

GNSO
Post-Expiration Domain Name Recovery (PEDNR) drafting team teleconference
11 February 2009 at 15:00 UTC

Note: The following is the output of transcribing from an audio recording of the Post-Expiration Domain Name Recovery (PEDNR) drafting team teleconference on 11 February 2009. 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-pednr-20090211.mp3>
<http://gnso.icann.org/calendar/#feb>

Participants present:

Avri Doria - GNSO Council chair
Alan Greenberg - ALAC GNSO Council liaison
Matt Serlin - MarkMonitor
Steve Holsten - Verisign

Staff:

Marika Konings - Policy Director
Glen de Saint G ry - GNSO Secretariat

Alan Greenberg: The - I'll take the lead in discussing where we go from here.

Avri Doria: Might as well wait for her to come back and say the recording is on.

Marika Konings: And (unintelligible) if you can mention again who are all on the call.

Avri Doria: Once she comes back with the recording.

Marika Konings: Yeah, yes.

Alan Greenberg: If she comes back. Do we have...

Coordinator: Hello?

Alan Greenberg: Yeah.

Coordinator: Now we'll be recording, you can go ahead.

Alan Greenberg: Thank you very much.

Avri Doria: Okay, thank you very much. Okay Alan, you take the lead.

Alan Greenberg: Okay, on the call we have Marika Konings from ICANN staff, (Steve Holsten) from VeriSign, (Matt Serlin) from MarkMonitor, and Alan Greenberg on behalf of ALAC, and Avri Doria who is here in...

Avri Doria: (Nomcom) appointee capacity.

Alan Greenberg: Okay. The question we started discussing a little bit before the call was if we've had this much trouble getting people involved in the drafting team is that a sign that there really is not a lot of interest in this and we're going to have a hard time getting a PDP working group together? Or is it just a measure of people are overwhelmed at this point? Any thoughts?

Marika Konings: This is Marika Konings, I have a slight suspicion that might be more of the second because I know there are many working groups going on, several PDPs ongoing. And I think there are a lot of meetings as well and of course all leading up to the Mexico meeting. So that is my personal assessment.

Steve Holsten: And this is (Steven). And the registry constituency meeting when this drafting session was raised it was largely - it seemed to be a sentiment

that people were overwhelmed. There wasn't a particular discussion about whether there was interest but rather when asking for people to raise their hands and volunteer there weren't a lot of takers.

Alan Greenberg: Okay.

Avri Doria: So that brings up the issue because at the moment what we're facing is we've got to do a PDP vote and by bylaws I have to bring it up real soon now. I mean, we're already beyond the chartered time but we don't worry about that so much. But I do need to bring up - hello? But I do need to bring up the PDP vote soon.

Now, what we've been normally doing these days is first chartering a working group and then - or putting the working group and PDP vote in the same motion. But I need to charter first if I'm going to do that. And so that the question becomes even if people aren't interested do we have enough people that have the bandwidth to do a working group on this at the moment.

Or do I want to do - I mean I don't want to do - if I follow the bylaws strictly speaking I call for PDP if we cross the 1/3 threshold, then I call for a taskforce which is basically one person from each constituency. And then we go it at that.

Or - and if the taskforce fails then we can come back to doing the charter. But we haven't been following that pattern lately. So I have to do something. Tomorrow is when I write up the agenda for the next council meeting.

My inclination is to put something there but if we're actually going to do something concrete in terms of a charter I'll wait longer. And I'm going to go on mute.

Alan Greenberg: The next council meeting being?

Avri Doria: Being a week from tomorrow.

Alan Greenberg: Okay.

Avri Doria: The 19th is our next council meeting. That's the last council meeting until the face-to-face meeting in Mexico City.

Alan Greenberg: Avri, one more question. Do we normally these days have a charter before voting on - or do we vote on a PDP and then charter, then put together a working group?

Avri Doria: We have - I mean its still - because we're still creating the revised system it's flexible. The bylaws say vote for PDP, vote for taskforce. If no taskforce then it's a committee as a whole sort of thing.

What we've been doing lately is either before the PDP vote or as part of the PDP vote we have been creating the - we have been creating the working group. But there's absolutely no rules on it. It's just if I don't have a chartered working group before the PDP vote is then I have to move on to taskforce vote.

When that one fails then we figure it out. Or we end up doing an old fashioned taskforce which I think everyone would hate.

Alan Greenberg: No, that's not going to happen. I mean the taskforce votes routinely are unanimously defeated or pretty close. I - the only question in my mind is the recommendation in the GNSO in the issues report does say before you go too much further see what other information is available.

And the question is do we want to do that as a step prior to initiating the PDP or do we want to do that as the first step of a PDP?

