

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

Note: The following is the output of transcribing from an audio recording of the Post-Expiration Domain Name Recovery (PEDNR) drafting team teleconference on 11 February 2009. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gnso-pednr-20090317.mp3>

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

Participants present:

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

Staff:

Marika Konings - Policy Director
Glen de Saint Géry - GNSO Secretariat

Glen Desaintgery: The recording has been started.

(Alan): Thank you. Have the other people on the call had a chance to look at what I sent out very late last night?

(Steve): Yes. This is (Steve). And I did send around a comment just now.

(Alan): Oh.

(Steve): And I will not take credit for that fully. But as I'm fairly new to all this I did ask for (Chuck) to weigh in and give his opinion. And so those comments are largely (Chuck)'s.

(Alan): That's okay. (Chuck)'s comments are always relevant.

(Steve): And I can also give you a little more flavor. He has - he's responded back to me on your last note about the 33%, 66% saying it only takes 33% to initiate a PDP. Whether that PDP produces a consensus policy or best practices recommendation or some combination will not be known in advance.

Two-thirds, (Alan), is referring to relates to a provision in the RAA. Don't think it's a good idea to confuse the PDP motion with RAA issues. The PDP should focus on the possibility of developing consensus policies regardless of RAA terms or potential changes in the RAA in the future.

(Alan): Okay. I - he's wrong in that case. There - in the bylaws on a PDP the words are that if the - if it has deemed to be out of scope by the issues report then it requires a 66%....

Marika Konings: But in this case...

(Alan): Vote.

Marika Konings: The issues report...

(Alan): No, no. I'm just clarifying what he...

Marika Konings: Okay, okay.

(Alan): What he's saying.

Marika Konings: Okay, sorry. But, you know, just for the record as we had a previous discussion on this that, you know, on - I think all the issues raised and the issues reported were deemed in of scope...

(Alan): Okay.

Marika Konings: In scope for (unintelligible) policies.

(Steve): Okay.

Marika Konings: And I think that, as (Chuck) said, voting on a PDP doesn't preclude whether that's going to be you need recommendations for consensus policy or consensus policy changes or other recommendations or advice.

(Steve): Okay. Then I have no problem with it at all.

(Alan) (Steve), is that the substance of (Chuck)'s comments? I haven't actually got to look at them yet.

Marika Konings: Okay.

(Alan): Or was there something else there?

(Steve): The substance on the actual draft still hasn't come through the wire to you?

(Alan): Yes. I just got it but I just hadn't looked at it yet.

(Steve): Okay. Since it is such a short document and those are fairly discrete comments why don't you take a second and look rather than...

(Alan): Okay.

(Steve): Me rehash it.

(Alan): Got it.

Well I certainly have no problem with the first one which changes the resolve statement into something that is probably better English and it's clearer and removal of the in-parallel statement.

If everyone agrees that making recommendations on - either to the board or through the ICANN staff is fully within the domain of a PDP then clearly that's not needed either. So I certainly have no problems with that.

Marika Konings: Okay.

(Alan): What I was trying to do was make clear that, Marika, in the issues report it says that some of these things may not be the subject - perhaps should not be the subject of a PDP but other mechanisms...

Marika Konings: There's some - I think you refer to some of the compliance issues, no?

(Alan): Yeah. Well compliance is one of them. It's not the only one.

Marika Konings: Yeah.

(Alan): And I'm suggesting that it is the subject of the PDP, just the outcome is not a consensus policy.

Marika Konings: I think that's a correct assumption.

(Alan): Okay.

Marika Konings: I don't think...

(Alan): Could you...

Marika Konings: You know...

(Alan): The reason I was...

Marika Konings: Looking at those and, you know, making any recommendations if it sees there is a need to. But indeed those are not necessarily consensus policies or suitable for consensus policy but...

(Alan): I understand. I'm just - was trying to reverse the words you used that it should not be the subject of the PDP which I think are the words you used in the issues report.

But is there a better - other ways to handle this rather than a PDP?
And I'm suggesting that the PDP is indeed the way one can handle those things, not with a consensus report.

