

**ICANN  
Transcription  
IRTP Part D Working Group meeting  
Monday 30 September 2013 at 15:00 UTC**

Note: The following is the output of transcribing from an audio recording of IRTP Part D Working Group call on the Monday 30 September 2013 at 15:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gnso-irtp-d-20130930-en.mp3>

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

Attendees:

Volker Greimann – RrSG  
James Bladel - RrSG  
Kristine Dorrain – NAF  
Angie Graves – CBUC Chris Chaplow – CBUC  
Bartlett Morgan – NCUC  
Mikey O'Connor – ISPCP  
Barbara Knight – RySG  
Graeme Bunton - RrSG  
Avri Doria – NCSG

Apologies:

Bob Mountain - RrSG  
Holly Raiche – ALAC  
Paul Diaz - RySG

ICANN staff:

Lars Hoffmann  
Marika Konings  
Julia Charvolen

Coordinator: Excuse me, everyone, this is the Operator and I just need to inform you that today's conference call is being recorded. If you have any objections you may disconnect your line at this time. And you may begin.

Julia Charvolen: Good morning, good afternoon, good evening, everyone and welcome to the IRTP-D Working Group call on Monday, 30 September, 2013 at 1500 UTC.

On the call today we have Volker Greimann, James Bladel, Mikey O'Connor, Barbara Knight, Graham Bunton and Angie Graves. We have, from staff Lars Hoffman - I'm sorry, Kristine Dorrain has joined. From staff we have Lars Hoffman, Marika Konings and myself, Julie Charvolen. And we have apologies from Bob Mountain, Paul Diaz and Holly Raiche.

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

Mikey O'Connor: Thanks, Julia. And thanks, Laurie, for riding herd on the bridge. This is Mikey today because James is in Arizona and so I'm going to run the call. And we'll do the usual deal where we pick the pause and look at the agenda and the statements of interest. I think today we're going to mostly zero in on Charter Question B.

We have a drafting team that's working on the charter question about some of the TDRP stuff. But, we had a big debate before the call as to whether that's a dog's breakfast or a dumpster fire. So we're going to pause on that for a week and see if we can get that rewritten.

So with that any thoughts about the agenda or statements of interest? Right, well I note that Avri just joined too. Welcome, Avri. I think with that we'll just jump right in. The next item - I sort of gave you a preview on that is that there is a drafting team that's working on - I've forgotten which charter question. Let's see, it's Charter Question...

James Bladel: B?

Mikey O'Connor: Yeah, it's the one where registrants can get access to...

James Bladel: I think it's C.

Mikey O'Connor: Oh there we go, yeah, D, D as in Dog. Thanks, James. And we're making really good progress there but what we discovered when we really dug into the TDRP is that that policy was written back in 1999 and it's tremendously disorganized. It's got all kinds of things in the wrong place in the structure. It's a very hard policy to rewrite because of the fact that it's so badly organized.

And so the drafting team has sort of taken upon itself the project of rewriting the TDRP. Most - not changing the words in it so much as changing the way it's organized that makes it easier to rewrite. And given that we've had a couple of very successful meetings but we're still working.

And so rather than take you through something that's really not ready we decided that we would switch back to some of the other charter questions where our initial report draft is in quite a bit better shape and start working on those instead. The other thing is that it will help - some of these feed into the work that we're doing. And so that's sort of the state of affairs.

Does anybody have any concerns, questions about that before we move on to the main topic of the day, which is Charter Question B? James, go ahead.

James Bladel: Thanks, Mikey. James speaking for the transcript and, you know, for the group. I missed the last session. There was a last-minute reschedule and unfortunately had a conflict. But just a couple of questions regarding the reorganization of the TDRP. And perhaps it's something that, you know, was discussed already extensively on Friday and if so I apologize.

But just want to make sure that we're mindful of things like the TDRP that has - even when we fix them and make them better they can still have a pretty significant operational impact for service providers like Kristine's organization, like Barbara's organization, like mine. And just want to make sure that we're, wherever possible, taking a light touch.

And I know, Mikey, you said at this point it's mainly just reorganizing the existing language as opposed to, you know, changing it. And I think that's probably, you know, a sound approach.

