

**Fake Renewal Notice Meeting
TRANSCRIPT
Thursday 9 February 2012 at 1930 UTC**

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<http://audio.icann.org/gnso/gnso-frndt-20120209-en.mp3>

Attendees:

Mike O'Connor
Tatiana Khramstova
Michele Neylon
James Bladel
Paul Diaz
Poncelet Illeleji

Staff:

Marika Konings
Berry Cobb
Nathalie Peregrine

Apology : none

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.

Nathalie Peregrine: Thank you very much, (Kelly). Good morning, good afternoon and good evening. This is the FRN call on the 9th of February, 2012. On the call today Mikey O'Connor, Tatyana Khramtsova, Paul Diaz, Michele Neylon, Poncelet Illeleji and James Bladel.

From staff we have Marika Konings, Berry Cobb and myself, Nathalie Peregrine. We have received no apology for the call today. I'd like to remind

you all to please state your names before speaking for transcription purposes. Thank you very much and over to you.

Mikey O'Connor: Thanks Nathalie and welcome all to the call. I want to take a moment right at the top of the call to prostrate myself in front of James and Marika for taking over for me on no notice whatsoever. I listened to the transcript and you all did a terrific job; I really appreciate it. I owe you both a beer.

As usual we'll take a minute to update an SOIs that need to be refreshed. Take a minute to review the agenda.

Michele Neylon: This is Michele. Mine needs to be updated and I still haven't done it and I will do it, I'm sorry.

Mikey O'Connor: Oh good. Floggings will continue, that's nice, thank you. We're going to take a look at the staff response that's on the screen then we're going to return to the conversation about the survey and see if there are any sort of further thoughts there and then start sketching out the response to the Council.

We sort of aimed at the end of the month for the - for that piece of the work to be done. And I think we'll be able to do that. I listened to the transcript and it seems like some pretty clear themes are emerging so I don't think we'll run into much trouble there.

But Marika, why don't you, if you would, take us through this staff response that's on the screen.

Marika Konings: Yes, so - oh - so this is Marika. If you basically scroll down to the last page it's where basically the conversation started and those are the responses to the first two questions that the drafting team asked on one of the earlier calls.

So the first one relates to, you know, what measures, if any, are in place as part of the current registrar accreditation policy to prevent known offenders of sending fake renewal notices to become an ICANN-accredited registrar.

And there we've provided some information on the recently modified accreditation application process, you know, basically looking at further background checks and also, you know, making sure that people don't have any past criminal history.

Of course it doesn't talk specifically about fake renewal notices but, you know, if someone has been convicted that might be a mechanism to, you know, prevent accreditation.

And then the other question related to, you know, the link - that it's linked to to resellers and if there's anything in the new RAA that, you know, would provide more or provide better protections to address the issue of fake renewal notices if these are sent by resellers.

And I think just to paraphrase, you know, the 2009 RAA doesn't specifically talk about fake renewal notices. There are other, elements in there if, you know, it would be touched upon by, you know, for example, you know, violate the transfer policy or, you know, applicable laws.

And there might be ways - just looking, you know, looking at that as a violation and the way then to deal with that. But as such fake renewal notices is not specifically called out as something that's not allowed or, you know, could be enforced against.

So on that basis Paul asked a couple of follow up question asking basically, you know, what do we have in place to prevent an existing accredited registrar or reseller from sending fake renewal notices.

And again, you know, our response has to be because there's currently nothing in the RAA or any policy that specifically, you know, prevents sending fake renewal notices.

There are mechanisms if, you know, if these notices turn out to be unlawful or, you know, noncompliant with the RAA or another ICANN policy, you know, then we have mechanisms to deal with that or we might be able to refer that to, you know, the appropriate law enforcement or consumer protection agency.

And there was a second point that Paul made as well when we would invoke the RAA 2.1 provision that basically deals with suspending the registrar's ability to create new registered domain names.

And, you know, I think that's a - a really heavy hammer and that's one of the ones that basically need to take into totality of circumstances because it talks about that it's, you know, the breach of its, you know, fundamental and material to this agreement and, you know, has been repeatedly and willfully and fundamentally a material breach at least three times within any 12 months.

So, you know, that would need to be seen on a case by case basis basically. So that was basically the feedback, you know, we could provide from a staff perspective. And happy to take questions or attempt to clarify if this wasn't clear.

Mikey O'Connor: Thanks Marika. Paul, go ahead.

