

**Inter-Registrar Transfer Policy Part B PDP
Transcription
Tuesday 06 July 2010 at 14:00 UTC**

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Participants on the Call:

Michele Neylon – Registrar SG – Working group chair

James Bladel - Registrar SG

Paul Diaz - Registrar SG

Matt Serlin- Registrar SG

Robert Mountain - Registrar SG

Barbara Steele – Registries SG

Mikey O'Connor - CBUC

Berry Cobb - CBUC

Chris Chaplow - CBUC

Michael Collins – Individual

Kevin Erdman – IPC

George Kirikos - Individual

Staff:

Marika Konings

David Giza

Glen de Saint Géry

Gisella Gruber-White

Apologies:

Eric Brown – RY (all Tuesday calls)

Anil George

Oliver Hope (replacing Matt Mansell)

Gisella Gruber-White: No, no, no. He won't be joining. He - it's a place for Oliver Hope who - he - who's on a honeymoon at the moment so Oliver Hope will be joining us in the next couple of weeks.

Michele Neylon: Okay. Right then. Well the first item I had on the agenda apart from the obvious roll call was the new member intros but it looks to me like the couple of people who've joined us since Brussels aren't on the call. The only person I think who may not have had a chance to introduce themselves properly is George Kirikos so George if you wanted to say a couple of words by way of introduction.

George Kirikos: Yes I'm the owner of Leap of Faith Financial Services, Inc. We own a bunch of high quality domain names including Math.com, Paper.com. Most of the - you probably know me from participating in ICANN processes in the last five or ten years, so.

Michele Neylon: Okay. Thanks George. Well if the others ever go - ever should join the call at the same time, we'll get them to just say hello to themselves - from themselves rather.

Okay then, several peep - well I think look at the list here, most of you were actually at the meeting in Brussels apart from (Barbara) who joined us remotely. Who else - I'm just looking at the list here. I think that's - I think that's everybody. I think (Barbara) was just the only one who joined us remotely. Everybody else I think was there.

Now there's a slide up there on the Adobe Connect which are some of the points that have been raised - that were raised at the meeting in Brussels in relation to the draft ETRP. So the list there is need for clearer terminology in relation to the ETRP. Marika, go ahead.

Marika Konings: Yes. This is Marika.

Michele Neylon: Marika.

Marika Konings: I'm sorry I need to - a few seconds now with the mute on mute off button. I just wanted to know because these are the different points that I took from

going through the transcript basically picking on some of the points that maybe the group didn't cover before or that, you know, were discussed extensively during the meeting.

But if everyone - anyone else feels there are any items missing that were raised during the call they should feel free to add those to the list.

Michele Neylon: Okay. Perfect. So a couple of things, need for clearer terminology - urgent as in some definition of that. Should we have a separate pol - is a separate policy required taking into account other options available such as injunction and does the incidence warrant a new policy? Are there sufficient safeguards? Abuse/misuse of ETRP should be strongly penalized.

The idea of ETRP is reactive as opposed to proactive. Some level of certainty. Should the system of locks be abolished all together? And another point raised closer review of the indemnification provisions recommended.

That - George, you had your hand up?

George Kirikos: Oh I just wanted to add that I posted on the mailing list in between the meeting that an irrevocable transfer procedure might be another item to discuss, put on the agenda.

Michele Neylon: Okay.

George Kirikos: That would be a constructive suggestion I hope that can satisfy...

((Crosstalk))

Michele Neylon: The only thing - I mean we're going to do is George is we're going to be working through several things. Apart from anything else - well I mean we've worked through this - we've worked through the agenda we have today. And

as you can see Marika's adding that suggestion now to the list on the screen there in front of you. Okay?

George Kirikos: All right.

Michele Neylon: Now, if there's other things that people want to add, either add them - raise your hand now and add them now or post them to the list. As per the email that Marika sent out earlier today I think it was, the comment - the comment period has now been opened. So if you could let your friends, colleagues, next door neighbors, clients, whatever, colleagues, let them know that they - that the comment period is open and hopefully we will get some useful comments from more than one or two people.

