

**ICANN
Transcription
IRTP Part D Working Group meeting
Monday 28 October 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 28 October 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-20131028-en.mp3>

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

Attendees:

James Bladel - RrSG
Chris Chaplow – CBUC
Avri Doria – NCSG
Barbara Knight – RySG
Volker Greimann - RrSG
Mikey O'Connor – ISPCP
Holly Raiche – ALAC
Angie Graves – CBUC
Graeme Bunton - RrSG

Apologies:

Kristine Dorrain – NAF
Kevin Erdman - IPC
Paul Diaz - RySG

ICANN staff:

Lars Hoffmann
Glen De Saint Géry
Julia Charvolen

Julia Charvolen: Thank you, (Tonya). Good morning, good afternoon, good evening everyone.
And welcome to the IRTP Part D Working Group call on Monday 28th of
October, 2013.

On the call today we have Mikey O'Connor, Holly Raiche, Barbara Knight,
James Bladel, Graeme Bunton, Avri Doria and Angie Graves. We have

apologies from Paul Diaz, Kevin Erdman and Kristine Dorrain. And from staff we have Lars Hoffman, Glen de Saint Géry and myself, Julia Charvolen.

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

James Bladel: Thank you and welcome, everyone, to IRTP-D PDP conference call. And appreciate everyone in Europe and Australia that adjusted their calendars for this one week and then we will all be back on our normal time after North America shifts next week.

So per our standard order of business if anyone has any updates to their statements of interest please get my attention now. And seeing none we'll then move on to review and accept the draft agenda which is posted in the right hand column of the Adobe Chat room. Does anyone have any questions or comments regarding the draft agenda?

Okay we'll consider that adopted and that will be our marching orders for today. And it looks like once again we are focused on Charter Question C, the TDRP - re-imageneering of the TDRP that incorporates the registrant access to that dispute policy.

Mikey, if I - I may want to turn it over to you as co chair and also leader of this sub team but my question is just more of a overarching discussion about this before we dive into the meat and potatoes. Do you feel like we're getting close to language on this? Or are we still a ways out? How do you gauge the progress today?

Mikey O'Connor: Hi, James. It's Mikey. I think where we're at right now is we - I circulated a Word version of the draft that the drafting team came up with last week I think right after the call. I think where we're at is that's a first cut. It's highly editable.

We, the drafting team, thought that before we went another layer deeper into that that we would like some guidance on some of these really broad issues because it'll make the drafting easier. And actually we've got a little list. One is the registrant access to the TDRP thing. Another is whether the registry layer gets removed which is Charter Question - well, I don't know, I've sort of lost track.

But anyway, we have a few broad issues like that. It would be really helpful if we could get a sense from the working group today or soon on some of those broader questions because then we think we're pretty close in terms of language and that with another pretty vigorous scrub of the document that we've got we could be there.

But we decided best to get broad directions squared away first and then go down one layer. Does that give you the sense that you were looking for?

James Bladel: Yeah. Thanks, Mikey. And those - just to recap those three issues were whether or not to remove the registry layer entirely and what was the other one?

Mikey O'Connor: I've got a little list here in my - actually let me share this on the screen, might as well go right to the old screen sharing routine. You all can follow along. These are the notes that I've got so far as sort of stuff to yet be figured out. We've got a fair number of things that we think we know the answer to.

So, for example, we think that TDRP decisions do not get appealed; they are - the dispute resolution provider decisions are final. And if you want to appeal them whether you're a registrar or a registrant you need to go to the courts to do that. But we need to just get a little tick mark by that to make sure that that's really what the group feels is right.

It would be very helpful to get a sense as to whether we are allowing access to this process to registrants in which case one of the things that we need to

get a little bit deeper on is okay what are the hoops - what do registrants have to do in order to gain access to it? So that's kind of one blob.

There's the whole who pays discussion that we broke into a bunch of granular parts. But, again, that's sort of subsidiary. So I think the two things that would be a great place to start today would be is the registry layer really out? And, you know, if we did that the drafting team could go off and start accommodating that recommendation in the draft and clear out a bunch of language that we left in because we didn't know.

And then also start to get a sense as to whether the notion of access to the registrant is acceptable and get as far as long on that as we can. I think if we could get through those two things we would actually be in a pretty good place to write a summary of where we're going for a presentation in Buenos Aires. And we would also give the drafting team a pretty good piece of work to go back and do.