Marika Konings: No. Yeah.

(Alan): Not with a consensus...

Marika Konings: Yeah. I think that - I mean I might have used the words meaning it's not necessarily consensus policy that will address it. Again, the confusion there over the words but, you know, I agree there with you. I don't think, you know, this group definitely has a role to look at those issues. I might conclude in saying, you know, there's some recommendations we can make to compliance.

And I've already spoken several times to compliance team on this. And they're actually very interested as well in providing their input and feedback to the working group going forward and, you know, their experiences. And hopefully they might have as well some insight or recommendations and what things might help in addressing some of these issues.

(Alan): I was more worried about setting the expectations of council and of the people on the working group that the focus will not be exclusively things resulting in consensus policy.

Marika Konings: Yes. But I think that's an issue we struggle with in every PDP.

(Alan): Okay.

Marika Konings: I think we need to, you know, set that basically straight from the beginning when members join. And I think here as well probably the - this motion does describe that the group will look at whether it's, you know, policy change or best practices. And I think as well when we

start drafting a charter it'll be very helpful to include similar language in that.

(Alan): Yes. And by putting those words at the beginning (Chuck) has addressed that. So I'm happy with that.

The example I was going to give is the compliance report that you just distributed. If you look at the section on expiration handling it says the compliance department verified that a large percentage of registrars were meeting the contractual needs by looking at their Websites.

That ignores the fact that many, many registrars have subcontracted the Website responsibilities to a reseller. And you can't check compliance unless you check all the arms or at least some selected subset of the arms of the reseller.

And that's the kind of example that I'm using, that the fact that there's no contract with the reseller doesn't mean you don't - that the compliance department shouldn't recognize that the reseller is the one fulfilling the obligations of the contract with respect to the end user in many cases. And you can't verify compliance unless you look at that arm. And that's the kind - one of the examples that I would use of a recommendation that could come out of the PDP.

Marika Konings: I think this relates back as well to the question you circulated earlier to the group, no?

(Alan): It's related to the same thing. Yes.

Marika Konings: Okay.

(Alan): I mean we got the answer from (Dan Heller), I'm pretty - the answer from (Dan Heller) pretty clearly that contract law implies that you can't - you aren't removed from having to fulfill obligations of a contract just because you subcontract.

The new RAA will make that a little bit clearer or make it more explicit rather. But it has to be under - it has to be practiced from the compliance - on the compliance side as well.

What about - okay, can we go over it piece by piece? The first two whereas I think are statements of fact. I don't think we can argue with that. The third one we're in the process of doing.

We pretty well - I think we decided at our last meeting that we don't see the need for chartering a work group to do further studies prior to a PDP. Is there agreement on - of the people we have on this call that that was - I believe we did make a firm decision on that. Is that anyone else's recollection or did I imagine it?

Man: I don't know that I was present at that so...

(Alan): Okay.

Man: So that I can speak to it.

(Alan): Marika, do - does this ring a bell at all?

Marika Konings: I think we had a brief discussion on it. But at least, you know, from my point of view there's nothing really outstanding that I would see at this stage that would require further study.

I agree with you. I think it's probably for a working group to further dig into these issues and see whether there's a need on certain items.

And just to mention something I suggested in an email to (Alan) as well, something this group might consider or the working group going forward is that an information-gathering event would be helpful in Sydney for example, something similar that we've done in Mexico City for the registration of (unintelligible) policies working group, to provide a forum for community input.

And the working group at that point might have some specific questions they might want to ask to, you know, the broader community that something like that might be a way to get further information apart from your creating a separate working group at this stage.

(Alan): Yeah. I'd be more optimistic than that and say given the timing for Sydney that hopefully by then we will have a draft or an outline at very least of what we plan to do and look - ask for feedback on that as opposed to just an open - a clear - a clean slate of asking for input.

Marika Konings: Yes. No, definitely.

(Alan): Since coming out of the last meeting I was charged with trying to draft something to initiate the PDP. I think we did pretty well formally decide that we would - did want to go ahead unless something came up. The other issue is the question of whether to transfer the - to move the

registrar transfer during the RGP into - away from us and into IRTP part C.

