

**ICANN
Transcription
IRTP Part D Working Group meeting
Monday 05 May 2014 at 15:00 UTC**

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

Attendees:

Graeme Bunton - RrSG
Barbara Knight – RySG
James Bladel - RrSG
Angie Graves – BC
Kristine Dorrain – NAF
Avri Doria – NCSG
Bob Mountain – RrSG

Apologies:

Paul Diaz – RySG
Volker Greimann – RrSG
Holly Raiche – ALAC

ICANN staff:

Amy Bivins
Marika Konings
Lars Hoffmann
Berry Cobb
Steve Chan
Terri Agnew

Coordinator: Recordings have started. Thank you.

Terri Agnew: Thank you. Good morning, good afternoon, and good evening. This is the IRTP Part D Working Group call on the 5th of May, 2014.

On the call today we have James Bladel, Barbara Knight, Angie Graves, Avri Doria, Bob Mountain and Graeme Bunton. We have apologies from Holly Raiche, Paul Diaz and Volker Greimann.

From staff we have Amy Bivens, Lars Hoffman, Berry Cobb, Steve Chan and myself, Terri Agnew.

I'd like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much and back over to you, James.

James Bladel: Thank you and welcome everyone to the IRTP-D working group call for May - Cinco de Mayo 2014. If we could please as per our usual SOP if anyone has any updates to their SOIs could you please indicate so by raising your hand in the Adobe room or get my attention on the call?

Seeing none we'll move on then to the draft agenda that was very simple there that is items one through four circulated by Lars earlier on the list it is posted there in the right-hand column. Any comments or suggestions on that?

Okay I think that that agenda will work for this call. I think that at some point however were going to get to a place where we're going to need - I guess we would call it a second pass review of some of these comments to make sure that we - all of the little place markers and follow-up items that we - the breadcrumbs that we left for ourselves are picked up. But I think that we probably have a few more comments to get through before we can begin our second pass so we'll start with that.

So as we left our heroes we were reviewing comments from - Lars, can you help me which one we are on? I believe - 13 does not look familiar. Does that mean that we completed up through 12.

Lars Hoffman: Yeah, James, this is Lars. This is correct. I was just going to scroll up here; this is the last one we did. And then I scrolled down to the 13 which is where we should start today. I'm going to release the file as well so everybody can scroll through by themselves.

James Bladel: Thank you, Lars. Appreciate scroll and zoom control. Okay so we'll start with 13 and we'll see how far we can get today. It looks like there are 30 actual comments so we're just about halfway through although some of them certainly take longer than others so I think that'll probably consume the bulk of the call today.

So Questions 13 and 14 - or Comments 13 and 14 involves our Recommendation Number 6 where the working group recommends that if and RFP is initiated under the TDRP that the relevant domain name should be locked against further transfers. The TDRP as well as guidelines for registrars, registries and third-party dispute providers should be modified accordingly.

We have a note here from staff, "It might be useful to add lock under the basis for denial of transfers."

So just off the cuff I think that is correct. I believe one of the existing reasons for denial includes locks for UDRP. Is that correct? Lars, does anybody...

Lars Hoffman: Yeah, James. This is Lars.

((Crosstalk))

Lars Hoffman: I just pulled this up. This is the reason of denial extracted from the IRTP as it stands. There's the...

James Bladel: Yeah.

((Crosstalk))

James Bladel: Yeah, so that's reason for denial number two, UDRP action. So I think that it would be reasonable to expect that we could say UDRP or TDRP action that - if that makes sense. I think this is a good suggestion and possibly something - a note that could be left for the implementation of this recommendation is that it would simply be added in there.

The only concern I have here - and maybe we can capture this in our response - is that as we discussed in previous working groups reasons for denial our reasons where a registrar may knock a transfer request. So I think a domain name lock is a situation where a registrar must knock a transfer request.

And if that's what we're going for then I agree, to cover all of our bases we need to have it in reasons for denial but I think that we also need to have it explicitly described in the TDRP section of the policy because otherwise - we don't want registrars treating that as optional is my - or do we? I don't think we do but, you know, I think that that's what we would be saying if this were the only place where the lock is provided for.

