

**Registrar Accreditation Agreement (RAA) DT  
Sub Team B  
TRANSCRIPTION  
Monday 22 February 2010 at 19:00 UTC**

Note: The following is the output of transcribing from an audio recording of Registrar Accreditation Agreement (RAA) drafting team Sub Team B meeting on Wednesday Monday 22 February 2010 at 19:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gnso-raa-b-20100222.mp3>

On page:

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

**Present for the teleconference:**

Steve Metalitz - IPC – Chair  
Tatyana Khramtsova – Registrar Stakeholder Group  
Michele Neylon – Registrar Stakeholder Group  
Cheryl Langdon-Orr - ALAC chair  
Holly Raiche – At-Large  
Kristina Rosette – IPC  
Phil Corwin – CBUC  
Statton Hammock - Registrar Stakeholder Group

**ICANN Staff**

Margie Milam  
David Giza  
Liz Gasster  
Heidi Ullrich  
Marika Konings  
Glen de Saint Gery  
Gisella Gruber-White

**Absent apologies:**

Elisa Cooper - Registrar Stakeholder Group

Coordinator: Excuse me; I'd like to remind all participants this conference is being recorded. If you have any objections you may disconnect at this time. You may begin.

Gisella Gruber-White: Thank you (Kelly). Good morning, good afternoon, good evening to everyone.

On today's RAA Sub Team B call on Monday the 22nd of February we have Steve Metalitz, Tatyana Khramtsova, Michele Neylon, Holly Raiche, Cheryl Langdon-Orr, Phil Corwin, Statton Hammock.

From staff we have Margie Milam, Glen de Saint Gery, Liz Gasster, Marika Konings, David Giza, and myself, Gisella Gruber-White.

We have apologies from Elisa Cooper. I hope I haven't left anyone off the list and if I can please remind everyone to state their names when speaking for transcript purposes. Thank you, over to you Steve.

Steve Metalitz: Thank you very much Gisella. So welcome everybody and I assume no one was omitted from the list that Gisella read. And assuming not, let's get started.

I circulated the agenda which was really based on the timetable we've been working from the last several meetings, first to go through Items 16 through 19 and finish up our chart which will be a milestone.

My second one was to flag any open items on the chart. In particular we have a few areas where there was a bit of discussion on the list but not very much and so we need to figure out to handle those.

The third item was that once we are done with our first two tasks of prioritizing and flagging any consensus policy issues, we're at the point of our third task which is to recommend next steps to the Council which I assume is what procedures should be followed to advance this toward RAA amendments or consideration of the same.

And then before we adjourn we do need to decide whether our next call will be next week or in three weeks because on our usual bi-weekly schedule it conflicts with the Nairobi meeting. And so we decided that we would alter our schedule one way or the other.

So those are the agenda items that I had listed. Are there any other agenda items or can we assume the agenda is approved?

Woman: (Unintelligible).

Steve Metalitz: Okay. Hearing no other agenda items why don't we get started then with Item 16 on our chart, and we do have a new update of the chart from Margie.

And I guess I should mention that you should take a look at the notes that she's added in the last column, primarily to reflect our discussion of the last meeting.

And please on the list circulate any comments on those or any corrections to those. We won't go through them now.

But turning to Item 16 which deals with sanctions for violations of the RAA, I think the existing provisions on this, if I'm not mistaken, are in Paragraph 5.3.7 of the new RAA or the more recent version.

And this was one of the -- excuse me, I should say 5.7 -- this was the - was one of the new features of the RAA. In the old version if there was a breach, the only authorized remedy was termination - dis-accreditation.

And so this provides for monetary liability which can include payment for the reasonable direct costs of efforts to restore compliance, costs incurred by ICANN to respond to or mitigate the negative consequences.

And then in the event of repeated or willful material breaches, the Registrar can be liable for sanctions up to five times those enforcement costs.

So that's the status quo and the first couple of topics we have here are about enabling ICANN to impose fines exceeding the cost of enforcement, at least time after a first violation. And then - I guess that's the first one is 16.1.

So let's open the floor to comments on whether this is a high/low priority or any other comments on this proposal.

Do we have anyone by the way from the Compliance staff on the call? Oh David is on.

David Giza: Steve - you know Steve, I just joined.

Steve Metalitz: Okay great, thank you. We're just getting started here with Item 16.1 and we have a queue with Holly, Michele, and then David. Go ahead Holly.

Holly Raiche: From what you have said in outline terms of what's already in the RAA, it sounds as if you're already empowered - sorry, ICANN is already empowered to do just what's outlined in 16.1 which is essentially if they repeat a breach, you can do it.

So isn't that already implied? And if I'm wrong could you correct me.

Cheryl Langdon-Orr: It's too - sorry, Cheryl here. The proposal is that it can exceed costs not to equal costs up to...

Holly Raiche: Yes, well that's exactly what he just said. He just said if you - if there's a repeated breach then in fact that's what you can do.

Now are we suggesting that on this first instance is that not on 16.1?  
Because otherwise it strikes me that you can do that anyway.

Steve Metalitz: Michele and then David.

Michele Neylon: Well I think David really needs to kind of answer...

((Crosstalk))

...answer a couple of our queries in this area to be perfectly frank. I mean the question I was asked is just before David jumps in, over the last 18 months ICANN's compliance has terminated a much larger number of Registrars from previously.

