that people wanted to bring up on this call or shall we wrap up a little bit in advance this time? Okay in that case I think we can commend ourselves for our efficiency and adjourn this meeting, and please watch for the Doodle and for those other documents since I just - as I just listed. Thanks everyone and for those who are traveling to Nairobi safe travels.

Holly Raiche: Thank you.

David Giza: Okay thank you Steve.

Michele Neylon: Bye.

Kristina Rosette: All right, bye.

END