Paul Diaz: Hi guys, it's Paul. Thanks, Marika; that was all very clear. I just wanted to add or clarify my own statement. We've been in touch - registry operators have been in touch with compliance recently. Compliance is thinking about what the limits are, what they might be able to do under existing authority, 2.1 feeding into a suspension program, etcetera.

Agree that the potential exists that could be a pretty heavy hammer. The flip side of course is that if compliance doesn't ever do anything other than, you know, terminate a registrar we basically never see any compliance enforcement for things that most everybody agrees are bad actions.

The sense that I'm getting is that compliance recognizes this and is looking for alternatives; graduated sanctions, etcetera. My strong suggestion - my hope really is that compliance will be vocal in sort of thinking out loud what that might look like, solicit input not just from registry operators that would help enforce it but most importantly from registrars who could find themselves on the receiving end.

That as a community we move forward on that with all due haste because clearly for years now there have been shenanigans going on, fake renewals are just one of them. And it seems kind of crazy that we continue to dance around things. There's not enough authority or it's unclear what the authority is and yada, yada, yada while registrants are harmed.

And if compliance is at a point where they are actively thinking about putting together a program my hope is that they will step out and make it clear to everybody, encourage a dialogue and one that happens in near real time not ICANN government time where this takes another 18 months to figure out.

That was really the thrust of my response. Much appreciate what you came back with but I would ask if compliance people are not listening to these calls that the other staff make sure; hey there's a lot of us that will back them up in doing this. It's long overdue. And I think without getting overly creative they do have a lot more authority than they're willing to lend themselves. It's time to start acting on it. Thanks.

Mikey O'Connor: Thanks, Paul. Marika, go ahead.

Marika Konings: Yeah, this is Marika. Just specifically with the fake renewal notices because in some of the discussions we had as well that of course, you know, the issue we're facing a bit as well that we don't have a clear definition of what fake renewal notices are; which are the criteria that would need to be met for it to be considered a fake renewal notice.

Because I, you know, I know it's right, you know, closely linked as well to the cross TLD scam and then, you know, some other issues. So I think as well if at any point this would go into a direction where, you know, this would become a reason why or by which compliance can enforce or specifically on fake renewal notices it would definitely need a kind of definition to really make clear, you know, what it means.

As well for, you know, registrars this is what you can do and this is what is not allowed. So, you know, just to follow on that, you know, if it goes down that route further (cases) would need to be provided to really make sure that, you know, compliance can indeed enforce and has the clear guidance of what is meant with, you know, fake renewal notices.

Mikey O'Connor: Okay. Any other thoughts about this document - the whole thing, the questions, the response and so on? I tend to - go ahead, Michele.

Michele Neylon: You know, just to vocally, on the record, I mean, I agree pretty much with everything that Paul was saying. I mean, the kind of - I mean, it's just - it's not just fake renewal notices as Paul says. I mean, there's - you know, ultimately, you know, it's a competitive market, we're all competing against each other.

Those of us who try our best to, you know, comply with policy and everything else shouldn't suffer because other people are able to find loopholes that either can't be closed or people aren't willing to close. Thanks.

Mikey O'Connor: Thanks, Michele. I sort of dropped this little last section of the discussion into a pile that I made when I was taking the notes of possible recommendations.

So I've captured this and maybe we can - when we get around to making some recommendations maybe we can polish some of this up.

I also agree that just, you know, with everything that people have been saying. So maybe we can put that in the report. Anything else on this topic before we move on?

Okay the next agenda item is the sort of - I think probably kind of final look at the survey responses. I think I may grab the screen away from you, Marika, because I went ahead and summarized these in the mine map.

So if people need a copy of the - of the actual survey summary that you did could you put a link in the chat for people to get to that? And meanwhile I'm going to replace this with the current state of affairs in the mine map. Just have to click a few things to get back to where I can see what's going on.

Sort of where we're at - let me kind of shrink this down - we're in the part of the mine map where we are building our report back to the Council. And, you know, we framed the questions, we got them out to the registrars. We're in the analysis thing. We're shooting for the end of February.

And we just did the staff responses thing. Now I want to go back to the summary of the conversation from last week. And I captured several clumps that I wanted to go through with you. There were several comments that people made that I sort of threw into an overall bucket.

And I've - I make no promises for my typing or spelling skills in this particular tool. But what seemed to come through is that there is a bit of a divide between some registrars who are pretty passionate about this and others who aren't.

