

**ICANN  
Transcription  
IRTP Part D Working Group meeting  
Monday 10 June 2013 at 15:00 UTC**

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<http://audio.icann.org/gnso/gnso-irtp-d-20130610-en.mp3>

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

Attendees:

James Bladel – RrSG  
Chris Chaplow - CBUC  
Avri Doria – NCSG  
Kristine Dorrain – NAF  
Kevin Erdman – IPC  
Rob Golding - RrSG  
Angie Graves – CBUC  
Alan Greenberg – ALAC  
Volker Greimann – RrSG  
Barbara Knight - RySG  
Bob Mountain – RySG  
Mikey O'Connor – ISPCP  
Jill Titzer – RrSG  
Graeme Bunton - RrSG

Apologies:

Bartlett Morgan – NCUC  
Paul Diaz - RySG  
Holly Raiche – ALAC  
Michele Neylon - RrSG

ICANN staff:

Marika Konings  
Lars Hoffman  
Julia Charvolen

Coordinator: 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.

Julia Charvolen: Thank you. Good morning, good afternoon, good evening. Welcome to the IRTP D Working Group call on Monday, 10th of June 2013. On the call today we have James Bladel, Rob Golding, Angie Graves, Alan Greenberg, Barbara Knight, Bob Mountain, Mikey O'Connor, Jill Titzer, Graeme Bunton.

We have apologies from Holly Raiche and Bartlett Morgan, Avri Doria and Michele Neylon. And from Staff we have Lars Hoffman and Marika Konings who will be joining later and myself, Julia Charvolen.

May I remind all participants to please state your names before speaking for transcription purposes? Thank you very much and over to you.

James Bladel: Thank you Julia and welcome everyone to IRTP D PDP Working Group call for June 10. As per our normal procedures does anyone have any updates or notifications per their Statement of Interest?

If so, please raise your hand in the Adobe room or interrupt me on the phone. Okay, seeing none there do we have any comments on the draft agenda that was circulated to the mailing list by Lars and appears in the right hand column of the Adobe chat room?

No comments to the agenda. We'll consider that adopted. Thanks. Okay welcome everybody and when we last left our heroes we were discussing or we had actually finished the review of the public comments received.

And I think that the good news is - and I don't want to get too far ahead of us, but I wanted to cautiously say the good news is I think we've identified some low hanging fruit in our charter questions as we get towards the bottom of that list.

But without spoiling the ending let's I think take a look at our agenda for today. What we wanted to get through was run through the proposed

responses for each of the questions, make sure that everyone agrees with the Working Group response.

This should not take I don't believe the entire call, and then we can move on to taking a look at our work plan. And I would ask Lars or Julia or Mikey or anyone who has that work plan handy if they can dust that off and get that one ready for the second half of the call so that we can take a look and make sure that we're on track for what we wanted to discuss in Durban.

And then that will be shoehorned into Agenda Item Number 4 where we discuss - kind of finalize our plans for the meeting in Durban and possibly even start to work on a tentative agenda, as well as understand what kind of attendance we can expect.

So if there's any - if there are no comments or concerns we'll just dive in to Agenda Item Number 2. You can see that we have the comments review tool on the screen here.

We're looking now at the Working Group Response column, which is the - I guess it'd be the fourth column over but it's the second large column from the left.

And this is where we try to encapsulate what the end result of our discussions were in response to each comment. So real quickly here it looks like for Comment Number 1 the BC is just reiterating the charter question, Charter Question A, in the affirmative and saying that, "Yes, reporting requirements should be standardized and required."

I don't think that there's really a whole lot more to capture here. The Registries' comments is a little more involved and, you know, we can walk through it here.

But I think essentially what we - where we ended up was that Registries know that they would bear a large portion of the burden of the implications of this charter question, that they support standardized reporting requirements, that they believe it's important to standardize the case data and with the introduction of new gTLDs the number of Registries will increase dramatically.

I think that that is an undercurrent for all of our discussions. I think one important element here is that the Registries advocate the idea that the - their level of dispute could be removed entirely and that all TDRPs would be initiated or handled or heard at the second level dispute provider level, and I think that's something that is worth considering.

The next bullet point notes that this is a problem, that they acknowledge that non-standardized data and reporting requirements are leaving gaps in our knowledge and that finally they - we look at the bigger issue of is the TDRP doing what it was intended to do?

Is it meeting its objectives? Is it serving its purpose? Is it solving the problem that it was set up to solve? And I think we have identified that this very small number indicates that the problem is being addressed more commonly and more rapidly in other areas.

And there at the bottom are our key discussion points. Removing the Registry layer from the process, impacting with new gTLDs and revisiting the whole - taking a holistic view of the TDRP itself.

So any other thoughts or things that folks want to comment on Charter Question A? I want to emphasize that while we received comments from the BC and the Registries, there are a number of other stakeholders including all the participants on this call and their various - I don't want to say constituencies or Stakeholder Groups.

And we want to make sure that we're getting everyone a chance to weigh in on these things. Bob?