Yes Marika? Marika?

Marika Konings: Oh yes. This is Marika. Sorry I was again on the mute off not hearing anything. No but I just wanted to point out is that Glen has already sent out the announcement as well to the consulate and all the respective constituencies and other mailing lists that she has access to. So from our side, we've done our best as well in trying to get the message out and encouraging people to provide input during the comment period.

Michele Neylon: Perfect. Thank you. So does anybody have any suggestions on how we can get more people to provide input? Obviously we won't get the same level of input as ICM Registry got for their comment period, but if anybody has any suggestions on how we can get more people to provide input, I'd love to hear it. And deathly silence landed on the call.

Bob Mountain: Yes Michele? This is Bob Mountain.

Michele Neylon: Yes.

Bob Mountain: In ray - didn't raise my hand but would you like a suggestion?

Michele Neylon: Yes, that was the idea. Come on.

Bob Mountain: Okay.

Michele Neylon: Giving away free Saki by the way is not advisable.

Bob Mountain: Well that'd be a good thing anyway regardless. The, you know, one idea I had just going through the agenda was perhaps, you know, a signing or asking for volunteers to tackle some of these issues and just report on or make suggestions, kind of work offline sort of mini groups or individuals. And I, you know, I'd be happy to pick one of those up if that was a - if people agree with that suggestion.

Michele Neylon: So which items you talk about the ones on the screen in front of you at the moment?

Bob Mountain: Yes exactly, exactly.

Michele Neylon: Okay. All right. Thanks a lot. The - does the general thing I was just trying to get at is if people could let other people -- their clients, their colleagues, their friends or whatever know that the comment period is open so we can get as much feedback as possible.

Since the last time we opened the comment period on this, I think we got maybe half a dozen comments or something. Marika how much did we get the last time? She's probably on mute so could be waiting for a second for her to reply.

Marika Konings: Can you hear me now?

Michele Neylon: Yes.

Marika Konings: Aw this is a real pain this star 6. I think the last time we had three comments if I remember correctly.

Michele Neylon: Right. So it wasn't exactly the most popular comment period ever.

Marika Konings: Yes. And just regarding - I think it's - if you compare it to the previous IRTP public comment period, this is, you know, it's very specific issue and indeed not a, you know, triple X kind of discussion that, you know, goes much wider.

The amount of comments received tend to be limited. But at least I hope we can encourage the different constituencies and stakeholder groups to provide their input and feedback on the, you know, the draft recommendations that are being put forward.

Michele Neylon: Bob has his hand up again. Marika maybe you should just leave yourself not on mute at this time for the moment.

Marika Konings: Yes. Then I just hope you don't get too much background noise, but if that happens...

Michele Neylon: That's okay.

Marika Konings: ...quickly press star 6.

Michele Neylon: Okay. No problem. Bob go ahead.

Bob Mountain: Yes. You know, in the - certainly in the aftermarket there's a number of very widely read blogs, you know, Mike Berkens, you know, as George is as well, you know, and others along those lines, perhaps we could reach out to them and ask them to publicize this. I'm sure you'd get some comments from that channel.

Michele Neylon: Okay, good idea. If any of you have any contacts with those people, please, you know, drop them an email or ping them or whatever method you use just to let them know. To me, the thing from my perspective as group Chair is I don't want people turning round in three or four months time going oh you have a comment period and you never let us say our word because I think that's been reasonable. Anybody else have any other ideas? George and then (Michael).

George Kirikos: George here. I posted on the various domain boards like Be Informed, Domain State and some private boards already and have reached out to various bloggers and registrars that are going to be affected by this policy.

And I think they're waiting for my comments to appear which will hopefully be by the end of next week and then that'll maybe spur some additional people to comment because they're not going to probably read the primary documents. They're going to read, you know, summaries of it because...

