Inter-Registrar Transfer Policy Part B PDP
Transcription
Tuesday 17 August 2010 at 14:00 UTC

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Participants on the Call:
Michele Neylon – Registrar SG – Working group chair
James Bladel - Registrar SG
Paul Diaz - Registrar SG
Chris Chaplow - CBUC
Mikey O'Connor - CBUC
Berry Cobb - CBUC
Barbara Steele – Registries SG
Rob Golding – Registrar SG (on Adobe Connect only)

Staff:
Marika Konings
Gisella Gruber-White
Glen de Saint Gery

Apologies:
Anil George - IPC
Kevin Erdman – IPC
Robert Mountain - Registrar SG
Simonetta Matteiger
Eric Brown – RY (all Tuesday calls)

Gisella Gruber-White: Good morning, good afternoon to everyone on today's IRTP call on Tuesday, 17 August. We have Michele Neylon, Barry Cobb, Barbara Steele, James Bladell, Paul Diaz, Mike O'Connor. And from staff we have Glen De Saint Gery, Marika Konings and myself, Gisella Gruber-White.

We have apologies from Kevin Erdman, Anil George, Bob Mountain and Simonetta Batteiger. If I can please remind everyone to state their names when speaking for transcript purposes. Thank you over to you Michele.

Michele Neylon: Hi everybody. Okay then the agenda we have here, Marika will be looking at the comments and everything else.

Oh have you already posted a review already Marika?

Marika Konings: This is Marika. Yes I already posted a summary and analysis which I also circulated to the mailing list and it's also up in Adobe Connect now.

And but what I would propose to do if the working we think it's helpful to develop a grid as we did on previous occasions on previous public common grounds which makes me break them down comment by comment and links to them as well to the different parts in the report.

It might make it easier for the working group to review the comments and details. So if that would be helpful I'm happy to put that together in time for the next call.

Michele Neylon: Okay perfect. Does anybody have any problems with this?

No? Okay. Mr. Bladell, art thou on the call?

James Bladell: Yes I am.

Michele Neylon: You're agenda item number two.

James Bladell: Yes, yes I posted a message to the list. One of my brief takeaways from last week was to determine whether our internal 60 day loss practice allowed for any scenario in which that could be removed. And I discovered that while it is rare it is something that we have done.

Michele Neylon: Could you quantify rare?

James Bladell: No because that data was not given to me.

Michele Neylon: Okay. So it could have been a case of one in 1000 or it could've been a case in one in a million?

James Bladell: No. I would say it's probably on the order of, you know, a handful a month.

Michele Neylon: Right. Okay. Anybody else have anything to bring up in relation to this?

Paul Diaz: Yes Michele it's Paul.

Michele Neylon: Yes go ahead.

Paul Diaz: Yes I just want to basically backup James's stats. Our experience here at Network Solutions is similar. We will lock a name when we see certain activity on the account.

A registrant, the legitimate registrant is more than welcome to contact us either online or through a toll-free number.

And once they've established bona fides we will remove that lock. I don't have an exact statistic but it also is a very infrequent instance where this happens.

Michele Neylon: Okay thank you. Anybody else have any other comments on this?

Mikey had circulated sending the list back towards the end of last month a couple weeks back so I'll just read for you quickly.

(There are) reason seven is currently raised. A domain name was already in locked status provided that the registrar provides readily accessible reasonable means for the registered name holder to remove the lock status.

From the initial report prior to receiving the transfer request that the domain name was locked pursuant - actually this is terribly verbose.

Now I think he's raised a couple of queries. Oh here we go. Should we limit this only to locks imposed by registered name holders?

(Michael Collins) suggested this but my recollection is that this policy is really aimed at both registrant initiated and registrar initiated locks.

So if we want we can explore moving the treatment of registrar initiated locks to SUD. But then Mikey says he's going to be grumpy and we wouldn't want that.

How can we address Paul's point that overly detailed published - publishing and security practices provide a roadmap for criminals?

Is the five day interval the right one? I think that's the main key points. Is there anything else that you wanted to add in Mikey?

Mikey O'Connor: No that's the list. And I don't recall any subsequent conversation on the list about it. But I have been distracted. So I could be wrong on that.

Michele Neylon: Okay I see James has got his hand up.

James Bladell: Yes just and I wanted to thank Mikey for putting this together. But, you know, on this particular issue and the task of redefining this reason for denial I'm very concerned that we're taking something that has, you know, what, maybe 12 to 15 words and is causing confusion and we're turning it into several paragraphs.