Marika Konings: Maybe you need to mention there as well something that the registration abuse policies drafting team has done or will do probably by the latest by tomorrow is actually proposing need that a pre-step before actually talking about initiating a PDP or if not to indeed do further research and information gathering which was a very strong recommendation in that context.

And I think in this one there are as well some issues that could be considered but it's something that's being done in other groups as well and will be discussed I think in that matter as well, so.

Alan Greenberg: Marika do you get a sense that there is a lot of information that is really available? Because when drafting the issues report the feeling we got was a lot of it is going to be hearsay and anecdotal and there isn't a lot of hard evidence.

Marika Konings: Correct. And I think probably most of the issues as, you know, having done a lot of the research is more a question of talking with the different stakeholders to see indeed if there is, you know, feel that changes need to be made in view of their experiences. And as well taking into account, you know, possible consequences of changes that will be required.

Avri Doria: Just so you know, I'm more than willing also to put forward a motion that says we're going to either do the following information gathering or request the following information gathering. And we set this deadline and we will postpone the PD vote - PDP vote until that date. That kind of motion has been done, we can do that.

Marika Konings: Is there a way as well to - I mean this is a question, is there a way to initiate the PDP but not actually start it until a later date to give people ample time until the Mexico meeting or, you know, just also to finish up some of the work that everyone's involved with now? Or...

Avri Doria: I think certainly if we have a charter that says, you know, we're approving this chartering of this working group and we're going to suspend the time and it will kick off. I mean we've got really a lot of flexibility now while we're in this trial and error of how the new system works.

And I think the one rule that we've followed and that I pretty much insist on is that whatever we do we do it deliberately with a motion. And make sure that, you know, we're not slipping into something or forgetting something that we'll deliberately say we'll do this, we'll do that. We take a vote on it and then we follow through.

Alan Greenberg: I mean if you look at the self recommendations there's a pretty clear list of function there of things to consider in a possible PDP. I would not be unhappy with taking those - I mean we need to read over the section and see if there's any changes we need to make or additions. But I would be moderately happy in taking that and initiating the PDP.

The - do we really need to do more study as - or preparation in addition to that? I mean if that's all we're going to - If that's what we're going to do I'm certainly happy to draft something. Is everyone still there?

Avri Doria: You mean you're willing to take the first crack at drafting up a charter?

Alan Greenberg: Yeah.

Avri Doria: Because I think that's the first thing somebody has to do.

Alan Greenberg: I mean I don't think it's going to get done in time for this council meeting but it would be done in time for Mexico City.

Avri Doria: Okay. Now the meeting in Mexico City, any motions we vote on we vote on in a public meeting.

Alan Greenberg: Understand.

Avri Doria: Okay.

Alan Greenberg: Now of course I can't make the motion so someone else is going to have...

Avri Doria: That's okay.

Alan Greenberg: Someone else on campus is going to have to play with me.

Avri Doria: I will make any motion. In other words, I cannot make motions unless it's a formal procedural one. But I'll make any motion that comes after this drafting change.

Alan Greenberg: Okay.

Avri Doria: So that's not a problem. I'll take that since I'm the only council member participating at the moment.

Alan Greenberg: All right, I'll be honest, I didn't realize this meeting was being held until yesterday. And so I haven't done an awful lot of preparation for it. I think however that we can come up with a charter which pretty clearly echoes what is in the staff recommendation so it's clearly within scope.

There may be a few things that we want to look at in addition to that.
But I...

Marika Konings: I think one of those issues, Alan, probably is this question of counter over dominion of RGP which as well raises the question - one of the questions that was raised by (Chuck) at one of the council meetings. It's probably something for the group to consider whether it should be included in the charter or it will include our RGP.

Alan Greenberg: Let's do that one first. That's actually the first point that's mentioned after the actual bullets in the recommendations. The question is currently the RGP which is not a consensus policy but does not allow a domain transfer during the RGP.

The issues report suggested that allowing it would be a good thing. The issues report said that it may fit well in the entered registrar transfer policy PDPC. I have no strong feelings about it, to be honest. It was not one of the really hot points in the request for the issues report.

It was put in because a number of people suggested it and it would make the whole process uniform. That is, at any point you could switch registrars if you are unhappy with how your current registrar was acting. I have no real problem tossing that one over into the IRTPC unless someone - if someone else feels strongly otherwise.

Marika Konings: And this is Marika. Just maybe to add a little bit of background because in the question asked by the council is why we made this recommendation. And looking at the initial discussions on the RGP this question of returns for in the RGP was already raised in that context. But at that point they said let's maybe wait until a second phase or, you know, a potential review of RGP further down the road.

Because allowing a transfer in RGP will bring with it sort of some technical and procedural complications that will need to be carefully addressed. So I don't know if from that process they said let's first get RGP going and then maybe in the second phase consider the possibility of transfer of the remaining RGPs.