Do we want me to drive the call? I see you're in the queue, James, so either way is...

James Bladel: Let's go to Barbara first and then if you can come back to me afterwards that'd be great.

Mikey O'Connor: Okay. Barbara.

Barbara Knight: Thank you, Mikey. It's Barbara for the transcript. A couple of comments; I think I'll go ahead and address the second level dispute decisions and whether or not they can be appealed. It's my understanding that they cannot.

And I think that we probably need to just make certain that we clarify that, you know, at this point the registry operators are considered a dispute resolution provider but they're considered a first level dispute resolution provider. And

then the folks like, you know, Kristine's group, NAF, would be a second level dispute resolution provider.

So they're both dispute resolution providers; one is just at the first level, one is at the second level. The first levels can be appealed to the second level. However, if somebody goes to the second level first passing the first level - registry level dispute resolution provider option, then if they're not happy with that particular decision they cannot then appeal to the Level 1 dispute resolution provider, the registry operator. They would be able to take it to the court, that's my understanding. So hopefully we can clear that up.

And then with regard to the registry layer, you know, I think that when we were out for comments the Registry Stakeholder Group did come back in light of everything that's happening in the industry and the fact that we're now going to have a large number of registry operators technically to ask all of them to have experts, if you will, in dispute resolution for transfer disputes, you know, on their team.

I don't know that it really makes sense to have a level, you know, registry operators as the Level 1 dispute resolution providers add. We would prefer to see it go to more of a UDRP and URS type situation where we have ICANN name dispute resolution providers which would basically handle all of the cases associated with it. So that's my two cents.

Mikey O'Connor: Thanks, Barbara. And that was - I just stole a few of your ideas because I thought they were a good set of bullets for us to talk from.

James, go ahead.

James Bladel: Thanks, Mikey. And I think my take on the overarching issues is probably going to align fairly well with what Barbara is coming up with maybe with some - a few wrinkles. But I wanted to just kind of weigh in on where I see this today and where it's going.

I think that removing the registry layer is probably the right way to go. You know, I think just handling - just listening to the feedback we received from registries, you know, Barbara, but also folks from Neustar and PIR, is that it is something that is probably disproportionately a burden versus the number of times it is actually used and it's going to be appealed anyway at the second level, might as well just start there and make it align more closely with the UDRP and the URS. So I'm totally on board with that approach.

I am starting to, however, get some cold feet about opening this up to registrants directly. And I think it's because we're getting into some issues of verification of the claim, standing and making sure that the fees associated with this, which, you know, now are going to the second level are much substantially larger than we would have at the first level and making sure those flow through back to the initiating parties or the defending parties or whomever.

So - but I have a solution rather than just being a critic or a cynic. I think the idea that it's - we want to ensure that registrants have access to this process we could simply compel the registrars and make it a requirement for them to initiate a TDRP if requested by a registrant.

And I think that gets us to where we want to go without over - you know, over-engineering this process. And I think it cleans up things significantly if we essentially say the process exists as it exists today however if someone comes to you and says I want you to initiate a TDRP registrars no longer has the option to say no. And I think that kind of addresses this problem.

And then thirdly, and this is more of a - just an overarching concern that's not contained in our charter questions but perhaps something that we ought to address at least deserves mention I think in our final or initial report is that nothing that we're proposing, in my opinion, addresses the heart and soul of the problems associated with the TDRP which is that it's slow and it's

expensive. And because of those two things it is a very poor tool to addressing the most common use which would be domain name hijacks.

And so, you know, I think we've got a bit of a disconnect that we really haven't really dove, you know, we really haven't examined fully or proposed any policies that really hit at the heart of that problem. So that's my monologue, I guess, on this topic and those overarching questions.

Mikey O'Connor: And a darn fine job that was too, James. Let me just type a little bit.

James Bladel: I was not agreeing with myself. I'm trying to lower my hand. There we go.

Mikey O'Connor: Good job. Oh, Barbara, you're back in the queue. Go ahead.

Barbara Knight: I am. Thank you, Mikey. This is Barbara. So, James, I don't disagree with compelling registrars to raise a case in the event that a registrant requests them to do so. But I think that the conversation that we had - I'm not sure if it was last week or the week before - where I think there does have to be some measure of merit.