And in many instances this was in relation to (unintelligible) fees. And the question I have was, you know, has ICANN had any success in getting those fees from those Registrars after they've lost accreditation because if they haven't then this thing here about extra fines and everything else is a bit pointless.

Steve Metalitz: Okay. David a couple of questions have come up that I think you're very well situated to answer so go ahead. And as well as any other comments you want to make.

David Giza: Thank you, I appreciate that. Okay, so let's start first with Holly's question.

I may have mentioned to the working group that our Contractual Compliance team is developing a plan right now to determine how we are going to deploy the new provisions in the RAA regarding sanctions, penalties, and fines.

And so we think that the tools that are in the agreement - in the 2009 version of the agreement are very strong. But quite honestly we haven't used them yet.

And until we actually have a couple of test cases where we can determine what success or failure we're going to have, you know, regarding imposing fines on Registrars for failure to compliance with either compliance notices; with breach notices, or with other requirements, quite frankly we may just be premature at this time.

And so I would suggest that ICANN be given some time here to deploy this plan and to test the tools that we currently have available to us in the new RAA.

And then, you know, perhaps come back and revisit this issue as perhaps it may be a lower priority on the scale of things.

Steve Metalitz: Okay.

David Giza: And then with respect to Michele's question, it's true that, you know, out of the 20 plus Registrars that we terminated or non-renewed last year, you know, many of those terminations or non-renewals involved, you know, the failure of Registrars to pay fees that were owed to ICANN.

In some instances we were able to recover those fees post-termination but not in all instances. And so again, we really need to spend some time developing a plan that allows us to recover those fees, you know, post termination, with the assistance of our Finance Department and/or an outside collection agency.

And that's something that our Contractual Compliance Team is working on right now with our CFO. And we should be in a better position to share more information with the working group a little bit later, you know, in this month if not, you know, shortly after the Nairobi meeting.

Steve Metalitz: Okay, thank you very much David. I think Cheryl had her hand up, then Michele and we'll try to (unintelligible) this one together.

Cheryl Langdon-Orr: Thanks Steve, Cheryl here. I took it down and then put it up again. Just back to you for a moment though David, did you actually answer Holly's question about is this 16.1 actually required with the new 5.7 in the new RAA?

David Giza: Well I think I did answer it and I think the answer was that...

((Crosstalk))

...we don't need - yeah, we really don't need 16.1 right now at the moment, it's a lower priority until we get some experience behind us on actually using the sanctions and the fines and the penalties that are currently permitted in the 2009 RAA.

Cheryl Langdon-Orr: Okay, thanks for that. As you know, the at-large community is very keen to have enforceable and enforced meaningful encouragements through sanctions for compliance with the RAA.

So obviously what's in (unintelligible) and indeed now the proposals on the 16 are something that many in our community are very both keen to what watch and keen to see being conceded.

But I was going to suggest that because of it being such (unintelligible), that whilst we would want it on the books so to speak, I'm fairly confident for it not to be of the highest priority would be useful, particularly because we would again like to see an enormous predictability and knowledge on exactly how the tools that I think you should have in compliance are going to be used.

And that would come out of your planning which is why I put my hand down and back up again. Thanks.

Steve Metalitz: Good, thank you Cheryl. Michele, you had your hand up again?

Michele Neylon: Yes. Steve, sorry for putting you in the hot seat but, I mean please don't take this as a negative.

You said that some of the Registrars that you had de-accredited and you were able to get to - recover those funds, is that's information that's going to be shared or what's the situation on that?

Steve Metalitz: Actually we're putting together a report right now and it's a summary report of our activity over the last six months, you know, in this particular area.

And so once that information is provided to the CFO, I'm sure that, you know, either he will share that information or we'll share that information, you know, through the ICANN Web site.

Michele Neylon: Okay, thank you.

Steve Metalitz: Okay, thank you. I think the clear sentiment that we're hearing is that 16.1 should be a low priority to give the Compliance staff time to use the new tools and see if they are found wanting.

Now this may apply - unless there's any objection why don't we list that as low.

This may apply to a number of the other issues in 16. As I recall on 16.2 about being able to impose cures that go beyond the standard requirements, I think David already told us at a previous call that this is already being done with - I think - well I'm not sure if David said that or I had had a separate conversation with Stacy Burnette about that.

But I think there was at least one Registrar that was required to go through some additional steps that weren't required of other Registrars in order to show its compliance with some related obligations as I recall.



So David is that correct that you said your view is you already have this authority...

David Giza: Steve that...

Steve Metalitz: ...on 16.2

David Giza: Yeah Steve this is David again, that's correct. Stacy probably provided that information to you when the two of you were together in Washington, D.C. at the - I think at the FCC event perhaps.

Steve Metalitz: The FTC yeah, that's...

David Giza: FTC event. But it's true, we already do have that authority and we've already started to, you know, use that authority with respect to who is compliant.

Steve Metalitz: Okay, any other comments on 16.2? On 16.3 this is one of Danny Younger's proposals and it's a little bit different.

It says instead of saying that you could impose fines of up to five times the cost; you should put a dollar amount in there which apparently is the case in Registry Agreements or was the case in Registry Agreements.

So I suppose the same argument would apply here that until we have some experience with whether fines of up to five times the amount are being used, it may be premature. But I'd open the floor for comments on 16.3 and I see Cheryl has her hand up.

