

**ICANN
Transcription
IRTP Part D Working Group meeting
Monday 13 January 2014 at 16:00 UTC**

Note: The following is the output of transcribing from an audio recording of IRTP Part D Working Group call on the Monday 13 January 2014 at 16:00 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-irtp-d-20140113-en.mp3>

On page: <http://gnso.icann.org/calendar/#jan>

Attendees:

Graeme Bunton - RrSG
Avri Doria – NCSG
Mikey O'Connor – ISPCP
Barbara Knight – RySG
Holly Raiche – ALAC
Chris Chaplow – CBUC
Rob Golding – RrSG
Paul Diaz – RySG
Bartlett Morgan – NCUC
Kristina Dorrain – NAF
Volker Greimann – RrSG

Apologies:

James Bladel - RrSG

ICANN staff:

Marika Konings
Lars Hoffmann
Caitlin Tubergen
Berry Cobb
Julia Charvolen

Coordinator: The recordings have started ma'am.

Julia Charvolen: Thank you. Good morning, good afternoon, good evening everyone, and welcome to the IRTP D Working Group call on Monday 13th of January 2014.

On the call today, we have Rob Golding, Volker Greimann, Mikey O'Connor, Holly Raiche, Graeme Bunton, Avri Doria, Paul Diaz, and Bartlett Morgan. We have as well Kristina Dorrain who has just joined.

We have apologies from James Bladel, and from staff, we have Caitlin Tubergen, Marika Konings, Lars Hoffmann, Barry Cobb, and myself, Julia Charvolen. May I please remind all participants to please state your names before speaking for transcript purposes? Thank you and over to you.

Mikey O'Connor: Thanks Julia and welcome all, even Graeme. Poor Graeme, he's brain dead after three weeks of vacation. I certainly sympathize with that. We will take our usual pause to take a look at the agenda and let anybody - let us know about changes to your SOI.

Just to give a little context to the agenda, we had sort of a big call last week and sort of arrived at a bunch of conclusions that I think we will probably replay since many of you weren't on the call. And so the focus on the work plan is because we are thinking that we may be able to hit an initial report by Singapore as a result of the conversation we had last week. So that's sort of what's going on today, and with that, I will just take the pause and then we will dive in.

Okay, what you see on the screen - Lars do you want to run us through this? This I assume is yours. Just give us a...

Lars Hoffmann: Yeah, Mikey. No problem.

Mikey O'Connor: Go ahead.

Lars Hoffmann: This is Lars for the transcript. Following last week's call, I just had a quick look at the calendar. If we wanted to submit even just a draft initial report out of the official documents to be submitted to the - I'm sorry, to the Singapore

meeting. The cutoff point is the 3rd of March and so, that would give us I think I said 12 - 8 meetings including today.

And so if we were to assume that on the charter questions A, D, E, and F, that was on the right-hand side of the column you know of the Adobe Connect, we agree that we've come to consensus on those recommendations. I'm happy to send them around again and that's been sent around before.

We only have B and C left as we've had for a while. On B, I have the recommendations that we have come up with so far also on the Adobe Connect and I'm happy to pull it up later on when we come to that agenda item. And C, after last week where it looked like the group would like to recommend the launch of the new report looking into the possible of an inter-registrant dispute policy.

And if so, that - if we could wrap that up within the next three or four weeks, then it would give us three or four weeks to look at the entire draft initial report as a whole and then (send it off) hopefully by the 3rd of March and get maybe some feedback during the Singapore meeting. Give a presentation and then I assume the first meeting after that will be in the 7th of April. And then if there is no major additions, we can then publish the initial report and open the public comment forum on that.

Mikey O'Connor: the mute button. I was so articulate into space. Thanks Lars. This is Mikey again. Let me give you sort of my sense of this and that is that I think this is something we could do.

I note that we've got an end of January target for draft initial report and what would be nice I think is to see some language on the charter questions. I think we may have - my memory is failing me, but we may have preliminary language on some of the charter questions already, and it might be good to just take a try at the ones that we haven't got.

Because at this stage, the conversations may be easier if we are actually looking at draft language for the next few calls, so I just throw that back. I know Lars you are in LA for a week, so this is probably conflicting with that, so maybe have you got any sense as to whether in breaks in the action in LA this week you could bang out some drafts for the charter questions or is that just pushing too many things into your agenda.