And the policy does contemplate that, you know, hopefully the registrars will be able to resolve any disputes, you know, amongst themselves before it would actually get to a dispute under the TDRP anyway. But, yeah, I think that there does need to be some leeway for the registrars to basically just say, you know, what grounds are you, you know, wanting us to raise this dispute and, you know, providing some sort of evidence in order to make a compelling case to actually file a dispute.

Because there may be claims that don't have any merit. And I think that given, you know, if we do take out the first level, you know, registry operators, and go to the second level which is a more expensive avenue to go, that we would want to make sure that there aren't cases just being filed that are frivolous, that don't have any merit.

So I really liked the thought of putting something in place to, you know, to kind of validate that it is a legitimate request before registrars are required to do it.

Now if there is a legitimate request then - and the registrar does not want to do it and then the registrant files a complaint with ICANN or the registry operator then I do think we need to go back and say okay well what is that, you know, what is your case and then go back to the registrars as a compliance issue if either at ICANN or, you know, the registry determines that there may be a legitimate case to be filed.

I don't know that...

((Crosstalk))

Barbara Knight: ...registrants would necessarily know to go to a, you know, a dispute resolution provider directly to file a complaint that a registrar isn't doing it. But I know that we would here at the registry or ICANN directly.

James Bladel: Mikey, can I respond real quickly?

Mikey O'Connor: Yes, go ahead. Sorry, I'm busy typing...

((Crosstalk))

James Bladel: ...with apologies to Herr Greimann. Yeah, no I think you're absolutely right, Volker - or I'm sorry, Barbara, that we would want to put some checks in the process to eliminate frivolous complaints and ensure that there is some merit.

And I'm envisioning something along the lines of a abbreviated version of the reasons for denial list that we currently have for knocking transfer requests. I think there would be, you know, a short list of reasons why a registrar could

legitimately say that this request for a TDRP, this dispute has no merit in our determination and then, you know, I think that's a - it's still better than the status quo but it does provide a bit of a screen for those frivolous cases.

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

Volker Greimann: Okay. Yeah, listening to James's proposal and I think that might be a solution. However, I would be very hesitant to have something - a policy rule that would force a registrar to go to a complaint that he might even be 100% sure that he will lose. There are costs involved not only with the cost of filing but also preparing the complaint by the registrar.

And I'm not sure that's something that a registrar should be required to initiate even if the registrant wants it. I'm a bit on the fence on this leaning towards no.

Mikey O'Connor: Well there you go. Let's see, Barbara, I think it's off to you.

Barbara Knight: Thanks, Mikey. It's Barbara. So I'm wondering if - in order to help with that and I guess the reduce the number of complaints if registrants who even after a conversation with the registrars, you know, and the registrar advises them that there's really no case here based on, you know, the policy itself and if the registrant still insists that a case be filed if the registrar then has the right to basically require payment up front from the registrant via a credit card or some other means in order to, you know, maybe on deposit or what have you, to basically initiate that complaint or case.

Mikey O'Connor: That's a - that's certainly a model that's included in the current TDRP I think. If not we wrote it in in the drafting team. Holly, go ahead. Oh wait a minute, I'm sorry, I've - I've been not paying attention to the Chat and Avri is in the Chat.

She says, "I think that if we don't get the registration - the registrant a right to initiate on her own we must have a forcing function." And then followed up with, "Will we make this an ombudsman duty?" Which is another - I hadn't thought about that one.

Now Holly off to you.

Holly Raiche: Yeah, I was going to say pretty much what Avri has said that if you are not going to force it then there should be an appeal somewhere whether it's the ombudsman or ICANN compliance. So instead of before having to pay up front there should be some mechanism so that there is a review.

So when, for example, you get a statement that's frivolous and vexatious there's somebody to actually test that it is a kind of frivolous and vexatious thing before somebody has to put money up. Otherwise you haven't solved the problem.

So I would suggest either an ombudsman appeal. And I'm, you know, I'm not sure that the jurisdiction of the ombudsman would extend that far or ICANN compliance but some mechanism with ICANN that doesn't cost the registrant something to actually test whether or not the reason for denial is legitimate. Thanks.