And I'm concerned that we may be unintentionally creating or worsening the problem confusion, ambiguity and non-uniform interpretation of this reason for denial.

So I'd like to maybe just put it out there for a discussion of is this clarification something we really want to pursue?

Can we do it incrementally? Does it need to be broken up into multiple reasons for denial rather than try to be, you know, as Mikey's tried to unpack this? Do we need to - are we trying to do too much with this language?

Michele Neylon: I'm just going put myself in the queue. Just from my own perspective just speaking as myself I would like to see this be clearer in some respects.

So I think the reason (of this), parts of the language here is in need of clarification. Now whether that means that it's simply an add-on paragraph or whether people need to look at breaking it up a bit more I don't have any strong feelings either one way or the other. Mikey?

Mikey O'Connor: I hate to drag us all the way back in time. But this was one of the issues that we inherited from the distant past.

And I think we, you know, this is one of the ones I think we have to resolve James. I don't think we have a choice on this one.

And it's because the language just isn't clear. We had a drafting group that sort of took a look at some of this stuff. And we didn't in the drafting group feel that we have the charter to take this on. And so we booted it down the line to here.

So to boot it down the line again I think then puts us out - I mean I think we're talking a five year interval here.

So I think this is one that's on our plate that we have to fix. But I don't - like Michele I don't have real strong opinions about how we fix it but I'm pretty uncomfortable kicking the can again.

Michele Neylon: Michele?

((Crosstalk)).

Man: Yes...

Man: Go ahead.

James Bladell: That's fine Mikey and that's fair enough. You know, and perhaps if we take a look at your (untagged) version if we were to look at that as reason for denial 7A thru 7C or something like that.

I mean I hate to get this even more convoluted but, you know, it's fair if we believe that we have to do something to fix this. I just want to make sure we don't make it worse.

Mikey O'Connor: Let me just jump in Michele. I agree. I think that, you know, the main issue is whether we tackle it, not how.

I think there are a lot of different ways that we could do this. And I agree with the notion that our goal is to make it clear or not more murky for sure.

And, you know, the reason I did the unpacking was just to sort of get us started down that line.

And then, you know, Michael Collins raises, you know, an interesting point which is the difference between registrant initiated and registrar initiated locks.

And we'd really have to go into the misty past. But I believe that the focus of this particular confusion was registrar initiated locks.

We'd have to do some digging to make sure on that. But I - you know, I just think we need to get this one figured out and fixed.

Michele Neylon: Marika and then Paul.

Marika Konings: Yes this is Marika. Just to mention that one of the public comments submitted by the Registry Stakeholder Group they've actually submitted another proposal on how to modify this language.

So maybe the working group at some point might want to consider that in conjunction with the discussion on the proposed language or as has been broken down by Mikey.

Michele Neylon: Could you dig out the link for that please Marika we can paste it on the chat or something dig up the language?

Marika Konings: Yes I'll dig out the comment and post that. I think it's actually - probably it's - maybe it's easier if I actually pull it up in Adobe Connect because I think it's probably an attachment that they've provided. So if you give me a couple of seconds.

Michele Neylon: No problem. Mr. Diaz.

Paul Diaz: Yes thanks Michele. Yes please pull it up Marika because as I recall the registry's proposed language led us down this path of going from 12 words to 14 paragraphs. The language was even more confusing so we definitely need to see it.

My point for all of this though guys is the, you know, I'm not sure if I'm agreeing or disagreeing with you all.

And what I can't get my head around is what is the problem, what do people want to see clarified?

Yes Mikey's correct in that these charter questions were originally formed by a working group that literally did it's work five years ago.

The marketplace has changed dramatically over time, over that period of time. So, you know, when we start agonizing about was it registrar or registrant initiated locks look to me I don't think that really matters.

The reality of the world we face today is that almost all registrars lock names as a default security measure.

So let's just kind of accept the reality for what it is and then look at the language and say, you know, what is it? What is it about the text that we have right now, the existing language is confusing to folks?

And if it's confusing fine, then let's do it. But these kind of murky we ought to do something, I'm not sure exactly what - I don't get what it is we're trying to do here or where we're going.

I mean I look at the language and I see it as pretty self evident. Personally I don't believe that we - the working group needs to recommend any language changes.

I'm perfectly open if somebody can make a good argument about what is confusing. But let's just make those arguments and stop kind of spinning our wheels about was it registrars or registrants and it is what it is.

Everybody uses locks. The language that we have, is it clear enough so that, you know, the typical user can understand what needs to be done to have that lock removed so they can move forward on the transfer request and then that's enough.