Lars Hoffmann: Mikey this is Lars, two things. There is already some text for at least one, two - four of the six charter questions. I am happy to work that over again and send that out, and depending on what we decide today, I am also happy to give a full stab at B and C and see what the group thinks of that. And I am actually just going to be here for two days of training, and so I can work on this on Wednesday on my flight home, so I will probably be able to send something out on Friday.

Mikey O'Connor: that would be lovely, okay.

Lars Hoffmann: Early European time, so you know you would get a full workday in in The Americas at least.

Mikey O'Connor: Yeah and I guess my thought is that if that is too tight, it would be all right with me if you just skated it in over the weekend too. I don't think that we've got that kind of time pressure, but I think if we had draft language by the next call, that that puts us on a pretty easy glide path to hit these dates.

Now let me put some context around a couple of things. Lars, is that a new hand or an old one? I will circle back to you and just check.

Lars Hoffmann: Sorry, it's an old one. So sorry.

Mikey O'Connor: Okay, I think that with charter Question B one option that we have is whether or not to rewrite the TDRP and we were starting to do that. We had a drafting

team that was working on that because the language of the TDRP is a bit of a dog's breakfast. It is not very - it's not that it's wrong. It's just that it's really, really confusing, and it might be good to rewrite that. I'm not sure that we need to rewrite it and I'm not even sure that a rewrite is required, but that's one thing I want to touch on today.

Another is the - with regard to C, last week what we did on the call is we sort of concluded that the best outcome for that might be another issue report and a PDP. In the middle between the last call and this, I said in a call with the IRTPC Implementation Review Team, and it may be easier to await the outcome of that before it is decided that a new PDP is required, in which case we might leave that recommendation to the Implementation Review Team rather than to us.

So those are a couple of things that I just wanted to add to the discussion, but with those two caveats and Lars' kindness in sacrificing his plane flight to get us a draft, what do people think of this? Do they think - is there anybody that has big concerns right now about trying to hit this sort of a schedule?

I'm seeing Holly okay with it. I'm really looking for people who are worried about that, and certainly, the offer will stay open if as the conversation progresses you get worried. Let us know, but I'm thinking we can do this. So thanks Lars for that.

Let's move on to the next agenda item, which is the Question C summary that Lars you probably captured from the chat, because that was a big discussion we had last time and I think it would be good to go over that again. So if you could substitute that one for the work plan in the Adobe Lars that would be terrific.

Lars Hoffmann: So Mikey, charter Question C we are talking about, no.

Mikey O'Connor: Yeah, where do we say final discussion? Hang on just a second Lars before you take that one down. Do we say that somewhere in here?

Avri Doria: Yeah, it says final discussion on charter Questions B and C - final discussion on charter - and I know we don't really mean it but...

Mikey O'Connor: Yeah, I think that's right, so let's just drop the word final from those Lars. Look at that; it happens right before our very eyes. Isn't that cool?

Lars Hoffmann: No attachment to the word final.

Mikey O'Connor: Yeah, I mean this is our normal - you know we are heading into an initial report, so final doesn't really get into our vocabulary for a while yet. That's a good catch. Okay onto the - yeah, the summary of Question C Lars is the one that - think you posted it to the list. Yeah, there we go.

Lars Hoffmann: Yeah, I posted it to the list and I put in a (part here too) so you can just open it up and - and actually Mikey you as host you can also edit if you want it to. I'm happy to do it, but you can go in there and edit it as well.

Mikey O'Connor: I'm going to do one thing and that's make it bigger. There, I can see it. That's the trouble of being at the end of a 65-year warranty period. These things just don't work as well as they used to.

So I sort of just want to replay the conversation that we had last time, because a bunch of you weren't on the call and I think this is at least for me the most substantive part of our recommendation, so I just want to really take us through this one more time.

You all saw the scenarios. I pushed out a table over the weekend to the list that shows all of those scenarios of ours, and what emerges from that is that most of the interesting use cases, at least from my standpoint you know

putting on a registrant hat at this point. Most of the interesting use cases are not covered by the IRTP and TDRP as it stands today.

And so, the need for access to the TDRP. I guess I'm on the wrong charter question. I'm really talking about B. The need for the TDRP as it stands today isn't necessary. And then in terms of C, what we said last time is that this is outside our scope. These are registrants that are disputing a transfer and then that their options in general are - well they are certainly outside of the TDRP. And in most cases today, they probably wind up defaulting to the courts.