Bob Mountain: Yes thanks James. This is Bob. To the point of standardized reporting does there - is the reporting today gathered by ICANN Staff and standardized, or is it today essentially reported out by the parties that are involved with that particular incident?

And, you know, if the latter, you know, I could understand the need for standardization if that's not currently format. I'm just wondering where the information is being kind of aggregated in it currently so...

James Bladel: It's a good point Bob and I think I'll look to Staff to answer it more definitively. But my feeling is that because there is no current reporting requirement that that information is either being retained by the Registries or the parties that are involved and, you know, any kind of examination of the TDRP requires a little bit of a fact finding mission.

But I don't know if Lars or Marika or any of the Registry reps if we have any on the call would like to weigh in on that. Is there any centralized place where this information is housed? I don't see anyone jumping to take that question Bob.

Bob Mountain: Yes, story of my life.

James Bladel: I think that, you know, Registries have reporting requirements. I feel fairly confident in saying that I don't believe this is one of them. But, you know, I haven't looked at a Registry report to the very end for quite a while.

So I think this is just something that would be added. If we were to accept this part of the - of our charter I think that the, you know, the way it would show up, it would be an add-on to that standard Registry report that's required on a monthly basis.

That's just - I don't want to get too far ahead of it but I think that's where it would show up.

Bob Mountain: This is Bob. Yes I think Kristine had a comment in the chat. But yes it's - if it's not currently being aggregated and it's distributed across the, you know, all the Registries that are involved, then that's a fair point.

I mean, if we now have hundreds and hundreds of new Registries, then this information would be pretty tough to gather any real conclusions from it. If it's not standardized and it's distributed orders of magnitude more broadly than it currently is.

So I think that the Registry constituency - in my opinion that's a very fair point.

James Bladel: Yes I think so and I think right now it's, you know, probably some of the Registries would look at it and say, "Well what data because I've never had a TDRP?"

So I think we're really just talking about those few cases. Where are they going? And I think this - I think we can even expand this question a little bit here because - well, I mean, it does indicate for example that it's for Registries and dispute providers.

And I don't think the dispute providers have any reporting requirements Bob, so I think this would be a brand new change for them. Yes and Kristine is acknowledging that that is in fact the case.

So I think what we're getting at is that Registries have reporting requirements currently, but this is not among them and dispute providers have no reporting requirements.

So if we were to recommend that this be the case, then that would be a change to the Registry obligations and it would be a new obligation for dispute providers. Does that address your question Bob?

Yes, got a green checkmark. Awesome. The two big questions I think that are encapsulated in the Registry report, and we can have a discussion on this now or we can make a note, you know, if we could ask Staff to make a note of the things that we still need to have more extensive deliberations on.

But the two I think that are - that really jump out at me from this comment are, one, being the idea that the Registries will be removed entirely from this function and it would be the exclusive purview of the second level dispute providers; and two, this more holistic approach to TDRP.

And I think that is a bigger question, which has kind of been touched on a couple of times during our work which is, you know, do we want to tweak this or do we want to take more of an end-to-end look at what's going on?

You know, I'm fine either way but I think that we can capture those. We can either get into them now or we can circle back, and that could be part of our broader discussions in Durban where we have more community in the room and available to weigh in on these things.

Bob? Oops, there goes the hand. I guess that was an old hand. Okay, any other thoughts or questions or comments on Item Number 2 or Charter Question A?

Where I think we're starting to come in for a landing is a group that yes, you know, we shouldn't have to hunt around for this data. It should be collected somewhere, you know, as part of the Registry requirements or dispute level report.

And I think that there's a question - a bigger question of, you know, do we still want to keep that Registry level? And there's a hand again Bob.

Bob Mountain: Yes. I guess this is my day to be a pain in the neck. I guess the only other consideration then if we're going to request changes to the TDRP, should we - oh sorry.

For the record this is Bob. Do we - any changes should be commensurate I think on an approved level of usage right? So it seems to me the data would be looked at is that the level of usage is extremely - is quite low.

I would think any recommendations we would make on the changes would, you know, reflect that. If we are going to make recommendations on changes then there would not be a lot of heavy lifting involved for the parties, because we - why ask for a lot of work on something that's really not being utilized to a high degree, again my assumption being that it's not and we expect it to continue on that trend.

So that would be my only comment on the - on making any changes and requesting people to do more work.

James Bladel: Yes it's a good point. You know, not creating a - I think if I understand you're not creating wholesale changes or new burdens for something that's, you know, is - right now is a black swan type of event and isn't happening all that commonly.

But I think that also gets to - and not to jump too far ahead but Charter Question C, which talks about opening this up to the Registrants themselves directly.

Now you combine some of those thoughts of Charter Question C about opening this up to Registrants with the concept of just eliminating the



Registries altogether, then that makes it look a lot more like a UDRP and then does that make it more common?

I don't know but it's something we could think about. I saw a hand go up I think in the Staff box. Is it Lars?