We - I think in too many ways this working group is making whether it's with our ETRP proposal or other things a lot more work for ourselves than we need to do on this particular PDP.

Michele Neylon: Thanks Paul. I put myself in the queue. I mean the thing I was of the understanding was that there was some confusion being caused by this which is why it was something that was still coming up.

From my own personal reading of this I think part of the issue was in relation to readily accessible and reasonable.

But that - well it wasn't clear to people and there was some difference opinion about this.

Marika I think you said to me off-line that you were going to just double-check with compliance to see if this was something that they had been tracking? Marika?

Marika Konings: Yes this is Marika. I suggested indeed that, you know, as Paul mentioned that this is an issue that was arranged five years ago.

And I'm happy to go back to check with our compliance team as well our legal department whether they see this as an area where it would be helpful to have a clarification or whether indeed it's no longer an issue because, you know, events have already taken over whatever confusion there might have existed around certain terms. So I'm happy to check internally as well what the deal is there if people would like.

Michele Neylon: Okay thanks. I'm going to probably make a very strange sound because my headset battery is about to die. So please don't feel that I'm ignoring you - well because I might end up going off-line and coming back on again. Barbara go ahead.

Barbara Steele: Yes basically just from the Registry Stakeholder Group perspective if I can just add a little bit of background surrounding it.

I think that, you know, primarily the group wanted to be supportive of registrars being able to put in place products to secure domain names.

I think that we all recognize the value of being able to protect high-value domain names. So I think that the only point that the stakeholder group, the registry stakeholder group was really trying to make here is that, you know, so long as the registrars and their agreements with the registrants, you know, make it clear that they're, you know, what their practices are, then, you know, we're supportive of them being able to do that and just basically be able to go forward with various products and services to secure domain names because they do recognize the value in that.

Michele Neylon: Okay thank you. Mikey?

Mikey O'Connor: You are making strange noises. Are you on a speakerphone or something?

Michele Neylon: I am temporarily. I'm going to switch my...

Mikey O'Connor: Oh okay. Nice echo. Oh that's better. You know, I think from the registrant perspective -- that would be me -- the reason I'm interested in this issue is because I want to make sure that when I want to transfer a name I can and that the mechanism to remove any locks is clear.

And I think you're right Michele, the big issue is readily accessible. And a lot of times at least out in the world the story is that sometimes these things aren't readily accessible and that we need to set some standards for that.

So sorry James to be in your face and Paul but, you know, this is basically I think a tussle between registrants and registrars. And we're just going to have to tussle it out.

Michele Neylon: I see Paul putting something there on the Chat.

Paul Diaz: But can I respond to...

Michele Neylon: Yes go ahead.

Paul Diaz: ...Mikey's - you know, Mikey I think we're going to have a situation like, you know, you and I and others experienced in all these various working groups where, you know, there are a large number of registrars that do everything the way you would expect as a registrar you would expect things to be done.

They do provide readily accessible and reasonable means and you don't have a problem with it. The challenge will be those registrants who are not but we have the same problem like we see in other working groups know.

Can you point to a registrar who is not providing a readily accessible reasonable means? If not we get into the all too common dilemma where we have anecdotes that are driving policy.

And again from my registrar's perspective we are trying to fix existing policy that is not broken in our view.

We provide readily accessible and reasonable means. And nobody complains about that. So we don't see a problem. We would like to move on.

If you can demonstrate a harm, if you can show us a registrar so that we have a concrete example of what is an unreasonable practice great. Then let's tighten the language and focus around that.

Otherwise I really can't support trying to create a fix to a policy that in our view is not broken.

Mikey O'Connor: Well let me just respond to that. You know, I think that I'm becoming impatient with that argument Paul.

I mean, you know, I'm a volunteer. I don't have a professional staff to back me up. I don't have the time to chase around and find these examples.

But at the same time I think that registrants are owed a certain level of protection. And so I think we have to get past this sort of kabuki theater ritual dance and figure out a way to solve problems like this.

I don't know if it means that...

Paul Diaz: That's fair Mikey but with the existing...

Mikey O'Connor: ...we return to ICANN and ask for a professional staff allocation to support volunteers like me. But, you know, I'm not the guy to ask for that because I participate with two registrars and both of you on the call. So, you know, give me a break.

Paul Diaz: I understand that Mikey. Look...

Mikey O'Connor: This was an issue that precedes my involvement in ICANN. It was clearly something that was on the minds of a group of people five years ago. And I think to just shrug our shoulders and say well it's not a problem anymore is not satisfactory.