But I just wanted to get that out there that I think we've - I know in my situation even when I've tried to fix things internally that sometimes these things can have a domino-effect really quickly that I didn't anticipate. I will do my best to attend future drafting sessions as well.

Mikey O'Connor: Thanks, James. I think at this stage it's safe to say that we're mostly just moving words around in the document. You know, we have things like remedies, for example, where there are remedies sprinkled all up and down that document in different paragraphs.

And basically what's going on is we're taking things like that and pulling them all into one place which I think, from an - certainly the goal from an operational standpoint is to make things easier rather than harder. But absolutely for sure we want to bring this whole thing back to the working group.

It's just that it's not done. And rather than subject you to reviewing something that's really not in very good shape yet, you know, it's better but it's not done. We thought we'd wait a week and pick another round at it. And, clearly, if we goof and introduce a bump in the road there's no issue at all at sort of rolling back.

But I think it's going to - you know, what I see so far I'm pretty enthusiastic about it. I think it's a lot easier to understand the policy and I think it will be a lot easier then to introduce some changes. One of the, you know, clearly the change that caused all this is the access for registrants to the policy.

And we've got what we think is a pretty flexible approach to that where we could either put that in the existing policy or essentially create a separate

policy. And once this is rewritten it's going to be a lot easier to do either of those things. So I think it's just a worthwhile investment in tidiness more than anything else. But for sure there's lots of room to review.

Okay...

((Crosstalk))

Mikey O'Connor: ...anybody else in. Thanks, James. I don't see anybody else in the queue so we'll just give that a second to see if anybody else has any thoughts about that before we go forward. I don't want to get into any discussion of changes that we're proposing yet because, as I say, it's really not ready. But okay.

Let's go on and spend most of the call today then on Charter Question B. And what's on the screen in front of you is essentially initial report draft language. So I think hats off to Marika and Lars for getting that pulled together. And I think this is sort of a first walk through of the real deal.

And with that I think probably the thing to do is just sort of take it chunk by chunk. So the first part I think is pretty stable but there are a couple of interesting comments in here where basically it's talking about the issue of multiple transfers. This is a conversation we've had pretty much through every single IRTP working group.

And this is where the group that set up this multi-phase project sort of put the hard questions for the end. And this is clearly a hard question. So one of the things that you can see in the comments is the stuff from compliance. And maybe I'll throw this to either Lars or Marika just to sort of give us their interpretation of those two comments. Either of you want to take that on?

Lars Hoffman: Yeah, this is Lars. I'll give it a shot. Sorry, I'm just going through them to remind myself. If you give me one second. Yeah, so I mean, what they're noting is basically, I mean, the issue that we have been struggling with too,

right, so that the middle - the transfers that are following the initial hijack are obviously legal and can comply with the TDRP and the IRTP - over the IRTP, I'm sorry, as they stand.

And the complaint that Compliance receives most of the time is about hijackers gaining control of the admin contact email address and then request a transfer. And so from a compliance point of view once it's been hijacked and they have access to these - to this data then there is very little that Compliance can do from their perspective unless it's proven that it's been hijacked in the first place.

And obviously the problem also being - and I suppose it goes back to the registrar as well that they need to be able to supply some information or the original registrant or the registrant claimant maybe even as we call it, maybe in the TDRP in the future.

That once the hijacker has the control of the admin contact details and can change those how do we know that there was a hijack in the first place and that the problem that Compliance has and that we might have with this and that also will feed in, obviously, to the things that we are working out currently for the TDRP question in this group.

And I'm going to leave it at that I think.

Mikey O'Connor: Okay thanks, Lars. There's a little queue building up. James, go ahead.

James Bladel: Thanks, Mikey. This is James. And I agree with the comments here from ICANN Compliance and will probably note that I don't know, at least without reading further down, I don't know that we are proposing any particular sanctions for registrars who are involved in subsequent transfers or even registrars that are involved in the initial transfer if the transfer was the result of a hijacking because someone had gained control of an email address.

I think compliance is correct to point out that these problems are usually predicated on a compromised email account as opposed to anything - any sort of misconduct on the part of the registrar or negligence on the part of the registrar.