There was a fairly extensive conversation that we might be taking a small problem and creating a bigger one with the cure so we have to be careful about that.

There was a lot of conversation about, you know, it's the same player; it's one bad actor. It's not a constantly churning pool of bad actors that are different with new ones coming in as old ones drop it. It seems to be a pretty repetitive theme that it's really the DRA/DRC/DRE crew.

They come in different shapes and sizes but they're all pretty much the same people. There's the connection to - I got this off the transcript; I'm not sure I spelled Brandon Gray right - but the NameJuice connection.

I think that in the general perception of ICANN these days this doesn't help ICANN. There is a perception - a kind of negative perception that's created by this.

And then one point that I thought was interesting and I meant to go back to our charter is whether we would get different answers from non contracted parties than we do from registrars if we went out and pulled them. I think several people suggested that if we talk to registrants they would probably have costs cast a slightly different way.

And I think that's right. I just can't remember if that was our charter. I don't think it is. But it's something I think will work into our suggestions to the Council.

And then before I throw it back to the group for conversation there was a conversation last time about maybe moving this issue into the PDP on the RAA. There was a lot of conversation about that.

A certain lack of enthusiasm; sort of again the worry that we would perhaps be using a bigger and less flexible hammer to solve the problem. I like this

emerging theme that Paul sort of stated earlier in the call where, you know, maybe we work directly with and encourage compliance on this one.

There was a conversation that talked about using better - using tools that are already in place. And again I think that plays into what Paul was saying just now. Then again this is just a repeat of the same one before.

And then I just summarized that conversation that Paul sort of kicked off at the end of that review of the staff response that suspension is indeed a heavy hammer however if de-accreditation is the only option then we tend to see few actions because it's sort of - it's either nothing or nuclear. So there's this hope for a graduated response. I don't know (graduated) came from; that's a new word for me.

He brought forward the notion of trying to do this quickly that fake renewal notices are - but only example of the things that could be brought forward to the compliance group.

And, you know, when Paul was talking about the support notion I was sort of reminded of that memo that many of us participated in when we were in IRTP something or other - A or B - where we supported compliance in the budget process.

It seems like we could, you know, again this may be falling outside of our charter but maybe we could peel off and do sort of a comparable memo from us even if we can't get it into the recommendations although I think we could slip it into the recommendations.

Marika pointed out that we do need to come up with a good definition of what an fake renewal notice is. I can't remember - oh I think that was Michele; registrars shouldn't - you know, law abiding white hat registrars shouldn't be penalized in a competitive marketplace for the actions of some bad actors who've found holes in the process to abuse.

So that's kind of - I just wanted to sort of whiz through that before we have any further conversation about that survey and what we learned and then we'll pivot and sort of head into what we want to talk about in terms of recommendations.

Michele, go ahead.

Michele Neylon: No just following up on that last thing. I mean, that statement of mine, by the way, you can apply that to pretty much any PDP.

Mikey O'Connor: Yeah, that's true.

Michele Neylon: It's just - no, I mean, the problem I suppose is it's part of a larger conversation that's ongoing at the moment is that there's a lot of pressure on ICANN, on registrars and on registries to make all sorts of changes.

And to be perfectly honest the problem with a lot of this stuff is if people aren't careful those of us who actually take our obligations quite seriously are probably going to end up being hamstrung whereas the people who actually - who don't take their - don't take this seriously are the ones who - they're not going to - it's not going to change anything for them. That's something I'm just very, very wary of in general.

Mikey O'Connor: I think that's a puzzler that somebody has got to solve. I don't think - fortunately we don't have to solve it. But, you know, it's clear that, you know, there are good arguments on both side of that coin.

And the perception that's out there isn't real good right now. So I think we have an opportunity to get creative and figure something out on that. But fortunately that's above our pay grade I think.

Anything else on the survey that came to folks either in the intervening week or that didn't come out on the call last time? Is there anybody on this call that wasn't on the last call that wants to chime in on their reactions to the survey besides me?

My reaction was pretty much captured by what you all said. I was a little struck by that divide where there are a few registrars who are pretty passionate about this and then there are a few that aren't. And I found that interesting so - oh, James, go ahead.

James Bladel: Yeah, thanks Mikey. James speaking. I don't have the exact topic but I remember very distinctly from last week the conversation that there was a question that we possibly missed asking last week in the survey.

When we were going through all the different responses I think that we were kind of dancing around a topic here. And I'm struggling to remember. I'll have to go back and look at the transcript. But there was - it seemed to me that there was...