Cheryl Langdon-Orr: Well I guess - it's Cheryl again. I just wanted to point out that when I was referring to the priority which would be below or certainly lower than medium, so maybe a medium rare or rare -- if I was cooking this thing as a steak -- and

I think you decided that on 16.1 certainly, I really was referring to pretty much the whole grab bag of 16.

I wouldn't want to see the discussion and the using what we have now as a benchmark and openness and transparency in the reporting of how things are being used and what might need to be changed in the perhaps not too distant future, particularly when we get into new details.

Because I would want it on the books but I was actually referring the whole lump of 16.

Steve Metalitz: Okay, that's a good point. Okay, other comments on 16.3.

I think I've got Dave again and Holly.

David Giza: Steve, I would take the view that, you know, five times the amount was - is both reasonable and I think it was negotiated, you know, pretty diligently in the last round of discussions regarding the 2009 RAA.

So even though Danny suggests that the sanction amount should be increased, we really don't have any history yet behind us to, you know, to make that leap forward until we can actually deploy the tools we have today.

So again I would hold the line on this one.

Steve Metalitz: Okay. Okay Holly, I think you had your hand up.

Holly Raiche: Yeah, just a comment and that is that I think it's better to have five times that a set amount because there may be in fact a small Registrar or it may be a big Registrar.

And what seems like a set amount that's reasonable in the case of some Registrars would be completely unreasonable. So five times the whatever, is probably a fairer way instead of penalty.

Steve Metalitz: Okay, thank you. Okay well then I think this does - I think we would agree with Cheryl's formulation this is a low priority but not one to be neglected all together.

And after there has been some experience with the sanction tools then we should definitely, you know - there could be a relook at this.

The next few all have to do with some specific actions that Registrars might take. And Danny Younger's proposal that there be I guess, a specific penalty for these particular types of actions.

I guess - I'm trying to figure out if this is really a question of sanctions or is this raising the question as to whether all these things are violations of the RAA?

Certainly violations of consensus policies are because the RAA says we will abide by the consensus policies. But are all these others clearly violations of the RAA as it stands now - failure to prevent (unintelligible) info codes in the case of a...

Cheryl Langdon-Orr: No, no.

Steve Metalitz: ...or penalties for unauthorized change to registration record or failure to renew after someone pays for renewal and the Registrar simply fails to renew.

Cheryl Langdon-Orr: No.

Steve Metalitz: So I guess one question is whether these are violations. And I see David has his hand up but I think Holly and Cheryl were first so let me just ask them.

Cheryl Langdon-Orr: Well no, I'm happy to reverse that order and hear Dave first because I - yep.

Steve Metalitz: David do you want to...

David Giza: Yeah, I wanted to share with the working group...

Steve Metalitz: ...take a crack at it.

David Giza: Yeah Steve, in 16.4 I wanted to share with the working group that we're - Contractual Compliance is currently exploring our authority to send notices of breach to those Registrars who fail to provide, you know, info codes within the five day timeframe.

And so we've actually developed a letter and we're beta testing that letter right now with a small number of Registrars to see what the actual response will be. And I think we'll be in a better position then to tell you whether, you know, sanctions, you know, is necessary or not.

I do believe that we have enough authority right now. And that's why we're testing the concept under the RAA as a grounds for breach, and that should be sufficient to get a Registrars' attention.

So on 16.4 I think I would - I wouldn't support this initiative at this time.

Steve Metalitz: Okay. Thank you David; how about Holly and then Cheryl and Michele?

Holly Raiche: Okay, just to begin, this is about a code of practice that doesn't exist. It was first and foremost a suggestion that one does exist. In the (unintelligible) experience there is such a thing as a Code of Practice.

It is enforceable because it is written into the Registrars Agreement between (unintelligible) and Registrars.

But this - in a sense this is simply a, is there a need for either a voluntary code which is a code of practice and in fact that suggestion was made by the Registrar - Registration Abuse Policies working group.

It was just a suggestion for a code of practice that doesn't exist...

Steve Metalitz: Holly are you referring - are you talking about 16.4 or are you on to 17?

Holly Raiche: Oh no, sorry, I'm on 17. I'm on 17.

Steve Metalitz: Okay, can you hold that thought for just a minute until we finish 16 which I think won't be long?

Holly Raiche: Sure, yes.

Steve Metalitz: Cheryl did you have something else on these others.

Cheryl Langdon-Orr: Yes, and in fact in some ways it was short-cutting to 17. I was going to point that whilst we've got - hopefully we've agreed that the lump of 16 is to stay on the books but is at the particular level of priority.

A number of these from 16.4 down really are more appropriately dealt with as a subset of if 17 gets up and running, because they're the types of things that are not so much violations of RAA per se, but rather more the sort of thing that you can have in an industry developed and enforceable by ICANN Code of Conduct or Code of Practice.

It is something that I know Danny has looked at the Australian experience. And quite clearly at least Holly and I on this call think the Australian experience is a very good one.

So you might want to cluster some of those thoughts together, that's all.

Steve Metalitz: Thank you. Michele, I think you - on 16? Michele did you have a comment?

Cheryl Langdon-Orr: Are you on mute mate?

Steve Metalitz: Maybe.

Michele Neylon: Sorry. I was talking and then nobody - and nobody can hear me and it was absolutely fantastic.

Steve Metalitz: We were all in such agreement with you we were speechless Michele. But go ahead - please go ahead.