Lars Hoffman: Yes James, this is Lars. It was me. But you beat me to it. It was that point to Charter Question C in this context.

James Bladel: Okay. Sorry. Well I guess we must not be too far off if we're thinking the same thing at the same time, so that's good. Any other thoughts here on where we have landed with Charter Question A?

We can move on to Charter Question B. Charter Question B again touches on this idea of untangling multiple transfers or what we've - do we want to formalize our term that we've identified here what - we call it Registrar hopping or domain name laundering or, you know, other types of descriptors that we've used to identify this practice of taking a hijacked name or a name that was transferred in an author's way, and then having a large number of transfers in a short timeframe for the sole purpose of confusing the original authorized Registrant?

I think that's - I don't have the transcript in front of me but, you know, I think that probably serves as the working definition until we hash that out a little bit better.

But, you know, as we noted here I think the BC indicates that this is a problem. This is real and I think that not only is it an actual practice that we have seen occur but it's the - we should acknowledge that the folks doing this are very much aware of which Registrars are going to be the least cooperative in untangling that chain of accountability, because they know exactly which ones to pick on.

So here's the - going into the Registry response now. Oh I'm sorry. We're still unpacking the BC responses. Continue on to the next page. So the - it is a problem.

The - they referred to it as Registrar hopping or domain name laundering, which we mentioned before. The BC doesn't necessarily propose any specific remedies aside from that definition.

There is a provision that allows Registrars to reject transfer requests within 60 days of a previous transfer request. However we should note that that's optional.

We discussed previous Working Groups, the idea that that could be made mandatory and that was - there was not consensus support for that idea. So this is - in my opinion this is not something that is on the table for our Working Group, but certainly that's a matter of process.

And I think a lot of folks can feel free to weigh in on that. There is also an issue with a claw back where a domain name was hijacked and then it was sold legitimately, which I would guess that would put legitimately in quotes there.

But the original owner then would file a TDRP or attempt to work with the Registrar to get the domain name back after that transaction had occurred. So there should be some protections for the good faith purchaser.

And then I'm trying to unpack this last bullet point here, add to the provision that anyone initiating a TDRP can contact any Registrar within the domain name that's been registered in the past six months and add a lock to the domain name as soon as a TDRP is initiated.

I'm not sure about that one. That one I think came through a number of our discussions, and I'm not really sure where we landed on that. But I think that the - to sum up the BC's comment this is a problem.

There is a best practice to block transfers within 60 days. We don't want to create the situation where there's - the harm is multiplied not only to the person who had their domain name taken away from them, but also the people who were - deceptively believe that they were purchasing a domain name and found out later that that transaction was reversed.

I saw a hand go up there. I thought it was Mikey but - and now I got Alan as well. Mikey's hand went down so I'll go to Alan and then Mikey if you want to jump in we can do...

Alan Greenberg: Yes. It's Alan. Thank you. Question about the - someone who purchases a name, a stolen - a hijacked name in good faith. In most other parts of the economy that I'm aware of, if you accept a counterfeit bill by mistake you lose the money.

If you buy something else that's stolen I think you have full liability for it. You lose it and you don't have any recourse. Am I mistaken? Are we trying to create a right here which doesn't exist in most any other transactions around?

James Bladel: Yes it's a good point Alan and I see Chris Chaplow wants to weigh in. I'll put myself in the bottom of the queue and go to Chris.

Chris Chaplow: Thank you. I will agree it's a good point Alan. And I think where at least I was coming from was a position of really not knowing what the situation was, and that's why I was sort of thinking of education or working it out.

And we heard a couple of quick legal opinions but I think it's a - let's be polite and say I think it's a messy area to say the least. And whether it's the role of this Working Group or not or ICANN, anything that can be shed to clarify this

situation I think is for the benefit of every - anybody because when it happens it's a mess. You don't know where to turn do you? Thank you.

James Bladel: Thanks Chris. And I see a nice queue forming here. I would actually like to weigh in as a Registrar here and say I don't think that it is appropriate for this Working Group to add protections for folks who are I want to say defrauded by this practice - defrauded yes by this practice and for a couple of reasons.

One, as Alan pointed out, you know, it would be a very novel area in terms of - I know it's true for the U.S. and some other countries. You know, if you buy something that's stolen you don't - consider yourself lucky you're not criminally responsible and that you only just lost money.

I think that there's another problem which is that, you know, you could create a problem where the hijacker is really just the accessory to the real crime, which is now saying, "I bought this domain name."

You know, a second bad actor comes in and says, "Well I bought this stolen domain name for \$10 billion and I want the Registry or somebody to make me whole on this," you know, this fake transaction that occurred that they now are demanding protection from.

And more importantly I think that, you know, and I think Chris touched on this is that there's no analog in the domain name space to a title search or a, you know, whatever the investigation is when you buy a house to ensure that - or any other piece of property to ensure that there's continuity of ownership and all the paperwork is in order through the history of the ownership.