Mikey O'Connor: Look at the one I've highlighted on the screen and see if that's the one you're thinking of.

James Bladel: Yes exactly. Yeah, what do the registrar respondents do when a customer asks them for help? And I think that that might shed some light on the divide that you're talking about. You know...

Mikey O'Connor: Right.

James Bladel: ...if the registrar's practice is to say sorry can't help you, you know, don't be so gullible next time. Then they might not see this as a huge issue. Whereas if they do actually try attempt to get the name back then they might incur more of a burden in terms of resources and so they might see this as a bigger issue.

So I don't know if that's - that's just something I wanted to get into the record. If this is something that we just - we just overlooked it when we were designing the survey.

Mikey O'Connor: Well, you know, like my friend who started off Johnny B. Good with the ripping guitar solo without plugging in his guitar so who's perfect, you know?

James Bladel: Oh nobody is. And I'm not being a critic or a cynic with that I'm just saying it's something that we should capture now now that we've thought of it. So that's all.

Mikey O'Connor: Yeah. I think I'll stick that in the recommendations. We can tidy that up later. Michele, go ahead.

((Crosstalk))

Michele Neylon: ...James - James was - James's point is very well made. I mean, obviously some of us for whatever reason, you know, we might take this more seriously and might get more involved in trying to sort things out for people than others.

And, you know, it's (part) of a kind of thing that, you know, for me personally my view with a lot of this stuff is is if this - if there's something where registrants are having a bad experience even if it's not with ourselves then ultimately we're all tired at the same brush because we're those Internet people that are making their lives difficult.

So, you know, it's, you know, that's just the kind of - it kind of segues with what Paul was saying as well though Paul might disagree with me.

Mikey O'Connor: Oh I would disagree with you just on general principle but...

Michele Neylon: Well we know that you would disagree with me but that - Mikey, that's what you do, you know. You get on a call and it's like okay I'm going to agree with James; I'm going to disagree with Michele today. And then the next day it's like, you know, I'm going to agree with Michele but I'm going to disagree with James on principle. That's fine; that's okay.

Mikey O'Connor: Yeah.

Michele Neylon: We're used to you.

Mikey O'Connor: I have a coin that I use for that.

Michele Neylon: It's one with two heads on both sides or something.

Mikey O'Connor: Yeah.

((Crosstalk))

Michele Neylon: Yeah, okay, moving on.

Mikey O'Connor: Okay. Anything else on the survey? I could take you through the notes that I captured from the call if you want. I'll share them; certainly I'll push this out in a PDF so that you can read them.

But, you know, it was a very - I thought a great conversation. Let me just open them up. You can watch them open on the screen. We'll just sort of read them really quickly like that.

And I think, you know, I did this this morning so I think what I want to do as an action item for me is to go back through this and look for possible recommendations. But as I was listening to the transcript I sort of captured ones that I thought had some - some possible merit.

Marika, I don't have our charter in front of us. Our primary charter is to come back to the Council with an answer to the musical question should we do a PDP on this, correct? That's our main...

Marika Konings: This is Marika. Let me just post in the notes section there on the right the specific part from the resolution. So it's more about information gathering on the nature and scope of the issue. And that should help...

Mikey O'Connor: Okay.

Marika Konings: ...inform the Council's deliberations. But I'm sure the Council wouldn't mind if there are additional recommendations on indeed whether that warrants a PDP or whether there are any other options that Council should consider because I think it's one of the logical questions they might ask, you know, based on the data you might present them.

Mikey O'Connor: All right so in a way if we wanted to abide by the absolute letter of our charter we could essentially summarize the survey results with some commentary and be done with our charter. And so maybe what we do is we do that. I think we could do that offline.

And I think the call last week produced enough material that at least a sketch of that summary is already on the screen and would be pretty easy to flesh that out.

And then if we were to take a look at this list that's on the screen here as possible things to talk about there's one other - there's one other thing that we wrote. I am sorry, I need to make this much smaller for just a minute while I find it.

Because we had a conversation about next steps; I want to pull that up into those possible recommendations as well. It seems to me that where the conversation seems to be headed, you know, remember at the beginning of

this drafting team we had a pretty extensive discussion about where this could go and what it seems like is happening is we're sort of running down a track that includes maybe working with outside organizations plus compliance but not - I didn't detect a whole lot of appetite for a PDP.