And what we were thinking last week was well there might be a need and an opportunity to establish essentially another dispute resolution process. In no way the same as TDRP, in no way the same as UDRP, but a DRP for registrants who are disputing a transfer that might be a better venue for them than just going to straight to the courts.

And where we wound up was to say that last sentence, which we called for an issue report. Marika, if you are still with us, help me through this next bit, because I may get the right, I may not quite get it right, and with your help, we will both get it right.

What we ran into in the IRT - the Implementation Review Team meeting that happened in between was that much of this is likely to fall into the brief of the Implementation Review Team anyway. And that rather than us taking an excursion outside our scope and then recommending that we launch another PDP, maybe what we ought to do is let the IRT get further through its process, because the IRT is just really getting underway now that you know (Amy) is on board and (Katelyn) is on the call, which is fantastic.

You know rather than tie our recommendations to something that really probably needs to be addressed first by the IRT, let's let the IRT deal with it. And then, if the IRT concludes that they need a PDP, a number of this are on

the IRT. That that recommendation could come out of that group instead, and so, that would mean that our conclusion here would be mostly saying this is outside our scope and our conversation.

Marika, over to you.

Marika Konings: Yeah, this is Marika. I think the idea would be that part of the IRTP Part C implementation discussions, which will specifically focus on the change of registrant policy. That that group first works through that and indeed addresses how that policy exactly is going to be implemented and it determines whether there is indeed any need to have any additional mechanisms to handle disputes. But it may also be that at the outcome of those discussions it turns out you know through compliance activities and enforcement of the policy, that disputes can be potentially be handled.

And I think at that stage, it would be helpful for the IRTP Part D Working Group or any implementation review team that comes out of IRTP Part D to actually look at the use cases you've come up with to actually see if those are covered by IRTP Part C. And if not, then explore the avenue of indeed going through and requesting a separate issue report or recommending separate action on making sure that those kinds of cases don't fall into the cracks.

I'm a little bit hesitant of trying to squeeze in the use cases that you've come up with IRTP within IRTP Part C as a part of the implementation as IRTP C specifically deals with those recommendations that were adopted under the IRTP Part C initiatives really focusing on change of registrant.

So I think there needs to be - once that group has worked through its thinking and outlined you know policy implementation, I think at that stage, it will be easier to assess whether that will automatically cover the use cases identified or whether there is still a gap that exists and further discussion may be needed on whether a separate policy is needed or whether you know there

are existing mechanisms that could be you know tweaked to address such cases.

Or whether the conclusion is that actually no, there is no room for policy there. Those are really court issues that need to be resolved within the local jurisdictions that would apply. I think that's probably the thinking at least from my perspective at this stage.

Mikey O'Connor: So to replay that sequence, it sounds like what we could do is we the IRTP D could go ahead with an initial report with one open question still remaining and dependent on the progress of the IRTP C Implementation Review Team, and that's the discovery that IRTP C folks, the implementation review folks, will be making as they lay out their plans. Is that about right?

So we could go in with an initial report that says we don't know yet on this one topic; we want to go ahead and put the rest of the report out there, but leave one dependency until the Implementation Review Team is done.

Now Marika is saying it might be helpful for this working group to work out the use cases so that it will be easier to identify whether or not these are covered under the implementation of IRTP C. We could do that. Are you thinking in terms of including those in our report or simply as a separate analysis?

Marika Konings: This is Marika. I think it would be very helpful if in your report you actually outline what the thinking is and basically say look, we have identified a number of areas where we believe registrants should have an avenue to raise their issues and that these are the specific cases we've identified. However, we don't believe at this stage that those would be suitable for the TDRP to modify, because the TDRP is focused very specifically on the IRTP and relating to that.

At the same time, we are aware that IRTP Part C is being implemented and there is an expectation that maybe some, all, maybe none of these use cases

may already be addressed by the implementation of that policy. And as such, we recommend that upon the publication of the implementation plan of IRTP Part C - I don't know if you want to reconvene this group or it depends on how everything works in parallel.

But a specific group will look at whether these use cases are covered or not and if these are not covered, then I think you can very specifically write into your recommendation what should happen. So that maybe in a way, you won't need to reconvene the working group as such, hold up any work, or the final report.

But I think you very clearly say that if these use cases are not addressed by the implementation of IRTP Part C, we recommend that the council request an issue report on the remaining or the outstanding use cases to see whether or not these can be addressed through a separate mechanism targeted at registrants.

