

Thick WHOIS PDP DT Meeting

TRANSCRIPTION

Monday 08 October 2012 at 1800 UTC

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<http://audio.icann.org/gnso/gnso-thick-whois-20121008-en.mp3>

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

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Attendees

Alan Greenberg - At-Large
Carolyn Hoover - RySG
Susan Kawaguchi - CBUC
Mikey O'Connor - ISPCP
Jonathan Tenenbaum - RrSG
Steve Metalitz
Evan Leibovitch - At-Large

ICANN Staff

Marika Konings
Barbara Roseman
Gisella Gruber
Julia Charvolen

Apology:

Susan Prosser
Carlton Samuels

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

Gisella Gruber: Thank you very much (Kelly). Good morning, good afternoon, good evening to everyone. On today's Thick WHOIS PDP Drafting Team call on Monday the 8th of October we have Mikey O'Connor, Carolyn Hoover, Steve Metalitz.

We also have Jonathan Tennebaum who is currently only on the Adobe Connect room. We'll let you know as soon as he's joined the call. From Staff we have Marika Konings, Barbara Roseman, (Julia Chavolin) and myself, Gisella Gruber.

Apologies noted today from Susan Prosser. And if I could also please just remind everyone to state their names when speaking for transcript purposes. Thank you. Over to you, Mikey.

Mikey O'Connor: Thanks Gisella and thanks for kicking off this call in your current fragile condition. I hope you're health improves before you have to travel to Toronto.

We - this is an extraordinary call because we just ran out of time on the last official call. We really only have one issue to get through on this, and this is language that Keith Drazek introduced and we discussed a little bit on the last call, but we just ran out of time.

And so I went ahead and took a swing at redrafting the language to kind of address the issues that I heard during the conversation, and it's in front of you.

Hopefully you can read it. It's the part that's highlighted in yellow. And the issue is whether to include this or not in the charter. I'll just read the paragraph for the transcript so that people who want to listen to this later can get filled in.

It's pretty short. The question is whether or not to add a clause in the part of the charter that's talking about what happens if the PDP reaches consensus on a recommendation that Thick WHOIS should be required for all gTLDs.

And in that case the PDP Working Group is also expected to consider some things like cost implications, guidelines as to how to conduct a transition, special provisions or exemptions, et cetera.

And the one that's remaining to be discussed reads like this. It says, "Whether existing contract terms between Registrars and Registrants are parenthetically registration agreements, which include consensus policies by reference are sufficient to permit the transfer of Registrant data to the Registry in connection with a transition from thin to thick WHOIS.

If not what are the potential issues and suggested ways to address them?" That differs just a little bit from the language that Keith submitted, but I circulated this to the list and that's the way the draft stands right now. Marika go ahead.

Marika Konings: Yes this is Marika. Unfortunately I had to miss, you know, the last part of the last call so maybe this was already discussed. But this to me really sounds like an implementation discussion.

I think if you look at some of the other PDPs that we've conducted when it comes to, you know, how contract language needs to be revised or what needs to be, you know, added to make sure the recommendations work, I think usually that's something that's actually done as part of the implementation discussion where we also have, you know, our legal team looking at that because I don't necessarily know if, you know, a Working Group would have the expertise to advise on.

I'm sure we'll have a lot of lawyers on this Working Group so maybe I shouldn't say that but, you know, specifically looking at how, you know, ICANN contracts need to be revised.

So I'm not really sure how it fits with the Drafting Team or the charter itself, and whether that's more something that would - could be covered if there's any specific guidance or recommendations to a Working Group who want to provide under the, you know, the one above guidelines as to how to conduct such a transition, which might also look at indeed are there certain parts of the agreement that need to be looked at or revised.

But, you know, that's just from - it's our perspective having dealt with other PDPs where normally this kind of discussion is more part of the implementation, although of course nothing prevents a Working Group from providing guidance or, you know, notes on implementation discussions.

And I think as some of you may be aware as well, in the new PDP there's also the possibility for a Working Group or the Council to form an implementation review team that then works together and in parallel with - or together with Staff to look at, you know, making sure that the recommendations are implemented as intended and that Staff also has a soundboard to go back to and say, "Well, you know, looking at the recommendations this is what we think you meant.

You know, do we indeed tick all the boxes? If so yes let's go ahead and if not, you know, can we just discuss what you really meant with this recommendation?" So that's just, you know, from my perspective my two cents.

Mikey O'Connor: I think that's really helpful and I think that that summarizes one side of the argument that we had right at the end of the call. You know, there was a pretty good group of folks who essentially said exactly the same thing Marika that, you know, this doesn't need to be in, et cetera, et cetera.