Kristine has a point about TDRP then we should add URS as well. I think that is probably correct. I would have to take a look at the URS policy. And I think this is a - a bit of a tangent but it is an important one and we should be consistent as possible so maybe we mark that as they take away. So it's just one little sentence here, Lars, but I think Comment Number 13 has generated a couple of different action items for staff.

Does anyone else have any thoughts on Comment Number 13 and whether the locking of the TDRP domain name should be included? Does anyone object to it being included here, let's maybe put it that way. Okay. I don't see any hands of there. I think my only concern is that it can't only be there if our intention is to make it mandatory.

So moving van to Comment Number 14. Registries support this recommendation TLD registries currently have a practice of locking a domain name by applying server transfer prohibited, server delete prohibited and server update prohibited to the domain name upon receipt of a RP. In those cases the lock remains in place for the pendency of the case including the period of time that the domain name dispute is a peeled to the second-level dispute resolution provider, non-prevailing party elects to appeal the decision.

So this I think is in line with a comment that Kristine has posted into the chat which is if the lock is applied by the registry then does it matter? The answer is that the registrar is unable to initiate a transfer anyway so the registrar lock - locking out the registrar level seems redundant but certainly would cover us in case there were, let's say, if this were inconsistently implemented across all the dozens or hundreds of new registries we see popping up.

And Bob is pointing out that we are all learning a new word today, pendency. I like that.

Any thoughts, reactions or questions here? I think this is more of an informative comment than a challenge except for the first part which generally supports the recommendation. Okay.

Kristine is noting in the chat that the UDRP Locking Working Group added and defined that term. I believe you mean the term "pendency" Kristine? Is that correct?

Kristine Dorrain: Yes, that's exactly what I mean.

James Bladel: Okay yeah, so that is a defined term under the UDRP Locking Working Group which has been completed and approved and is currently pending implementation.

So okay, moving on then our next comment is Comment Number 15, Recommendation 7. The working group recommends not to develop dispute options for registrants as part of the current TDRP. One comment on this, and I was surprised it was only one, but here it is, it's from the BC.

"The BC believe there must be a mechanism for registrants to initiate proceedings when registrars decline to initiate them. The BC supports that details of our position on Charter Question C, they're encompassed in Recommendation 8 and 9."

So, do we have - no, Kevin is not on the call. I'm not sure who else on this working group is coming from the BC. But, you know, I think that this is, you know, there's no other way to position it; this is diametrically opposed to where we landed as a working group and I think we're a lot of us landed anyway, I don't know if it was unanimous; it seem to be that it was kind of the prevailing discussions once we untangled a lot of the issues associated with this recommendation.

I'm curious though how the working group wants to proceed, whether we want to reopen this issue, whether we want to maybe put some of the issues raised by the BC under a microscope and take a closer look? Did we miss something? Kristine.

Kristine Dorrain: Hi, this is Kristine from NAF. Say, I just wanted to - I thought - and I'm trying to scroll through and see where it is but I thought ultimately we ended up recommending that the - we recommend to the GNSO that if, you know, the BC or whoever believes that some mechanism should be up for registrants that there be a different PDP for that so something where we actually talk about that, you know, that specific issue. Does anybody else remember what I'm talking about there?

James Bladel: Thanks, Kristine. I don't see any other hands going up. Does anyone else - Graeme is agreeing as well. You know, I kind of would turn to staff and say

do we have something to that effect in our report? Was that captured in any of our subsequent recommendations?

Bob, go ahead.

Bob Mountain: Yeah, James. Sorry, I haven't been as active recently just because of a - some work obligations. But from prior discussions I thought that the escalation process was not ICANN and was, you know, through commercial or legal route - am I misremembering or was that the alternative?

James Bladel: That's a good question, Bob. I don't remember myself. I know that we had fairly long lengthy and diverse discussions around this topic. And I think that we floated a lot of different ideas. And I think that was possibly one of them. I think Kristine and Graeme are also remembering the idea of the second PDP although I don't see us formally recommending that.

I do see us making some recommendations to the implementation of a previous PDP. Could that have been it, Kristine and Graeme or are we on two different tracks here?