I think if you try to phrase it or state it a little bit that way, it means that this working group can actually move on and not necessarily have to wait until the IRTP Part C implementation is done, but you do set out very clearly what the expectations is of what happens should indeed those use cases not be resolved through the implementation of IRTP Part C.

Mikey O'Connor: Boy, I love the fact that we record these calls, because that's a fairly good first draft of the language for that section, and let me replay it to make sure that I've got it right.

So what we would do is we would spend in the next couple three weeks - we would spend some time sharpening up that first draft of the use cases that I pushed out to make sure that we agree. Because you know, I did that in a fair hurry and I'm not sure that I've got everything in the right bucket, so let's make sure that those are right.

And then, we would include that in our report with the instructions which you laid out Marika, which is that the IRTP C Implementation Group should look at those as they are implementing the policy that we did in C and determine whether some or all of those that are not currently addressed by the TDRP because they are between registrants will be addressed by IRTP C.

And if they are, terrific. If they are not, then we would recommend a PDP at that point to figure out what to do about those. And I'm not sure that I actually clarified it. I just want to make sure that when I said that back to you Marika, that's the - that was what you meant.

Marika Konings: Yeah, this is Marika. Yes, exactly.

Mikey O'Connor: Okay. All right, so at least I have an understanding even if I'm not as articulate about it as you are. Having a couple of three tries at that, how are the rest of you feeling about that approach? Holly go ahead.

Holly Raiche: Yeah, one thing just to remind ourselves what happened last week, which was we were pretty clear that there are - in between registrars, there are some situations which may actually be within the ICANN brief, but there are some things which probably ICANN shouldn't buy into. Because you know, there might be disputes between registrants about - that would be the subject of company law or very sort of (unintelligible) at ICANN.

So part of what we discussed last time was the things that ICANN possibly has a role in and to identify those, but to also identify situations where in fact it would be outside of ICANN's brief to even try to have a solution, because the solution will probably be a national one.

And when I was reading your paper, that's the way I was reading it. To sort of understand the - almost three categories. The stuff that is within the brief, the stuff that might be the subject of another process, and stuff that we just say ICANN shouldn't be touching this.

Mikey O'Connor: Yeah.

Holly Raiche: So did I understand that correctly last week?

Mikey O'Connor: I think that's right and I think that that's one of the things that we could spend the next week or two sharpening up in that table is to put those things in the right buckets.

Holly Raiche: Yes.

Mikey O'Connor: Because my tendency may be to put too many things into the new dispute resolution process bucket because I am concerned that local courts may not be as sophisticated or as fair at resolving those disputes. And that a more specialized dispute resolution process would be of benefit, so I think that's a tussle that we can have pretty productively over the next couple of calls.

And even if we didn't get it absolutely perfectly finished, we could put it in the initial report and let other people react to it as well and circle back to it during the final report. I'm sort of in work management mode right now trying to look for barriers to hitting Singapore, and I don't think that would get us in trouble.

Are the people okay with this? I'm seeing nobody in the queue, which is either good news or shocked and dismayed bad news, but I think this is pretty workable and I also think it's easy. If we run into some trouble, if we run into a snag along the way, we can certainly easily change course, but it feels like we are pretty much in agreement that this is the way we want to go.

And I think the group has essentially agreed on our charter questions with you know this discussion being the last one, which is yeah, probably it would be worth looking at dispute options for registrants, but not a part of this policy necessarily as much as the upcoming implementation of C.

And that they - and to finally put to rest the discussion about whether or not a registrant should be able to trigger a TDRP, the answer would be no, we would leave that out. We would recommend that that not change, which ought to make Volker heave a sigh of relief. Okay, well I'm not seeing any hands up and that's good I think.

Let's see, that would put us at charter Question - or at agenda Item 4, which is to take a look at the recommendation on charter Question B, which is the multiple transfers one. This is going to take us back in time a little bit. Lars, do we have - yes, we do. Good, this is so cool. Lovely, thank you for making it bigger.

I'm going to - Lars if I could rely on you a little bit. I'm a little rusty on this one. What were the - down at the bottom is where we've got some remaining questions. Which parties should participate in a dispute? Does the transfer of registrants as covered by C also fall under the (remit) of this charter question, and if so, does the TDRP need to be updated? Should the statute of limitations to file a TDRP be eliminated?