Maybe that's the place to start; just have a short conversation about whether we want to comment on a PDP either for or against. You know, I listened to the conversation and found the argument that, you know, PDP resources are pretty stretched at the moment; this is a fairly narrow topic. It's not really very well suited for a PDP.

And essentially heard a sense of the group that there wasn't a lot of appetite for a PDP. But I think we might want to just nail that down. Marika gets to go first of course and then Michele.

Marika Konings: Yeah, this is Marika. I'm just wondering as well if there should be a sub-question to that because you can ask as well indeed should it be a PDP on its own or, you know, should it be added to one of the existing PDPs. And as we discussed before, you know, the one on the RAA that will start soon - shortly - you know, could be one of those. So I guess it's, you know, maybe two questions in relation to should there be a PDP or not.

Mikey O'Connor: That's a good idea. Let me pull that out like that. Let's do the first one first, PDP question mark keeping on that topic. Michele, go ahead.

Michele Neylon: Can you hear me now?

Mikey O'Connor: I can.

Michele Neylon: Okay sorry I'm not used to muting myself using this. But the operator told me there was a noise coming from me. Should there be a PDP on this specifically? I would say no. But the key thing I wouldn't want it - the fact that

there's no PDP I think it should either be part of another PDP or something needs to happen.

But does it warrant a PDP by itself? Probably not. I'd actually say no. Just the big fear I would have is that by saying no to a PDP we're saying there isn't a problem; I think there is a problem. And it does need to be addressed.

Mikey O'Connor: Something like that? Let me make these bigger so you can read them a little easier. Other thoughts on - are other folks being - now you are mute. Oh maybe he's using his phone to mute himself, which is what I do; I never use the meeting gizmo to mute myself.

Okay other thoughts about PDP or not. Anybody really fired up to lobby for a PDP before we sort of put this one in stone? I certainly didn't hear a lot of enthusiasm for it. James is in on that. Okay I think unless anybody says otherwise I think we've got that one done.

Let's go to the - let's promote this one down there. Let's have a conversation about that. Oops didn't mean to do that. Any thoughts about leveraging opportunities presented by other PDPs?

I was actually quite taken with that idea. If a PDP is relevant then it would fit well in the agenda. But I stand ready - oh, Michele, go ahead.

Michele Neylon: Putting it apart from another PDP I like the idea but the question is which one?

Mikey O'Connor: Right.

((Crosstalk))

Michele Neylon: ...I mean, the - was it the one you were doing the - God, what was it, the DNS abuse type one, I can't remember the name of it. I think you were chairing it, Mikey.

Mikey O'Connor: Oh the DSSA one, the Security and Stability one? The one that's still going or the earlier one?

Michele Neylon: The DSSA I think is the one...

Mikey O'Connor: Yeah.

Michele Neylon: I mean, something like that might be...

((Crosstalk))

Mikey O'Connor: The DSSA would never get to that granularity. I mean, we're...

Michele Neylon: Okay.

((Crosstalk))

Mikey O'Connor: ...threats to the DNS.

Michele Neylon: Okay sorry. But, you know, that was the one that sprung to mind. I'd be very wary of shoving it into something to do with directly to do with the RAA. I'm not sure - I could see it kind of getting lost in the trees. But, hey, if it's the only suitable place for it then so be it.

Mikey O'Connor: Well let me offer a suggestion and see what you think and then I'll give Marika a go at this as well. And that is that it seems to me that one of the puzzlers in all this is giving compliance a tool that they can use to deal with this more effectively.

And, you know, I think there's a reason why we're so enthusiastic about that soliloquy that Paul did earlier. If compliance already has the tools that they need then let's not create any additional tools until those tools have been explored.

Which would say to me that this is sort of an implementation, you know, it's not really necessarily a PDP it's more an evaluation of current tools and practices to see if they could be modified to address this. I'm sort of stumbling around so I'll shut up and let Marika talk.

Marika Konings: Yeah, this is Marika. On that specific point compliance did already provide feedback. I think that was the first step in this recommendation of fake renewal notices where indeed they were specifically asked do you have anything you could do at this moment.

And I think, you know, just to say very succinctly I think they said no because there's no specific mention, no, you know, specific definition of what it is. So at this stage unless there is a violation of any of the other terms of the RAA we don't have a specific tool to address fake renewal notices apart from looking at it, you know, on a case by case basis.