Kristine Dorrain: Well this is Kristine from NAF. And I don't remember anything involving changes to a previous PDP. But I do remember a lot of discussion surrounding this idea that if the GNSO considers that was still a problem then we'd have to figure out under what bucket (unintelligible) whether this would be an entirely new policy because UDRP is for trademark infringement. Most of the registrant complaints aren't trademark infringement.

The TDRP is for registrar, you know, violation between registrars of transfer policy. And there's really no place for registrants there so there would be a whole separate thing as was my recollection.

James Bladel: Thank you, Kristine. I think that just reading Recommendation 8 I think that it is perhaps encompassed in that second half here where it says something

about inter registrant transfer recommendations when they're implemented they should include appropriate dispute resolution mechanisms.

The IRTP-C and IRTP-D Implementation Review Team should determine whether the inter registrant transfer use cases documented in the appendix - question mark - have been addressed. If there are use cases that had not been addressed by the implementation of IRTP-C then the implementation review teams are charged with formulating a request for an issues report to review the remaining use cases.

I think that's where we're getting the new PDP because an issues report is essentially the first step. And consider whether any additional dispute resolution mechanisms or changes to the TDRP should be developed that that request should then be forwarded to the GNSO Council for consideration.

So I think that that bit there about the requesting the issue report for any uncovered use cases is tackling the - is tackling that issue as far as studying it but a new PDP - or teeing one up if the implementation of IRTP-C is not covered. I see a green checkmark from Kristine.

Graeme, is that where you're thinking we're coming from as well? Does that jive with your...

Graeme Bunton: Yeah, hey. This is - that sounds - yeah, no that's about where I'm coming from.

James Bladel: Okay. I think that the concern I have here is - with the BC - if you take a look at the comments or the excerpt of their comment is that, "Must be a mechanism for registrars to initiate proceedings when a registrar has declined to initiate them." So that is, you know, that is specifically talking about TDRP where a registrar has declined to initiate them.

So I believe our response should be something like this, you know, the working group discussed this at length and determined that since the TDRP effectively covers, you know, noncompliant transfers between registrars that the registrars would not necessarily be a party to, you know, those disputes.

However the working group also determined that the IRTP-C inter registrant transfer provisions would be an appropriate place for this dispute mechanism and that if these issues were not addressed then, you know, new issue report, new PDP blah, blah, blah.

So something like making sure to redirect this particular comment or the question to, you know, not to the TDRP but to that inter-registrant dispute. That's one potential path of forward as far as a working group responds to Comment 15. Kristine.

Kristine Dorrain: Yeah, this is Kristine from NAF. And I thought that what we had decided there was that there was a - yeah, Berry's putting it in the chat right now. I think we decided or at least we discussed in detail that that was a compliance function.

If you've got a registrar - so we were going to put some - I remember Mikey talking about this. We were going to put some sort of language into place or on ICANN's Website or something that said if you are a registrant and your registrar isn't bringing a dispute and you feel that they should then you need to let ICANN know or, you know, click here and we'll give you your options or something.

Because I know the Registrars are really concerned that they don't want to be forced to bring a dispute that they don't think is, you know, has merit. But at the same time we have to do something for where there are registrars that are just purposefully being jerks about not bringing a dispute because they don't want to deal with it.

So there was a discussion about compliance function - and the problem I know is right now - and I just went through this the other day with another registry - or another registrant where I can't even find an ICANN site where to report a registrar that's not taking a registrant's claim seriously; that, you know, my domain has been stolen, you let a transfer out of my account without my permission. Whatever it is, I mean, I'm sure that's not a TDRP dispute.

But I can't even - I couldn't even find where to direct them to. So it may just be a matter of beefing up ICANN's site and, you know, being a little bit more clear on compliance to decide what they can and can't help with.

James Bladel: Okay thanks Kristine. And thanks, Berry. I do remember that now. I think that Mikey - when he raised that issue touched on that fairly succinctly when he was explaining that a lot of these elements associated with this use case are covered under existing policy and therefore are not a matter for dispute or new policy but in fact are a matter of compliance enforcing the existing obligations on registrars.

So I think Berry has put a link in the chat there. Berry, can you help me here? Is that a link to the complaint submission that Kristine was referencing?

Berry Cobb: Hi, James. Yes that is true.