But my concern specifically is with regard to subsequent transfers that, you know, in the case where a registrant - and this is touching on the last paragraph here - in the case where a registrant believes that they have legitimately purchased a registration and then later find out that it's subject to the dispute from two or three hops ago, that registrant may believe it has a civil case against its - I guess the registrar that was also, that we've determined here, was, you know, sort of a co-victim in this whole hijacking thing.

So, you know, I don't know what we can do from a policy perspective to acknowledge that, you know, in those cases where we would reverse a transfer that had several subsequent hops we may be creating liability down the chain for those registrars who accepted those contracts or those transfers in good faith.

Mikey O'Connor: Thanks, James. I'll get to Chris in a second. But I think the first part of your comment may contain the seeds of the answer to the second and that is maybe in this policy we need to acknowledge that lack of negligence on the part of the registrars in the transfer.

You know, take the comments that the Compliance folks have written and turn that in to a piece of the policy as a way to sort of head off that cascading liability thing. Some better legal minds than mine are going to have to help with that but that might be a way to mitigate some of the risk that you're concerned about there, James. So we might want to file that away for the subsequent round of drafting and not just discard these comments but actually think about some way to work them into the policy.

Chris, go ahead.

Chris Chaplow: Thanks, Mikey. Just so I'm clear about this - because I might have missed what you're saying, Lars, for a second, are we looking at situations here that go through Compliance where control has been taken of the email address and the account. A likely hijack has taken place. And then Compliance have ruled that everything was in order on the basis of the email addresses and to which Compliance are then saying that's it, everything's in order, end of complaint, issue resolved.

Because they don't want to right (your) wrongly step out of a narrow vision of this into a territory of what might be hijacking, what might be partners splitting up the business, what might be a simple mistake, etcetera, etcetera. Is that what we're saying is happening, Lars?

Mikey O'Connor: Lars, over to you.

Lars Hoffman: Thanks, Chris. I think the difference here is where Compliance point out - is the difference between inter registrar and inter registrant transfers. And so what they're saying is for them what has taken place - without knowing or being certain that a hijack has taken place which has been a different issue, the actual transfer is correct because the policy has been followed.

So in the past the registrant has changed, you know, that can happen obviously legitimately. And that new registrant is then changing the domain to a different registrar. And since we're looking at the latter of this, the change between registrars, there's nothing that ICANN Compliance, based on the policy that stands right now, can do about it because the issue would be the original hijack rather than the transfer between registrars. If that makes sense?

Mikey O'Connor: Chris, you want to come back?



Chris Chaplow: Yeah, it makes sense. I don't like the sound of that. I don't know if that gets escalated anywhere or reported anywhere. That's just what I'm - I'm just sort of trying...

((Crosstalk))

Lars Hoffman: ICANN Compliance gets reports by people complaining about the hijack in the first place which is something, I believe, that both under the Inter - would be something of - that has to do essentially with the change between registrant which is something that the IRTTP-C has dealt with. And so that's something that doesn't fall under the close charter question, if you want, as it's worded for this working group.

((Crosstalk))

Lars Hoffman: So they receive complaints - they receive complaints about hijacks but ICANN Compliance can't under - what the question - this question that we're dealing with right here right now is not to do with hijacks between inter registrant transfers where the hijack comes into, it's about the transfer then onto a new registrar which is slightly different.

Mikey O'Connor: Oh, James just dropped off the call. Chris, back to you, you want to come back again?

((Crosstalk))

Lars Hoffman: If I can just add, Marika just pointed out obviously IRTTP Part C is in the process of still being implemented so that might add to the gray area here that we're in right now. So the transfer between registrants is something that has been dealt with or addressed by the previous working group and has not yet been fully implemented.

Mikey O'Connor: Right. I mean, that's where I was going to head on this one too is that this looks like sort of an historical interpretation but I'm not sure it's correct going forward with the new - the way the policy is written right now. That does raise an interesting puzzler because the IRTP-C Implementation Working Group is silent; at least nothing, as far as I know, has happened on that.

Can we tease this apart into two pieces? One is the impact of inter registrar - I'm sorry, inter registrant transfers as embedded in IRTP-C. And then the second part is the point that James raised earlier which is the one about sometimes these are not compliance issues and then James in the Chat raises that question a little bit more by way - by saying, "Are we asking for a Compliance action or are we establishing TDRP eligibility?"