So I'm happy to circulate that memo again because I think that specific question was already answered. But, you know, building on that what you said indeed, you know, what I'm hearing here as well from, you know, people discussing that now it's an issue with resellers. You know, it should be enforced by compliance.

You know, it does seem to come down that, you know, call that out in the RAA as a violation of the agreement, you know, might make sense and might give indeed compliance those tools to actually do that.

You know, regardless of whether it's in the RAA or whether it would be a consensus policy, you know, they're part of the same package as both are, you know, contractually binding on the registrar.

I understand the sensitivity of trying to shove everything into the RAA but, you know, the group could also provide some kind of, you know, wording around it on how they would like to see it considered as part of the RAA.

Because I think the next step that is going to take place there because I don't know if people have followed it but there has been an initial - a preliminary issue report where I think the - there has been a proposal from staff to break out some of the issues that have been identified as part of, you know, earlier work on, you know, the RAA amendments into several categories.

And maybe it's worth looking at what has been proposed there to see if there's any category where this would obviously fit. And, you know, as Michele said that, you know, it wouldn't get lost in a discussion. You know, so maybe that's something to consider.

Mikey O'Connor: Marika, help me with that last one; the work that established categories in the RAA. Which work was that?

Marika Konings: Yes, I think in the preliminary issue report they - I think there was a proposal from staff because indeed there's such a big pile of topics that have been suggested, you know, that should be part of this RAA PDP that I think staff made some kind of initial proposal on how to maybe categorize, you know, that could maybe end up in being parallel or some sequential PDPs or whatever form that would take.

And that was one of the things I think they put out for public comment. And to be honest I don't remember it by heart what those different categories were. But maybe it's worth looking at what was there and, you know, if it would make sense to make that suggestion because it would fit somewhere clearly

or whether to say well no if we fit it there it's really awkward, it doesn't belong anywhere. And then, you know, it might get lost in all the discussions.

But I think on that note is I think they're currently working on a final issue report taking into account some of the comments received. And again, you know, I'm not working on it so I don't know exactly if there were any specific comments or suggestions on the categorization or how such a PDP should be handled.

So I'm not sure how the report in its end form might change but that's something I think, you know, staff is working on and it should be, you know, published in the coming weeks basically.

Mikey O'Connor: Okay, Michele, go ahead.

Michele Neylon: Well a couple things. Just going back to what Marika was just saying there was - there were two - there was one mega-work group which then split into two subgroups which was dealing with prioritization of - oh what was - how the hell was it worded - kind of a potential improvements to the RAA.

And then as a high - what were identified and kind of agreed on as the higher priority things were the - basically form the baseline of the current RAA negotiations; at least that's my understanding.

But there was - there was actually quite a long report which goes to - there's a breakdown of where they came from. There's some stuff from staff. There's some stuff from elsewhere. And so it's quite a long list of potential amendments.

Now some of them of course you have to take with a massive pinch of salt because they were kind of just thrown in there without any kind of, you know, is this actually legal to ask people to do. But a lot of it - a lot of the stuff that actually came out and I think in the final version of that was stuff that was,

you know, it had been kind of worded in such a way that it was, you know, relatively sane.

Going back to the thing about compliance I spoke to them at length informally I think it was in - oh good God where was it - San Francisco possibly. And it was this kind of - the conversation I had with them the impression I got was that yes they know there's an issue. They weren't denying it, I mean, they weren't saying, you know, this is news to us; we've never heard about this.

But there was nothing that they could see under the current contracts or current consensus policy that they could look to and say this was a breach. And of course the problem is - and this is something that, you know, it has to be repeated until we're blue in the face - that whatever way anything is done around it you have to be really, really, really careful because the famous unintended consequences here are so, so big.

Because, you know, how do you word it in such a way that you don't end up in a situation where because - let's just say for argument's sake like I'm going to take on you, Mikey, I mean, nothing personal.

You have a number of dotCom domain names registered with registrars that are not mine, okay? So - but you might have something with Arcelle. So if I were to send you an email basically soliciting your business for your dotCom domain names that's perfectly legitimate, I mean, much in the same way that Go Daddy could send you that or any other registrar with whom you do business.

You don't want to end up in a situation where what is normal kind of marketing - direct marketing, call it what you will, gets pulled into this kind of thing. It's - the - it has to be very, very narrowly stroked.

I mean, the kind of thing that's worth looking at is the kind of - the kind of decision that the British Advertising Standards Authority made which isn't

such a bad thing to look at in general where you're looking at, you know, advertising standards.