I was sort of hoping to stall long enough so that Keith would get here or Avri, since they were the ones who were sort of on the other side of that argument. But I'll go to Jonathan first and then I'll kind of fake my way through the other side of the argument if they haven't joined by now. Jonathan, go ahead.

Jonathan Tennebaum: Yes thanks Mikey. This is Jonathan obviously and I'll talk really slow if that helps to maybe get these guys on the call in time. But yes - no I guess my whole thing and, you know, I was kind of, you know, my concern was just, you know, if we were going to send this along without at least just discussing a little bit.

And maybe this is part of me just being a little inexperienced and not understanding exactly what our role is. I mean, I think that, you know, there's no doubt that you could highlight a number of things I think that could be, you know, possible concerns with respect to the implementation and, you know, to some of the stuff that Marika was just talking about.

You know, the fact that this is in a sense somewhat of an implementation issue, I don't know if it's our responsibility to highlight some of those things as issues without suggesting a solution.

I know that from a Registrar standpoint, I mean, you know, I think that, you know, and not to speak out of school with respect to the other Registrars, but I would think that, you know, the ones that, you know, have been through some of these processes before and, you know, would give themselves somewhat of a, you know, somewhat of some wiggle room with respect to updating their terms and conditions and those kinds of things.

I mean, you know, we have that kind of liberty as needed especially when you talk about changes coming from, you know, as far up as the ICANN level in order to comply with, you know, new ICANN rules and regs and what have you.

So, you know, most of the Registrars I would think would be suited to be able to deal with the issue. I guess it was just a question as to whether or not there would be an issue in the first place and if it's our responsibility to highlight the fact that there is.

I mean, I think there's no question. It's something worth - that should be thought about and discussed, you know, on a - at least on a Registrar level as this comes along.

And so I just didn't know what our role was in the group. I mean, I'd be fine either included or not included depending on what our responsibility is to highlight these kind of issues.

And I guess - and see, I gave you a really, really long comment and to not hold the call up...

Mikey O'Connor: You did great.

Jonathan Tennebaum: And the short version is just, you know, I guess I wasn't 100% sure what our role is, and if we're supposed to highlight these things I think it is an issue.

But if not or without being able to suggest some kind of a solution or something, you know, I didn't know what we were supposed to be doing here. So it was just, you know, my 2 cents.

Mikey O'Connor: You did great Jonathan. But dang we still don't have either Avri or Keith on, so let me kind of dredge up what I think the other side of this argument is. Normally I think this would be considered pretty much a purely implementation issue.

I think the concern that Keith is raising is this is a fairly extraordinary circumstance, and given that maybe we ought to err just a little bit on the side of caution and at least take a look at it as the Working Group.

What I did in rewording it - Keith's original wording was - let me see if I can recreate it. He said, "How existing contract terms between Registrars and Registrants," - I think maybe - well I don't know exactly where that goes.

Barbara Roseman: This is Barbara. If I maybe can...

Mikey O'Connor: Yes. Go ahead Barbara.

Barbara Roseman: So I think Keith's concern was that for those moving from the thin to the thick Registries, that if that was the decision then their - the implications for the registrations that are already involved in those Registries would have significantly more changes than the ones that - than any if the decision was to not make that change.

And so I think he just wanted to get on the table that if the decision were to move forward with making everybody have the thick, that there would be implications for those Registries that currently - for the Registrants that are currently within the thin system.

And I think that Avri's concern is similar in the sense that it means exposing more data for those Registrants.

Mikey O'Connor: Yes, although that I think we have got covered in the...

Barbara Roseman: Yes I do too. I actually don't think this is necessary unless you want to just put in a pointer to like, you know, maybe document whether such concerns exist or catalog them or, you know, something along those - it's certainly not in the scope of the Working Group to settle it, you know.

Mikey O'Connor: Right.

Barbara Roseman: And so I think that's how, you know, that would be my temptation to address it.

Mikey O'Connor: That's a - I'm going to just scribble a note documenting and now I note that Alan's got his hand up. Go ahead Alan.

Alan Greenberg: Yes thank you.

Mikey O'Connor: And then Jonathan can...

Alan Greenberg: I cannot see how we could include something like this in any way which would imply - and Mikey you - both you and I mentioned this last time - imply that we would have to do an exhaustive review of all registration agreements to make sure that none have to be changed.

The reality is in most - in virtually all cases Registrars use the same registration agreement for thick and thin TLDs, and there are presumably relatively few Registrars that only register domains with thin TLDs right now.