Mikey O'Connor: Thanks, Holly. Volker, let's circle back to you. If we did something like that in the compelling - there were two ideas really, one is an appeal mechanism and the other is some sort of collect the fees up front mechanism. What does that do to your state of mind? Does that cheer you up?

Volker Greimann: Not really because finding such a complaint is not only paying the fees, it's also a lot of work preparing the complaint. For example the registrar, if he were compelled to file a complaint that he finds is (above) merit how much time must he then devote to preparing such a complaint or should he just here's the facts, have fun with it, or should he really be required to file a

complaint that has a chance of winning even though the - to the outside observer even though it's meritless.

Does the registrant have a right to complain about the registrar filing a complaint that he sees is not sufficient to win? All of this is just too mushy in my view that I don't really like it. This is a responsibility for a registrar...

((Crosstalk))

Volker Greimann: ...that a registrar should not be required to bear. We are not in the position to educate and prepare a legal opinion on the registrant's rights. So not...

((Crosstalk))

Mikey O'Connor: The question that comes to my mind, Volker - this is Mikey, is the question - but the difference between filing a complaint or, you know, filing a case and initiating a case. And if we compelled the registrar to initiate and then let the DRP provider drive the process of collecting the evidence etcetera, etcetera, yes at some point the registrar might have to file a bunch of papers. But there wouldn't need to create the filing; they would become a party to it.

Does that take some of the, you know, I mean, I understand the burden problem. I get that. The key issue on the table of course is the recalcitrant registrar who doesn't play, that doesn't, you know, who sits on the registrant and the registrant needs some mechanism.

So, you know, maybe the way to do this is to encourage you to think about what James did which is rather than just saying no what would be an option that would work for you that would get the job done that the registrants want which is getting out from under a recalcitrant registrar? I'll go next to James and let Volker cogitate. James, go ahead.

James Bladel: So just to clarify - this is James speaking - just to clarify I'm not stating that I think that this is something that registrars would welcome necessarily. I just feel it's the least complex of the two options on the table.

I do believe that, you know, the status quo is probably our first choice. But, you know, given that that's - if that's not really an option and that we want to make a change I think that the burden associated with requiring registrants to initiate the claim and then hand it over to a TDRP panelist are probably less burdensome than allowing the registrants direct access to the TDRP panelists without any involvement of the registrar or without the registrar having some ability to screen those requests for their merit and veracity.

So I just feel like this is the least - none of the approaches that we've laid out are without concerns; I just feel that this is probably the least burdensome of the two.

Mikey O'Connor: Yeah, I think that's a good summary, James. I mean, this is a change. And clearly no change would be certainly preferable to the registrars but it's tough on the registrants. So, you know, I like the way that you framed that. And Avri does too.

Volker, go ahead.

Volker Greimann: I'm still not convinced that requiring a registrar to file a complaint is the right way to go but maybe a compromise solution might be to allow a registrar to sponsor a complaint, i.e., if a registrant wants to file himself - he is not a party but a registrar could sponsor such a filing or could be required to sponsor such a filing.

This would mean that the sponsoring registrar - where the registration occurred, where the registrar was the registrant could collect the fee for filing and the actual filed documents, the arguments, the fees by the providers,

would all have to be prepaid by the registrant, i.e. take the registrar out as much as possible.

Don't require him to file in his own name but allow the registrant to contact his registrar to sponsor, for lack of a better word, the complaint - the dispute. That would, in my view, take out the registrar's obligation and allow registrars of all sizes to comply because you'd have to - bear in mind not all registrars are large organization that have a legal department; some have a legal department consisting of one, some have no legal department at all and wouldn't even begin to know what kind of information they would have to file.

And (unintelligible) to the outside legal counsel would then incur additional costs that would have to be stacked on top. But if the registrant were able to just prepare the documents and file them through the registrar that would be an easy solution perhaps. Not saying that this is something I could (later) agree to but this is just something that popped in my mind.

Mikey O'Connor: Thanks, Volker. That's - that's kind of edging us along in a good direction. Let me just - Avri's in the Chat and then I'll get to you, James.

James Bladel: Okay.

Mikey O'Connor: Avri's point is Volker's solution seems very burdensome on the registrant. I think that if the registrant can't do it themselves someone needs to be responsible for doing it on their behalf. So we'll, you know, we've got some work to do there. And with you - with that off to you, James.