James Bladel: Okay thanks. So, Kristine, I don't know if that helps. But so I think that, Lars, if we can kind of capture some or most of what I was saying that we need to also address this idea that, you know, registrants are not powerless necessarily - not a given that they need to dispute a process if they believe the registrar is not following existing policy they can raise the issue with ICANN Compliance - contractual compliance to enforce their existing obligation.

So, there's a chat going on right now regarding that submission of complaints but we'll move on.

So any other thoughts or parting thoughts here about the BC Comment Number 15? I think that we have a path to address them. I mean, certainly we're going to have to do a read through on our second pass but it sounds like pointing out that the TDRP is really an inter-registrar dispute, that there is an upcoming inter-registrar process that needs a dispute mechanism that's compliance can enforce.

The existing policy obligations if they're raised five registrants who believe that registrars are not living up to those and that we have a mechanism - part of our recommendation is to capture any uncovered use cases that were identified as part of this process and formulate a request for an issues report. So I think that's our - that's how we navigate our way through this issue.

Okay, certain that will - we'll be able to talk about that again when we come back for our second pass. So let's move on to Recommendation 8. Is that actually a comment there, Lars? Because I don't see it. Blank by number 16. do you see it on yours?

Lars Hoffman: Sorry I was on mute. No I think I just moved to that - there was no comment on 8 - on 16. It should have been blank I apologize for that.

James Bladel: Okay that's fine. And as we already kind of unpacked the second half of Recommendation Number 8 is where we point out that, you know, any use cases that remain unaddressed could be the subject of a future PDP.

So, moving on then to Number 17, and Recommendation 9. Recommendation 9 the working group recommends that the TDRP be modified to eliminate first level layer TDRP so registries would be off the hook. And, you know, Barbara could get a little more sleep that night.

Recommendation 17 is from the Registry Stakeholder Group. The Registries support this recommendation for several reasons. First, the number of gTLDs and registry operators increases the potential and consistency and the interpretation and administration of the TDRP as likely to occur.

Second, the expense that the registry operators incur to have staff with expertise to process and render decisions in dispute cases is not justified by the small number of disputes that are raised at the first level.

Third, other ICANN dispute policies, specifically the UDRP and URS, do not include the registry operator in the dispute process but instead call for dispute resolution providers that have been approved by ICANN as having the expertise necessary to adjudicate domain name disputes to handle disputes.

Finally, with the vertical integration of registry operators and registrars now possible the potential for conflict of interest exists if registry operators continue to be the first level of a TDRP. Consistent handling of cases by subject matter experts, i.e. dispute resolution providers approved by ICANN, has the potential to improve the overall TDRP process.

So let's unpack this here for a moment. In general I believe that they are supportive of our recommendation as it stands. They're offering a number of I guess justifications for that position. First off noting, as we have, that the number of operators is increasing so that could generate inconsistencies; secondly the expense. We noted that one in our discussion as well.

Thirdly, and I think this is perhaps new that if we are to align the dispute mechanism here the TDRP with UDRP and URS those do not include a first level dispute with the Registries so this is consistent policy structure with those - with those other procedures.

And I think this last parties definitely new comment the idea that a vertically integrated registry operator could be conflicted in the event that a dispute

occurs in a vertically integrated TLD. I hadn't thought of that one. You know, I think that that's interesting and something that we perhaps - I don't remember discussing it on the call, Lars, or Marika, if you guys are aware of any opening of this topic. But Barbara thinks that's a new one as well to her memory.

So overall I think these are good - good comments. And in general there's no action required because they're supportive of our recommendation.

The next comment, Comment Number 18, coming from (unintelligible). I would encourage the IRTP-D Working Group to consider removing - to recommend removing the fees, parentheses, (unintelligible) defined - as they concurrently are seen by us as prohibitive. Registrars starting procedures in vain or without good cause can be warned, find and ultimately de-accredited based on the RAA. I feel gTLD registries should take more responsibility in order to deal with this. Ultimately they are responsible for their database, not others, even if it's a thin registry.

So this is, I think, a reminder to us that one topic that we've left open is a discussion of the economic impact of this change, that the rarely used registry level - first level that we are recommending be done away with is much less expensive than going the route of the, you know, independent party - the dispute - third-party dispute providers.