((Crosstalk))

Michele Neylon: And I know one thing George - one thing George to just bear in mind that it - there are other points in the document apart from the ETRP.

George Kirikos: Oh I know. Oh I know.

Michele Neylon: Okay. Just - because I know you have strong feelings about the ETRP but there are a couple of other ones which we don't seem to have much reaction from anybody of (ours).

(Matt) is saying that he sent it on to the Registrar Group. James Bladel: mentioned that the two of the comments on IRTP were actually spam. We probably picked up an adult triple X comment or something knowing our luck.

Okay then, now with regards to how we're going to proceed moving forward here, the comment period is open for - is it 30 days or 20 days Marika?

Marika Konings: It is 20 days.

Michele Neylon: Okay perfect.

Marika Konings: That's prescribed in the ICANN Bylaws. I mean there is an option if you really think that at the end of the period there's still groups that need more time or, you know, haven't submitted them - their comments and, you know, we want to leave it open for a little bit, there might be an opportunity to just leave it open for a little bit more but, you know, we try to stick to the 20 days normally.

((Crosstalk))

Michele Neylon: No that's fine. I mean I think the last time we were waiting on the stakeholder groups. I mean some - it became obvious that some were going to submit comments and others, no matter how much we cajole them weren't. I - okay. Is somebody ringing? Hello?

George Kirikos: Isn't there a control panel for the...

((Crosstalk))

Michele Neylon: There is but - George...

Man: ...presented by...

George Kirikos: ...present to see who's talking.

Michele Neylon: Well I've no idea what that is. Okay. Now looking at the - okay looking at the other areas of the - of this PDP, okay the ETRP has received quite a bit of

feedback at both by email, on various calls and I suspect we will get quite a bit during the public comment period.

Does anybody have any feelings about any of the other points that we're meant to be addressing?

James Bladel:: Michele this is James Bladel:.

Michele Neylon: Yes, go ahead James.

James Bladel:: Yes, I think, you know, and forgive me, I haven't had a chance to dig into the reports that deeply as I'd like to but I think that there are a few charter issues that maybe deserve a little bit more of an - attention or spotlight but they've been kind of been suffering from a lack of attention perhaps because of the...

Michele Neylon: We say lack of TLC James Bladel:.

James Bladel:: Yes. It's the lack of TLC based on so much of the activity on ETRP. So, you know, I would recommend that in the interim between receiving, you know, while the comment period is open and while we're analyzing those which are sure to be very heavily weighted on ETRP, if we take a look at the non-ETRP charter questions to make sure we thoroughly address them.

Michele Neylon: Okay.

James Bladel:: So that would be one suggestion.

Michele Neylon: Okay. George.

George Kirikos: Yes. I think we should go over all the five questions because ETRP is just one proposal to address the questions. But the basic question, if you look at number 1, why they are processed should be developed, that's, you know, a

fundamental question which I don't think has been properly addressed and requires more statistical analysis.

Michele Neylon: Okay. Now if it's free - okay let's say A and B arguably there was some - we've done something with them but the ones that we haven't really looked at at all which is what James Bladel: had mentioned, like C, D and E we have done something but nobody seems to have either said yes that's great or oh my God that's terrible.

So for example, issue C, whether special provisions are needed for a change of registrant near a change of registrar. Does anybody have any feelings about that? George.

George Kirikos: Yes. When it says special provisions, I'm assuming that's compared to the status quo? Like right now there's no provisions except that some registrars on an ad hoc basis are locking the domain name when that occurs.

Michele Neylon: Yes.

George Kirikos: Perhaps more clarity from ICANN as to whether that's permitted or not would be a special provision or what there's, you know, something that the work group could comment on.

But it also opened up the question whether special provisions are needed for any change of registrant whether it's occurring, you know, that - near a transfer or not because I think the whole basis of the transfer group is between domain security.