James Bladel: Just to build on what Volker was saying. I actually thought that's kind of the direction - the idea of a registrar being the sponsor I thought that's kind of where we were headed with this. So I'm in favor of what he's talking about so...

Mikey O'Connor: Okay.

James Bladel: And then the second point was just the thought about putting some sort of an out in here, you know, I think minimizing the registrant - registrar involvement so that this truly is a dispute between two claimants to being the registrant for a domain name and not - and minimizing the registrar involvement as much as possible I think or eliminating it entirely so that we're just essentially facilitating the panel's work in deciding this I think is probably one way to go.

But I think that we should also consider a component that doesn't punish registrars for trying to work this out amongst themselves prior to initiating a TDRP.

If registrars are required to initiate a TDRP I think a registrar would prefer, you know, particularly if it's larger and established registrars, you know, Volker wants to call me and say hey we got to work this out. Otherwise I have to, you know, the registrant wants me to initiate a TDRP but maybe we can fix this faster. I think that, you know, we need - whatever we come up with needs to accounts for that scenario.

Mikey O'Connor: Yeah. Let me just think for a second. Okay, Volker, it looks like you're next.

Volker Greimann: Just as an aside note we also need to define what kind of disputes actually can be determined in this kind of proceeding. Currently as I'm not very much mistaken the only objective of this proceeding is if the procedures of initiating a transfer and carrying out a transfer have been followed.

What we are discussing now seems to me to be also including the intentions of the registrant and issues beyond the current scope of the TDRP, i.e. has the account been hijacked even though the policy has been followed the transfer was not authorized, i.e. things that a registrar can usually not - can usually not really see for himself.

I mean, I've seen a couple of complaints from other registrars about hijacking cases but as a gaining registrar in those cases it was always very difficult to make a call on that because in most cases there were claims from one party that the transfer was not authorized. But on my end I see that the auth code, I see the FOA was there. And everything beyond that I cannot check; I cannot control. So (unintelligible) I can usually do in those cases is lock the domain name until the civil proceeding has taken place and the domain can either be transferred back or not.

But even that is rather iffy under the TDRP, the - as the - or inter registrar policy because the current registrant still has a right to transfer at some point. And I cannot block his transfer forever without reasons - without evidence. So we would need to define where to apply this and what kind of cases this actually applies to.

Because this would go beyond (unintelligible) been followed which is the usual suspect - the usual case of the TDRP.

Mikey O'Connor: Yeah, and this is Mikey. That is a good and key question. Let's come at that question in the other direction and just see sort of where it takes us for a minute. If we had limitless freedom what would be the best way to resolve a hijacking case?

You know, forget about TDRP, forget about IRTP, you know, at this stage. And is that - is that way of resolving that kind of dispute something that could be incorporated in IRTP, etcetera, or not? That may be a more fruitful line of - because, you know, the procedural stuff, I mean, I think that's part of the reason why there aren't very many TDRP disputes is because generally the procedures are followed, that's not the problem, it's hijacking.

And with that I'll go over to James.

James Bladel: I don't know if I'm going to help or make this worse. James speaking. But we did discuss the change of registrant process in IRTP-C and I believe, if memory serves, when we reached the point where we discussed mechanisms to dispute a change of registrant process we kind of kicked the can down to this thing and said, well, they can just make use of the TDRP.

So my opinion is any changes that we make - and this is going back to Volker's concern - is that any changes that we make to the TDRP are grandfathered - or inherited into this other process that we developed in IRTP-C which is the change of registrant process.

Mikey O'Connor: Yeah. Let's just put that in the notes. Volker, over to you.

Volker Greimann: I lost my train of thought. Give me a minute.

((Crosstalk))

Volker Greimann: I'll come back.

Mikey O'Connor: Didn't mean to go so slow. But just jump back in if you remember. Avri, I apologize, the sun is shining so brightly on my monitor that I can't see the Chat. So oh Avri said, "I think that if the registrant can't do it themselves someone needs to be responsible doing it on their behalf." And then Volker responded to that, "The registrant must always be responsible as the registrant is, under normal circumstances, the only party actually interested."

Oh, I have - yeah, I know I do have sun. I hear it's a little wet in Europe today. James, I've stalled long enough. Carry on.