Michele Neylon: You all love picking on me, it's terrible.

Woman: You love it.

Michele Neylon: Oh, I know. Most of these things here, to be perfectly frank, I think they stem from ICANN compliance pre-Giza.

((Crosstalk))

Michele Neylon: I mean David has - David and his team they've been doing a lot of work over the last whatever period of time it is and, you know, some of the information that David has shared with us in this group and in other groups. And, I mean they kind - the kind of transparency we're seeing in terms of some of the reporting that he's doing, it's able to show us clearly the difference between perceived problems and real problems.

Not only does it show us the difference between perception and reality in terms of does Problem A or Problem B exist, but also which Registrar profile is more problematic than another.

Now I don't want to kind of labor this point too much but, the - in -- oh god I'm in so many of (unintelligible) working groups -- I think it was in IRTP, David gave us a breakdown of the transfer (unintelligible) and we mapped it against the Registrars and we mapped it against the number of names of that the Registrars held and as a percentage of that.

So for example a very large Registrar would obviously have a larger number of complaints. But in terms of percentage it would be significantly lower if you follow what I'm saying.

And, you know, this kind of showed us, you know, a lot of these things while some bad actors, are causing massive headaches for some people and nobody can avoid that, I think, you know, give David's team some time to actually, you know, clean up some of that rubbish and then we'll be in a much better position to see where things are going.

Because there's some aspect of this, I understand where they're coming from but shoving that kind of on to all of us means that they - it's getting us massive headaches where we're already doing our best to deal with - to be as compliant as possible. And I think David's team is doing a stellar job.

Steve Metalitz: Well this is Steve. I'm prepared to stipulate that Dave's team is doing a stellar job, but I think the question is a little bit different here which is, is there any sense that any of these activities, if they were engaged in systematically by a Registrar, would not be a violation of the RAA?

That's the only point I'm trying to get at, because I think when Danny proposes well this is a terrible thing and there must be specific sanctions for

it, that could be a question about how sanctions operate. But it could also be a question about is it clear that these are violations of the RAA when you don't - you know, when you make a change in the registration record that's not authorized unilaterally or when you take money for renewals and you don't make any renewal.

So I guess that's the only thing I'm trying to clear up here. And so let me ask David if he can respond and Michele also has his hand up.

David Giza: Yeah Steve, I would have to go back and, you know, and look at each one specifically to give you a precise answers but I do believe that we have authority -- Contractual Compliance ICANN -- has authority with regard to all four of these, you know, these items.

We just simply in the past haven't enforced those provisions in the RAA and certainly, you know, Danny Younger is suggesting that the enforcement here, you know, go to a different level, you know, concerning potential sanctions.

And I don't think we need at the moment, to quite that far because I do think we have authority to breach Registrars who fail, you know, to comply with 16.4 or 16.5; 16.6, etcetera.

So again, I'll go back and verify that and I'll send some notes along to Margie and then Margie can put that information into the minutes for today's meeting.

Steve Metalitz: I think that would be great. That would be very helpful. Michele any last words on the subject?

Michele Neylon: No, I think David is the best source for this kind of thing and I would bow to his superior knowledge.

Steve Metalitz: Okay. All right, so then I think we're done with 16. On those we will get some detail from Dave that will go in the minutes.



But we're operating on the assumption that these are - there already is authority and that like the other sanction issues, let's give the - it makes sense to give the Compliance staff time to work with the tools they've got and then keep this on the back burner as far as - and revisit it after some period of time.

Let's move on then to 17 and Holly had already started on this about the Registrar Code of Conduct.

You know, I'm not entirely sure about this but I think that the RAA now says that if there is a Registrar Code of Conduct that's developed, then the Registrar - and it's approved, you know, goes through the entire process, then the Registrar will, as part of its RAA obligations, the Registrar will comply with that.

Is that roughly correct anyway, just so we have an understanding of what the status quo is here? And then the fact is if there is no such thing yet as a Registrar Code of Conduct, so that - I think that sets the stage for where we are.

But let me - can I first ask on that factual - did I summarize that reasonably accurately Dave?

David Giza: Yes, you did Steve.

Steve Metalitz: Okay. All right, so then let's go back to Holly, Michele, and then David did have his hand up I think, on this point. So let's start first - let's get back to Holly on this question.

Holly Raiche: Yeah, that was exactly the point that I was going to make that there isn't one and this is - I, having read through the RAA looked and thought wouldn't that be a useful addition.

Certainly in the Australian experience there is one and it is enforceable. And this is more a, it's in there, is anybody going to do anything about it?

And just a point of what came out of the registration of these (unintelligible) working groups, there was also mention of wouldn't be nice to have something for the Registrars that is, some kind of code of practice, a best practice document; something like that.

So this is really a, is there need for a best - sort of best practice code and do you want it to be industry developed - how do you want it developed. And in the code it's already it would be (unintelligible), do you want that.

It's really just questions at the suggestion that's already in the RAA. Thanks.

Steve Metalitz: Thank you Holly. Michele and David and then Margie has her hand up.

Michele Neylon: Right, my fault. They were there. Yeah, I think - I don't personally -- and I obviously don't speak for all Registrars -- I personally don't have any issue with the idea of a Code of Practice. I think in some respects it might help, so whether it should be obligatory or not is another thing.