And I think we need to clarify that. And that's one of the things that we're doing in the TDRP rewrite is we're adding a section there called Standing which sort of describes the circumstances under which various parties, either registrars or registrants, can initiate a TDRP.

And that may be a way to address some of this at least on the TDRP side. I'm not sure quite what that implies for this. So I hope somebody's taking notes because I'm not but we need to capture those points and get them - get them folded into this because they're valid.

James, are you back on the call, I hope? I don't want to go too far without James, my co chair.

James Bladel: Yes, I - I'm back on, sorry about that.

Mikey O'Connor: Oh good, okay. Just, you know, I didn't want to get too far ahead of you.

((Crosstalk))

Mikey O'Connor: Good question, Chris and James. I think those are both good ones. Let's make sure that we capture them and think about how we fold them both into the draft - I think that these certainly belong in the issue description but also, you know, into our suggested change to the policy.

Okay, let's go on to the next part, the Working Group Observations part. And maybe this is where some of those comments show up. We had that big discussion about how far back should it go and we agree that it should go back to where it got stolen.

And we talked about - James, go ahead.

James Bladel: So...

((Crosstalk))

James Bladel: I'm kind of - this is James speaking. I'm kind of torn on this one, Mikey. As you're aware, you know, we certainly don't want to put hard-coded timeframes on these things, we're just teaching hijackers they have to cook the domain name before they can move it. You know, if you say 60 days they'll wait until Day 61. If you want for six months they'll wait for six months and a day or whatever.

But I do, you know, see the other side of this coin anecdotally, you know, like with some of our internal experiences I remember a few years back there was a case where a domain name was hijacked and the registrant didn't notice for over a year.

And, you know, I can imagine where if someone had invoked a dispute on a transfer that had occurred, you know, 14, 16 months ago that would also be disruptive not only to, you know, to the registrars involved but also the registrants that were involved and subsequent registrants.

So I'm just pointing out that we should be careful here and I think make sure that we have a thoughtful response to those types of concerns as opposed to just saying, well, you know, we go back to where the problem started and start disputing from there. I think a recognition that could be several years past, you know, I think should be part of our observations at a minimum.

Mikey O'Connor: Yeah, I think that's right. I know that the conversation always sort of revolved around sort of normal law which is you buy stolen property it's still stolen property even if - so, you know, maybe we need to build more words around that. And I'd be open to hearing suggested language there.

You know, maybe what we're saying is we need another paragraph to explain that and give people sort of a heads up. But I would hate to march in and say oh, by the way, if you've managed to successfully steal a domain name for X months it's yours; I think that's a problem.

Ah, good, I got some bites. I've got registrars in the queue. Go for it, Volker.

Volker Greimann: Hi, Mikey. Just one question about US law, I'm not certain about. Under German law once a stolen item has been auctioned off by a public auction then it no longer is subject to any claw backs by the previous owner. So when a domain name is just transferred between owners - when it was stolen, it can be - probably be reclaimed. I don't have an argument with that.

But once it's in an auction I think the case is different at least under German law. I'm not sure how it works in a US law.

Mikey O'Connor: That's interesting. So there is a puzzler for our further research is to make sure that that, you know, I hadn't ever heard of that before. So if I can take anything and auction it off in public that washes clean all of the prior history, huh?

Volker Greimann: Basically because that is because when it's a public (launch) auction then the owner of the stolen property should be aware of that and should have - be able to gain knowledge that the goods has been stolen, be able to stop that auction from happening.

So basically by auctioning something off in a public auction you assume that the owner of the stolen property is able to gain knowledge of the fact that it has been stolen and be able to - to take action at that point. Once it's auctioned off then the new owner has a certain element of trust in the fact that he has purchased something in an auction and therefore gains ownership.

Mikey O'Connor: Now I would presume in that circumstance - this is Mikey again - that the auction house has duties and responsibilities to do due diligence prior to putting it up for auction, is that right, Volker?

Volker Greimann: I would assume so, yes, but only to a certain extent.

Mikey O'Connor: Because - well that would be another thing to research because it seems to me that could actually be more disruptive than what we're proposing here in a way for, you know, CEDO, for example, if they had to go and essentially carry the burden of researching the prior history of the domain before they could put it up on auction that would certainly change the speedy auction - interesting.

