

**ICANN
Transcription
IRTP Part D Working Group meeting
Monday 27 January 2014 at 16:00 UTC**

Note: The following is the output of transcribing from an audio recording of IRTP Part D Working Group call on the Monday 27 January 2014 at 16:00 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-20140127-en.mp3>

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

Attendees:

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

Apologies:

Paul Diaz – RySG
Marika Konings

ICANN staff:

Lars Hoffmann
Berry Cobb
Julia Charvolen

Coordinator: And pardon me, this is the Operator. Just need to inform all parties that today's conference is being recorded. If you have any objections you may disconnect your line at this time. And you may begin.

Julia Charvolen: Thank you, (Laurie). Welcome everyone to the IRTP Part D call on Monday, 27th of January. On the call today we have Kristine Dorrain, Volker Greimann, Mikey O'Connor, James Bladel, Barbara Knight, Holly Raiche, Angie Graves and Graeme Bunton.

We have apologies from Paul Diaz and Marika Konings. And from staff we have Lars Hoffman, Berry Cobb and myself, Julia Charvolen.

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

James Bladel: Thank you, Julia. And welcome, everyone, to the IRTP-D working group call for January - I believe it's the 27, 2014. Before we get started I would ask if there's anyone that has any update to their Statements of Interest. If so please get my attention by raising your hand in the chat room or coughing or something on the telephone bridge. Okay no takers on that.

Then could we please ask anyone who has any updates to the agenda, which was circulated on the mailing list and appears in the right hand column on the Adobe chat room if you have any updates to that please raise your hand. And Mikey and I discussed before the call, Mikey, agenda update?

Mikey O'Connor: Thanks, James. Yeah, this is Mikey. I thought I'd just say hi to everybody else. And I think what we're going to do - James and I talked a little bit about this - is we're going to reverse Agenda Items 2 and 3 and really zero in today on the recommendations and then leave you all with action items to read that section especially hard this week and then we'll get to the other stuff later. Thanks.

James Bladel: Awesome. Thank you, Mikey. And, yeah, the goal here is to get everyone comfortable with the language in the recommendations. And then we can pull back and make sure that they are covered and correctly incorporated into the draft initial report.

And then the homework and the next call or two becomes an exercise in reviewing the initial report and making sure that all of the pieces fit together cleanly and all the charter questions and the issues that we uncovered through the course of our work are sufficiently addressed.

So I see Kristine is going to reconnect so thank you, Kristine. Just maybe ping us when you are - when you're back in the bridge here.

So with that Volker and I - do we want to start with our recommendation or do we want to go through them sequentially? I guess I would leave that up to Lars whichever one is more readily at his fingertips. So, Lars, you want to start us where the recommendations begin and then we can...

((Crosstalk))

James Bladel: ...pick up that bit that Volker and I were assigned. I think there's going to be some discussion on that part but then the rest of it would be review.

Lars Hoffman: No objections, just scrolling down and then I'll sync as soon as I'm done. It's more tedious than it really should be. Just one second.

James Bladel: Understood. Well while you're doing that let's just send out our sympathies to me, Mikey, our Canadian and Minnesotan friends and it turns out our operator is also in my neck of the woods so, you know, everybody please stay warm and don't go outside if you don't have to. And we're there.

Lars Hoffman: Okay, so yeah, we're there, 5.2 recommendations Page 22. And I'm syncing right now so you can scroll further down yourselves, is that okay?

James Bladel: Yeah, that's fine. So everyone has scroll control there so we are now at the top of Page...

Lars Hoffman: Bottom of Page 22.

James Bladel: ...bottom of Page 22, okay. So we're starting with Charter Question A, "Whether reporting requirements for registries and dispute resolution providers should be developed in order to make precedent and trend information available to the community and allow reference to past cases and dispute submissions." Isn't that kind of the same as saying "precedent"?

Anyway we'll just kind of go through these here. And then we have an issue description beginning at the bottom of Page 22 that identifies that the TDRP did not anticipate the reporting requirements as part of this review. And then go to the next page.

The enforcement, I think, what we've identified is it seems inconsistent or maybe a better word than inconsistent might be situational. And I hate to be editing as we go but it just - it feels like inconsistent (unintelligible) of the abilities but I think more the case that just a - it's unevenly applied.

We have Chris Chaplow in the queue. Chris.

Chris Chaplow: Yes, just a question about the document. What we're reading now on this section in the preliminary report is it identical - perhaps a question to Lars - as the preliminary recommendation document - mini document we were looking at last week? How are the two...

Lars Hoffman: Yeah, this is Lars. Thank you, Chris. No it is not. It's identical to the document that was sent around earlier today so it's in your inbox. But it's slightly edited from what was there last week.

Chris Chaplow: Thank you.

James Bladel: Okay thank you, Chris. Good catch. And then I don't know how much further we want to dive into this but I see Barbara has her hand up. Barbara.

Barbara Knight: Thank you, James. This is the Barbara for the transcript. I guess my question would be is, I mean, at the point in time that this particular item was raised, I mean, it's been quite a while ago and is there still, I guess, the view that this is - that this is happening? That there are still inconsistencies, excuse me, in the deciding of cases?