So I think, you know, we should probably not wade into this because I think that we could actually make it a whole lot worse. But that's just me speaking as a Registrar. I'll go back to the queue now and go to Bob.

Bob Mountain: Yes this is Bob. You know, speaking from the aftermarket perspective I would have to agree with James. The, you know, we should as a Working Group put together whatever best practices or, you know, policies we can to prevent a hijack.

But once it's hijacked it's a law enforcement issue really. It's a legal litigation. It's a mess. But someone has to decide or decide to pursue, you know, the, you know, recapturing that name and then someone has to decide, you know, where it ultimately belongs.

And I just don't know if policy - once that hijacking has occurred to what extent the policy plays a role. But it's - it is very messy, very complicated and we generally, you know, always defer to law enforcement in that case.

James Bladel: Yes good points Bob. The - it's one of those things where you could wade in with the best of intentions and really get our hands bitten off pretty quickly. So Alan you're up.

Alan Greenberg: Yes thank you. I think this is an area where we need a little bit of legal opinion, and I suspect it can come from someone who's gone to law school without a degree.

I think we're in an area where if the fraud is large enough it becomes a law enforcement issue. If it's small it's something that you can typically in many jurisdictions sue the person claiming they knew it was, you know, they didn't have proper title to the goods.

I mean, you know, most domains are not in the area of what a house costs and that's the reason why there are, you know, there's a long history going back centuries of titles on property and, you know, on physical property and land.

And I don't think we're anywhere near the same area such as that. I mean, if you buy a television set off the back of a truck or you buy, you know, a painting from someone, typically it's your responsibility to try to make sure it's good and if you can prove fraud afterwards you probably have a civil suit.

Perhaps if it's widespread enough there may be a law enforcement issue. But I think that's the general world and I don't think we want to create rights that are over and above that.

And, you know, so if the Registrar knowingly, you know, was fencing the domain I guess is the right expression, sure you can sue them. But I'm not sure anything more than that would be appropriate.

But I want to check with someone that in at least some sample jurisdictions what we're talking about is indeed correct, because I'm speaking off the top without any real knowledge.

James Bladel: Okay thanks Alan. I wonder if Staff can help us capture that request. I'm not sure that we can run off and execute on it right now, but at least capture the idea that we would ping various folks.

And it looks like I got a green checkmark. Okay so we'll circle back on that Alan and maybe we'll leverage, you know, if there's two things that ICANN is not short of it's lawyers and various jurisdictional - samples of jurisdictions.

So I think that we should be able to come up with something like that on an ad hoc basis without turning this into a big, you know, white paper or something like that. Chris is up next.

Chris Chaplow: Yes so I would second that. That'd be very interesting to have some ICANN legal opinion on that. And also because the couple of cases I've been involved in - the Registrant without, you know, even knowing ICANN as we do or as I do, you look at an aftermarket Web site.

There's no warnings on there. I mean, it might be in the detailed terms and conditions but there's no warnings of any sort, "Be careful. Check the history of these domain names.

Check that they're all right," because if it's - what's that phrase, buyer beware, caveat emptor is it? And that's the situation and so maybe we might come to mention or recommend some sort of education or some sort of warning rather than create rights as such.

It's no good to go that far but I think there is something there that the average person would - either gets themselves into a problem. It's not a huge problem.

It's, you know, a few hundred dollars worth of problem. And then feels a bit - well then everyone abandons us and says, "Oh no, sorry. It's buyer's problem and there's no title to check." So yes, let's see what comes back from that. Thanks.

James Bladel: Thanks Chris. And I think I could see where Bob is going to go with this but I think, you know, that's really part of the value proposition that a lot of aftermarket networks offer is that, "Hey, we are a safe marketplace.

You can trust us to at least take some basic steps to ensure that our inventory is -- and I'm using air quotes over here -- clean." But Bob go ahead.

Bob Mountain: Yes this is Bob. No I think that's - I think, you know, a vast majority of aftermarket transactions do occur properly, you know, and the owners end up with the domains and everyone's happy at the end of the day.

We're - I think we're talking about a very small minority of the cases. So our, you know, I think the messaging certainly from our standpoint is, you know,

appropriate and that it goes into the terms and conditions and that's where it belongs.

I, you know, I think we just need to be careful that the messaging is appropriate for, you know, for what we're talking about here, which is a very small minority.

I mean, I guess that said it's, you know, it's always important though to just be vigilant about this and, you know, we - obviously we do I think all the players do everything they can to cooperate with the Registrars to make sure that the, you know, doing as much as possible to just prevent these sort of bad actors.

But, you know, that, you know, we are fully aware that, you know, these things are just bad for the industry and, you know, to the extent we can prevent them I think we, you know, the whole aftermarket and all the Registrar ecosystem just works better. So that's, you know, from an aftermarket standpoint that's where we are.

James Bladel: Thanks Bob. Marika.

Marika Konings: Hi this is Marika.

James Bladel: Marika? Oh there you are.