James, sorry, I put you kind of on hold there. Go ahead.

James Bladel: Oh, no problem. I'm still kind of processing Volker's comment here and what the implications of that might be. I just wanted to point out it sounds like what we are saying in effect is that if you are the victim of a domain name hijacking your rights of recovery essentially have no expiry or no statute of limitations.

And I'm not judging whether that's right or wrong I'm just saying that - I'm just trying to say that that seems to be where we're going with this. And I think that's possibly raising the question of, you know, does the industry require some sort of a - we always use these tortured analyses from the real world in the domain name space.

But are we looking for something like a title search or a Carfax equivalent for, you know, domain names. And I wonder if this is where this is heading because if you're going to have some sort of rights of recovery in perpetuity then I think that that is going to really shake up some of the aftermarket activities.

You know, and it will cause someone to wonder you know, if you didn't originally register a domain name on your own you'll never be 100% certain that it is legitimate.

Mikey O'Connor: Yeah well I think that's sort of along the same lines as the question I was asking Volker which is what's the duties and responsibilities of the auction house? If the auction washes it clean that would actually be useful in a way.

But what that also seems to mean to me is that they would have some duties and responsibilities. Otherwise if I'm a hijacker I immediately put it in the auction and I leave the who is and DNS information alone.

So that the registrant maybe isn't aware of it and poof it's auctioned off and now I'm out of domain and have no recourse because it's been washed clean by an auction house. So that's not a happy thing I think.

Volker go ahead.

Volker Greimann: Yeah well I'm not saying that this is something that we should follow. I mean that's (unintelligible) certain cases where this applies.

I'm not even sure that the current providers of the domain name auctions would even qualify for such a public auction. However this is something that just I just wanted to raise as one possibility where the chain of illegitimate transfers could be cut.

Basically I agree with you that this is (unintelligible) that it's very hard to determine where to make a cut or when to make a cut between sales because I see a great potential of hurting innocent buyers at a certain a point we have no way of finding out that a certain item has been stolen.

Mikey O'Connor: Yeah I, you know, this is always the tradeoff when you're dealing with stolen merchandise. It's the, you know, somebody's going to get hurt.

That's why it's a crime, you know. And the question is what we need to do about it.

Aubrey's got an interesting, you know, I'm sure slightly ironic, sarcastic comment but actually I think legitimate auction becomes domain name laundering.

Volker Greimann:: Yeah that's...

Mikey O'Connor: I think that's a problem. You know, I'm cranky about that.

Volker Greimann: On the other hand if we now say that transfers become only sub - become subject to retroactive backtracking or any domain transactions become subject to retract back tracking for years to come then aren't we hurting the second level market in a way that we cannot even estimate at this time? Because every domain sale might be contested 10 years in the future if we do not set a limitation to that.

Mikey O'Connor: Well I think that's where the access to the TDRP -- the standing issue with TDRP and the hoops that have to be jumped through that we write into that

become important. You know, I don't think that the intent is to allow frivolous use of that or just like there's -- what is it reverse TDRP - not the right phrase.

But, you know, I don't think that a person who maliciously files a TDRP should be able to do that without, you know, some sort of penalty. You know, in a way it's a lot like the EDRP.

And, you know, there has to be an orderly way that people establish that they have the right to bring that action and they can't establish that then they shouldn't be permitted to do it. Yeah reverse domain name hijacking. Thanks, Christine.

Volker you're back in queue. Go ahead if you want.

Volker Greimann: Yes I'm back in the queue. Just one point that I just want to marry that I just cooked up which would be probably a horror scenario which we should take care of that as well.

I mean two parts acting in collusion could basically decide on making domain transactions coming from a certain portfolio undoable. For example I want to sell as a domain owner I want to sell a certain number of domain names in a fraudulent way.

So I sell them to party B without creating a contract. Party B disappears after a while.

Party B sells the domain name to the real buyer with a contract. So parties A and B would be acting in collusion but there would be no way to prove that.

Party B as they have disappeared is no longer in the picture. Party A comes out two years later stating that the domain names A, B and C have been stolen by - from him by B.