James Bladel: Thanks, Barbara. And that was kind of part of my concern with using the word "inconsistent". I think that it's not really a case that it's, you know, being done inconsistently. It's more a case of there's really no way to identify trends or establish and reference precedent when there's inconsistent reporting, I think is probably the better approach; not inconsistent enforcement.

So I don't know if that addresses your question but I do believe that the - the statement - and Lars, I know it's not something you just pulled out of thin air, it's probably something that lives in a transcript or previous draft. But I think that we do need to revisit that quote that starts with, "TDRP enforcement seems inconsistent."

I think that we need to maybe sharpen that a little bit so we make sure that we're - our message is clear that we're not pointing that the registries or pointing that at the panelists; that we are in fact just commenting or observing on the reporting status.

I see we have Lars and Mikey in the queue so I will defer to staff first. Lars, go ahead.

((Crosstalk))

Mikey O'Connor: This is Mikey. I'm actually going to break in because we don't have audio. Sorry. So Avri can't hear. Other people have been having trouble hearing. So, Julia, are you on the line? Can you check and see what's doing with the audio on this Adobe room? Because it sounds...

((Crosstalk))

James Bladel: ...says she's checking. Can we pause here and give everyone maybe two minutes to dial into the bridge?

Mikey O'Connor: Yeah, we could do that too. I think the thing is just see if we can figure out why it's cutting in and out because it sounds like it's been erratic. Sorry to interrupt with that.

James Bladel: No, thanks Mikey, that's good. I didn't realize that was going on. So what does the group want to do? Should we just hold here for a moment and see if our colleagues can catch up on the bridge?

(Julia): This is (Julia) speaking from - with (AC). Can you hear me?

Mikey O'Connor: Yeah.

Avri Doria: Yeah, and it does seem to be working now so I'd say move on.

James Bladel: Okay. Well we'll move on but if it continues to deteriorate or doesn't improve then we will - we'll just maybe take a quick break and allow everybody to dial in.

So back to the queue and back to Lars.

Lars Hoffman: Thank you, James. This is Lars. Just very quickly on that quote the section you were talking about is the issue description. And so it's something that explains why this is a (unintelligible) charter question. And the quote actually doesn't come from the group but it's based on if you just read the - just the send this before. And I'm happy to change it obviously; I'd just like to explain where it comes from.

There was a review of issues for Transfers Working Group which came out of IRTP-B I believe, I just looked this up.

James Bladel: Okay.

Lars Hoffman: And in that report it was noted that the enforcement of the TDRP team is inconsistent. That's a direct quote from a report that's, by now, (unintelligible) is 10 years old but it's in the section to explain where the issue arose from.

So this is not - the next section that the Working Group Observations, that's what's attributed to what the group has actually been saying (unintelligible) so it sets the scene if you want but I'm happy to change it, no problem at all.

James Bladel: So I guess I would defer to the group on this one. My thinking is that it's - we either need to change it or we need to, in our observations, note that the actual issue varies slightly from the description that was in - is this coming from the issues report, Lars?

Lars Hoffman: Yeah, it's coming from the - actually - oh, it's coming from the issues report but it's coming back from IRTP-B in fact which is what I believe this issue was raised as well.

James Bladel: So it's their fault but considering that most of the people that were in IRTP-B are also on this working group it's our fault. Okay well I'd like to maybe just highlight that and put that on our list as something that we're going to need to circle back and address. Or we can add some language to the observation that we don't necessarily feel that that statement on its face is an accurate characterization of the TDRP.

I see Barbara's hand is up in the queue. Barbara.

Barbara Knight: Thank you, James. It's Barbara. So I guess my question is is, I mean, and it's been a long time obviously. Lars has just said it's been seven years. When

we're looking this are they referring to inconsistencies across providers so maybe one provider is deciding it one way and one is deciding somewhere else and so the benefit of having the reporting is so that, you know, all of the various registry providers and I guess ICANN-appointed providers - sorry that was my phone - are looking at data and kind of analyzing and I guess evaluating the cases against the policy consistently? Is that kind of what we're trying to get to here?

James Bladel: So we're instead saying - it seems inconsistent between differing providers.

Barbara Knight: Yeah, that's what I'm wondering if that's, you know, what the reference was trying to get to...

((Crosstalk))

James Bladel: It's possible. I wonder if - I mean, I wonder if we can maybe tease out a little more context from Lars for our next call and just make sure that - I think that what you're saying sounds familiar but I just would want to maybe check that that is in fact the case.

Barbara Knight: Right, I mean, I think if that's the case then I think that, yes, we could all benefit from having reporting to see how, you know, various cases were handled and decided.

James Bladel: Yeah.

Barbara Knight: Because everybody interprets things a little differently I'm sure.

James Bladel: Understood. Mikey.

Mikey O'Connor: This is Mikey. I was just going to echo what Barbara said. You know, I think that the statement stands okay actually. You know, we may want to reference it a little bit better but that's certainly the reason we put it in back in B was to

make sure that cases were being decided consistently. And we thought that some sunshine would be a good way to address that.

James Bladel: Okay. Okay excellent. Just one second here. Have to go on mute. Sorry, I had to sneeze. Okay so I think, Lars, do we have enough to capture here that we will circle back, try and maybe quantify that statement a little bit better in our observations? You can leave the quote intact perhaps in the - was that the issue statement or the problem statement and then move into our observations. Go ahead, Lars.