Are they, you know, not misrepresenting things in general which, you know, it happened across the Internet industry with, you know, ISPs being beaten over the head by the Advertising Standards Authority in Ireland for example in the UK for making crazy misrepresentations like saying that, you know, their broadband was better than somebody else's without qualifying what they meant by that. Thanks.

Mikey O'Connor: Okay dokey, thanks Michele. James go ahead.

James Bladel: Hi Mikey. James speaking. So I had a number of points here and I'm not sure if I'm still in sync with the general thread of the conversation so I'll just start at the beginning and go forward okay?

Mikey O'Connor: Yeah, right, I'll write them down and we can move them around later.

James Bladel: Okay and I'll try to be as brief and succinct as possible. First off Marika mentioned that we needed a definition. And I think the, you know, there's a challenge there. We want to make it as robust as possible but also make sure, as Michele is saying, that we don't squash legitimate marketing efforts.

I think that the definition of this falls into a broader category which is what we would call deceptive transfer solicitations...

Mikey O'Connor: Wait a minute...

James Bladel: ...as opposed to fake renewal notices.

Mikey O'Connor: Hang on a minute.

James Bladel: And that is - oh.

Mikey O'Connor: You're doing so well you're leaving your note taker behind.

James Bladel: Sorry.

Mikey O'Connor: Okay so just step back and rerun that last little bit again.

James Bladel: Okay that what we're talking about in general are deceptive transfer solicitations. So that's the transfer - solicitation to transfer the domain names to a new registrar is deceptive.

Mikey O'Connor: Right.

James Bladel: And it's deceptive in one specific way and that is purports to be coming from the current registrar of record. So it's obfuscating the fact that it's actually a transfer. They're characterizing it as a renewal.

I got something - and I think I shared it with a couple of folks - I got something to my personal email address recently that was a deceptive transfer solicitation but it was held up as I needed to reactivate my search engine registration.

But it was - actually it wanted me to transfer a domain name. So these are deceptive transfer solicitations. The nature of the deception changes, okay. But overall that's kind of the underlying theme. They're lying to get your business.

Now having said that there is one section of the RAA - I believe it's Section 3.7 that governs how registrars engage in their business practices. Now I was thinking, you know, very simply that a PDP we could through the course of an existing PDP or even, you know, through some of the RAA talks that are currently ongoing.

We could insert into that section governing business dealings for registrars, that, you know, registrars may not engage in deceptive business practices in their marketing efforts such that they are stating or implying that they are the current registrar of record when in fact they are not.

You know, right now there's something in there for example that claims that in their marketing efforts registrars cannot claim to have better access to a registry than any other registrar. So why not add this to that?

It seems to me like we're making - we're ICANN-ing this thing, right? We're taking a problem that involves a specific few entities or individuals and we're talking about, you know, building this. I really feel like there's a very narrow targeted razor-like thing that we can do to just cut this right.

And it is to add some very tailored language to the business practices section of the RAA that says you cannot claim to be the registrar of record for a name that you are not when you're engaged in marketing purposes.

If you are the registrar of record and you're marketing to your existing customers then that's fine. You know, so, you know, maybe I'm oversimplifying this but it just - it seems like that is where all this is headed. Thanks.

Mikey O'Connor: Sure is a good thing we record these calls because James is all of a sudden just rattling along with...

James Bladel: I'm sorry, Mikey. I didn't mean to go too quickly.

((Crosstalk))

Mikey O'Connor: That's okay I just - great, I love it. So - and I just want to take a moment to sort of let others react. I like that a lot in a lot of ways. I like the laser focus. I like the don't ICANN this thing. I like the definitions that you were throwing in

there. I think it makes a fabulous recommendation for us to sort of start sketching out. Michele, go ahead.

Michele Neylon: Just reiterating what I put on the chat, I mean, I absolutely love the deception thing. That's absolutely - that to me - it summarizes it perfectly.

Mikey O'Connor: Yeah.

Michele Neylon: And, you see, the thing is is that under the current - I mean, James is right and he's actually identified the area of the RAA that covers part of it. Maybe it's simply a question of wording that in such a way that, you know, you talk about, you know, the registrars should not knowingly deceive registrants about their relationship or what, you know, something - so you don't need to add a specific sub clause or whatever to the contract.

But what you do is you just broaden it a small bit. So instead of just saying that a registrar cannot claim to have better access to a registry they cannot claim to have a relationship with a registrant that doesn't exist or something.