And so whether it's a domain transfer externally or internally within a registrar, I think that's something that the work group might want to take on.

Michele Neylon: Okay. James Bladel: and well actually and then Marika, but let's let - let Marika go first since she's a lady.

Marika Konings: Thanks Michele. This is Marika. Just a note on George's point on checking with compliance or legal, actually in the early discussions of the working group there was a same question and the response from compliance was circulated to the group and I'm happy to dig that email out and resend it to the list so people can see that response which basically stated that it wasn't in contradiction to the current policy as it stands.

Michele Neylon: Okay. If you wouldn't mind resending that Marika because I think that was probably sent out to us months and months and months ago and...

Marika Konings: Yes. Yes.

Michael Neylon: ...trying to find it amid a sea of emails might be hard. James Bladel:?

James Bladel:: Yes. You know, I didn't really come prepared to dive into the material elements of this issue but I did want to raise two points relative to change of registrants. And, you know, my company is known for I think being extremely cautious in this area particularly when it occurs in conjunction with a password change or a transfer because it usually is a good indication that something amiss is going on.

But with regard to a change of registrant, I think it's important to note that this function is not defined in, you know, in all of the ICANN policies and circles. Some country codes have a very good process for doing this but they are in some respects, you know, if you look at (Sira) for Dot Da there - they have some knowledge of change of registrant because the registry itself is maintaining contact with the registrant.

But two points that I wanted to make about change of registrant, so the first one is that it's really not a defined function. We have functions for updating your address, your email, your fax number, etcetera in WHOIS, but we really don't have a function for, you know, a wholesale change of a registrant.

And the second point is that it opens up some interesting legal concerns. And I think for folks on the call that may be lawyers, maybe they can help me get my mind around this. But, you know, if you have a registration agreement accepted by a party by, you know, that binds a registrar and a registrant, then a registrant changing to another registrant in a sense is a unilateral transfer of that agreement to a third party who may or may not have explicitly accepted that agreement.

So I think that that's something to, you know, bear in mind on this issue. And, you know, we built this entire - or this aftermarket has kind of evolved, but, you know, there's this missing piece, I think, that is causing us both a lot of frustration and a lot of security vulnerabilities because we're really not sure how to formally and explicitly change the registrant of an active name.

Michele Neylon: Okay. Thank you. George.

George Kirikos: George here. I'm not a lawyer but I think on a legal basis what the registrant trained really is is an assignment of an existing contract if you look at the registration itself as a contract between the registrar and the registrant. All we're simply doing is assigning that agreement to somebody else when we change the registrant.

So I think - and this also goes to people trying to change the registration agreement or forcing often procedures on new registrant. The reason why I pose the 60 day hold of Go Daddy for example on a registrant change is that you're putting the new registrant in a worse off position than the original registrant.

If you're simply doing an assignment of the agreement itself, then that registrant - the new registrant should be in the same position.

((Crosstalk))

Michele Neylon: How do you mean that they're in a worse position George? Could you explain please?

George Kirikos: Okay. The original registrant - let's say I have a domain example.com at Go Daddy and I can transfer it to any registrar. You know, it's past the 60 day creation date. I can transfer it to TwoCows whenever I want.

Now let's say I assign that agreement from myself to corporation B. Corporation B, if they're in the exact same position as I was before, they should be able to transfer it to TwoCows or Moniker or whatever equally as well as I was before.

Now Go Daddy's arguing for example that people are opting into this additional term that they have to agree as part of a registrant change that they have to keep it at Go Daddy for 60 days.

That's where I disagree because if we look at the ICANN rights people have, the registrant has the right to transfer it say after the 60 day creation period. Can we simply rewrite all the rights that ICANN gives us?

I think not because even though the contract says you can opt in to, you know, to a higher level of security for example, you should also be able to opt out of that at any time assuming the authentication is there.