Marika Konings: Can you hear me? Yes I'm trying to speak via my computer and it seems to be working. So I'm just trying to get a clarification on whether there's a specific question you would like us to take back to ICANN Legal, because it's not really clear to me what you would like them to comment on or something that the group will look into as a whole and it's not a question for ICANN Legal.



James Bladel: So if I could state the question and I'm looking for Alan and others to correct me if I'm wrong, but we want to confirm - so our understanding is in the U.S. in non-domain name legal circles that the buyer of property that was acquired illegitimately is not protected.

They are - they're - any money that they have lost in that transaction is considered part of the crime, part of the harm, part of the fraud -- whatever -- and that they are not protected or re-compensated.

And I think that we're just looking for a confirmation that that is correct in US and probably Canadian and I want to say, you know, common and civil law and then that is true of other jurisdictions as well. Alan is that getting close to what you were trying to capture?

Alan Greenberg: Yes I think so. I'm not even sure it's a legal question. I think it's a consumer protection question.

And of course the caveat is that they're not protected unless the seller is providing some level of protection. And I think Bob or someone alluded to that, you know, or maybe you did.

You know, if they're a reputable organization that says we stand behind what we're doing then they're protected. But they're protected contractually, not by law or not by force. And we are equivalent, you know, roughly equivalent to the law in this context since we're governing the process.

So guess we're to look for confirmation that we're not going off on a tangent and we're doing things in accordance with general business principles.

So I'm not really sure it's a legal but, you know, lawyers may see gee, you know, we haven't researched any of this. We can go do it and spend \$10,000 doing the research. But I - so I'm not quite sure it's a legal issue but I think we need...

James Bladel: Okay.

Alan Greenberg: ...someone nodding their head and saying yes they're talking something that's rational.

James Bladel: Does that help Marika? Does that help zero in on what we're looking for? I think Alan's point about this not really being a legal issue but more of a norm or a standard in consumer protection certainly.

Alan Greenberg: I mean if our lawyers know the answer fine. But I wouldn't want them taking this as a question they have to go research if they're not the right ones.

James Bladel: Right, I agree...

Marika Konings: This is Marika. That's exactly my point. It - you can definitely ask but I suspect that it would require them to ask all the lawyers to investigate them.

But so if that's not the case we can just check and see if indeed they know the answer off the top of their head. And if not, you know, we can let you know that they don't know and then (group) can decide maybe how to proceed.

James Bladel: Well let's rather than kicking off ICANN resources here folks which I think will make this a much bigger issue and slow things down, make it more complicated why don't we just each of us that comes to this either, you know, from a background of commercial or legal or government or whatever that maybe we all just kind of as our homework go back and ask our own internal resources or whatever and just bring that informally back to the list or back to the next call.

If we can get enough people doing that and with the strong encouragement on folks who are jurisdictions outside the US in Canada and I think that's probably sufficient for what we're after. Alan your thoughts?

Alan Greenberg: Yes thanks James. You said pretty much what I was going to say. I'll say it with even less work.

If no one on this call can think of an example where it is not either the seller warrants or the buyer beware and the only recourse is a small claims court or a large claims court or whatever, if none of us can think of a case where we, you know, where anything else applies I think we've pretty well defined it.

James Bladel: Thanks. And I would say let's just give it folks, you know, until the next call to see if...

Alan Greenberg: Yes.

James Bladel: ...they can come up with any examples of that. So okay. Okay the only other salient point that I wanted to highlight here is this idea that initiating a TDRP can contact any registrar that sponsored the domain name within the past six months or some similar timeframe.

I wanted to be a little cautious about this because I haven't fully thought it through and I think that other folks might also have some hesitation before putting something like that down on paper.

You know, I think that it's very difficult, you know, well let's say it's a fuzzy logic problem to say when laundering issues started and when it stopped.

I we could say a certain number of domains within a certain timeframe, I'm sorry a certain number of transfers within a certain timeframe, a certain number of registrar (hoffs).

But I think that you know, we get into a - kind of a dangerous area here when we start to try to put boundaries on these things. And I know that they're necessary but I think that it is challenging.

We've had hijackers age domain names for, you know, many months if not a year before making their move.

So, you know, it's a really - I don't know. I think that, you know, it's one of those things where folks I know it when I see it but, you know, it's hard to quantify it. Mikey?

Mikey O'Connor: Thanks James. It's Mikey. If you roll down to the discussion points that we wrote, I don't know if it was synced or not but if you go to the next page where we summarize this is we - this - a discussion point and the point we wanted to discuss was all registrars that were in a dispute transfer chain would be required to provide information relevant to the case which is a little bit more sharper focused than some of the comments up above.

That may be a little bit easier to support. But we've definitely got it in the needs more conversation pile.

James Bladel: Thanks Mikey. And I always thought that the key discussions were just for the registry comment but I see now that they are for both. So I appreciate you doing that.

And I agree with you that that point probably encapsulates and supersedes the other one which in a much better way.