I don't know - I'm just - it just - it triggered something in me that, you know, rather than adding something which I don't - I just look at the, you know, the RAA and I've - I don't like adding stuff to it unless it's really, really necessary. I'm quite happy to take stuff away from it though.

But, you know, that's - that's something that maybe is the way to do it. I don't know if James agrees or disagrees with me.

Mikey O'Connor: Let's see, it's Tuesday; no it's not Tuesday it's Thursday. James agrees with you, I know that.

Michele Neylon: No we're talking about you; James doesn't have days of the week for these things.

Mikey O'Connor: Oh I see. Wrong algorithm. James any thoughts on what Michele said? I think we're starting to sort of home in on a direction here. The mechanism for getting it done could be to tack it onto the RRA PDP but maybe there is some other mechanism to do that. James, go ahead.

James Bladel: Oh it looks like Marika is a little faster than I am. There's an interesting section of the RAA, it's Section 3.7, and Section 3.7.3 says, "Registrars shall not represent to any actual or potential registered name holder that the registrar enjoys access to a registry for which the registrar is accredited but is superior to any of that of others."

And I was thinking okay here is something very, very similar. You don't see registrars claiming move your names to us, you know, VeriSign likes us better or Paul's organization - I'll pick on Paul - PIR takes our calls where they don't listen to our competitors.

You know, so here's a - I think a related but similar in construction problem which is that you can say you cannot represent to registrants that you are something that you are not.

And, you know, I think that Michele and I are saying the same thing. The mechanism of how we get that language in there I think is definitely an open question of whether that's something that comes through in this next wave or maybe it's something that registrars just, you know, we take it up with the stakeholder group and we voluntarily ask to include it in there. I mean, registrars can amend this agreement too.

So, you know, I think it can be done with a very simple statement and then that will give - it won't stop these people from doing it but it will give compliance the ability to take action.

Michele Neylon: Is it appropriate to applaud him?

Mikey O'Connor: Sure.

Michele Neylon: I've only got one hand free so I'm applauding you here, James, or trying to.

Mikey O'Connor: I'm going to pull that idea - actually out one more layer because that really gets us to - oh come on. I'm still learning this tool, sorry. You know, we've been saying next step one is PDP; we're not terribly keen on that.

We're warming up a fair amount to the notion of another - putting it into another PDP. And then at sort of that same level is the possibility of maybe the registrars simply request that change to the RAA.

This is feeling pretty good actually. I think we're doing fine. It's about four minutes until the end of the call. I think this is a good spot to stop. And I will sort of hammer on these notes and tidy things up a little bit. They're always a little sloppy when they're on the call.

So let me just take a look at the chat. Transfer PDPs - oh that's an interesting idea. Stick that in...

James Bladel: Yeah, sorry just wanted to point out that there are some transfer PDPs that haven't started yet so it might be possible to yet include this. Although that would still push it off to, you know, we'd still be looking at it this time next year.

Mikey O'Connor: Yeah I, you know, I myself am not terribly taken with that just because of the time delay but...

James Bladel: Yeah, right.

Mikey O'Connor: Okay dokey. Yeah and IRTP-E and J and X and XX and oh God. I think that's - let's call it a day. I think we're starting to see the themes of our thoughts emerge. Let me sort of shape this into something a little bit easier to follow

than the mine map. And I'll push it off to the list and we'll pick it up again next time.

Let's see have we got any more agenda items? I guess the only other is confirming next meeting time; same time, same channel. It sounds like a good plan to me. I think we'll probably be able to meet maybe two or three more times and basically be ready to go at the end of the month so I think we're nicely on target and should be able to get across the finish line just fine.

So, Marika, you get the last word.

Marika Konings: Yeah, this is Marika. Just an advance warning that I think on the 1st of March we're having our policy update Webinar that would conflict with this time so if we're needing more calls than that for that week we might need to look for an alternative.

Mikey O'Connor: Oh that's a good motive to try and wrap this up before then. So we have two calls between then and now right?

Marika Konings: Right.

Mikey O'Connor: Well so why don't we try to get a rough draft out of the next call and a final draft out of the call after that and then we'll call it quits. That's a good target.

Okay dokey it's 30 minutes after the hour by my clock so we'll see you in a week. Thanks all for joining.

James Bladel: Thanks Mikey.

Michele Neylon: Thanks Mikey.

Marika Konings: Thanks.

END