We've got some substantive work yet to do here. And if it's extended, should it be until the next renewal period or a certain period? And then is the TDRP the most effective way to deal with multiple transfers or should it be left to the courts?

Rob, go ahead. Welcome back.

Rob Golding: Thanks. In terms of the multiple hops it doesn't really matter how many legitimate or otherwise transfers have taken place after a disputed transfer takes place. So I think the current registry setup where it's the initial losing registrar, the initial gaining registrar and the final registrar which ended up being the only three parties beyond themselves that need to be involved in the discussions is correct.

Even if it goes through 10 registrars the registrars in the middle don't need to know anything about the TDRP or get involved in that because once you've had one illegitimate transfer that's the issue that you have to solve.

Mikey O'Connor: All right. Barbara is agreeing. Barbara is pretty smart about this stuff so a green checkmark means a lot to me.

Rob Golding: As to the periods I would suggest that we extend it to be one year and the reasoning behind that is that all registrars are obliged to send out mass spasm - I mean, emails - asking people to update their Whois contacts at least once a year and therefore people should at least be getting a reminder even if they don't get a normal renewal kind of reminder because they registered it for three years or five years or whatever.

So there will be at least annual contact expected by the registrant or should be expected by the registrant from the registrar they think they used. And that, at least, is some indication to registrants who don't sit there refreshing the Whois every 15 minutes that their domain isn't in the state or with the registrar that they're expecting it to be.

Mikey O'Connor: I tend to agree with that as well. What's the current period? Six months, right?

Rob Golding: Six months - six months.

Mikey O'Connor: Yeah.

Rob Golding: And admittedly I would know, you know, if any of my domains are moved to another registrar because I'd be the one - unless somehow, you know, something's gone wrong - but I'd be the one getting the (unintelligible) and I'd be looking at these thinking how the hell did they get an EPP code or what are they trying or whatever.

But, you know, with the amount of mails that people are going to get now regarding please update your contacts, please tell us this phone number really is your phone number, please email us this special code that we said we proposed in order to validate your postal address, please provide a blood sample and two forms of identification by your grandparents preferably.

And all the other things that we have to do I think some emails may be getting either just automatically clicked on because people have this tendency to, oh it's underlined in blue therefore it's a link therefore I must press it and maybe inadvertently giving authority to transfer their domain away so I do think a year would be better than six months.

Mikey O'Connor: I think we could capture that little piece of the transcript, Lars, when we're trying to describe the rationale for doing that. And I'm seeing a checkmark from Lars. What do other people think about that? Anybody - certainly from my vantage point six months has always felt a little bit concerning for exactly that reason that I generally, as a registrant, don't hear from registrars that often.

And quite frankly, I don't pay very much attention to the domain names and so it would be nice to have a little bit more time. There's always the - let me play the devil's advocate because I don't know that we've got anybody with this point of view on this call.

There's the claw-back, you know, the ability for abuse that comes in - I think that once upon a time I would have lobbied for longer but that's because once upon a time I would have been less reliant on the courts to resolve disputes.

And now that I'm more comfortable with the idea that registrants always have courts available, even after a TDRP, I'm not as strong an advocate for a really long statute of limitations. I think at one point I would have lobbied for even two or three years. And I think that's what might have triggered the claw-back response.

But one year for all the reasons that Rob just rattled off, maybe leaving out the blood sample, seems like a good thing. And so maybe we're closer than I thought we were.

Any other thoughts on - let's see, what are some of the other questions that we've got here? So we've got the - the first one, the parties who should participate are the beginning and the end of the chain but not everybody in the middle. Does transfer of registrants under Part C fall under this question? And I think the answer is addressed with our previous conversation which says maybe we're going to develop all the scenarios and we'll leave that question to be resolved by either the IRT or another PDP. So I think we can tick that one off.

The second to the last one is: If it's extended to a year, parenthetically, should it be until the new renewal period? And I think that's the whole point that Rob was making. So - well, no because renewal period is longer than that. And I am more comfortable saying no, a year is enough, especially given the number of notices that people are going to get.

It's unfortunate that registrants are going to have to notice an absence of notices rather than get something affirmative. And the affirmative clue would be when they went to try and renew and they failed because it had left but given the prevalence of pretty long renewal periods now I'm a little reluctant to go there. Anybody a strong advocate for next renewal period? This would be a good time to speak up.