I mean in some respects I would see a Code of Practice as being something that's if people - it's a differentiator that, you know, a Registrar or any other company would opt into rather than forcing them to adopt this.

Yeah, of course I can't ignore 3.7.1 which says that Registrar's shall abide by that code should it be...

Woman: Right.

Woman: Should one exist.

Michele Neylon: So, you know, my hands are tied there so yeah.

Cheryl Langdon-Orr: I like that position for you there Michele. I think having hands tied is attractive so I think we need to deal on to 17, whether or not we -- this group - is suggesting that exploring a Code of Practice is a good thing or a bad thing, and if what - if it's good at what level of priority.

Steve Metalitz: Okay.

Cheryl Langdon-Orr: sorry, that was Cheryl bumping in, I apologize.

Steve Metalitz: Cheryl, thank you. We have Dave and Margie.

David Giza: Steve I would make this a high priority item from a Contractual Compliance point of view.

Cheryl Langdon-Orr: Yeah...

((Crosstalk))

David Giza: Certainly as staff discussed, you know, potential amendments to the RAA, this was a topic that came up, you know, time and time again. And I do think that having an established Code of Conduct that is mandatory would help all Registrars, you know, manage, you know, ethical as well as compliance issues within their organizations and inside of our contractual agreements much better.

So I would rank this as a high priority item.

Steve Metalitz: Thank you. Margie...

Margie Milam: Yeah, I just wanted to follow-up on Section 3.7.1, I'll just read you what it says.

It basically says that in the event that ICANN adopts a specification or policy that's supported by a consensus of ICANN accredited Registrars that establishes or approved the Code of Conduct, Registrars shall abide by it.

So the contract basically says ICANN, if they adopt it in accordance with the Registrars, it would be part of something that they would be committed to complying with.

Steve Metalitz: Okay, thank you. Well let me recognize myself and then I see Cheryl has her hand up.

So I'm looking at this provision which I think was also in the old RAA if I'm not mistaken.

Woman: Yes, it was.

Steve Metalitz: So we've now nine, ten years of experience with the provision that says, if there is a Code of Conduct then you have to abide by it. But there has never been a code of conduct and this obviously contemplates that it would be developed by the Registrars or at least it had to be supported by a consensus of the Registrars. It doesn't actually say it has to be developed by them, but it's never happened.

So I'm trying to understand what we're suggesting - what people are suggesting would be a high priority in terms of the RAA.

I mean this group could say we think it's a high priority for the Registrars to develop this Code of Conduct that they've never developed and that's fine, we could say that. But are we saying that we think that this RAA provision ought to change?

And I think for example Danny Younger seems to think if you look at 17.1, he says that ICANN should - the staff should establish the Code of Conduct.

And one way you could do this would be to say if within a year after the new RAA goes into effect -- I'm just - here's just one example -- if within one year after it goes into effect the Registrars have not come up with a consensus Code of Conduct, then ICANN has the authority to establish the Code of Conduct and all Registrars must abide by it. And that's one way to approach it.

Is that what we're - is that the topic that we see as something that's high priority or are we talking about something else?

So let me then - let me turn to Cheryl who has - who wanted to be recognized and I think Margie also is in the queue.

Cheryl Langdon-Orr: Thank you Steve. And to some extent what I was going to point out is I think what is very clear in 17.1 and would certainly be wholeheartedly supported by the wider at-large community whether that at-large is capitalized or not.

In other words I'm not just suggesting that the at-large structures within the ICANN world would think this is a good idea. I'm strongly hypothesizing, based on national experience that just Registrants and Internet end users at a much wider scale would think this is a good idea.

Should one be developed? Yes, it should be. Should it be a priority? We would think yes, very highly.

Who does it? I actually rather liked what I just heard you say Steve which is, you know, if it's not done by now then here's the fallback position.

And I would also point out -- because I do know Danny is very aware because it was he that pointed it out to me when we first started discussing this within our own ALAC work group on the matter -- that not quite a decade back but not unlinked with the earlier RAA work that was done, the (unintelligible) stuff, there was in fact a move by the industry to do their own, and it just for some reason stopped.

So there's already been a start for a Code of Conduct and in our work group we actually have reference to all of that information links and lists discussions so it's there as an archive.

So they did have one go at it but for some reason it didn't happen. It certainly needs to be revisited and reviewed and we would certainly like to see it has a high priority.

Steve Metalitz: Okay, thank you Cheryl. Dave did you have your hand up again?

David Giza: I did Steve. You know, I just want to reiterate what both you and Cheryl have said, and I do think ICANN staff has to take a leadership role in...

Cheryl Langdon-Orr: Yes.

David Giza: ...organizing a, you know, a group of Registrars to move this initiative forward because I don't think we can rely on the industry, as we've seen over the past ten years, to rise to the occasion and establish the code without direction and guidance from ICANN.

So I think our recommendation around this as a high priority item should include a role for ICANN staff.

Steve Metalitz: Okay, thank you. Cheryl did you have something else you wanted to...

((Crosstalk))

Cheryl Langdon-Orr: I did. I got my knickers in a knot quite literally. If you're going to do it under staff leadership and guidance that's excellent, but do not forget the end user and Registrant.

They, we found, having a joint committee that ADA supported, that having the consume interest - and we had consumer, regulator, and industry around the table, was a very good way of ensuring that the industry understood why some things were seen from a different angle in a slightly different polarized view.