And, you know, what impact might that have on the use or disuse of this particular procedure if the fee structure is changed dramatically to become a barrier to using this process?

I think that you could possibly make the case that if price were a barrier that we would have seen more of these cases open at the first level than we have. As we indicated it's a very rarely used process.

I think what (Arthur) is saying here is something different however, talking about fines for registrars that appear to be abusing the process. And I'm not sure if he's stating registrars that are just exclusively registrars that are initiating these disputes versus those who are frequently found to be on the losing side of the disputes, you know, for disputes that are brought against them.

Anyway thoughts, comments on this particular recommendation or is this just more, you know, more fodder for that larger discussion about the fee structure - the downstream impact of this recommendation.

Nobody has any strong feelings when we're talking about money and fines and - okay. Kristine, go ahead.

Kristine Dorrain: This is Kristine from NAF. I have a question on the fining thing because I'm not, you know, really well-versed in the RAA. But is there actually like processes for ICANN to warn, fine and - well obviously de-accredit - but warn and fine registrars?

James Bladel: No that I'm aware of...

Kristine Dorrain: ...and in conjunction with I guess IRTP - okay.

James Bladel: Yeah, I'm not really aware of any specific fines. I know that we have SLA now for Whois performance that even exceptions to that SLA I don't think there are financial sanctions as part of that enforcement.

Kristine Dorrain: Okay so this is - so you're viewing this comment as sort of a suggestion that ICANN add that to the RAA. I mean, only because I'm not seeing any - I mean, the TDRP doesn't have any - I mean, fees is a different issue which I think we need to eventually address but fines and I guess, you know, de-accreditation or whatever against registrars that's not written in anywhere to my knowledge. So I'm a little bit confused by this comment myself.

James Bladel: Well I was thinking perhaps, Kristine, that the commenter was raising the idea of loser pays, is that where he may be going with this?

Kristine Dorrain: Only sounds like just does reasonable a suggestion as anything else.

James Bladel: Well it doesn't really jive with the second part of the comment though so that's why I'm kind of just questioning - scratching my head a little bit here. You know, I think we can capture this - I mean, I think that a lot of it here - the last sentence is certainly, you know, more adding, you know, some background or some color to the comment. I think it's the first bit here talking about fees or fines that's got the rest of us confused.

My recommendation would be that we revisit this comment when we have that more fulsome discussion about the impact on fees with regard to this recommendation and whether or not that will create a barrier to this policy for use by registrants.

And perhaps if we, you know, as part of the previous recommendation if we think it's part of IRTP-C implementation then maybe we need to discuss what the fees - how that these would be handled or something like that so maybe that's the more appropriate place to discuss this.

But I'm with you on this one, Kristine. And if anyone else can shed some light here I'm not really clear what fines are being discussed unless it is more of a discussion of - loser pays model. And if we're still stuck when we discussed fees then we can certainly perhaps ask staff to reach out to the commenter and see if we can get some clarification on those points.

Okay, So if there are no other comments on Item Number 16 - I'm sorry, Item Number 18 - we can move on to Recommendation 10. The working group recommends ICANN create and maintain one stop Website containing all relevant information concerning dispute transfers and potential remedies to

registrants. And then there is a list of items that could be included as well as links there.

Let's see what the - we have a few comments on this. The first one is from, (Arthur). "In general yes this is a good idea but a lot of text on the ICANN Website needs to be shortened and simplified because it uses way too much text and acronyms to explain something simply. This not only applies to the transfer (unintelligible) used which are actually directly relating from the homepage (unintelligible) but also to the registrant's rights and responsibilities and other policies like WDRP, ERRP, Whois Accuracy Spec, which are actually not explained to the public at all or missing, bouncing one of these emails means your Website and email are disabled in 15 days."

And then he turns on the sarcasm tag here and says, "Always nice to find out when you get back from your holiday and learn that ICANN's positive proactive way (unintelligible)." Sarcasm tag off. "Seriously, the ICANN Website needs to educate text writers who can - need educated text writers who can write in a more accessible way in layman's terms. The registrant-impacting possibly should have short pages no longer than one screen explaining each of them separately answering questions like why policy here, how does it affect me, what can I do about it."