B is no longer to be found. All domain names have to be given back to A -- good profit for A.

Question how do we prevent that? And as there is no record of that I don't think it can be prevented.

It would just be abuse of this policy.

Mikey O'Connor: I'm not sure. Again I think this is where, you know, Party A would have to establish standing. You know, would have to demonstrate I think sort of along the way some documentation steps sort of waving my hands at this because this is part of what that - part of - you know, that's what giving registrants access to some sort of policy like this does is it provides them a mechanism to do it.

But it seems to me that we have to write it in such a way that they can't abuse it. James go ahead.

James Bladel: Sorry mute button was a little slow. James speaking for the transcript.

So I'm thinking - I'm going back now in the chat -- something that was posted by I believe Christine earlier on. And I think that while our intentions are good as far as not setting any arbitrary cutoff of, you know, timeframe for this I think that we may be forced to as the lesser of two evils.

Just because we want to maintain compatibility with the TDRP which currently has -- I think as Christine pointed out a six month timeframe on it. So it seems like regardless of what we do if we want to continue to use or to dovetail into that then -- and if we are indeed saying that we're not asking for compliance to get involved here that this is more of a function of how to manage dispute then I think that we need to go back to what the TDRP sets as a requirement.

And say essentially if this thing is happening longer than six months, you know, it's probably too far gone. Just an opinion at this point but I think it is something that we need to consider unless it is our intention to completely throw the doors open on TDRP as well.

And then in that case I think that's actually a bigger issue.

Mikey O'Connor: Yeah. I can see how these conversations are pretty interlinked. You know, I think Volker's point in the chat is well framed which is I just think that we need to make sure this policy cannot be abused.

I think that's where we're all headed. You know, A a policy that is at least very difficult to abuse -- probably impossible to write policy that can't be abused and that's as close as we can get to that.

But then B also policy that doesn't disrupt the operations of say the aftermarket. That's why we get paid the big bucks.

We got to figure this out. So I think this is a good conversation.

Let's - having said all that let's go down to the actual recommendation for a second and sort of see how we're doing. I'm on Page 2 now at the bottom where we say transfers from (unintelligible) registrar to a third registrar and all other subsequent transfers are null and void if the gaining registrar acquired sponsorship from the registrar of record or an invalid transfer is determined through the dispute resolution process set forth in the transfer dispute resolution policy.

Anybody want to bounce our current conversation off of that recommendation? Essentially I think what this would do - let's play with some scenarios.

One scenario would be that we leave - let's leave six months in the TDRP for a minute. We did that.

And this would all be fairly recent history. Presumably these transfers, as many - it would basically be as many hops as you could get done in six months.

Because after that the TDRP wouldn't work. You wouldn't be able to use it.

At which point one of the things in the TDRP and one of the things that we've pulled up into a more obvious place in the TDRP is that if the TDRP doesn't work for you you always still have the option of going to court. It's not like the TDRP is the absolute end of the line.

And maybe that's the way out of this dilemma is, you know, if something happened quite a while ago -- 14, 16 months ago like James' example -- the person who, you know, the losing registrant or registrar still has the option of going to court. And maybe that's the backstop.

That makes things easier to accommodate to you. Barbara's in on that.

James go ahead.

James Bladel: Hi Mikey. James speaking. One other thought.

You mentioned - I think it was the statement you mentioned that was, you know, we don't want to include any kind of a cutoff that would tell a hijacker, you know, hold onto a domain name for six months and a day and it's yours. I think that we can certainly say that while a name is not necessarily eligible for any kind of a clawback after a certain timeframe -- six months or whatever -- we can certainly say that the registrant who currently has it as a result of a fraudulent transfer doesn't necessarily get to keep it.

You know, we could say that the registrar should be required to delete it or repossess it and allow it to expire, you know, or something like that. I mean I think it can still be, you know, punitive to the party that actually took the name and not necessarily give - make it an attractive option to just cook those names for six months.

And I think that we could do something like that without introducing this whole, you know, concern about perpetual clawbacks. So just thinking out loud that we could bake some other stuff into that as well as just, you know, not just having a hard cutoff.