Now from my point of view I think the issues report makes a good point that transfer issues are moderately complex. And adding them into our - into this PDP adds a level of complexity that we don't need to go into and that IRTP C will be going into in any case. So I'm not unhappy to transfer that.

The charter for that PDP has not yet been written. So it shouldn't be a problem to incorporate it. We're just include - increasing its scope somehow. So I have no problem with the - with moving that (TD) - that aspect into the other PDP.

Marika Konings: (Alan), just to mention the IRTP part A is about to, you know, wrap up its work and has now started to consider, you know, which one should be next. In principle there's the order of B, C, D and E. But there's no, you know, the council has given the freedom to the group that's currently working on it to make any recommendations if they see fit to move up or move down or group issues together in a different way.

So there is an opportunity to highlight this maybe to the group. I know that the - basically the - in principle the (PDPB) is looking at undoing transfers. So this issue might not really fit in there. But if the group feels very strongly that they at least want to bring it to the attention of the current group working at this there is this possibility.

(Alan): Well I'm actually quite happy if it doesn't - if this one doesn't progress quickly because I think there's an opportunity for this working group,

the one that comes out of this PDP to provide along the way input into the one handling domain transfer.

Marika Konings: That makes sense.

(Alan): And on top of that let's face it, not many domains get into the RGP at this point. That may grow based on whatever comes out of our process.

And the real issue of being able to transfer says you're not locked into a registrar who's charging a user his price for an RGP transfer - an RGP redemption if there's someone else who will do it at a lower cost. And that's really the only reason you'd want a transfer at that point.

And I'm quite happy to have that one not be addressed right now because I think the deliberations that we go through may well impact it to some extent. I don't know if we need to put in this recommendation that we will provide input into that PDP. Is that necessary at this point?

Marika Konings: I think it might be premature.

(Alan): Okay.

Marika Konings: Borrow from...

(Alan): I don't think...

Marika Konings: (Unintelligible) requirements I have here. It doesn't mean if you don't put it here, you know, you cannot put any - provide any input so.

(Alan): Okay. I'm sorry. Say that again.

Marika Konings: I don't think it means if you don't put in...

(Alan): Oh.

Marika Konings: Here that you're going to provide input that you're not allowed to do it if it's not in the motion here.

(Alan): Okay. So it doesn't preclude us doing it in any case.

Marika Konings: Yes as far as I know.

(Alan): Again it's perhaps a matter of setting expectations. And we can certainly discuss that during the council meeting whenever this comes up.

Marika, in the private notes you sent to me you suggested that we could rework this into a full-blown charter. And is there really precedent for writing the charter at the time the motion is made to initiate a PDP?

My recollection is we decide to initiate a PDP. Then we have to vote on whether it's a taskforce or not. That always fails this phase.

Marika Konings: I would actually have to look at Glen for this one. I'm - I just have the expertise of the registration of this one but there I was actually the recommendation of not to initiate...

(Alan): Right.

Marika Konings: Not initiate a PDP yet. I just recall I think in the council discussion when they created a drafting team I thought that Avri mentioned as well that she would like to see a charter out of this group. But I don't recall if she mentioned whether - she first wanted a motion and then a charter both at the same time. Glen, what's your experience?

(Alan): Yeah. The minutes are not posted on yet - on that meeting yet. So I...

Glen Desaintgery: This is the one on the - of the 19 of February. Is that it?

(Alan): No, the 29 of January.

Glen Desaintgery: The 29 of January, yes they will be posted later today. Can I just - I'll come back to you when I look them up. I've got them. Okay?

(Alan): Okay. I know roughly where it is in the audio recordings so I can go back to it if necessary.

Glen Desaintgery: Yes. No, no, no. I've got the minutes saved. And they've been edited then it's just get up. Okay?

(Alan): Okay.

Glen Desaintgery: So in about five minutes I'll get back to you. Is that all right?

(Alan): That's okay. Yeah. That's fine.

Marika Konings: But Glen, do you recall whether any other working groups, you know, had at the same time the initiation and charter or normally don't (unintelligible).