So the reality is it's probably not a large problem. I think our responsibility or the Working Group responsibility is going to be to potentially - and I don't know how we phrase it in our charter but let me say the words - to ensure that the Working Group makes recommendations if necessary to ensure that registration agreements are in line.

You know, I think simply signing the RAA forces all Registrars to make sure the registration agreements are in line with ICANN policies. But if we wanted to we could ensure that our recommendations, you know, restate the issue.

I cannot see how we could take on any responsibility or how the Working Group could take on any responsibility which implies verifying that specific registration agreements are compatible as it were. Thank you.

Mikey O'Connor: Yes. I couldn't agree more. I've tried that before. It's - there are too many and there's too much...

Alan Greenberg: Well we couldn't - we probably could not even find all of them including those used by resellers.

Mikey O'Connor: Yes.

Alan Greenberg: We have - ICANN has no definitive list of who the resellers are, and in theory a reseller could have a superset of the agreement used by the accredited Registrar.

Mikey O'Connor: Yes. Right. Jonathan.

Jonathan Tennebaum: Yes, and I would agree with that as well. I think the idea that as a Working Group we would be somehow obligated at this point to collect all of the various services agreements for all the different Registrars, you know, I mean, that just would be a, I mean, you know, an unbelievable burden.

And I do think that, you know, when you look at the RAA it does, you know, it does cover the fact that Registrars have to, you know, have to contract with the Registrants for certain things and I think this would all be covered under that.

I guess the - now so from a legal standpoint and a terms and conditions standpoint I think the, you know, the issues are probably already dealt with to some degree.

I mean, if anything I think it's more of, you know, again the implementation and the logistics involved with going from thin to thick when you have a ton of, you know, a ton of domains that are, you know, that would fall in that bucket to have to, you know, now that's also assuming that the Registrars aren't collecting that kind of information already about - from the Registrants to begin with.

But I think the implementation and the logistics involved are where it could get a little bit tricky especially, you know, speaking on behalf of a, you know, decently sized Registrar, you know, it could be some work depending on, you know, exactly how it shakes out.

But I think when we talk about the idea that we would have to go and take a look at everybody's terms and conditions as to whether or not they're okay for this, I mean, again the, you know, ICANN has its, you know, obligates the Registrars to contract with the Registrants for, you know, a large volume of things and, you know, it does cover changes to, you know, new rules and those kinds of things as well which, you know, I know we include provisions for in our terms and conditions and I would think a lot of the Registrars would do the same.

So yes, I mean, I think for the purposes of the Work Group the idea that we'd have to look at all those Ts and Cs is - would be, you know, would be virtually impossible to do.

So if anything I think just, you know, I don't even know if we need to note it. But - and that goes back to - my original longwinded comment was just that, you know, I wasn't sure what our role was with respect to something like that as to highlighting the fact that it's a concern for the Registrars when they have this obligation to make sure that their, you know, services agreement are, you know, lining up properly and that they can go ahead and they're legally able to move the, you know, do what they need to do on their side in order to move things from thin to thick.

And then I'm not an expert too in some of the, you know, some of the EU privacy laws and some of that stuff too. I know there's been some chatter about that.

But - so I'm not speaking with respect to any of that but I'm just saying as far as us collecting all the - and looking at all the various services agreements I just can't see how we would ever even consider doing something like that.

Mikey O'Connor: Yes. And the privacy stuff is, you know, I don't think anybody's disagreeing that the - we'll have to take a look at some of that but that's up in the body of the charter. Marika and then Alan.

Marika Konings: Yes this is Marika. I'm just wondering if a compromise might be - is, you know, taking out the paragraph that's highlighted in yellow and just adding to the line above that says, "Guidance as to how to conduct such a transition."

And then between brackets we have now time and requirements and we just add there something like, you know, "Potential changes to registration agreements," just so we do make a pointer of it or we note at the same time that it's not, you know, necessarily something the Working Group has to explore in depth.

There might be some guidance that they provide and something they may want to look at if appropriate but it's not, you know, called out as a whole paragraph that indeed suggests that they have to go and look at and dig through these agreements and, you know, have some sense of legal advice on the calls as well to go through this while indeed it's something that might be done as part of the implementation part.

Mikey O'Connor: That sounds like a cool idea. I've got a tick from Jonathan. Alan, go ahead.

Alan Greenberg: Yes, I noticed Steve Metalitz has put in the chat that Registrars will be on the Working Group. There's no need to -- I'm paraphrasing him -- point out that they may have such changes to make.

They'll remember. I had a far more longwinded way of - that I think Marika finessed with the one addition to the parentheses. I was going to say something like a recommendation to say, "Ensure that any recommendations consider the case where Registrars may need to change their registration agreements."