So let's just continue on here with the registry comments. We see here that TDRP should lock the domain name against further transfers until a dispute is resolved.

I think that that was something that some of us were actually perhaps surprised that it wasn't already a requirement.

This is the point that Mikey threw our attention to here is that the TDPR should be expanded so all registrars who are involved in the dispute chain would be required to provide information to help unravel the case. And that would essentially create a paper trail so that the laundering of the highjack, the registration would be much more difficult.

And I think that's when we go down to the next one as well, any registrar that was part of that chain would be compelled to make that data available.

And then where it says here the last point about the group needs to define how many transfers are too many in what period of time see that's again I think that's going into a bit of a dangerous area.

I mean I'm not against that. I certainly would welcome any efforts to put a reasonable boundary around that. But I think just by seeing how crafty the bad actors can be and then I think the aftermarket folks would also point out that we, you know, there could be legitimate transactions on a very popular or name could probably happen within side of that.

Now I think that, you know, if there was such a thing as someone who was flipping domain names or something that would be possible.

So I think that we can see both sides of that, the bad guys acting outside of those boundaries, the good guys acting inside of those boundaries. So I think it's something that we would need to be careful about. But we - but I would certainly welcome any efforts to do that succinctly.

Just revisiting then the key discussions points on this charter question we want to talk about locking. We want to talk about lock intervals, claw back, any provision that's initiating within six months.

I think we kind of weighing in a little more in favor of the next bullet point which is just requiring all registrars to provide information if they were involved in a chain of transfers and then defining that boundary.

So those are the key discussion points. Let's move to the queue. I have Alan and the Bob. Alan go ahead.

Alan Greenberg: Yes thank you. And in terms of identifying that something is being, you know, transferred too often I can think of way to implement it in some ideal world. I'm not sure there's a practical implementation.

And that is if something is - if the transactions are happening too quickly you don't forbid transactions but you flag it.

And if a domain is flagged in this sense then a registrar has an obligation to, you know, manually process the next transfer just to ensure that things are indeed kosher and that aren't - games aren't being played to the extent that they can find it.

To actually implement something like this of essentially add a flag at the registry level for every domain and keep track cause you - it has to be almost a running total, you know, a running list of the transactions, sounds like it's really impractical to implement.

You know, if these were higher value enough things one could probably do the high value and low enough volume one could probably do it. I don't think there's a practical way that I can think of to do it to catch - there are moderately few things that it might catch. Thank you.

James Bladel: Thanks Alan. And I have a question. I'll put myself in the queue behind Bob. But go ahead Bob, we'll get your question, your statement on there first. But I have a question actually for you so go ahead.

Bob Mountain: Yes thanks James. This is Bob. I'll just piggyback on Alan's point. How do you know? It's almost to me it seems like almost like the credit card (unintelligible) where unusually activity is somewhat subjective but they know it when they see it because they track these things.

So, you know, if you've got frequent transactions that are out of the ordinary that they get flagged and, you know, appropriate action gets taken.

So I think to Alan's point it's subjective and how do you actually implement those rules? I guess it goes back to what is normal? Is there a normal, statistically a normal range for number of domain transfers and a point in which, you know, behind that it's indicative of a fraud situation. So that comes back to making the decision based on data.

And I think our - right the registrars not going to know necessarily if it's getting bounced around from registrar to registrar, you know, they're not going to necessarily know that there's unusual activity. They're just going to see it moving in or out of their credits.

The registry would almost be the one where they would see it hopping around right, unless I'm mistaken on the way this whole thing works.

And lastly the - is there again to - before you do anything around this are we solving a problem? Is there a problem that's commensurate with the amount of effort it would take to implement something like that?

So at the end of the day is it, you know, does it make sense to invest to solve it or is it not enough of a problem where we really need to dive in? That's the - I guess the ask - the thing I would ask at the end of the day before we do anything. That's all.

James Bladel: Thanks Bob. And I took my hand down because you exactly hit my point is that when a domain name shows up at your door I think the registrar has no way of knowing if that's the first time it's ever been transferred in its whole existence or if it's the second time this week and the registrar has no idea.

So I think anything that would be part of what Alan was recommending would almost have to go up to the registry level just because they have that perspective that registrar lacks. Alan to respond?

Alan Greenberg: Just to be clear, I wasn't recommending. I was hypothesizing that such a thing is possible if there's enough value in it.

I think Bob's example of credit cards is a really good one. To start with they fix the problem by refusing a transaction and then trying to fix it after the fact.

So, you know, at some level they have - they're in enough control that they can do that. It's not clear our registrar could do that. So it would have to be at the registry level.

But credit card companies do look for patterns and they have, you know, the full history of it. You know, a few months ago the price of gas which jumps up and down in Montreal was really good.

So I filled up my car and then I went and filled up my - went to try to fill up my wife's car and they bounced the transaction because two uses in the same gas station of a credit card is the sign of a stolen credit card.