I'm a little cautious about that one. We'll leave that one as tentatively no for the, you know, for sort of the reasons that we've just described in this chunk of the call. And then is the TDRP the most effective way to deal with multiple transfers or should this be left to the judicial system? And I think the answer there is it depends.

I think there are certain cases where the TDRP might be useful. Volker, we're working our way through. At the very bottom of the Charter Question D I'm on the last remaining question of that list of five that's at the bottom. Is the TDRP the most effective way to deal with multiple transfers or should this be left to the judicial system?

I'm thinking that the TDRP is not a terribly effective way to deal with anything but that the IRTP and the inter registrar cooperation that takes place there is.

That the TDRP - I mean, I guess one way to approach this is to say given the fact the TDRP is never used, or at least very rarely used, and that it wasn't really designed to address hijacking anyway, another whole approach to this would be to lift that hijacking multiple hops burden off of the TDRP process altogether and say when you face a hijacking you ought to go to court right away.

You shouldn't try and use the TDRP because the TDRP was never really designed to do that sort of thing and is going to be - if James were here I would channel James and say the TDRP is too slow to deal with it anyway. Because presumably if you've had a hijacking and you're using a name you need to get that fixed. And Rob is pointing out in the Chat that the TDRP is really for registrars to resolve disputes not registrants anyway.

And so for all of those reasons I think the answer could well be no. Let's see, Rob is saying, "We (knacked) this transfer request but you processed it anyway." Yeah, and that's an inter registrar problem, right Rob? No, that's the sort of thing that the TDRP, it seems to me, could work, does work for because it's the inter registrar thing.

But when that is involving a hijacking I think at that point the registrant might still want to go to court because they, you know, the TDRP moves with such slow speed. Volker keeps typing. He's tantalizing me but then he stops typing. Volker, speak to us. It's been so long since I've heard your voice.

Well, I thought I could draw him out. There he is I'll bet.

Volker Greimann: Okay, the microphone is (unintelligible)...

((Crosstalk))

Mikey O'Connor: It's working.

Volker Greimann: Yeah, I was just thinking about the recommendation here. And I think that one thing that we still should ask ourselves is if there is any protections in place that should be put in place for good faith domain buyers at some point be it after auction, be it after five hops have happened. Once a domain name has been transferred so many times it can possibly be sold by - in good faith and be bought on good faith of course.

I'm not sure if - where we should have our focus on the original owner or on the security of a domain transaction. Because once domain transactions are called into doubt then the buyer of a domain name can never be certain that the purchase - the domain name he's purchased isn't going to be pulled back at a later date because of a transfer years ago that was flawed. So that's just something that we should maybe, before we finalize this recommendation, just think a little bit more on.

Mikey O'Connor: Don't you think that one's one for the courts though, Volker? I mean, that's going to be a pretty weird outlier anyway.

Volker Greimann: I agree. This one should be one for the courts. However, by creating FAQs and making policy that transfers and all subsequent transfers are null and void therefore rolled back we are creating a situation where the buyer would have to make sure and provide evidence that he had legally acquired the domain name or get - try to get the domain name back or recover the money that he paid for it whereas in the other case the original owner would have to

prove that the domain name transfer originally was a hijacking or was against his will which is, I think, must closer to where the responsibility should lie. Not sure about that, it's just something I wanted to throw out there.

Mikey O'Connor: Well, you know, right now we've got draft language that's just above those remaining questions. So let's - since we've got a few more minutes let's parse our way through this.

It says, "Transfers from a gaining registrar to a third registrar and all subsequent transfers are null and void if the gaining registrar acquired sponsorship from the registrar of record through an invalid transfer as determined through the dispute resolution process set forth in the TDRP."

I mean, isn't that just normal - I suppose the problem is "invalid" is a pretty broad term. It's not just the illegal, it's not just theft. Is that your concern? Is - could we put a different word in there? I think "invalid" was plucked out of the air.

I don't know that there was anything special about that word when we wrote that so is there a better word for "invalid" so that we don't - because I agree, we don't want to have a technically flawed transfer invalidate a string and be used as a claw-back; that would be quite unfair.

You know, our intent is to catch those where the domain was stolen. So is there a better word there? Holly and then Volker.

Holly Raiche: Yeah, I - picking up on what was said, if you look at what the legal situation is there's sort of an equitable principle that says it (sort) of third party without notice; if you've plunked down money and you've got a good or a service for that money and you didn't have any notice that there was a problem with it then the equitable principle is you should keep it.