So in general I think that the comment is supporting our recommendation with the caveat that the language used on ICANN's Website is, you know, not very accessible and often missing some key elements here particularly with regard to the Whois accuracy specification which is a - a much, much bigger fish that needs to be fried at some point here because we, you know, registrars need, you know, needs to help from ICANN to build awareness of that responsibility.

So there's some color there from the commenter. But I don't think any action is required here except perhaps a note as far as part of our recommendation

that should be easily accessible and easily translatable; if we have not already stated that somewhere in our recommendations.

Any other thoughts on Comment 19?

Okay, Comment 20 from the ALAC, "The term 'user friendliness' should be augmented comprehensively to make it clear that the site should be understandable to a registrant who does not have to deal with such problems on a regular basis."

So reinforcing this concept of accessibility of the information and, you know, not using a lot of inside industry jargon or as having that a registrant is familiar with the transfer process or the associated dispute mechanisms. I think that's good advice and just kind of continues to pound the that point home that we need to make sure that this is, you know, clear not just full of alphabets soup.

Comment 21 from that Business Constituency, "In the interest of consumer protection but BC recommends establishing requirements for registrars to publish information pertaining to transfer dispute resolution options available to registrants. The BC supports the details of our position on Charter Question (D) that are encompassed into Recommendation Number 9 and Number 10."

So I think that they're now circling back to one of the original points of discussion that was raised which is the idea that registrars should also be required to link to this information or to publish information.

We had a fairly lengthy discussion about this and so I'm kind of looking to folks to help fill in the gaps of my memory. I know that we discussed this and we discussed perhaps some best practices. We could certainly reopened the idea of requiring links to sort of a centralized and authoritative ICANN information repository.

I think that just putting on a registrar hat here for a moment I think registrars would be wary of requirements to duplicate the information because of course if it's not linked to it then that runs the risk that we could be out of sync in terms of revisions.

But anyway what is the group thinking here about the BC suggestion that we reopen the discussion about making this a requirement on registrars as well as guidance to ICANN? See no hands. Not even any of the other registrars? Graeme? No? Hate to put people on the spot here.

Okay well let's just move on. I think that, you know, I can respond as a registrar if it's appropriate to do so and just note that I think that our recommendation certainly could include some best practices. The BC is asking for requirements.

I think that registrars are still addressing some of the unintended consequences of requiring publication of certain things from the RAA, for example, abuse email addresses that, you know, have not necessarily work out the way they were intended.

But I don't think there's any particular issue as far as linking to and ICANN resource for example the way we are required to link to the registrant rights and responsibilities document, I think that is certainly something that we could consider. I would just not necessarily be excited about duplicating the information on multiple places because that's how discrepancies are born.

Okay it looks like I'm just kind of talking to myself now so we'll move on to Question Number 22. This is from ICANN staff, a note. "It might be helpful if the working group could specify in more details how to improve (unintelligible) and content. I agree, that's probably a little vague.

I think that the other commenters, perhaps, provided a little more substance around these issues about accessibility, usability and content ensuring that information that's provided is understandable to a non-industry insider who may experience the disputed transfer once or twice in the course of their career and don't do this sort of thing on a daily basis.

But we can certainly, you know, build that out a little bit more. But I think that that also would be explored as part of the implementation of this recommendation.

Okay I see some points in the chat there but I think that they're so far in agreement. So we can move to Recommendation Number 11. The working group recommends that as a best practice ICANN-accredited registrar promptly display a link on their Website. ICANN registrant help site, registrars may choose to add this link to the section of the Website already contains registrant relevant information, registrant rights and responsibilities, Whois information and other relevant ICANN-required links as noted under 316 of the RAA.

And that is addressing the BC's comment to some extent. It circles back to Comment Number 21 where we said this is our recommendation as a best practice. Whether or not this should be a requirement is I think what the BC is asking.

Comment Number 23 from the ALAC. "It is essential that in addition to registrars and resellers be explicitly included in this recommendation."

So I'm going to have to go and take a look but I think there is a note in there - in this section regarding resellers that says that all, you know, ICANN-required this and bobs, you know, need to be passed through to resellers as well but I'll have to go back and take a look.

Bob.

Bob Mountain: Yeah, James, are they referring here to resellers of the ICANN accredited registrars like the, you know, eNom and Tucows for example, their resellers?