Lars Hoffman: Yeah, James, I made a note and I'm obviously going to track changes for the next draft too so everybody can see. I reference that it's a 2006 document that this comes from that arose from IRTP-B and that at that time that was the sentiment. And so it's clear that that's not what the group thinks at the moment. But...

((Crosstalk))

James Bladel: We were all so much younger and more naïve in 2006 so...

Lars Hoffman: Absolutely.

James Bladel: ...we can't be faulted for thinking such terrible things about the TDRP. Okay so moving on then to 5.2.1.2, the Working Group Observations, I don't really see anything here. And I want to maybe see if I can skip forward to the recommendations because I think we're going to have a more comprehensive read-through of the report at a later time so I think I want to skip down to 5.2.1.3 which is at the top of Page - what page am I on here - 24 of the report and 24 of the Adobe document.

Lars, go ahead, please.

Lars Hoffman: Sorry, that's a hand from my previous...

((Crosstalk))

James Bladel: Oh okay. No problem. Okay so beginning with 5.2.1.3, "A preliminary recommendation. The working group recommends the TDRP reporting requirements be incorporated into the policy similar to existing best practices - best practice requirements in the UDRP. This means that outcomes of all rulings by both gTLD registry operators and dispute resolution providers should be published except in exceptional cases."

"This should include: Information about parties involved in the dispute; the full decision of the case; the date of implementation..." - I think it's of implementation, "...of the decision; whether the case was an appeal of a first level ruling. And the working group recommends the TDRP be amended to include language along the lines of this revised version of the..." And there's a comment there from Lars, UDRP.

Let's tackle the language first. "The relevant gTLD registry operator or dispute resolution provider shall notify us, the registrar, of any decision made by the dispute resolution provider or the decision is made at the registry level, the gTLD registry operator, with respect to a transfer dispute initiated under the TDRP."

"All decisions under this policy will be published in full over the Internet except when a dispute resolution panel or gTLD registry determines in an exceptional case to redact portions of its decisions. In any event the portion of any decision determining a complaint to have been brought in bad faith shall be published."

Okay so let's unpack this here a little bit. I think the first thing that we need to talk about for consistency. Did we later - and I'm trying my memory here a little bit - did we, in a later recommendation, recommend that gTLD registries be removed from the TDRP or will that remain? Mikey, go ahead.

Mikey O'Connor: This is Mikey. I think we are recommending that the registries be removed. And to this point I think what we were talking about when we came to this conclusion was - I think we had an example of one of the dispute resolution providers report that we were quite taken with. And I can't remember whether it was Kristine's or...

James Bladel: It was the Asian Dispute Resolution...

((Crosstalk))

Mikey O'Connor: Oh right, yeah.

James Bladel: Yeah.

Mikey O'Connor: And I think we were going to point to that and say, you know, do something like that. And so then to Lars's comment, yeah, this is a different level of detail than the UDRP, which is aggregate so that was purposeful. So that's sort of my pile on that one.

James Bladel: I agree, Mikey. And without any slight intentional or unintentional to Kristine's organization I think we all thought that the other panelists provided some really interesting - a nice easy to read and easily accessible and searchable format. And we were looking at that as perhaps the template for an industry-wide reporting format. So I agree that that should be mentioned in here.

Going back to my earlier point, if we are going to, in a late recommendation, recommend that registries be removed from TDRP then it certainly doesn't seem to make much sense to continue to include them in this reporting requirement. So we should ensure that that is consistent that those two recommendations jive to each other. And I see a big green checkmark from Barbara so it would be a very mixed signal that we would send to the registries.

What about - and I see that the queue is clear so I'm kind of just, you know, just riffing here a little bit. But what do you think about the phrasing regarding exceptional cases? I wonder, does that need any flushing out, further work? What are your thoughts on that? Kristine is in the queue first but I would hope that other folks maybe want to weigh in on that. Go ahead, Kristine.

Kristine Dorrain: Hi, yeah. This is Kristine from NAF. I just - I actually wasn't - I had my hand up just before you asked the question do I actually have two different observations. And the first is that the - with respect to that sentence, "All decisions under this policy will be published in full over the Internet except when a dispute resolution panel or gTLD registry determines in an exceptional case redact portions of its decision."

I would just propose a little bit more clarity here if we do keep the registry level because it seems like, from the read of this, that if you have a case at the gTLD registry operator to the dispute resolution panel or gTLD registry could order the other one to redact portions of the decision.

So I think that the gTLD registries don't want to hear from us that a, you know, don't want to get complains that, you know, you should order NAF to redact a portion of their decision just as we don't want, you know, an email saying you should order the gTLD registry to redact. So I think we just need to make it clear that it's their respective decisions.

And then secondly the last sentence, "In any event the portion of any decision determining a complaint had been brought in bad faith shall be published." And that refers to reverse domain name hijacking and - because this was taken out of the UDRP because the portion of a decision determining a complaint had been brought in bad faith is referred to as reverse domain name hijacking.

So I don't know unless that - this discussion happened while I was fiddling with the audio connection - I don't know that we have a reverse domain name hijacking because of action or anything here so I don't know that that sentence is relevant. So I just wanted to throw that out there.