James Bladel: Sorry, that's an old hand.

Mikey O'Connor: Oh okay. Well so here's where we sit. I think we're pretty comfortable in our conclusion that the registry layer is out. And we're pretty comfortable about

appeals sort of running along the same tracks. And those two things go together. If we remove the registry layer we've basically removed Layer 1 and thus we've removed the appealable layer to the process.

I just want to sort of play that back and then I'll circle back to Volker because I bet he's remembered his idea. But at least in terms of the sense that I got earlier in the call that if we remove registry layer and then we can also remove the appeal because that's the Level 1 layer.

And I want to say that out loud and if anybody thinks that's a terrible idea this is a good time to sing out. Barbara is saying, yeah, makes sense to her and the little tick marks. Okay so we'll check that one up as tentatively the plan. And that's useful for the drafting team because there are quite a few pieces of the draft that then fall out. And so the drafting team can go to work on that.

It seems to me that the - the registrant access puzzler is moving forward. And I think that the sense is - oh, well Avri, hang on a minute. Let me just sort of capture what I think the sense is. I'm not hearing people say that it's absolutely impossible for registrants to get access to this process. It's the details and that the devil is in the details.

If people are, you know, Volker, are you willing to - and, James, you know, as our registrar reps - and I guess Graeme, too, are you willing to accept the sort of fundamental premise that registrants need some sort of access to a process when they have a recalcitrant registrar and that what we're doing is we're hammering out the details of how that works or are you fundamentally opposed to registrar access to a process?

I think if we could get beyond that point then maybe we could chew on details for the rest of this call and maybe into the next. But at least claim the baseline that some sort of access to some sort of process for registrants would be useful. Avri and then James and then Volker.

Avri Doria: Yeah.

Mikey O'Connor: Avri.

Avri Doria: Okay hi, thanks. This is Avri. I first put my hand up when we were in the process of quickly saying the registry was out because I'm not - I haven't gotten to the point of being comfortable with that. Starting from a basis that the registrant must have a reasonable road for recourse and that the registry is ultimately at the end of the day responsible for the registration's use of the domain name, I don't think they can be removed out of it until we're certain that we have a definitive procedure that gets the registrant their due.

And I think without the registry in it at the moment and with the registrar saying no there can't be a forcing function here that a registrar must do anything that I think at the end of the day the registry has to be the last point where a registrant can go for recourse to get to the appeal if they can't get there themselves.

So I'm not quite comfortable with having removed that yet. And I just wanted to get my statement into that before it disappeared off the table and I was too late to get that said. Thanks.

Mikey O'Connor: That's a good point. Let me just take a moment to summarize that. Okay, James, you're next.

James Bladel: Thanks, Mikey. James speaking. To your question, are registrars fundamentally - or I shouldn't speak for all registrars. Am I fundamentally opposed to allowing some sort of registrant access to this process? I would say it's not my first choice.

You know, I feel like we can probably improve - I really believe that the issues with TDRP deal with speed and cost. I'll just get that out there. I think that that is really what's hamstringing is not who has access to it. But, you know, if a

registrant has perfect access to a slow and expensive process it will still not - it will still be underused.

I think that given the option of having the registrant have direct access to the process in a way that sort of bypasses the registrar versus just compelling the registrar to cooperate with the existing status quo I think I would say the latter is probably less burdensome in the long run particularly for registrars who are already initiating this kind of in response to reasonable requests from registrants.

You know, and, you know, I just keep coming back to this idea here that there should be - well I'll drop it there. There's a number of things I wanted to kind of mull around a little bit relative to where the fees should attach, you know, where the responsibility for - or where the benefit lies. And I think that all of that sort of needs to be baked a little bit more.

Mikey O'Connor: Yeah. Okay, Volker, you're next. I don't want to interrupt. Go ahead.

Volker Greimann: I think we're dealing fundamentally with two different processes here. And the one is the process that is designed for registrars to resolve a conflict regarding upholding the policy and processing a formal transfer. And this is, in my view, what the TDRP really does. A conflict between two registrars if one registrar has not transferred a domain name according to what - the process that he has should be following and I'm very, very hesitant to allow the registrant into this.

The other one is more of a authorization issue, i.e. if the registrars have followed the process but the transfer was not authorized by the registrant because of say hijacking, say another reason, in my view that's a different process than the current TDRP.