So this actually applies right in the space of that so if we're going to the courts the court is probably going to take a different view of what should happen because somebody is actually - as I say, somebody's plunked down money in good faith to get something and therefore you compensate backwards instead of undoing the transaction.

So if we're relying on the court system I think they're going to come up with a different response to this. Now I don't know if people see that as a problem but I think that's what Volker was getting at. Okay?

Mikey O'Connor: Is that really right? So if somebody stole my antique car and...

Holly Raiche: Yeah.

Mikey O'Connor: ...sold it to you you get to keep the car?

((Crosstalk))

Mikey O'Connor: But then how - what about me, the guy that got the car stolen?

Holly Raiche: You would probably just get compensated. If I don't have a reason to suspect there's a problem - I went into a dealer and I had - no, there's no way you could say I should have known that this was a stolen car and I put the money down the court is going to say well, you know, probably the compensation goes backwards and I get to keep the car.

Mikey O'Connor: Interesting.

((Crosstalk))

Holly Raiche: That's essentially what Volker was pointing to that in fact the courts may wind up with a different outcome to this one. Now I don't know if that's a problem or not. And maybe actually the policy should be very firm, this is actually the

way ICANN deals with this situation and therefore what you tell registrants is something about in fact the way it works and that then, you know, as the sort of question, D, what is it you tell registrants.

Mikey O'Connor: Okay so there's a pretty lively chat going on and the phrase caveat emptor is...

Holly Raiche: Yeah, buyer beware.

Mikey O'Connor: ...tossing around. And there - I'm going to let Volker talk and then we're going to jump into this chat because it sounds like that convention varies by country. But...

Holly Raiche: Yeah.

Mikey O'Connor: ...Volker, go ahead.

Volker Greimann: Exactly. Just I wanted to raise two points. In Germany you cannot acquire a legal title in an item that has been stolen but that's for physical objects only. Immaterial objects like domain names there is a good - an ability for good faith purchase so that's one thing...

Holly Raiche: Yeah.

Volker Greimann: The other thing is that once you have a policy in place like that even if the registrant accepts it at some point you will have cases where domain registrars, auction providers, sales platforms, are going to get sued by people who have invested large amounts of money in acquiring a good domain name, that has come to the market after a while - after - I'm making things up here - having been transferred five times or something or more and a lot of good faith transactions in between there.

So because they allowed the transfer back of the domain name and deprived the registrant of his - of his rights in the domain name - the current registrant - I'm trying to wrap my hand around the recommendation. And I'm still not certain that this is the way that we really want to go.

By creating a status quo, so to speak, by transferring the domain names back in every case and rather have a policy that states that in case the registrar becomes aware that a transfer in the chain down the line has had a problem, has been invalid, illegal, what have you, the registrar is obliged to freeze the domain name for a certain amount of time to - or lock the domain name for a certain amount of time to allow the original owner, the complainant, to lodge court proceedings in this case and therefore just prevent further harm from being done instead of creating a status where there's going to be injured parties left and right.

Mikey O'Connor: I'm open to that idea. Lars, is your hand up? I didn't notice it if it was a long ago but, anyway, you're next.

Lars Hoffman: Thank you, Mikey. Just very briefly - this is Lars. I mean, obviously the statute of - I mean, I'm not a lawyer but it seems to me also that, you know, if we have a year statute of limitation then there's certain legal certainty for domain names as soon as that time has past. Now it's not that you can't go back six or seven transfers back the years over should the transfers - is beyond reproach at least within the TDRP...

Holly Raiche: Yes.

Lars Hoffman: ...if not within the legal system or court system.

Mikey O'Connor: Yeah, I get that. But I think the concept that at least I'm hearing from Volker, let me play this back, is that right now the recommendation reads in such a way that we are creating a response to a situation that - that's consistent with some national law but not all. You know, and so rather than essentially create

a policy that has the possibility of automatically conflicting with national law in certain places why not write a policy that slows the process down for enough time for a registrant to find courts to address the situation directly.

Which is sort of what we're saying about a lot of inter registrant transfer issues is that ICANN's in a much better position to handle registrar to registrar issues than we are registrant to registrant but that ICANN could help slow things down a little bit since it's the speed of transfers that's really the issue.

Chris, go ahead.