And then my final point, I guess, would be to sort of answer your question, in my opinion, which is the UDRP it does not specify what an exceptional case is. And I think that in the vast majority of situations the panel does not determine that there's an exceptional case. So you can just sort of use that to lend your - to lend to the discussion.

But I would not define it because I think that allows the panel to use its own, you know, inferences of logic and it doesn't compartmentalize. Because what's an exceptional case in 2013 or 2014 might not be an exceptional case in 2017 and, you know, five different exceptional cases might come up in the interim and so we hate to limit it to only exceptional cases that we can imagine today.

And, again, panels are very unlikely to use this section of the language anyway so I would suggest that perhaps it's not necessary to clarify it but that's just my opinion.

James Bladel: Okay so let me see if I can touch on those and capture something that we're all happy with. So certainly we don't want registries and panelists, if the registries are still involved in this process, which I believe we're recommending that they be removed, but if they remain involved we don't want any crossover requirements to where they or the panelists are being required to publish or redact something in the report that doesn't belong to them.

And I think that we can probably attack that with some language, as you mentioned. I think inserting the word "respectively" in there is appropriate. But as I think Mikey touched on earlier, we are later in this report calling for the

registries to be removed so I think that whole section needs to be addressed and cleaned up to make sure that it's consistent.

So I'm hoping that addresses the problem, Kristine, that you identified but if we need to pull that out we can. The second...

Kristine Dorrain: Yeah, I agree, I think it will address...

((Crosstalk))

James Bladel: Yeah. I see what you're saying about the bit about the bad faith being published. I don't believe that there is a, you know, bad faith in this context is not reverse domain name hijacking. Bad faith, however, could exist in a transfer dispute; it is possible. Oh, Mikey's hand up so I'll hold to that and...

Mikey O'Connor: No, no go ahead.

James Bladel: Oh okay. Well I do think that it would be - we would call it something else, we would call it, you know, an attempted claw-back of a name or something. I know the aftermarket has probably some terms for it that might not be, you know, family-friendly. But it's the idea that someone after a transfer would then want to go back on that particular transaction and undo it in the course of a dispute over the sale or otherwise a reassignment of a domain name.

So I think that we can leave something in there to address bad faith. But I agree, it would not necessarily be in this context reverse domain name hijacking. Mikey, go...

((Crosstalk))

Kristine Dorrain: Okay, I think, yeah. This is Kristine again. I was just going to say I think that the - I think that's good. And as long as we have it - as long as we can

reference back to a definition of whatever a complaint having been brought in bad faith is I think we're good to go.

I just wanted to highlight it because I know that under the UDRP that's been defined as reverse domain name hijacking. So it was - there was sort of like a, you know, misplaced or, you know, you're missing your - your pronoun missing its antecedent or something; it was sort of dangling there.

James Bladel: Yeah, that's a good catch. It's kind of orphaned out there without the definition. Mikey, go ahead.

Mikey O'Connor: Thanks, James. It's Mikey. I think this is sort of a drafting note for Lars but also for us. The question of whether the registry layer gets removed from the TDRP came up in Charter Question B as we started to rewrite that. And I'm not sure that we've really got that in this report. So I'm thinking that what we want to do is just catch this and say to Lars that, you know, we probably need a little bit more of a report framework and a place to hang that ornament on the Christmas tree. Thanks.

James Bladel: Thanks, Mikey. Lars.

Lars Hoffman: Thank you, James. This is Lars. I think that - if I recall correctly the - leaving out of the - getting rid of the registry level was actually part of the redrafting under C whether we should - whether the registrant should be involved in the TDRP and then we redrafted the TDRP and decided that it probably should be a good idea to keep the registries out and have the registrants launched if they're allowed to directly with the dispute providers.

And if I - the way I recall it the group decided once that the registrant wouldn't have access but that we're going down a different route. I don't think there was a decision been made as far as I remember on whether then to still amend the TDRP and leave - to leave out the registries from the process. So

I'm sorry if I overlooked that that's definitely under the recommendations and I'm happy to add that.

James Bladel: Okay thanks, Lars. Mikey.

Mikey O'Connor: This is Mikey. Lars, I think you've got it exactly right. I think what happened is we backed out when we went into C and concluded no, registrants are not going to have direct access to that process. We'll leave the process alone. We inadvertently also backed out of that other change that I think there is consensus in the group on to remove the registry layer.

And so we're going to have to figure out where in our charter, where in our charter questions that would be best addressed if at all. And this gets me back to a point that James and I talked about earlier on - much earlier, months ago, which is that we may - since we're sort of the last in the line of IRTP working groups, at least we hope, there may be other sort of cleanup items like that.

And so what you might do, Lars, is just open up essentially a last recommendation section that follows the last charter question. And we'll sort of figure out the language for that that says, oh and by the way here are some other things that we're recommending since we're last in the process. So this - I didn't mean this that you goofed; I just meant that collectively we goofed.

((Crosstalk))

Lars Hoffman: ...so it's no problem.

James Bladel: Okay thanks, Mikey. Thanks, Lars. I think that's good - that was good exchange there. And I think you're correct, Mikey, that we probably need to make sure that we've got all the pieces fitting together. If we draft that registry recommendation I think it still belongs in Item C.