Mikey O'Connor:: Yeah I think it's - one of the things that has happened for me, kind of really dug into the TDRP for the very first time over the last couple of weeks is that I think that some of this can in fact be handled fairly gracefully in the structure of the TDRP as it stands. One of the things that you're talking about there James is the remedy portion of the TDRP which is another problem with the current document which is the remedies are sprinkled all over the place and...

James Bladel: Right. In that case, you know, it seems like the one primary remedy that we've all been working from is return the name back to the person who it was taken from or the registrant prior to the illegitimate transfer. And I think what I'm trying to put on the table is that there are other possible remedies short of returning that name that could also be considered.

Mikey O'Connor: Yeah although then, you know, I'd have to conjugate about that. You know, I am always casting myself in the role of the losing registrant and sort of going good grief, why would I ever engage in a TDRP if the best that can happen is that the name gets deleted?

I want the name back. I think at that pint I'd go to court.

Anyway Kristine go ahead.

Kristine Dorrain: So Mikey yeah this is Kristine from (unintelligible). You just made my point.

That was it. I was just going to say I don't think anyone's going to pay to participate in the process if they're, you know, not going to get the domain name back.

Mikey O'Connor: Yeah I can't imagine who would initiate that James. And Barbara's in on that.

Okay well this has been a pretty tidy discussion. Let's - I think that one of the problems with this particular recommendation as it stands right now is that it's not nuanced enough.

And I think where the nuance comes in is in the actual structure and flow of the TDRP itself. And I think what this gets me to is that we -- the drafting team really need to get that revised draft to you all in time for the call next week.

Because I think that some of the issues that we are tackling here are handled in remedy, some of them are handled in standing, some of them are handled by the availability of a court proceeding. And that this recommendation kind of crosses all those lines.

And we need to step back and kind of understand that better. James again?

James we aren't evil enough to put ourselves in the mindset of a hijacker? I suppose I could.

Anyway any other thoughts on this? I'm sort of feeling like this section needs a better understanding of where we're at with the TDRP before we finish it.

And I'm reluctant to go much further today. I'm happy to carry on.

But, you know, we're sort of getting into endless recursive logic. You know, kind of covering the same points over and over.

And then I'm saying well, yeah but that's in there. And I think we really need to get a new version of the TDRP on the group.

And maybe what we'll do is get it to you faster in a slightly rougher form than I was hoping for. But it seems to me that without having something in front of us to look at we're getting a little bit stuck.

Lars go ahead.

Lars Hoffman: Thank you Mikey. It's Lars. I agree that the deals of this will probably depend on the TDRP outcome.

I'm just wondering and I know that time is running out so that might not be today. But something that I think the group might want to think about is what is key I think for this question is whether or not there should be a principle that if the domain has been hijacked from a registrant that that registrant can go and use the (unintelligible) to claim the domain back.

And whether or not there should be a statute of limitation on that or not. What that may be or not be is a different question.

But as a principle does the group believe that that should be the case? Or that there should be a statute, whatever that may or may not be?

I think that would be something useful and - to answer this question as a starting point. As I said maybe not today but something to think about.

Mikey O'Connor: You know I - this is Mikey. That's a good correction Lars.

And you're right. And as we've had this conversation today does seem to me that there's - this is sort of layered defense for the registrant.

First layer is work it out with the registrars. Hopefully that happens -- usually does.

Next layer is the TDRP. And the last layer is going to court.

And because going to court is always available maybe that's the backstop for the very unusual circumstance where name is stolen and too much time has passed. One of the things that I think rewriting the TDRP does is makes that clearer.

You know, James raises the point that it's not free for them to do that. But, you know, that's always been the case in a way.

Because up until now the registrant really only has two options. They have a free option and a go to court option.

So I'm not sure that really changes things for the registrant in that regard James. The - I think maybe the rewriting of the TDRP itself may actually make the rights of the registrants clearer.

And that in and of itself will make it improvement from the registrant's point of view. Aubrey's raising is you can always to go court a good terminal position for us to count on in policy?

I'm not adverse to that. Otherwise it makes us the court of last appeal Aubrey.

And I'm not sure that that's necessarily a good thing. That's a good question.

I don't know the answer to that. I mean I'm, you know, in a personal situation with a sand mine where I had to go to court.