Paul Diaz: One more follow-up Michele?

Michele Neylon: Yes go ahead.

Paul Diaz: Okay thanks. True Mikey and I'm not asking you certainly yourself as a great example as a volunteer who contributes a lot of his time to this to go out.

                  But, you know, you sort of made my point for me. Your experience, the registrars you deal with you don't have a problem.

                  If you had had a name with somebody and had a problem you could say hey XYZ gave me a hard time and then we would have something to go on.

                  What I'm suggesting again is that if we can't demonstrate the problem then this becomes a ICANN compliance issue.

                  Because the text that exists, the policy text that exists to me is pretty damn clear. And if somebody - if registrants have a problem with it, they contact compliance and say you guys have to work with this registrar, get on their case because they are not providing readily accessible reasonable means.

                  I don't think that the - that this PDP in the absence of a demonstrated harm of somebody specific who is doing it wrong should start trying to figure out well we've heard about these problems happening elsewhere and we're, you know, kind of blindly going off creating a fix to something that we think is happening out there.

Michele Neylon: Marika?

Marika Konings: Yes this is Marika. I just want to reiterate something I think that was raised in the past by some of my compliance colleagues.

But indeed the language as it currently stands isn't easily enforceable because there is no definition of what reasonable and accessible means.

So it's very difficult to tell someone well it's not reasonable and it's not accessible because there's no definition.

I think well what's just - but then would be helpful for example is certain examples would be provided. If the language would indicate, you know, that five days is considered reasonable well anyone who, you know, asks for ten or 20 days could be considered unreasonable.

So and I think it's something, you know, we've discussed before that maybe a line of thinking would be to maybe include some examples to give an indication what is considered. And of course then there's still some margin. But at least that would give the compliance team something to work with, you know, when looking at different practices.

Michele Neylon: Okay thank you. I was going to read a couple of things from a couple people from the Chats because I think (Rob Golding) is only in via chat. He's not actually on the call.

Just a few minutes ago Paul Diaz mentioned that readily accessible and reason was a US centric legal construct. It's intended to have some wiggle room, might not be overly -- oh I can't speak -- prescriptive but hold registrars to a standard the industry considers the norm.

(Rob Golding) following up from that goes it affords the registrars the flexibility while (police) some reasonable requirements rather locking.

Are we going to agree a best practice that details the locks are clearly published in non-legalese and the reasons for the lock, how long it lasts, how to remove it are shown in the terms and conditions before applying it or excepted the registration?

Go ahead (Chris).

(Chris): Yes I've just been off the call a couple minutes and that was because I walked across the room and I've asked one of our chats have we ever known a problem where with the transfer whether a registrar hasn't been willing to unlock?

And he's actually reported no. There are plenty of problems because the clients got confused with the authorization code and things like that and it's expired but never because the registrar just didn't want to unlock it.

So it looks like we might have to try to dig for some evidence on this here.

Michele Neylon: Okay. James?

James Bladell: I'm - Michele thanks. This is James. And real quickly I just kind of want to jump into the love in between Paul and Mikey and wade into that again (unintelligible) to some extent.

You know, I agree with Paul specifically that, you know, there's a lot of PDPs or policy initiatives being kicked off based on, you know, undocumented or un-quantifiable problems that need to be solved.

And I think this is a real issue within ICANN because we're - once you're not able to define a problem then how do you know if the policy that you put forward actually goes any length towards solving it?

And I think that, you know, we're getting to a point here where were cranking out PDPs and initiating working groups based on the power of individuals in various corners to persuade others to support a problem? So I completely understand where you're coming from on that.

However I'm going to disagree with him a little bit and maybe take Mikey's side in saying that this is already an existing policy.

So to some extent that argument while valid doesn't fully apply here. And I think that, you know, clarifying or typing up an existing policy that the good guy registrars like myself and like Paul and like everybody else on this call and then ICANN were already abiding by reason for denial seven we just need to make sure that what it is we're agreeing to and then operating under is universally or uniformly understood and it's not open to interpretations.

And that's where I jump into this idea that I'm concerned that we're taking a loophole here if reason for denial seven has some ambiguity.

We're taking a loophole and we're turning it into, you know, a floodgate. And I'm concerned that the bad guy registrars who may be abusing or misapplying reason for denial seven today will have a field day with some of this new language.

So my recommendation at this point rather than, you know, continuing to circle around the issue or do the kabuki dance as Mikey said is to maybe draw a - draw some boundaries around what it is we're trying to do and put together a - some language that we're hoping will tighten this up.