I think that we should, in fact, have a - what do we want to call it here? A caboose on this train of all these IRTP PDPs that anything that we've discovered, all these loose threads that we want to put to rest, you know, should probably come into a, you know, another section of the report. So if we can capture that that would be good.

I wanted to step back just a couple of hops and discuss a little bit about Kristine's comment regarding the exceptional cases. And I think I agree that we should not be defining what the criteria would be for a case to be exceptional and therefore not published.

I think that, you know, we don't want to tie the panelists into too small of a box. But I think we have two choices here. We either - we either leave it - either they publish everything or they have some discretion for exceptional cases.

And I guess I'm trying to envision why - just as devil's advocate here - why we wouldn't publish everything. And maybe, Kristine, or maybe Barbara or some other folks can weigh in on why - what may be an exceptional case in the past where obviously can't give too much detail but just maybe the general idea of why we would want to withhold some of this information. Kristine, go ahead.

Kristine Dorrain: Yeah, this is Kristine from NAF. So the main things that are withheld currently in UDRP refer to the contact information or the name of the registrant. So where a registrant comes forward - a respondent comes forward in a UDRP dispute and says, oh my gosh, I am not the registrant of this domain name. I know it says my name and address in the Whois but my identity was stolen and here's a copy of the policy report.

And, you know, and in some cases, about half of the cases, the complainant also comes forward and says we've actually been working with this

respondent. They don't have control. Their identity was stolen. Somebody used, you know, picked a name out of the phone book. It's not really them. Please redact that information because we don't want to victimize this person twice by having a public UDRP decision, you know, with their name attached to it available so please redact it. And in most cases the panel will do that.

Other information includes sometimes when parties submit business information to the panel they will ask and say, please don't publish my sales or don't publish my whatever. You know, please don't put this information in the decision. So that's some of the things that get redacted.

Additionally when - even if a panel were to inadvertently leave in an email address in a decision I will go in and redact that before it goes live so that people's email addresses are not published in UDRP decisions.

So it's usually personally identifiable information that would be subject to, you know, data privacy sorts of things. But it's possible also that parties do sometimes make arguments to the panel that, you know, they don't want - you know, certain contentions published, you know, that would besmirch their name. So panels have never agreed to that but there have been cases where parties have requested it.

James Bladel: Okay so maybe I did not get this - so it's not necessarily that there was something exceptional about the case so we wouldn't publish anything about the case but more certain fields would be redacted on a situational basis.

Kristine Dorrain: Yeah and that's the current practice. Now what the original drafters meant by that I don't know. But the panelists have taken an incredibly conservative approach to this and that's where we are in practice today.

James Bladel: Okay thank you. That was - I think that was very helpful. Barbara.

Barbara Knight: Thank you, James. This is Barbara. So from our perspective because, you know, obviously we're not doing any public reporting on these cases currently I can't really speak to it but just hearing what I'm hearing from Kristine I think that, you know, those circumstances make sense and would be justifiable reasons for withholding, you know, certain pieces of information or redacting those.

James Bladel: Okay thank you, Barbara. I think those sound very reasonable as well. So do we want to flesh that out a little bit in our recommendation so it's clearer that what we're talking about here - or do we want to continue - I mean, I don't want to box in the providers but do we want to say, "For example, personally identifiable information," or something along those lines. Mikey.

Mikey O'Connor: This is Mikey. I'm pretty much in the don't box the providers in. I'd be okay with some examples. But I certainly wouldn't want to specify. I really do solidly agree with Kristine's logic on that. Thanks.

James Bladel: Right, Mikey. I agree, we don't want to tie their hands. But, I mean, helping the reader understand what we're trying to capture in the recommendation by saying, "For example personally identifiable information," or something along those - I hate to over-lawyer this by saying non-limiting examples but I think that's what we're driving at is we want to be helpful but not create constraints.

Kristine.

Kristine Dorrain: Hey I just wanted to throw out there - this is Kristine from NAF - that are we - do we really even have the same sort of problem when we have a - a registry process? You've got two businesses with relatively public information happening so I almost wonder if we don't even have some of the same issues that are being redacted today.

And, I mean, I can imagine some situations in which the arguments of the parties include, you know, personal information such as, you know,

information that might be available in the FOA or something like that. So that's one thing to consider.

And then the other thing is just to remember that oftentimes it's sort of human nature and panelists are not immune to it. When you see a list of examples it's easy to want to limit yourself to those examples. So I think we would need to be super clear that that, you know, is just illustrative.

And the final point to just consider as we're discussing this idea of whether or not to include examples is that if we say, "Such as personally identifiable information," now I almost fear that we'd be raising the, you know, almost inviting parties to consistently say oh well this is personally identifiable information, you should have redacted that.

Almost in a sense creating a bigger hassle on the other end of you should have redacted because, you know, these are things that are redactable so just wanted to throw that out there trying to sort of identify problems before they arise.

James Bladel: Okay thanks, Kristine. I think that's fair and I think that as soon as you name one then that pretty much guarantees it will always be redacted so I think that's a fair point. Let's leave this as it is. But if we're going to throw an example out perhaps it doesn't belong in the recommendation or the language of the policy but maybe just the working group observations or discussions.