James Bladel: Yes, that's my understanding is ALAC is saying that anything that we recommend that registrars display that we make the same recommendation to resellers.

Bob Mountain: So are they recommending then that they are a direct communication between ICANN and the resellers, you know, as opposed to riding those communications through the wholesale registrar?

James Bladel: Well, you know, that's a good question, Bob. And I think in the past it usually takes the shape of a pass-through where the registrar is required to inform their reseller that they have an obligation to do something.

Now in this case I'm a little as clear because this is a best practice recommendations so I think in that case it would be a question of, you know, we recommend that registrars consider doing this. And if you are going to do this then we recommend that you make your resellers do it as well. Something along those lines.

Bob Mountain: Yeah, my understanding as well as the whole registrars jealously guard their communication with the resellers and so to, you know, I would think that any communication best practice otherwise would be, you know, probably be routed through the wholesaler. Maybe that's, you know, something they should weigh in on in this case. You know, it sounds like it's very relevant to their traditional practices.

James Bladel: Yeah, I agree. And I did find here the 3.12.7 of the RAA, which I will copy for those of you who do not have the RAA tattooed on the inside of your eyeballs, I will copy that into the chat here.

But essentially it says it's a specific to the registrant's benefits and responsibilities spec that says registrars shall require resellers to publish it on their Website. And I think that - Bob, I think that that does fairly prospectively say, you know, this communication - registrars must require the resellers to communicate this to registrants so it does not have the direct registrar to registrant communication.

Bob Mountain: Okay. That makes sense.

James Bladel: So I think that we can maybe make a note here on Comment 23 that, you know, since this is a best practice that we would recommend that resellers - registrars who use resellers also consider making this a requirement or making this a suggestion or whatever to their resellers as well. Okay, any other thoughts on this one?

Recommendation Number 12. The working group recommends no edition note penalty provisions be added to the existing policy. Working group concludes that the penalty structures introduced in the 2009 RAA and the 2013 RAA are sufficient (unintelligible) IRTP violations.

Number 24, financial penalties - this is from (Arthur) - financial penalties are almost always efficient when dealing with registrars violating policy. Alternatively ICANN Compliance has enough tools as it is for those registrars unfazed by fines.

I think that (Arthur) is the any kind of a roundabout way supporting this recommendation and a green with the justification for it while also advocating for the effectiveness of financial policy - financial penalties for policy violations.

I did think of one - it didn't come up here but I did think of one exception to this recommendation that already (unintelligible) the add-grace period violation thing limits policy where it actually has a specific financial penalty

attached but I think that was targeted to a specific behavior so maybe make a little more sense in that policy than it does here but that's just something to think about.

Comment Number 25 from the BC. "The BC believes there should be penalties for specific violations other than notice of breach. The BC hopes that the 2013 RAA will address this issue. The BC supports the details (unintelligible) our position on Charter Question E that are encompassed in Recommendation 11 and 12."

I think that it's very clear that there are compliance mechanisms (unintelligible) short of notice of breach for example a registrar can be suspended by ICANN Compliance which is something short of a breach so that's, you know, I think that we have seen some of those new compliance tools in action in the real world. And I think those are actually introduced in the 2009 RAA, they're discontinued in the 2013 RAA.

Any other thoughts or questions or concerns about these two recommendations?

Okay, moving then to Recommendation 13. The working group recommends GNSO consensus policy should avoid policy specific sanctions. And there were - I'm checking with Lars - there were no comments received under that, correct?

Lars Hoffman: That is correct, yeah.

James Bladel: Hey, folks, just to let you know the UPS guy is walking up to my door so bear with me because the dog is about to bark. I'm wondering if, Lars, you could help me out; I'll go on mute here and I wonder if you could maybe read Comment Number 27 from the BC which is our recommendation to maintain and preserve FOAs.

Lars Hoffman: No problem, James. I can do that. Although I be very keen for you to reading out Comments Number 28 as you'll see when you scroll down.