Glen Desaintgery: No. The council must initiate it. And then they usually ask to draw up a charter.

Marika Konings: Okay.

Glen Desaintgery: That's what happens.

(Alan): Yeah. I think we did it in the other order on the domain tasting ones that if...

Glen Desaintgery: Yes.

(Alan): That the working group was chartered to - working group - a drafting team was put together to decide how to go forward. And we in fact came back with a charter. And there was a fair amount of pushback that who are we to do that.

But I think we need to go back and see what exactly every Avri asked to working for.

Glen Desaintgery: What exactly she asked for yet.

(Alan): Yeah.

Glen Desaintgery: I'm just getting that up now.

(Alan): In any case, making it into a charter I don't think is a real problem. We - we're not in a position to name the council liaison, things like that. But leaving those parts blank I think we could probably - I or someone

could pull it into a form of a charter within - I mean we have two days at this point to get it into the council agenda for the 26th or to decide we can't make that deadline.

In terms of the absence of any comments I'm hearing that the document as modified by (Chuck) is basically acceptable and that we could submit it either as is without a chart - without it being the substance of the charter or that we could try to craft it into a charter if that deems to be - is deemed to be the appropriate thing.

Marika Konings: And this is Marika. I think maybe I spoke too quickly and tried to move too fast because, you know thinking about it, it might make sense for the council indeed first to consider this. And then indeed I just said I think it will be probably a relatively quick turnaround to go from this to a charter.

(Alan): Yeah. And we only - and that may allow us to identify people on council who are willing to work on this. Fortunately it coincides with the intellectual property group that's being formed to work on gTLDs and there may be some overlap there.

But we, you know, our next meeting's only in three weeks. So that gives us two weeks to craft a charter and make sure everyone's happy. And so I'm not particularly upset if we had - if we make it into a two-step process.

But if we were asked to come up with a charter then I think we could probably do it within the two days also.

Marika Konings: Sorry (Alan), which meeting do you refer to in three weeks from - of this...

(Alan): The...

Marika Konings: Drafting team...

(Alan): The next...

Marika Konings: Or are you referring now to a different group?

(Alan): The next council meeting.

Marika Konings: Okay.

(Alan): I think it's three weeks after the coming - upcoming one.

Marika Konings: Next council meeting next week and you mean after that it's three weeks?

(Alan): I think so. I think it's the 16 of April or some date like that. Happy Saint Patrick's Day everybody, by the way.

Glen Desaintgery: Here - sorry. Here I've got the meeting of - the last council meeting before Mexico.

Avri Doria proposed a drafting team to decide our next steps. And the aim would be to vote on whether or not to launch a policy development process of the council meeting in Mexico City on - for March.

(Alan): Okay. So we were not...

Glen Desaintgery: Action item: create drafting team and appropriate mailing list - mailing server list. And then the motion was deferred to the next council meeting which is this council meeting coming up on the 26th.

(Alan): Okay. So we were not explicitly asked to write a charter for an - for the forthcoming...

Glen Desaintgery: No. It says nothing...

(Alan): Taskforce working group.

Glen Desaintgery: Yes.

(Alan): So I - well I think what we have is pretty close to final. At least I would suggest then that I'll take (Chuck)'s words, incorporate them in, making - make any other cosmetic changes that seem to be appropriate and distribute it to this list again followed by council in the absence of any substantive comments.

Man: That...

Marika Konings: Can we make motions on it or we need to get someone to actually propose the motion.

(Alan): I can't make a motion but Avri said that any outcome of this group she will make a motion for if necessary.

Marika Konings: Good.

(Alan): Or somebody else will. If we have agreement then I think we're over unless someone else has anything else to put in.

(Steve): Agreed by (Steve).

Man: Yes, agreed.

(Alan): Then I thank you for an efficient phone call.

(Steve): Great. Thank you (Alan).

Marika Konings: Thanks (Alan).

(Alan): I'll have this out by the end of the day.

(Steve): Very good.

(Alan): Okay. Bye-bye.

Marika Konings: Thank you.

Glen Desaintgery: Thanks. Bye.

END