So the net benefit of having a very (unintelligible) balanced team to put it together under regular (unintelligible) leadership in our case, and here take that regulator and put in ICANN staff if you want to was in itself that exercise was very worthwhile.

And I would strongly encourage that should we go down that pathway -- and I hope we do -- that looking at the experiences that any country that's done it. Certainly I'm sure we could get (Christy Spain) to provide a briefing note on the net benefits and analysis for staff to look at and indeed for the work group to look at would be a very useful thing as well.

Steve Metalitz: Okay, thank you. Michele had his hand up but I don't see it up now. So, does anybody else have any comments on this Item 17?

I think there seems to be strong agreement that this should be a high priority so the staff will mark it such.

Moving on to 18, privity of contract. There's now a provision in the agreement that says there are no third-party beneficiaries. And Danny younger's suggestion is that that be eliminated or revisited let's say -- I think is what he says -- in order to permit third-parties to enforce contracts made for their benefit.

So the floor is open for comment on this proposal.

I see Holly and David. Anybody else - (Kristina). Okay Holly, why don't you start.

Holly Raiche: Just a question, I'm trying to think who would be the third-party who would want to bring an action, i.e., if there's a contract, and I'm assuming we're talking about the RAA.

Who would be an established - a third party with established or establish a (unintelligible) and for what? I'm just trying to...

Steve Metalitz: I'm assuming he's referring to Registrants here.

Cheryl Langdon-Orr: Yes, he would be.

Holly Raiche: So he's giving - so it's Registrants and they are - he wants them to bring an action for...

Steve Metalitz: To be able to enforce the provisions. I mean for example...

Holly Raiche: Okay.

Steve Metalitz: ...you know...

Holly Raiche: So this...

Steve Metalitz: ...we were talking about some of things that might...

Cheryl Langdon-Orr: Registry Fly as an example.



Steve Metalitz: Right, Register Fly where they were taking money for renewals and not renewing.

Holly Raiche: Okay. So this is really another enforcement path then isn't it?

((Crosstalk))

So if ICANN does nothing the Registrant can do something?

Steve Metalitz: Right.

Holly Raiche: Okay.

Steve Metalitz: I think that's basically the idea.

Holly Raiche: Thanks.

Steve Metalitz: Sure. David, (Kristina), Cheryl, and Michele. David, go ahead.

David Giza: Steve I'd like to consult with our Legal team on this particular point just to get some history behind the current, you know, no third party beneficiary, you know, provision or clause that exists in the RAA today.

Because if this is something we're going to explore, I'd certainly want to, you know, make sure we have someone from our Legal team to provide, you know, their opinion and their guidance in terms of how, you know, how to best accomplish that.

Steve Metalitz: That's certainly true on a lot of the things we've been talking about.

David Giza: Yes. But on this one in particular I just wanted to go on the record that I would like to get that opinion.

Steve Metalitz: Okay, thank you. (Kristina)...

(Kristina): I guess I'm just trying to refresh my recollection as to whether or not this was an issue that was raised in connection with the negotiations for the 2009 RAA and I simply don't remember. So I'm hoping that perhaps staff or maybe Michele could speak to that.

Steve Metalitz: Okay, let's - why don't we move through...

((Crosstalk))

Cheryl Langdon-Orr: I'll jump to Michele so he can reply.

Steve Metalitz: ...and see if anybody else has - I think we have Cheryl and Michele.

Cheryl Langdon-Orr: I was just going to say I'll jump to Michele so he can reply to (Kristina).

Steve Metalitz: Okay, thank you. Michele...

Michele Neylon: I don't know is the short answer.

Steve Metalitz: Okay, all right. That takes care of that. I'm going to assume that nobody on this call actually knows the answer to that question because if they did I hope they would speak up.

Cheryl, did you have something you wanted to add? Then we'll get back to Michele.

Cheryl Langdon-Orr: Yes Steve I did. Sorry to put in the hot spot Michele, I just expected you to remember that sort of thing. My apologies.

What I was going to say is I think this is another one of those which should be not taken off the to look at books but not given a high priority because I do

believe that it's one of those which was born out of the frustration of non-enforced - of the non-enforced world.

And a little bit like much of what was happening in 16, in many of the parts of 16, when we see David's team doing things and coming back, etcetera, etcetera, and reporting and the unwashed matters that we are out here in Registrants world, you know, having better knowledge and understanding, the level of frustration that I think was perhaps underpinning some of what Danny was saying here is perhaps going to be minimized.

But I would not want to see disappear because there is a part of the toolkit - the usefulness of it as being part of the toolkit should be explored but would need to be explored with careful legal and jurisdictional guidance.

Steve Metalitz: Okay, thank you. Michele, your spot.

Michele Neylon: I'd agree with a lot of what Cheryl said and I'd also be interested in David revisiting this either after he's spoken to ICANN Legal or to ICANN Legal themselves to share something on this.

And I mean, apart from anything else, regardless of what may or may not be in an RAA or in any agreement between a Registrar and a Registry, ultimately, you know, as a Registrar you provide a service to an end user if the end users can try to sue you any way.

So, you know, I'd like to hear a bit more from the Legal side of us to be perfectly honest.

Cheryl Langdon-Orr: Michele if I can just respond, I think, particularly in things like with the Registry Fly example, Danny -- and I'm not trying to second guess him -- but I - if I keep harking back to some of what he was discussing on our list at the time, the possibility of a group or represented group of Registrants taking an action I think might have been what he was talking about.