But I think it is, as we have said several times, it's important to ensure that the providers have some discretion here. And as far as registrar information being public, you know, I think we all received a bit of a wake up call when we were required under the new RAA to publish an abuse email in the Whois. I don't think anyone was ready for the tsunami of, let's say, questionable communication attempts that have since resulted from that from that change.

Okay so let's take a look here. Preliminary level of consensus for this recommendation. Well, that remains to be seen but it sounds like we're all - I don't see anyone really objecting to where we're going with this but maybe we need to fine-tune it a little bit better.

So then let's move on to Charter Question B. And I'll - if there are no final points on Charter Question A, reporting. Okay so moving on to Charter Question B - we'll take a look at the charter question and the issue description and then we'll skip down to the recommendation. And we'll see if we can put a button on this one before the top of the hour.

Okay Charter Question B, 5.2.2. "Whether additional provisions should be included in the TDRP on how to handle disputes when multiple transfers have occurred." And this is - where we call the register - the transfer-hopping and how do we untangle that chain of transfers.

Five, two, two, one, "Problems may arise when trying to resolve transfer disputes in instances where multiple transfers have occurred. The issue, sometimes called domain laundering..." which we may need quotes around that, "...refers to a situation whereby a domain changes between several registrars and the TDRP is eventually filed because the initial transfer was potentially in violation of the TDRP." I think we mean to say IRTP there.

"Though subsequent transfer (ones) did not breach the policy. Such a situation would require multiple layers in the dispute proceeding as the transfer process would have to be verified and assessed for each transfer - for every transfer that occurred potentially involving multiple registrars with subsequent transfers being in compliance with the transfer."

"Bearing in mind that registrars do only have to maintain records for this years this might complicate matters further. Finally, this issue may raise questions of fairness for those registrants that may have purchased a domain name and the transfer took place in compliance with that policy yet dispute

providers may find that an initial transfer in a chain of registrar hops may have violated the transfer policy and thus question the validity of all other transfers down the line."

So we need to do some editing in that statement but that is the description. I think that we had some good discussion here. And I believe, if we can go down to the recommendation and start to look at that - I'm skipping ahead here, which is at the bottom of Page 26, 5.2.2.3, Working Group Recommendations.

"The working group recommends that the TDRP be amended along the following line: Transfer from a gaining registrar to a third registrar and all subsequent transfers are null and void if the gaining registrar acquired sponsorship from the registrar of record through an invalid transfer as determined through the dispute resolution process set forward in the transfer dispute resolution policy."

"Furthermore, the working group further recommends to increase the statute of limitations to launch a TDRP from six months to 12 months." So I can't tell if the rest of this is part of the recommendation or not or if it's more recapping the observation.

"The working group also recommends that if the UDRP is initiated the relevant domain name should be frozen and thus prevented from any further hops." And this might be a good place to shoehorn some of the things that Volker and I were discussing last week.

"It is found through either a first or second level TDRP procedure within the statute of limitations that a non-IRTP compliance domain name transfer has occurred that the domain name is to be returned to the original registrar of record. This should also apply if the domain name has since been transferred to more registrars within the statute of limitations. The UDRP, as well as

guidelines to registries and third party dispute providers should be modified accordingly."

So what we're saying in effect is that if there is multiple transfers and the first transfer in that chain was invalid or non compliant or found to be - and it is within the statute of limitations which we are recommending will increase that all subsequent transfers are voided and the domain name would then return all the way back to the beginning of the chain to the registrar of record at the time that the - prior to the disputed transfer.

I think that that's, in a nutshell, what we're trying to say. Maybe we could condense everything back to that. I see the queue is empty so maybe this would be a good time to raise what we mean by "frozen" which I think what we're trying to say here is locked against future hops.

And one of the takeaways or the homework assignments that Volker and I had was to discuss a little difference of opinion that he and I had where he was, I believe, contending that the domain name should be locked against further hops and not just in this but in any TDRP, not just in the case of multiple transfers.

And my - I don't know if it was my strong position but my devil's advocate position was that sometimes in these cases the harm is occurring by leaving the transfer in place while the dispute is being resolved and so that the default position should be to undo the transfer and lock it at the registrar of record and then resolve the dispute.

And I think what we came up with was a compromise position that it's both which is that the default position will be what Volker has proposed which is that once a TDRP is initiated domain name, regardless if it's a single transfer or multiple transfers, the domain name will be locked against future changes or future transfers until the dispute is resolved.

However, if both registrars - and I think this is key - both registrars agree that there is sufficient harm in doing so that the domain name could be, at the discretion of both registrars, be returned to the registrar of record and locked they are while the dispute is underway. And I think that the key here is that both registrars would have to agree that's the case.

Now in the event of any multiple transfer situation where there are several registrars involved the to registrars that would have to agree to do this would be the original registrar at the time that the transfer dispute was filed, and the current registrar of record where the - so the first and last registrars in that chain would have to both agree that the best case scenario would be to return the name while the TDRP is being resolved.

Probably less likely that you're going to get to registrars to agree to that in the event of multiple transfers but it is one of those areas like in the previous recommendation where we want to ensure that the service providers have discretion to address some of the weird edge cases that are out there in the industry.