And that's something that's very much at the heart of what the registrant's interests are. And that's something where I would be more open to letting the

registrant into the process or creating a new process that would be designed for the registrant. So that basically...

Mikey O'Connor: Yeah.

Volker Greimann: ...and thinking that we might be better served by having a separate process not the TDRP of registrants.

Mikey O'Connor: You raised that before and I've got too many notes now to go find it. But I am - I'm starting to get persuaded that one of the problems that we often run into and have run into especially with the TDRP is that things get a little overloaded. There's a little too much being done in a single process or with a single fee.

We ran into the same problem when we were talking about fees that, you know, fees have multiple payloads. They have a sanctioned component and an incentive component and a cost recovery component. And the way it's structured right now there's no way to tease all that apart.

If we go up a layer in the process it may be that the TDRP suffers from the same problem and that we might benefit from having a - I mean, the trouble is the title. Transferred dispute resolution policy invites that overloading because it doesn't specify who the dispute is between. It only says transfer dispute. And so I as a registrant say oh well that's where I want to get my registrant dispute resolved.

And the way the process is structured and the way the policy is designed today it's not really doing that, it's really doing what you described, Volker, it's really a mechanism to allow registrars to ensure that the processes in the IRTP are followed.

And the tricky thing that we did in IRTP-C, which we debated and elected to do, was we brought that change of registrant piece into the puzzle. And that may not have been, on reflection, precisely the right thing to do.

So I'd be willing to entertain more conversation about that. We're getting - hold my hand over my screen I can see the time. We've got about 10 minutes left. Do we want to spend some time on that? Just the question of whether to burden TDRP and IRTP, in a way, with the registrant dispute resolution? Thoughts on that? It's, I think, a way to come out of this that might not be too bad.

Because as a registrant I don't really care what the title of the process that I use is as long as it's well defined and well supported. And if the TDRP is better off by being narrower and more targeted and supplemented with another parallel process I'd be okay with that at least on first consideration. I haven't thought about it all the way through.

One way - so one way to approach this would be to say what's in that other process? What does that other process need to do and forget about where it's done but figure out what it needs to do and then see how gracefully that fits into TDRP once we've gotten to the end of that discussion. That's one way out of the getting stuck. Barbara, go ahead.

Barbara Knight: Thank you, Mikey, it's Barbara. I think before we get into resolving disputes over change of registrant I think we really need to, you know, figure out - and I think it probably needs to be done in a separate policy - is to define what that process looks like; what are the requirements for a registrar to, you know, receive or what do they need to receive from the registrant in order to change a registrant on a domain name?

And I'm not aware of anything that's written that basically says that a minimum, you know, registrars need to, you know, have this, this and that in

order to, you know, validate that the person who's changing that information is authorized to do so.

So I think that, you know, that needs to be defined and then once that's defined then I think you can worry about, you know, if somebody is claiming that there's a, you know, a change of the registrant data without their knowledge then I think, you know, you can try to figure out what to do from a dispute perspective.

But, you know, I personally think that it, you know, should be done separately. You know, yes there are times when, you know, both the change of registrant and a change of registrar occurs either, you know, back to back or very close together. But I think that they are very different processes because, you know, change of registrants happen all the time and not necessarily in conjunction with a change of registrar.

Mikey O'Connor: Yeah, that's absolutely right. Now this also circles then back around to the IRTTP-C implementation team which, James, you and I are on. I can't remember who else on this call is on that one. Which does, at least from my vantage point, isn't doing a whole lot. It is - is the implementation process on IRTTP-C underway? Have they started defining some of this stuff? And if so could we get what they've got so far? Anybody know anything about that?

James Bladel: I think the answer is no, they haven't really gotten very far down the tracks. And I got to be honest with you, Mikey, from a registrar perspective we just - our pipeline is bursting right now anyway with ICANN changes and...

Mikey O'Connor: Right.

James Bladel: ...I think, you know, we're already seeing concerns that the customers and registrants are starting to feel even, you know, even the large number of positive changes can result in widespread confusion. So, you know, I think that if that one turns out to be a second half of 2014 or something like that

that's probably looking like when we're going to see that. I don't know, maybe that's too late but..

Mikey O'Connor: Well that - that might not be bad actually.