Hypothetical but that - if that helps you understand.

Michele Neylon: Okay.

((Crosstalk))

Steve Metalitz: Okay. Well I think - personally I think what Cheryl says has a lot of merit to it. I think changing a provision like this could have a lot of consequences. I mean well beyond what's intended.

I mean it's one thing to say - you've written out a provision that says there are no third party beneficiaries. If you take that out what does that mean? Does that mean that everybody is potentially a third party beneficiary or do you just want to constrain it in some way?

So I think it would be good to get further Legal input on this. And as well, I think there's a lot to be said for the fact that the problems giving rise to this suggestion may be being addressed by a different enforcement policy.

So let's put this down as a low priority item but not one to be dropped off the list. And unless there's objection to that, that's how we'll handle 18 at this point.

Any objection to that approach?

Okay, we're on to our last one, Number 19, Using Registrar Accreditations. Some Registrars have inappropriately lent their access to registries to third party proxies. Penalties for such actions are advised.

So I guess one question that I would have again -- and I'm very glad that David is on our call -- is whether this is a violation of the agreement? And is this just another area where Danny is saying there should be a specific

penalty for this or is this something which is more of a substantive change in the agreement?

So let me ask David for his comments.

David Giza: Steve you know again on this one, what I'll have to do is go back and verify that this is actually a violation of the RAA. I don't have the document in front of me and unfortunately I'm not in my office at the moment.

But I will go back and look at this issue and then I'll provide, you know, the information to Margie so she can incorporate into the notes.

Steve Metalitz: Okay. Okay Cheryl and then Michele.

Cheryl Langdon-Orr: Michele might be able to tell us the answer for that perhaps if he is and jumping to (unintelligible).

Michele Neylon: The answer to what; sorry.

Cheryl Langdon-Orr: If it is a violation of the RAA?

Michele Neylon: I don't actually know.

Cheryl Langdon-Orr: Okay. In this case I'll take...

((Crosstalk))

Michele Neylon: I've failed you twice this evening; sorry Cheryl.

David Giza: Cheryl this is David. I see that Margie put in the Chat Box that it is in RAA 3.7.1.

Steve Metalitz: I think that was the earlier one.

David Giza: Was that the earlier comment, I'm sorry.

Steve Metalitz: Yes, that was on the Code of Conduct.

Cheryl Langdon-Orr: Yep, yep.

Steve Metalitz: Cheryl go ahead.

Cheryl Langdon-Orr: But what I was going to say is if it isn't something that is covered by the existing RAA, this is one of those that could be picked up by a Code of Conduct. So it was linked back to some extent there.

That's all I want to say. It's one of those that keep it on the books lower priority.

But we - it's a, if this happens then this is a pathway decision note. It's the sort of thing that could be picked up in a Code of Conduct if it isn't in the RAA. And for that reason I'd put it as a medium to low priority.

Steve Metalitz: Okay. Michele I think you have your hand up.

Michele Neylon: Yeah, the thing with these things - Registrar accreditations, my own personal view on this is I don't really like it.

If we went to - if I went to all the trouble of getting us accredited so that we could have connections to registries; so that we could have contracts with ICANN or contracts with the registries, I don't like the idea of a third party that isn't a Registrar...

Cheryl Langdon-Orr: Having a connection, yeah.

Michele Neylon: ...having those connections because - and why the hell did I bother, you know, and what's the point.

Cheryl Langdon-Orr: Exactly.

Michele Neylon: And I would ask however, if it's a case of let's say for example okay, I'm entitled to X number of connections but because of our relative size or maybe because of a variety of other different business reasons I don't want to use all of my connections to registry X, and Network Solutions comes to me and says, hey listen, would you mind leasing us a couple of your connections?

Then in that instance I can see the thing, you know, as something which is just a business decision. We're both ICANN accredited Registrars.

As long as neither of us are doing anything inherently evil I don't see what the problem is. That's the simplistic view I've made because it's - that's just my personal take, bearing in mind I'm not a lawyer or anything like this.

Steve Metalitz: Okay. David, did you have some other comment to make?

David Giza: No, I'm fine Steve. I'll...

Steve Metalitz: Okay.

David Giza: ...drop my hand there.

Steve Metalitz: Well I think - I guess what I'd ask David to do on this and as well on those other elements under 16 is if he could get back to us or to the group fairly quickly on whether it appears that this is already a violation of the RAA -- at least under some circumstances -- that would be very helpful.

Because I think if it's not then we may need - then it may well be this is a topic that ought to go in as a high priority. But if it's already covered then maybe not. So let me ask David to do that.

And Holly has her hand up so let me ask Holly for the last word on our chart. Go ahead Holly.

Holly Raiche: Let me pick up what Michele had said. If we change this slightly - so if it's an accredited Registrar do we have a problem as opposed to a Registrar that's not? And is it worth making that distinction so that we can give 19.1 a little bit more meat for David to consider?

Steve Metalitz: I have to admit I sort of read this and I assumed from this that they were talking about an unaccredited third party but, that may not be the case.

So maybe David if you could look at that - both aspects of that. Would it make a difference whether it was an accredited part or non-accredited party?

David Giza: Mm-hmm, I'll do that.

Steve Metalitz: Okay, Michele.