But - tell you a different example. Let's say the S constitution outlaws slavery. Conceive of that to write a contract that, you know, that, you know, permits somebody to be my slave for, you know, 30 days. But that would be kind of an illegal contract because you have a more fundamental higher contract that says, you know, slavery's legal.

To that extent, I think that the ICANN rule that, you know, you can transfer after the - anytime after the 60 day creation period should trump whatever off

the procedure because it's not truly not opt in if you can't opt out of it equally well.

Michele Neylon: Yes. Let's see if James Bladel: wants to come back on that. Well he's got his hand up. James Bladel:?

James Bladel:: Yes. Real quickly. It is not (the in) contract. And the way to opt out of it George, it's very specific on the site. It says if you are about to transfer this name, the way to get around this lock is to transfer it first and then conduct the change of registrant at the new registrar. So we provide a recipe, if you will, for how to ensure that you are not inadvertently opting in to those locks.

But secondly, you mentioned something kind of interesting. You mentioned that the registrant is assigning this registration agreement to a new party. My question is does the registrar have any say or are they just supposed to unilaterally accept that? Do they have no right of refusal to that assign?

Michele Neylon: George?

George Kirikos: Yes. I'd like to respond to those two points. The first procedure that you outlined is actually what I've been doing and what lots of people have been doing because they don't want to be trapped by that rule. And so we're caught by the ETRP because, you know, we wouldn't be subject to the ETRP if - well right now there's, you know, the transfer from say Go Daddy to (unintelligible) to Go Daddy monitor is irrevocable.

Michele Neylon: That's not true George. There's already a...

((Crosstalk))

George Kirikos: No there's - ETRP but there's - that's at least subject to due process. But for all intents and purposes it's irrevocable if it's, you know, there's no fraud or anything, if it's (towel) and here's due process.

But introduce me to ETRP, you can't do that process anymore in a secure manner? Is it a (unintelligible) with a cause back without any due process. So it really affects the secondary market because if, you know, that procedure to avoid the opt in was allowed and the ETRP didn't exist, you know, that would be the way it is now. Most people are happy.

The second thing, whether the registrar has a right to not permit the transfer - sure, you know, but, you know, you treat the new registrant equally as well if not worse than any prior registrant. You basically can say take it or leave it. You can be our client on the same terms or not be our client at all in which case, you know, transfer it to another registrar.

In other words, this offer shouldn't be used to lock in registrants to a registrar they don't want to be at. That was all.

Michele Neylon: Just - but using the same logic, surely - now I'm not defending Go Daddy, but it does follow your logic. If I initiate a contract through Go Daddy then when I initiate that contract, I have to stay with them for the first 60 days.

So if I - if you - if - as a new registrant with Go Daddy for an existing domain, and I start a contract with them and you're saying that I should be bound by the same terms as the previous registrant. Shouldn't I be held to the first 60 days as well?

George Kirikos: George here. That 60 days counts on the creation date of the domain name. Let's say it was 1995. After that, that 60 day period doesn't - isn't an ICANN obligation at all at least for dot com.

Michele Neylon: Yes. I'm not saying that it is, but I mean you said that you're talking about the client being bound to the same terms.

George Kirikos: Right. But that term had an end date. Let's say you transferred it in to Go Daddy on January 1, 2010, that 60 days would elapse on...

Michele Neylon: But I'm extrapolating a way - I'm extrapolating away from the domain. I'm talking about if you sign a contract with me for a dedicated server, just say for argument sake, forget about domains.

George Kirikos: Right. Right.

Michele Neylon: Under the terms of the contract, once you've agreed to the contract and we've executed the contract, you would have to give me let's say 60 days notice to terminate the contract. Okay? That's the contract that you've entered into with me and we've executed the contract.

If I transfer the contract or you transfer the contract to a third party, they're going to inherit the same conditions.

George Kirikos: Right. But the thing is that the clock would have already expired unless you - see the thing is they want to restart the clock every time there's a change, just like before they were, you know, on any registrant change they were setting - resetting the clock and I think...