If we can't pack it all into the reason for denial seven then move it out into an appendix, the IRTP, move it into a definition section or, you know, something to close loopholes and close ambiguity as opposed to, you know, throwing it wide open.

Michele Neylon: Just coming back on a bit of this, just one thing in relation to this entire discussion, if we - if you remember several months ago David Giza shared with us some of the statistics in relation to the complaints that ICANN compliance had received at the time.

I mean and there were several of them which were related specifically to the registrar not refusing to unlock the domain name.

And obviously we have no visibility on what happened afterwards. But just looking at one of the spreadsheets that David had sent out, the failure to unlock domain by registrar column appears quite often.

Marika do you - what do you think the likelihood of you getting something back from compliance for next week's meeting is like?

Marika Konings: This is Marika. I know several people have been on holiday or are on holiday so I cannot guarantee it but I'll do my best.

Michele Neylon: Okay thanks. Right any other issues or should - or any other matters in relation to this? Oh James?

James Bladell: Yes well what's our path forward I guess?

Michele Neylon: Personally I would like to - I'd like to have some input from compliance on this. That's my own personal view.

I think if compliance or other members of ICANN staff, I mean they - ICANN staff have made proposals in the past in relation to various different things based on the issues that have been raised with them through various different contexts.

So while I appreciate where Paul's comments are coming from, and yes whoever is typing would you please put yourself on mute?

Where I appreciate where Paul's comments are coming from, I'd also agree quite strongly with Mikey in some areas of this, you know, it's not something that kind of came out of nowhere.

I mean in our own experience we've seen registrars and specific registrars using locks in manners that we would consider to be unreasonable, for example, charging registrants two to three times the annual registration fee to remove the lock. Now I don't know do you - would Paul consider that to be reasonable?

Paul Diaz: I'm sorry. Charging a fee to remove the lock?

Michele Neylon: Yes. Two to three times...

Paul Diaz: That's explicitly not allowed.

Michele Neylon: Where is it explicitly not allowed?

Paul Diaz: We've had through very recent experience with a reseller who was doing that somebody complained to compliance. Compliance came back and said no can do.

So I shouldn't use the word explicit I don't know its policy but compliance has explicitly told us go tell your reseller that's not acceptable.

Michele Neylon: Now we had experience of that. And I have actual screen shots of invoices and everything else where one registrar was actually charging I think about €15 to unlock a .com.

Paul Diaz: Yes but that gets back to my point that that registrant should contact compliance and compliance will come back and say you can't do that. That's a violation of your - of the RAA.

Michele Neylon: Yes but where in the RAA does it specify it? That's the problem.

Paul Diaz: I don't know. And I agree it's a shame that David's not here because it doesn't seem anybody else from compliance is on the call. But I'm sure they could answer it because they're sending out those sorts of letters.

Michele Neylon: Right well I might follow-up with you directly on this afterwards if you don't mind. I mean the thing from my perspective is that our customer service staff have had to escalate things to me personally in the past because particular registrars or their resellers have either refused to unlock domains or have tried to levy fees on this.

So I think it's something that we can't fully ignore. However we'll break to see what Marika comes back with next week.

With respect to the summary of the comments, have any of you had a chance to read over it yet? Marika?

Marika Konings: Yes this is Marika. I just want to emphasize again that, you know, this is a summary that I've prepared based on, you know, what I've read in the comments and what I thought was important for the group to consider.

But I really would like to encourage everyone to review the comments submitted in their entirety because I might have missed things or I might have not picked up on certain nuances that others deem important for discussions in the working group.

So, you know, for discussions going forward I just hope that everyone will have a chance to review all the comments in detail and then point out where anything in the summary, you know, might have been missed or might be important for the working group to take into account in their further deliberations.

Michele Neylon: Okay thanks. Does anybody have any strong feelings or anything on this at the moment? Because I think it would be possibly more constructive for us to

look at the kind of matrix type thing that Marika is going to be preparing for us. And we can actually work - probably work a bit more productively based on that.

Does anybody have any other comments to make at this time or does anybody object if I call this to end and based on us dealing with us next week?

No? Okay. So I'll - we'll adjourn then until next week when we'll hopefully have the matrix and we can work our way through that. Okay? Deathly silence.

Paul Diaz: That sounds good Michele.

Michele Neylon: Okay all right. Talk to you all next week then.

Man: Thank you.

Woman: Thank you.

Michele Neylon: Bye-bye. Bye.

Man: Thanks.

                              END