Alan Greenberg: I have no problem with that. Does anyone else have any thought?

Man: I'm kind of new to this so I'm not sure how specific you need to be in the charter as opposed to as in 4.2 those recommendations that you consider more information on fairly broad topics. Is that - is that not what should go in the charter but rather much more specific action items to address?

Alan Greenberg: I think we're -- Avri can correct me -- but I think we're pretty flexible in what the charter says, whether it simply comes down to specific points

or simply points back to the issues - the recommendations in the issues report.

Avri Doria: Yeah, it is flexible. What we've seen from other working groups is that a more explicit charter of what they're supposed to do is a good thing. So if we can sort of be explicit, you know.

And then the other thing we tag on since we don't actually have full procedures for working groups yet I would suggest we just tag on reference to the working team methods that are being developed in the - in those other committees.

But an explicit, you know, do this and this and develop that is actually better and, you know, giving some notion of these are the things they need to do. And look at some of the previous charter that we've done. I think -- and Marika you can confirm this -- that the one that we did for RXP Part A was not - was a good one or at least it worked.

Alan Greenberg: Certainly we - in the case of the transfer during RGP we could certainly take it on and as part of our recommendation say it would be better handled somewhere else. But that the timing may be dicey for that because IRTPC may in fact start before we get the point of making any recommendations.

I had another question for Marika. If you remember the issues report request very clearly said we are looking at both how registrars and how resellers treat things. And the answer - it was not mentioned at all in the issues report I don't believe, but the verbal answer that came back is really consensus policies kind of only address what contracted parties do and not their - is - not their resellers.

Marika Konings: Correct. As I understand that was part of the RAA amendment to have that extended. But I think as it currently stands it is only limited to registrars and registries, the product is.

Alan Greenberg: But surely I - I haven't reread the full RAA recently. But surely the RAA does include some provision that registrar must make sure its resellers honor the rules that are there otherwise simply having to re - the reseller says all consensus policies and all other rules are void. So surely there is currently something in there which says any rules a registrar has must be carried out by their reseller.

Marika Konings: I don't know if maybe (Matt) knows more about that?

Matt Serlin : Yeah I actually don't believe it currently does. I think that's part of the revisions of RAA is to include that. So the new version will include it. I don't think currently it includes those provisions.

Alan Greenberg: So simply having a reseller says you're not obliged to follow any of the rules that ICANN has made regarding domain names?

((Crosstalk))

Alan Greenberg: In practice with that growth?

Marika Konings: Well I presume that's between the registrar and the reseller. But I don't think that's anything ICANN do about it. I guess the registrar could say well, you know, if you're not following certain, you know, rules that I like or that we agreed between each other then, you know, I terminate my

agreement with you. But I don't think ICANN's arm stretches that far as I understand.

Alan Greenberg: But you're saying that ICANN cannot - and ignoring the fact that our enforcement - we don't have a lot of granularity in enforcing the contract. But ignoring that you say ICANN has no ability to terminate a registrar's agreement if they use resellers to essentially bypass all the rules? That cannot be the case.

Matt Serlin : Sounds like we actually need to look more carefully at the RAA...

Alan Greenberg: Okay, because that's...

Matt Serlin : To see exactly what it says. Because it would be very surprising if you had a contractual paradigm where you didn't have slowdowns and that you could subcontract things out and you would therefore do an end run around your actual obligations.

Alan Greenberg: Exactly, that - I mean as clearly ICANN doesn't have a lot of ability to enforce little things, you know, which are not major breaches but nevertheless. Okay I think we need to do a little bit more research. Marika can I ask you to talk to the - to - sorry, my mind has gone blank.

Avri Doria: It would probably be a good idea to frame any questions that we think need more research and that might be, you know, a worthwhile activity, you know, to do on the list or, you know, somewhere else. I don't know if we set up a list for this but setting one up is just...

Alan Greenberg: (Unintelligible)...

Avri Doria: But if we have questions - if we have questions for legal it's really best if they're written and framed.

Alan Greenberg: Okay.

Avri Doria: As opposed to just sort of throwing one off and leaving Marika stuck with trying to make sure that she covers the intent of our questions. I mean obviously she can do it...

Marika Konings: I'm sorry, I'm back. I just got disconnected, sorry.

Avri Doria: We were basically just talking about framing a question to legal and I was saying it is better that we frame it and get it written and make sure it's what we're asking as opposed to just throwing something off to you and saying Marika please go ask.

Obviously you're free to ask any question of legal and these things any time you want, but if this team wants a specific legal question answered I think we should get it written.

Marika Konings: Yes, definitely.