((Crosstalk))

George Kirikos: ...bad, bad, you can't do that. That's and now they have new wording thing there...

((Crosstalk))

Michele Neylon: No, no this one - let's just - just trying to understand the logic. That's okay. That's okay. All right. (Kevin)'s now on the call. Okay then.

Now what I would suggest rather than going - spending too much time on this today because I can see that a lot of you probably aren't fully prepared for this, what I would suggest is the comment period is open for the next couple of weeks.

What that (Rob) that we will not discuss until the comment period closes. Let's leave issues A and B alone for the moment. And if we can concentrate instead on issues C, D and E for the next couple of weeks as these are issues that we haven't properly given as much care and attention to over the last few months.

Now if anybody has any strict opposition to this, please voice it now, but I think that would be a sane way to work moving forward. Does anybody have any thoughts? Marika?

Marika Konings: Yes, this in regard - just thought it might be helpful then as well for everyone to review the information that's contained on these issues in the Issues Report. And if it would be helpful, I'm happy to send that out in separate threads in the - on the email so people have that background information from where to start their discussions as well.

Michele Neylon: Marika would you just re-circulate it just because apart from anything else, it would help to refresh my memory as we've also - don't forget, we've also got a couple of people who joined the group in the last couple of weeks who may need to just be brought up to speed if they haven't brought themselves up to speed.

Marika Konings: Yes. What I can do, I can circulate the Issues Report and then maybe highlight the pages that address the different issues so people can, you know, take it out for themselves and review them if needed.

Michele Neylon: Okay. Okay perfect. And as George is saying - George has just provided a link there to the wiki and all saying it's on the wiki which is very true.

Now does anybody else have any other matters that they want to raise at this juncture? Okay. What I would suggest then is that we look at those other issues as I said. Those of you who have any influence within your own stakeholder groups, please encourage the stakeholder groups or individual members of the stakeholder groups to submit comments in the comment period.

And go - Bob, yes.

Bob Mountain: Yes. Just a - is there a summary that the group is comfortable with in that, you know, with the positioning that we could send out to - and I think, you know, per George's comment, I think giving something for people to react to as opposed to a link to the entire report might prompt...

Michele Neylon: Well I mean if you want to paraphrase it a small bit, feel free Bob.

Bob Mountain: Yes. That's - I was going to do that but in the absence of doing that, has someone already done that I guess is the question that - is this something that we could reuse, otherwise I'm happy to do it.

Michele Neylon: I'm not sure. Does anybody know of anybody - anything like that? Marika?

Marika Konings: This is Marika. I mean you can just take the executive summary which to a certain extent tries to summarize the different issues and discussions. So that might be a starting point.

And also to point out that, you know, we've had the executive summary translated into the five UN languages. So if you know of anyone that would be interested to review it maybe in their own language, you know, before commenting, that's available as well on the ICANN site.

Bob Mountain: Okay. Sounds good. Thanks.

Michele Neylon: Okay thanks. And in the kind of the spirit of dealing with people who I know who've been on conference calls since 2:00 o'clock this morning, not looking at James Bladel:, I will then wrap - call this meeting to an end unless anybody has anything else they want to raise at this minute. Going once. Going twice.

Marika Konings: Michele, this is Marika.

Michele Neylon: Yes?

Marika Konings: Just to confirm, next week same time.

Michele Neylon: Yes.

Marika Konings: Same time.

Michele Neylon: Oh no. We're not changing the timetable...

Marika Konings: Thank you.

Michele Neylon: ...unless somebody really, really wants it changed. And even then I think it's going to cause headaches. Okay so, without further adieu, I will speak to you all next week. And if anybody wants - has anything pressing, please use the list. Post to the list. Talk to you all again next week.

Man: Thank you Michele.

Man: Thanks.

((Crosstalk))

Man: Thanks Michele.

Marika Konings: Thanks.

Man: Take care.

END