So with that I see Kevin has his hand up and open the floor to discussion on this particular recommendation. Kevin, go ahead.

Kevin Erdman: Yeah, this is Kevin. Can you hear me fine?

James Bladel: Just perfectly.

Kevin Erdman: Can you - great. I think one thing that should also be addressed in this provision is what party gets to affect - basically who gets to be the registrant during this lockdown period? I mean, that's one of the key issues that we identified, you know, long ago was, you know, the idea of hijacking and someone has a valuable domain and it gets hijacked and there's all this economic harm that happens because there is some malfeasance in taking the control of the domain away from the rightful owner.

So in addition to specifying which registrar is supposed to hold this frozen domain wouldn't it also be appropriate to specify which registrant is going to be able to exert control over the domain?

Kristine Dorrain: Yeah.

James Bladel: Thanks, Kevin.

((Crosstalk))

James Bladel: That's a good point. And I was proceeding under the assumption that if the transfer was reversed that - that all of the information not just the registrar but also to contact information would also be undone, everything that, you know, it would basically be put back status quo prior to the transfer or left in place, status quo after the transfer; it's really dependant upon the circumstances.

But I'll let Volker go ahead. Volker? You may be on mute. Volker, I see you in the chat. I'm not able to hear you so I don't know if perhaps your audio was disconnected or...

Volker Greimann: Hello, hello, hello, hello, hello, hello.

James Bladel: Oh, now we hear you. Thank you.

Volker Greimann: Okay. I'll try to speak up a little so you can hear me better. The way our registrar currently handles a lock, which we are proposing for the case...

((Crosstalk))

James Bladel: Volker? Volker?

Volker Greimann: Yes?

James Bladel: Volker. I'm sorry.

Volker Greimann: Yes.

James Bladel: We can hear you but your voice is very distorted. And maybe it's just on my end but there's a lot of static. Can I ask that you may be slow down just a little bit and maybe we can follow along because it's very - it sounds like a bad connection that we can almost make out what you're saying. I think if you could just give us a little bit more...

Volker Greimann: Is this better?

James Bladel: Yes, much.

Volker Greimann: Okay. The way our registrar currently handles lock is that we do not allow modifications when we have a lock so basically until the domain name is unlocked the registrant at the time of placing the lock would be the one that has put the final content on the domain name.

If the content has not changed yet that would be the contents that would be locked. So basically while the registrant listed in the Whois would be the same person who has the control over the domain name that's mainly focused by what the status quo at the time of the lock is.

If the transfer back occurs then I would assume that as this goes against the status quo this would also reinstate the original owner as the person who has control over the domain name. But that's a good question and maybe we should be more clear in formulating that.

James Bladel: Thanks Volker. I agree, it is a good observation and should be explicitly clarified. Mikey.

Mikey O'Connor: Thanks guys. This is Mikey. I like this a lot. I'm going to parse this language a little bit and I'm going to do it again into the chat one sentence at a time.
Sorry it all went in one big blob.

Because I think that the answers to some of these questions are embedded in the language. So the first sentence says, "When there's a notice of transfer complaint..." and I want to circle back around and tag that and say any kind of complaint or all the way up to TDRP, question mark. Because I think it fits any kind that's more helpful.

Then the gaining registrar place is the name under lock. So that's the starting point is it froze it. That's good, I like that. Then, let me paste in the second sentence. Get a little spacing because it's really just - it's great stuff it's just kind of hard to read all in one blob.

((Crosstalk))

Mikey O'Connor: The next one says - sorry? Or is that just echo?

Volker Greimann: That was me trying to be heard.

Mikey O'Connor: Oh, there you go. Go ahead, Volker.

Volker Greimann: Yes, I don't think that we would receive a complaint from the previous registrant. We would always look for a complaint from the previous registrar because the previous registrant is not necessarily a person that the gaining registrar has done any business with and therefore the complaint should always be channeled through the registrar that has held the domain name at the time that the complainant was the registrant.

Mikey O'Connor: I agree. You know, I'm just pasting it out of - out of the text that you guys sent but I agree with you, Volker, I think that, you know, it's - I think the specifics of

this language need some tuning but I think the general idea is something I'm pretty comfortable with.

The second sentence there is saying that the lock will be removed. I think that's also good. And it gives a little bit of time for a legal proceeding to start. And, again, that's where I think the first sentence, we got to be careful what we're talking about because it's not a TDRP necessarily, it's something else.

And then the last sentence I think is the one that addresses Kevin's point, which is providing a mechanism where although the default is to lock it with the current registrant there is a mechanism for the two registrars to agree that there's an awful lot of harm taking place and it should really go back to the old registrant, not registrar but registrant, and a mechanism to do that.

So in principle I'm - I commend you guys for this. I do think there's some wordsmithing to do. And Volker's saying in the chat this needs tuning and I agree. But I think if we can get a sense of the group as to how comfortable they are with this general idea then from there we can certainly tune it up and I thank both of you for working on it.

James Bladel: Okay, thanks Mikey and Volker. And, yes, I think as Volker indicated we were trying to catch the broad concepts here with this language but it certainly could benefit. We need to sand some of the rough edges off as we go forward.