And as soon as they refused it my cell phone rang. You know, so there's enough value in it for them to do these kind of things and apply heuristics to it to decide whether this is proper or improper. It doesn't sound like our problem's large enough to justify that. That's just my take on it and I'm not in the field.



James Bladel: Well thanks Alan. You know, and I think that your last bit there goes to Bob's point about making sure that the harms justify the burdens of any policy changes.

And I think that, you know, there's certainly if a registry for example were to offer this as a courtesy or a service I don't think anyone were to really necessarily object to hey I'm going to send my registrar a note if I feel that a domain name transfer or a series of transfers are suspicious. I don't think anybody has any concerns about that.

I think it's just making it part of a programmatic obligation that where we start to scratch our heads and say what we really solving here?

But so maybe this could be a recommendation that we could capture as a registry best practices. You know, if you see a domain name that you feel is suspicious then, you know, certainly feel like you can reach out to the registrar. So Alan?

Alan Greenberg: Yes. I think we need to be careful about best practices. It's been pointed out in other venues that if you call something a best practice and a registry for instance doesn't do it they have some liability. So I think we need to be careful on nomenclature here.

James Bladel: Okay. Well I think...

Alan Greenberg: I'm passing that on second hand.

James Bladel: No...

Alan Greenberg: ...but I've heard it several times.

James Bladel: That's fine. And I think what we need to, you know, emphasize here is that when we say best practice what we're saying is an optional or, you know, a recommended optional practice or something like that.

Just the idea that because we recognize the fraud landscape and that the universe of bad actors is constantly evolving. And, you know, you always have to stay one step ahead of them.

So okay the queue is clear so let's move to then - I'm just going to stick to the key discussion points. So I think Mikey did an excellent job of kind of capturing those all at once here and I want to make sure we can get through them.

So now we're into Charter Question C of whether this should be opened up to registrants as opposed to registrant contacts registrar and then registrar makes a determination of whether they want to initiate a TDRP.

So the key discussion points here is that there should be some sort of an override mechanism so that if a registrant asks this registrar to initiate it and the registrar declines that the registrant has some other option perhaps that's the bit where we talk about going to the second level.

And then how that interacts or what dependencies there might be with Charter Question A should be discussed.

And then that again is part of the second bullet point if the registrant is not able to get satisfaction from that registrar can they go directly to the second level?

And then final bullet point here the inability of parties other than the registrar to authenticate the registrant is also one of the challenges.

I mean how do we know the person claiming to have been subject to an unauthorized transfer or a victim of hijacked is authorized if we're not involving the registrar.

So I think that is something that would have to be discussed as part of any proposal to open this up to a broader audience is how do we authenticate them? Who can authenticate them?

And certainly that's something -- and I don't want to put words in the mouth of the dispute level providers -- but, you know, certainly they don't want to have folks coming in off the street claiming that they are victims of hijack and then it turns out that they are just another new type of bad actor.

So thoughts or comments on Charter Question C? And I know that we are sort of getting towards the end of our time here.

But I think that this charter question if I could just editorialize here a little bit very much plugs into some of the feedback that we had with Charter Question A about eliminating the registry level and making this a little bit more of a dispute level service similar to I believe we modeled it similar to UDRP.

Bob go ahead?

Bob Mountain Yes thanks James this is Bob. You know, should - do we need to provide, you know, further measures for this policy or based on the level of utilization is it fine right?

If it's - if the amount of utilization is such that it needs enhancement great but if it's just - if the utilization is just isn't that high I question whether we need to, you know, extend it per se extend functionality expand the features right?

That's about my only question. I'm not saying yes or no. But I guess that's just one thing I would ask before we decided whether to pursue it or not.

James Bladel: Yes and that's a good point Bob. And I think that the other - the flipside of that is is it so little utilized because it's too hard to engage?

I mean that might be the other flipside of that is is the bar set too high and that's the reason it's not being used?

I think I know the answer to that question. I think that that's no but that's just me weighing in. (Kristine)?

Kristine Dorrain: Yes this is (Kristine) from NAF. I did want to, you know, basically, you know, comment what you were going to say there too James as far as, you know, the questions and the comments we get are yes I contacted my registrar and they won't do anything. They told me to try UDRP.

And then we tell them but you have to have a trademark. And they're like well I don't have a trademark, you know, and that it's just a domain name and it was stolen, or improperly transferred, or I can't get it transferred or whatever but the registrar won't help.

But I know we've talked a little bit about that. And maybe making a recommendation as to something as far as requiring the registrars to help or whatever it is.

The other thing I wanted to point out is that, you know, and the reason I mostly have these calls as the provider finding out, you know, if there's interest in the community having most of these go to the second level, you know, what's currently the second level provider option which is I think that when the registry handles these disputes they're probably done internally by an internal staff member. And I could be totally wrong on that.

Remember when the providers do it we have internal - we have providers, you know, staffing but then we outsource them to lawyers who have to get paid as part of the process.

And I think one of the reasons why the providers don't see very many TDRP disputes is that it's probably not, you know, worth it to the registrant to pay \$1000 or whatever to have dispute the dispute adjudicated.