Michele Neylon: Yes, it's not clear from the comments. I mean he says...

Steve Metalitz: Right.

Michele Neylon: ...third party proxies. So I mean...

Steve Metalitz: You're right, it's not. I was reading something in to it which is not - probably not there.



Michele Neylon: Well I don't know because I don't know what a third party proxy is, I'm sorry. My command of the English language is pretty good but third party proxy, I've no idea what that is.

Steve Metalitz: Okay.

Holly Raiche: Yeah, that's why I think we need to clarify just what is being suggested and then pick up Michele's point which is are we talking about simply a business arrangement between accredited or are we talking about something else.

Steve Metalitz: Okay. And David's response will cover both those.

Holly Raiche: Yes.

Steve Metalitz: All right, we're almost at the end of our hour and I do want to celebrate that fact that we're all the way through our chart.

But I do also want to point out that there's some pretty important parts of the chart that we haven't actually had a lot of discussion on because there's been (unintelligible) discussion on the lists.

What I would suggest that we do - and I realize when I sent this out, the reminder again, it had Holly's comments on my proposals but not all my proposals were there because it was being responded to.

And I also recognize that the numbering changed or the numbering on this chart changed.

So in order to try to prevent massive confusion, why don't I - the staff and I try to get something out in the next couple of days that spells out which items we're actually talking about here and what the proposed priority ranking is.

And then we'll ask, particularly on the list if we can but if not we can spend some time on our next call, trying to nail those down. But that is obviously an important part of this that we attempted to do on the list but we have not made a lot of progress on that. So it may just take a little time to discuss.

In light of that I guess I would suggest if we can, you know, on our topic of scheduling the next meeting, if we can meet next week I think I would be in favor of that.

Because I think we might spend some time on some of these open points that haven't been fully resolved. And as well we need to start talking about what we think are going to be the next steps.

So rather than wait three weeks - I guess I should say first of all I'm assuming that because of the Nairobi meeting people still don't want to have a call the week of March 8, even though I don't know how many people on the call are planning to be in Nairobi at this point.

So we might have an option of doing it march 8 if people want, but I just thought it was better to kind of keep that clear in case people are traveling to Nairobi.

So would people be - should we set - should we get a doodle out quickly for dates during the week of March 1, to try to have our next call. And in the meantime I will try to - working with the staff to get out in one document the topics that we really haven't addressed except on the list.

Cheryl you had your hand up.

Cheryl Langdon-Orr: Yeah, I just wanted to point out if it's the next week, if it's the same time same place, my answer is yes I can do that. But I'm on an EDA Board retreat so, you know, I'd have to be cleared by breakfast so local time.

If it's next week it would need to be same time same place. Beyond that then I am traveling to Nairobi.

And on the 8th I think we should just note if it was to be during the week of the ICANN meeting -- and there's nothing wrong with that, work groups are already meeting during that time -- if it was the same time same place, it probably needs to be noted that, what are we now, 7:00, 8 o'clock AM UTC - 8:00 PM UTC?

What are they, plus two or three? You're getting in to sort of 9:00, 10:00, 11 o'clock and I think anyone who's been in an ICANN meeting will know what's happening at an ICANN meeting by about that time of evening.

Steve Metalitz: Right. Yeah, I think it would be difficult. I agree with you there's no rule against our having a call during the week of the meeting but I just think it would be more difficult. Because people will be either there participating or they'll be participating remotely at all kinds of odd hours and it just doesn't strike me as ideal.

If we can come up - if we can find a time next week that everybody or most people can do it I think I would go for that. Other comments on this?

Okay. Well let me - we are just about at the end of our time. We haven't had any discussion about the next steps which I think is - and again I would encourage people to use the list to try to start the conversation about that.

As I see this task -- and maybe other people see it differently -- it's really a question of okay, once we have this list of topics -- high and low priority -- what should be done with this?

And I guess one recommendation would be you convene a group of Registrars - a negotiating team of registrars and the staff and some other

representation from people who aren't either Registrars or the staff, and get to work on drafting an amended RAA.

I mean that would be one way to do it and to give our ideas about how that ought to be constituted and maybe what timetable it ought to be on. That would be one approach for next steps.

Obviously there could be others but I think what the Council has asked us to do is to come up, not just with a list of topics but also to say here's what we think should be done with this list.

So obviously our job is not - it's not done unless we come up with some, you know, well thought out recommendation there. And of course it may or may not be adopted by the Council.

But if the goal here is to get a better RAA then we ought to, you know, kind of spell out what we think are the steps to doing so.

I don't think that we're bound at all by the procedure that was used last time and in fact I think many of us think that the reason we're here is because the procedure that was used last time reached some unsatisfactory results.

So, you know, I would just encourage people to think about what they think ought to be the next steps and to circulate their views about that on the list as soon as possible.

Are there any other comments or questions that people wish to raise before we adjourn? If not, thank you very much. Please look for a doodle in the very near future for dates next week and also for these other documents that I mentioned.

Holly Raiche: Okay, thank you.

Steve Metalitz: Thank you.

David Giza: Thank you Steve.

Gisella Gruber-White: Thank you (Kelly).

Coordinator: You're welcome.

Gisella Gruber-White: Enjoy the rest of your day.

Coordinator: Thank you, you too.

Gisella Gruber-White: Thank you, bye, bye.

Coordinator: Good bye.

END