I tried everything else and didn't work and had to do it on a lawsuit. And I don't know -- sometimes these things just work out that way.

But I don't have strong opinions. Any other thoughts?

We're getting fairly close to the top of the hour. We could end here.

But if people have other thoughts. My main takeaway from today is that we've really got to get cracking on getting that TDRP draft.

Aubrey's point in the chat is should our policies be complete? And yes there is court.

But for us to assume that it is the exit point is a moveable line. Aubrey why don't you jump on the audio on - give us that one in words.

That - I'd really like to track that one. If it's easy for you to do audio.

James I'm inserting her in the queue in front of you. I hope that's okay.

But Aubrey you want to at least expand on that a little bit?

(Aubrey): Hi. Sorry. Yeah I didn't have my microphone activated so I had to go through that. I wasn't planning to talk at all.

Basically what happens is if we assume that the terminal action of our policies is oh, you can go to court then we start to have a question of where do we put that? Whereas if we have a set of policies that come to a resolution that have an appeals mechanism that don't leave dangling questions open



court is where you go when you don't like the decision you got out of the ICANN complete process.

Not an issue of the process always terminates in court. I know it may only be a nuanced difference.

But also when it becomes one of the pieces we play in how do I build policy. Well okay it really doesn't matter what I do because I can always go to court in the end.

And so it becomes a - it's a mechanism I worry about putting in. And I think that it makes sense as this discussion was evolving for us to look at the possible problems and say how is that resolved within our system.

Our system should be complete. Court is beyond our system I guess is what I was trying to say. Thanks.

Mikey O'Connor: Thanks Aubrey. I think that's useful and helpful.

I will point out that court is in both the TDRP and the UDRP right now. Both of those policies have language that say if this doesn't work for you this doesn't preclude going to court, I think.

Kristine is typing. I always defer to Kristine because she's my mentor and stuff.

And I think that then what we're engaged in is an exercise of trying to sort of try to have our policy handle most cases, 90-x% of the cases. But an avenue for those outliers and then defining what those outliers are.

And this is an interesting conversation. Kristine's got a giant comment in the chat.

Sorry to - well let me just read Kristine's comment because it's still in this thread. And I'm sorry to part you James.

Kristine's saying I'm thinking this way. Very low value domain if the registrar can't fix the wrong maybe the losing registrant says that's no good, too bad.

Medium value -- maybe they pay to try a TDRP or something high value. Maybe you skip the TDRP and go right to court.

Not every avenue is right for every domain name. And I use the word value loosely -- it's all relative.

I think that's another good - James with that I'll take it to you and then we'll wrap up.

James Bladel: Yeah thanks Mikey and I think there's some merit to what Kristine is driving at particularly when you consider that in the context of looking at timeframes that some - no one is going to let a very high value or a high traffic domain name be hijacked for more than, you know, a couple of days or, you know, 16 months or whatever.

Usually those things are noticed within hours. So, you know, the timeframe becomes less of a consideration.

But I just wanted to maybe change gears as part of the wrap-up here and note that we are by my estimations now entering October which gives us like four - call it, you know, five weeks prior to when we need to start thinking about putting a button on our initial report for the Buenos Aires meeting. So does the group believe that perhaps now is a good time to revisit our work plan and our deliverables?

I know we're pretty much off the page there because we were targeting September for an initial report. And I think we - early September.

So I think we clearly are off the glide path there. But I think that maybe just revisiting that work plan, updating it and making sure that we're also onboard with our timeframe might be something we can add to next week's agenda.

Mikey O'Connor: Yeah that sounds good to me. I got an agreement from Lars on that.

And I'm still thinking that we might be on a glide path to at least have a preliminary version of the initial report in enough shape that we can have a pretty productive public session in Argentina. I don't know that we'll have a consensus draft pre-typed for that.

James Bladel: Right.

Mikey O'Connor: But, you know, I wouldn't be surprised if we had something that was close enough that we could frame a pretty interesting series of questions and take that to a public session that Argentina (unintelligible). Yeah good idea.

All right. It's one minute after the hour. Thanks folks. That's it for me. We'll see you in a week.

And drafting team I guess that being me and Kristina and Lars I guess we got our work cut out for us. Talk to you soon.

END