The domain names may be not worth that much. It's enough for them to be frustrated but not enough to pay that fee. And, you know, the lawyers are not really, you know, they're making, you know, 600, \$700.

So, you know, it's not like they're getting paid a ton of money. But relative to the process it - there may not be a lot of value there.

I guess that's my only point is, you know, first I think that the - there may be some people that are not getting served because the registers are not following through.

And, you know, the second point I guess is that, you know, as cost effective as the providers try to be and as tight a ship as we try to run it may not be the answer just simply based on the fact that we have to pay outside lawyers to make these decisions and it's not done internally like the registry - like I think the registries do.

James Bladel: Thanks (Kristine). And I think it's always good to have your perspective on these. And I think that you hit a good point which is I think anyone who's ever struggled with whether or not to take up an issue in small claims court would probably have the same issue which is, you know, I lost something. It was only worth \$100. But it's going to cost me \$300 to get it back.

And, you know, they're not happy. They're - but they recognize that the cost doesn't justify the, you know, the initiating the process.

I would also put in that the TDRP in addition to being - having I would say having some cost involved -- I don't want to save too expensive but having some cost involved -- is also slow when, you know, if it is a high value or high traffic domain name it's - the harm can be measured in minutes or hours where a TDRP could take weeks or even a month or two to run through its course.

So I think - and I think we're kind of coming back to now what Bob is saying that, you know, is this such a little used process that it warrants changing in that regard and all the work that would be involved in that?

And I would put another wildcard on to the deck here and say we have a new policy that has not yet been implemented in IRTPC that requires a check of credentials, or authentication, or identity, or whatever when there is a change of registrant function which, you know, it's hard to say how that might impact this problem, how that might even make the TDRP, you know, even rarer. So I think all of those things are definitely some moving parts on that one.

We're getting close to the end of the call. I see Marika is up. And then we'll just take a few announcements here for housekeeping before we adjourn.  
Marika?

Marika Konings: Yes this is Marika. Just in relation to your last point that is also one of the questions we raised in the issue report not whether that, you know, we'll change the use of the TDRP.

But more from the aspect should there also be a district resolution process or should the TDRP be that process that dispute that would occur under that new policy that change of registrant policy.

So I think that aspect probably would need to be looked at from those two perspectives of how not only how we'll possibly change the use of the TDRP

but also can or should the TDRP be used to solve our address conflicts that may arise as a result of that new policy.

James Bladel: Thanks. That's a good point. And then will a certain percentage of them be caught at that level by that new policy.

Certainly that's the intent of that new policy is to frustrate those types of - yes those, you know, types of crimes. I don't know if crimes of the right word bad things.

Okay. So folks we have by my watch we have three minutes left. So I just wanted to jump us to next steps confirm next meeting.

We didn't get too much of a chance to talk about the Durban meeting. So we're going to have to postpone that.

I also wanted to just announce that I will not be available for the call next week. So our co-chair Mikey will be driving the ship next Monday.

And hopefully wrap us through this - these discussions here with any kind of a hopefully much shorter to do list of things that still require further deliberation before we can start getting a picture of what our initial report might look like.

And I think if I recall it's really just one more charter question because as I optimistically said at the beginning of the call Charter Question E and Charter Question F I think we're - we were very confident that as a group that we had some quick - we were quickly arriving at almost a unanimous position I think on those while there still needs to be some details to be worked out. But I think it's really just question A through D that require further discussion.

But again I may be missing something here. So I will say - so before we adjourn Mikey any other thoughts, or comments, or any homework assignments for us on this?

Mikey O'Connor: Thanks James. This is Mikey. I think what we'll do if it's okay with the rest of the folks on the call is we'll finish up that exercise.

That now that we've got the first part of this document filled out we'll go through and sort of highlight this and come up with those key discussion points sort of the way we did on that other call.

One of the reasons James and I wanted to drag you through this at this level of detail is because when we did this round of highlighting and summarizing there were only a couple three people on the call.

And we didn't want these to go by without the rest of you seeing them. So we're pretty close to done with that.

So I think next week's call we'll have a pretty good shot at getting the rest of this summarizing done and be in pretty good shape to sort of take the next step. Thanks James.

James Bladel: Yes thanks Mikey. Yes I think finishing up charter - the discussion on Charter Question D. And then just, you know, confirming that everyone is so comfortable E and F.

And then we can really say that we're getting close to I want to say some initial an initial report or at least an outline of an initial report with some blanks that still need to be discussed.

And then that can be something that we bring to Durban or something that can be done at Durban which really kind about to the group and where we need to be at our checklist.



But I think we're doing fairly well. And I think we're pushing towards that. And I think that's a testament not only to how well this group works together but also the fact that everyone is so constructive in their thoughts and their efforts.

So okay with that I have 9 o'clock here in the - in Arizona. And we'll adjourn for today. And hope to see everyone two weeks from now when I get back from the wilderness. Thanks.

Man: Thank you.

END