James Bladel: Well it might allow this group to catch up.

Mikey O'Connor: Right, that's what I was thinking. And in a way maybe allow this group to chart some of the early work there. You know, one of the complaints I've heard from ICANN staff is that sometimes we as working groups are a little sketchy on our recommendations and leaves them with not much to go on.

Maybe the way to remedy that is for us, as sort of the end of the train, I think you called it the caboose on the train, James. You know, maybe we dig in and get a little bit more granular around the whole change of registrant TDRP, you know, the whole deal there and do a little bit more of the design in the working group.

And then hand off, you know, that will make our schedule a little bit slower but it will maybe align better with the probably almost inevitable rollout late 2014 anyway. That might not be terrible.

Because I think this group could do it. You know, this group has been together for so long now we practically complete each other's sentences. And...

James Bladel: And doesn't it feel like - and I'm sorry to interrupt or to complete your sentence, Mikey, but doesn't it feel like for those - and I know we're only the last couple minutes so I'll maybe make this comment and then we can wrap up. But...

Mikey O'Connor: Yeah.

James Bladel: ...doesn't it feel like this one issue has popped up throughout IRTP-A, B, C and now D? I'm going back to IRTP-A; how do we prove the registrant can overrule the admin contact? IRTP-B, when we threw out the emergency transfer reversal process and got that shot down and rocks thrown at us at various ICANN workshops; IRTP-C, the change of account.

Just I feel like this issue is the heat of - the crux of the problem with transfers this issue and its accessory issues. That the other things that we've had, you know, whether to include IANA IDs in the Whois and locking and, you know, all that other stuff, you know, we looked at it, we wrestled with it, we got some data and we fixed it. It's this one - this one seems to be the white whale.

Mikey O'Connor: Yeah, I think that's right. And so it seems like we should go after it, figure it out and so we start with a clean white board and go to work. Maybe this is the time, James, when we go to the GNSO and say, you know, we need a face to face two-day long working group meeting where Internet doesn't work, can only work with ourselves, to get this figured out.

And, you know, essentially just do something different and try and figure out a way to get through this. Because I think if we can - and everything else just flows right out of it, you're absolutely right. The rest of it's a piece of pie compared to that.

James Bladel: Right. Right.

Mikey O'Connor: Well there you go, folks. Certainly the top of the hour. Back to you, James, you can take us on...

((Crosstalk))

James Bladel: Oh, well I don't really have anything to add. Mikey, thanks for driving the boat on this one today. And I guess we will meet again back to our normal time, for those of you in Europe and Australia, this time next week.

Holly Raiche: Yeah.

James Bladel: And until then we'll say thank you. And, Mikey, maybe you and I can catch up between now and then maybe Wednesday if that works for you?

Mikey O'Connor: Wednesday is tricky. I'm going out to that festival in Washington DC known as name collision.

James Bladel: Oh.

Mikey O'Connor: I'll be traveling back on Wednesday.

James Bladel: Well sometime this week.

((Crosstalk))

Volker Greimann: Sounds like fun.

James Bladel: Okay.

Mikey O'Connor: Yeah. I mean, you know, Thursday is fine. We're already - oh no I guess not.

James Bladel: We're about three weeks out I think from...

Mikey O'Connor: Yeah, you know, I think that we're probably at the stage where next call we should probably sketch out what we want to say in Buenos Aires. And maybe that's the story we tell is look, we found this whales, as Avri says in the Chat, we found a whale or two and we're trying to figure out what to do about that.

And tell the community that's what we're going to talk about and structure some materials. Because I think we have a public - Lars, help me out with the is. We have a public session don't we in...

Lars Hoffman: Hi, Mikey. This is Lars. Yes, we have a session on Wednesday at 10:30 I believe.

Mikey O'Connor: Yeah.

Lars Hoffman: For 1-1/2 hours is a public workshop.

Mikey O'Connor: Well so maybe that's the topic for our public workshop, something nice and noncontroversial.

James Bladel: Sounds good. It should definitely get the audience going so...

Mikey O'Connor: That ought to get people rolling for sure.

James Bladel: Yeah.

Mikey O'Connor: Okay. Yeah, let's you and me catch up. We'll do that.

James Bladel: Okay. Thanks everyone.

((Crosstalk))

END