Let me turn it around to the group here. I have two questions. The first off is, is there anyone that has serious objections with the way we're going with this idea here as far as what is happening to the domain name while it is in the course of the proceeding - of a dispute resolution - or a TDRP?

You know, is there anyone that believes that the registrar should not have the discretion to, amongst themselves, if both agree unanimously to leave the domain name in place or reverse it.

I think that what it is doing in effect in this policy is encoding into ICANN land what is already sort of happening in the industry at least among the larger service providers which is, you know, definitely includes the registrars participating in this group and in most ICANN functions which is that, you know, if there is some sort of a problem domain name we will, you know, confer and try to determine what the best course of action is before - even before a TDRP is initiated.

So does anyone have any strong objection to where we're going with this particular recommendation? Okay, so that's encouraging.

And then the second bit - and this is just to go along with the - yes, Avri has a good point - as long as it's reversible. And I think that this is all a temporary situation pending the outcome of the filing of the TDRP so whatever the decision of that would then be implemented and the situation would then go away in favor of whatever the decision coming out of the panelist would be.

The second bit would be whether or not this fits here or if it just is more of a broader recommendation. And I think that's maybe a different question but something to look at. We've got a couple of minutes before the top of the hour but I see Mikey has his hand up so go ahead, Mikey.

Mikey O'Connor: This is Mikey again. One question for you guys and that is is it only filing a TDRP or is it also going to court? In other words, I think the way I came away from the last discussion was that either a TDRP gets filed or somebody goes to court - and then Avri's slipped into the chat, "And the ombudsman."

So I'm wondering how broad is the incoming funnel to this? I'd be more comfortable if the incoming funnel included those other two but I'd be curious to hear what you guys would think about that.

James Bladel: This is James jumping in. I don't know about the ombudsman. I hadn't considered that. We'll maybe have to take a look at that. I think that a court proceeding might be a different animal together.

And - because it may come with its own set of instructions that a registrar would be compelled to follow which may be completely outside of ICANN's policy. In fact it may even require certain name servers be attached to the domain name, you know, in the interim. I'll defer to Volker on that. But I think that the court thing might be out of bounds but I think we'll have to definitely take a look at the ombudsman bit. Volker.

Volker Greimann: I would agree that the court decision would depend on what the court tells the registrar to do. However, I think a minimum would be a lock unless the court specifies a different procedure.

With regard to the reversibility one thing that we usually do when we have a case where we allow a transfer back after a claims hijacking is that the registrar that then regains control of the domain name must promise to place a domain name under lock for at least 60 days to allow the current registrant to initiate procedures to regain the domain name in that case. So I think that's a good idea to have reversibility in there as well.

James Bladel: Thanks, Volker. We're at the top of the hour but I see Barbara's still in the queue so we'll take this question and then we'll start to bring this in for a landing. Barbara.

Barbara Knight: Thank you, James. This is Barbara. So I could speak from our experience. When we get a TDRP case we do lock the name down to prevent any future transfers or changes to the name while we're reviewing it.

The only concern that I would have over actually having it reversed back to the registrant is how much time, you know, some of these disputes take in order to resolve. So if it's being done before it even gets to the TDRP case if

the registrars feel like they can resolve it pretty quickly then, you know, I think that it - I wouldn't have as much of an issue with it being sent back to the registrant if the registrant has changed as well.

I'm just a little concerned that, you know, if the registrars, you know, they do agree that they can go ahead and change it back to the registrant - the original registrant during the proceedings while they're discussing it and then they're not able to come to, you know, complete resolution of it and end up, you know, kicking it over to TDRP and then, you know, potentially it could, you know, it could be locked down for another - I don't know - 100 days if it were to go through like first level dispute resolution.

It's a long time for a domain name and a registrant who may have actually legitimately acquired the domain name to lose control of that name. So I have a little bit of trepidation, you know, thinking about having it returned to the original registrant.

((Crosstalk))

James Bladel: Thanks, Barbara. So - and I realize we're slightly over time. So maybe we should put a pin here and take that up at the beginning of next week. So the next meeting will be this time next week, same time. But I would ask that in the interim that folks take a look at the draft that Lars has circulated. And if we decide to push out another one, an updated draft, that we take a close look at those focusing on the recommendations. And then we'll continue to refine those and then edit and polish the overall initial report.

So that's it for today. Mikey, did you have anything - I saw your hand go up and then go down. Did you want to add something before we sign off for today or...

Mikey O'Connor: No, no, you've covered what I was going to do. Just to chime in behind James please take a hard look this week, you know, if you were to pick a

week to work on IRTP this is the week to do it because if we can get the really substantive issues flushed out on the next call, or even better yet, on the list, that'll really help us come into Singapore with a final report - or an initial report. Thanks.

James Bladel: Yeah, thanks Mikey. That's a good point. You know, I know these calls and having a meeting every single week starts to get a little repetition but if you could set aside a time on your calendar between now and Friday, the earlier the better, to just sit down with a cup of coffee and go through this report, that would be excellent.

And I think it would really get us a jumpstart into next week so that we can get these recommendations wrapped up, read through the report and then, as Mikey said, come to Singapore with our report in hand. So thanks everyone. Great work this week. And let's preserve the momentum for next.

Mikey O'Connor: Thanks, James. See you in a week.

((Crosstalk))

Woman: Thank you.

END