Alan Greenberg: Okay. All right, I'm not quite sure where we go at this point. I...

Avri Doria: It sounds to me we've got writing stuff.

Alan Greenberg: I've ready charters but I haven't actually focused enough on them. So if you say the PDP - the IRTPA is a good one as a model I'll take a look at that. And in the next several days try to have a first crack at drafting something.

Avri Doria: And I'll do a couple iterations with you if you'd like.

Alan Greenberg: Yeah, okay.

Avri Doria: Just to, you know, make sure everything's covered.

Alan Greenberg: No, I - I've taken the luxury of feeling since I don't have to do these kinds of things I haven't paid as much attention as I might have otherwise. But...

((Crosstalk))

Alan Greenberg: I'll get up to speed.

Marika Konings: And I'm happy to help as well Alan. I've just been working as well on these charters for the other working groups so I'm happy as well to help drafting that.

Alan Greenberg: So essentially what we're saying is we would like to see a PDP initiated at the Mexico meeting that PDP may well require - that there may well be some investigation work that's done as the first step of the PDP. I - from my point of view of the initiator I think that's a better solution than doing another intermediate step first.

This is one of those issues where ICANN is continually being criticized for not taking action and actually starting some real process which then is bound to continue, I think is a good sign. (Unintelligible) a good sign...

Avri Doria: And Marika you and I can figure out how to cut up this PDP because PDPs require a very low threshold, and forming working groups require a higher threshold. So we can cut up into the right pieces of the separate desk.

Marika Konings: Okay perfect. And Alan maybe just to mention as well from, you know, enforcing compliance side they're actually going to publish shortly a report of what they actually did in audit of the question, do registrars have the information auto renewal and the legion policies on their Web site. So from an ICANN side we're - they're already working on some of the issue that we raised here as being in the compliance corner.

Alan Greenberg: I'm looking forward to the answer. I just got some email a few days ago from a very unhappy person whose read - whose name was sold without his knowledge until it actually got sold. And I went to the particular registrar and he actually got with a registrar and not reseller.

And indeed, all the rules are there. It's the bloody longest agreement that you ever could see. And of course it includes a provision saying it could unilaterally change at any point by the registrar without any notice. So yes, it's posted.

Marika Konings: Well but I do believe, and this is probably another confined question, that in relation to auto renewal and expiration policies there is a requirement to inform the registrar of changing.

Alan Greenberg: Indeed. If the email still works.

Marika Konings: Yeah.

Alan Greenberg: We're not saying that everyone - anyone is innocent completely in this thing. But very often for one reason or another the people don't find out until the name - the page switches to someone else. And in this particular case the guy had build up his big business and it was a good domain name for someone else to take over.

Okay...

Matt Serlin : Well I also think tracking these things if you've got something like a ten year term. Who can think ten years from now and remember to keep track of everything.

Alan Greenberg: Well it's not a particularly good process. I mean if nothing else, one would think that we could still use telephone and paper mail if necessary. But at \$9 a domain how much do you expect a registrar to do?

Matt Serlin : Right.

Alan Greenberg: I think we're as done as we're going to be at this meeting. I'll try to get something in in the next few days. And I thank you for participating and I look forward to some active comments on the mailing list.

Avri Doria: Yeah I think that we just need to keep working ion the list.

Matt Serlin : Okay very good. I'll be happy to assist however I can. And Avri when this goes - when the charter drafts are written those of us on the call will review and provide comments. Do we also take those back to the various constituencies at that point or at what point do we...

Avri Doria: I think it's - I think that's really up to you in terms of how you and your constituency work on things together. Certainly the constituency will have at least a week to read it and talk about it before we have the vote. We have that seven day requirement, you know.

But it really depends on how you work with the constituency. There's not a formal go to constituency review period.

Matt Serlin : Okay terrific. And I have abundant access to (Chuck).

Avri Doria: Yeah.

Matt Serlin : So he can help me guide - help to guide me through all of that too.

Avri Doria: And you guys have more formal procedures than the other constituencies in terms of, you know, making decisions as a constituency and voting as a block. So your rules would definitely be different than another - than another constituency.

Matt Serlin : That's great. And the last thing I wanted to just note is that issues report on post expiration domain name recover, I thought was a very well written and clear report. Even as somebody fairly new to all of this it made clear what the issues were I think very effectively.

Avri Doria: That's Marika I believe.

Matt Serlin : Well than Marika, well done.

Marika Konings: Thank you. Thanks to the rest of the ICANN team that helped with this of course.

Avri Doria: Okay well good talking to you all.

Alan Greenberg: Anything else? All right, I thank you all.

Avri Doria: Thank you very much.

Man: Bye-bye.

Man: Have a good one.

Marika Konings: Thanks, bye.

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