I think Marika's one is far shorter and covers the same - has the same implications. Thank you. If someone cares that wants to see mine instead I could write it up, but I think it's already covered at this point.

Mikey O'Connor: All right. Just for future reference since we may be together for a long time, Steve's last name is Metalitz.

Alan Greenberg: I'm sorry. I say it right sometimes - syllable, you know. I - Steve I do say it right sometimes.

Steve Metalitz: Absolutely. Thank you.

Mikey O'Connor: It sounds like we're sort of honing in on...

Alan Greenberg: This is my second of four conference calls on a vacation day today, and I got 4-1/2 hours' sleep last night so my forgiveness is begged.

Mikey O'Connor: Well we've got at least half the Staff sick on this call so, you know, just all dragging a bit. So what I hear us sort of zeroing in on is deleting this paragraph and adding that caveat to the one immediately before.

And that seems fine to me because it does give the group a little room to maneuver. I think the kind of thing that Keith is looking for is the sort of broad sweeping ones, not the individual.

Certainly we're not going to review all the registration agreements - no way. But, you know, I think it's nice to have some space to identify something that's a puzzler as we go along and say, "Oh good, there's a place to put it."

And, you know, and now we've got a jar that we can, you know, put those notes in and...

Alan Greenberg: Mikey it's Alan. I think the Working Group's responsibility is going to be that if it recommends a thick WHOIS for all Registries, that there be an environment such that that is implementable.

Mikey O'Connor: Right.

Alan Greenberg: So it might - if the language wasn't already there, which I believe it is, it might require a change in the RAA to say, "Registration agreements must be compatible with, you know, WHOIS models."

Mikey O'Connor: Right.

Alan Greenberg: And we'd have to say it to that extent but no more, so I think the parenthetical covers it.

Mikey O'Connor: Yes I do too. All right. Well this is sort of the going once, going twice call and if I don't hear any cries of outrage I'll go ahead and take this out. Carolyn's in.

Sounds like we've got a plan. It's out. And I think with that we're done. I think we've covered everything else on the last call. You stalwarts who came in on this last extraordinary call, you get to be part of it but I don't think we've got any outstanding issues.

If anybody has something that's outstanding this would be the time to bring it up. Otherwise Marika and whatever remaining Staff isn't deathly ill will put the final draft together and forward it to the Council.

Alan Greenberg: Mikey we have 21 GNSO Councilors who also have an obligation to read it with a fine-toothed comb and point out any error or any problems in it.

Mikey O'Connor: Yes. And in this case they get to revise it too. It's not like we're the Working Group.

Alan Greenberg: Or remand it back to us.

Mikey O'Connor: Yes.

Alan Greenberg: I think we've done a pretty good first pass.

Mikey O'Connor: Yes I do too. All right. I didn't, you know, that was enough time to attract any cries of outrage so I think we'll wrap this call up and send poor Gisella off to take better drugs and get well soon as...

Gisella Gruber: Thank you very much Mikey.

Mikey O'Connor: Same for Barbara.

Barbara Roseman: Yes, we'll see you all in Toronto.

Gisella Gruber: And I hope Barbara feels better as well.

Mikey O'Connor: And she's still...

Barbara Roseman: We're all going to feel better. It's going to be a miracle.

Mikey O'Connor: Oh gad. You poor kids. Okay Marika you get the last word.

Marika Konings: Yes this is Marika. I'm not feeling ill yet. I'm knocking on wood here. But just to confirm I'll produce a clean version based on, you know, Mikey if you can send me your last draft and I think there was also a little bit that we synchronized in one other section just to, you know, reflect I think on the deliverables which I already put out before.

And I can circulate that around to the group just, you know, for their information and I'll submit everything then together as well with the draft motion I've prepared to the Council for their consideration. Is that right?

Mikey O'Connor: Perfect. Sounds terrific.

Alan Greenberg: Marika it's Alan. You don't have to worry. Super people can't get sick.

Mikey O'Connor: Yes I'm sorry Marika. You know, brain surgeon, rock star and policy - sorry. No chance to get sick.

Marika Konings: Well that's true. No time that's for sure.

Alan Greenberg: Which of course doesn't explain how Gisella could be sick.

Barbara Roseman: Yes right.

Marika Konings: I know.

Mikey O'Connor: It's true.

Barbara Roseman: All right. Bye you all.

Mikey O'Connor: Take care all.

Marika Konings: Bye.

Alan Greenberg: Okay thanks. Bye.

Mikey O'Connor: Thanks.

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