Chris Chaplow: Thanks, Mikey. You'll have to forgive me for getting confused now because when we discussed and maybe early drafted this comment I think I remember hearing Alan talking about multiple transfers in the real world. And what Holly said sort of contradicted that and now we're hearing it varies from jurisdiction to jurisdiction because what we were intending I think was mimic something that was happening in - if I say the real world.

I wonder is there an opportunity for us to ask for some legal advice here? Is there anybody or - I don't know, ICANN legal or somewhere can give us a - not a report but a couple of page let's say overview to make - to point us in the right direction or to make sure we know where the balance is; is it 50/50 or is it just the odd country that's different from all the rest? I don't know. I think we lack knowledge perhaps. Thanks.

Mikey O'Connor: Thanks, Chris. Although I'm not sure that we're going to get much better legal advice than the folks on this call. I think this is a pretty strong legal brain trust that we've got here but we could certainly do that. Holly I'm going to jump up to Lars just in case he's responding to Chris and then I'll come to you if that's okay? Lars.

Lars Hoffman: Thanks, Mikey. This is Lars. Just a quick response indeed to Chris. I believe that we are, Legal and Compliance, back in the day about this and about the possibility of what the situation is in other countries and about the possibility of reviewing this and they - let's say they don't have the expertise, obviously, to look at 200-odd different jurisdictions. And I think both money and time to do a report that is in any way useful to have legal certainty on international global basis I think it's beyond the remit.

But I do think they provided some answers about how they feel and how they think this might be easily addressed. And I'll make sure to include that in the email that I send at the end of the week. Thanks.

Mikey O'Connor: Oh that'd be great. I was thinking that maybe a call to the list - some of the folks who are familiar with national law in different places could just chime in on some thoughts there too. Let's see, oh Holly's hand just went down. Oh it's back up. Go ahead, Holly. I'm assuming - yeah, Chris is done. Go ahead.

((Crosstalk))

Holly Raiche: Just to say I don't think the national laws differ that much. I think most jurisdictions do have the principle of purchase in good faith as an equitable principle. I think courts would look at what ICANN laws are in specific circumstance.

So I'm not sure the international laws are that different and Australian law is very much a duplicate of English law so English law also has the principle of good faith. And given that America was (unintelligible) British at some points of it common law - there is an equitable principle there.

Courts would probably look at ICANN policy as well so I'm not sure there's that much difference. But I just think what the way - the direction you were headed which is slow the process down is probably a better way of looking at the solution than trying to figure out what the laws are in various Asian

jurisdictions, various European jurisdictions and various common law jurisdictions. I think that's too difficult and I think Lars is right, it's too hard. So I think the way you were headed is perhaps more constructive. Thanks.

Mikey O'Connor: Thanks. We're coming up to the top of the hour. Avri's got a point in the Chat that says, "US laws vary a bit by locality and state." And we are fans of (confiscation) - confiscation. And arguments such as, "But you should have checked," ah, this is the caveat emptor thing.

Well, okay, it's the top of the hour, we got to scoot. Let's tentatively say that we'll take Volker's suggestion under advisement and see where we get on the next call. I still think we can hit that schedule. I don't think we're too far apart on this one. Chris, you've got a really quick one before we drop off?

Chris Chaplow: Yes, it's just a quick one that in response to Holly. I certainly agree that it's the right way to go to lock down the domain, not a situation, you know, to get, you know, not for the situation to get any worse. But I suppose I'm thinking more of any guidance or knowledge to the registrant so, you know, under the ICANN policy so a registrant knows where they stand.

In, you know, one case I was involved with and through one of the secondary market providers the - I won't say which one it was - but they very much stepped back and said oh no, nothing to do with us; we're just an agent here. So I think that's more - I'm thinking more than putting it into a policy but just so that registrants would know where they were and if this group can help people with that so much better. Thanks.

Mikey O'Connor: Okay. I think we were doing great and if had more time we would do great some more. I think - we've certainly moved the ball forward so let's try and capture some of these points. Volker, if you could come up - I know this is unfair but if you could come up with a suggested draft of the phrase that you rattled off on the call and punch it out to the list I think that would be very helpful. And we'll pick this one up again next time.

Thanks, all. And with that I think we'll call it a day. Julia, you can stop the recording and thanks for your help. That's it for me.

Holly Raiche: Bye, bye.

Volker Greimann: Bye.

END