Recommendation 14. The working group recommends to maintain FOAs. In the day to day administration of the FOAs are redundant however in cases involving unauthorized transfer requests in which the registered name holder's email address has been hijacked or his access credentials to the control panel have been stolen the gaining registrar's obligation to obtain the FOA from either the registered name holder or the admin contact can help protect the domain names of being hijacked given the registered name holder's Whois contact information is different from the admin contact.

The BC supports the details of our position on Charter Question F that is encompassed in Recommendation Number 13. They refer to Number 14, we did some reordering of the numbering so they're referring to this recommendation.

James Bladel: Okay thank you. And I appreciate your indulgence there. So it seems like on the surface that this comment aligns fairly closely with the working group's recommendations and our discussions on this topic that the FOAs are, for the most part, just a redundant piece of paperwork. However, when something goes wrong with the transfer or something is coined to be unauthorized they can serve to help untangle the sequence of events and determine whether or not, you know, a transfer was legitimate or whether it was unauthorized or fraudulent transfer.

Trying to see here if there's something that we need to take away. And I'm just reading through it here about the note about the registered name holder and the admin contact emails being different. I'm trying to - does anybody have any insights on that here? I'm trying to figure out if that is something new that we had not discussed previously.

I think what they're saying is because the registered name holder trumps the authorization of the admin contact that if their contact information is different then it a - serves as an additional safeguard against a hijacking or an ability to undo a hijacking. But, you know, if anyone sees any - is reading that any differently please let me know.

Okay, all right and you wanted me to read Number 28. And I think it's because it 's so long, is that why?

Lars Hoffman: That is correct.

James Bladel: Oh gosh. Holy cow. Look at that thing. That is not a comment excerpt; that is a - okay, let's see if we can unpack Comment Number 28 here. Here's the issue we disagree on in Report 5261, observations are made by Compliance that FOAs are essential to help resolve dispute reserve if appropriate.

It is for this reason that ICANN Compliance also expressed its support for maintaining - can I ask, Lars, before I just dive into this multi-page comment here with only eight minutes left in the call, I think that we need to look at ways to break this up because it looks like he's quoting - the commenter is quoting a larger report, an excerpt of a larger report.

So where does that - does that end - he's referencing something that was submitted by a client in the report 5261 observations by Compliance. Where does that observation by Compliance end? Because I don't think it's useful for me to just read this out to the - into the record, I mean, it's like War and Peace here.

Lars Hoffman: Yeah, I have (unintelligible) that it ends actually even on Page 9 of the dispute. He goes...

James Bladel: Okay so this is not..

((Crosstalk))

Lars Hoffman: ...read the whole comment at some point. No, unfortunately it's not - that's not the whole thing.

James Bladel: All right.

Lars Hoffman: He's basically putting up a rather lengthy argument of why FOAs should be maintained, that's a spoiler alert. But...

((Crosstalk))

James Bladel: Well but it says in the first - in the opening bit that he does not agree that FOAs should be maintained; he does not agree with our recommendation. But then the argument is that it should be maintained?

Lars Hoffman: No, no, they should be abandoned is what he - is what he argues.

James Bladel: I see.

((Crosstalk))

James Bladel: Okay. Okay and it looks like if we go to...

Lars Hoffman: Can I just make a quick side note? If you scroll down to the final comment - well, final comment on this recommendation, which is also a fairly lengthy one albeit nowhere near this from ICANN Compliance, I submitted this - the comment from (Arthur) to Compliance because I realized there was, you know, he put out a lengthy argument and it's again something that the working group has fairly unanimously so far some concerned or noncontroversially recommended, albeit preliminarily.

And Compliance has provided an answer in 29 addressed specifically on this issue and why Compliance also believes that notwithstanding (Arthur)'s argument that the FOAs should be maintained.

James Bladel: Okay so if I'm understanding correctly Comment Number 29 is a response to the submission of Comment Number 28 to Compliance.

Lars Hoffman: Yeah, I mean, it's obviously not a response because it's offered Compliance to respond but it's their view on his argument if you want; it's their comeback or their answer to the points that (Arthur) brings forward.

James Bladel: Okay. And what I was going to point out is rather than, you know, just, you know, children gather round while I review a bedtime story sort of long comment I was thinking that we could capture the essence of the comment in the enumerated point A-F, if we can just take a look at those.

I think that that allows - these are the enumerated list is - he's pointing out - I think he introduces it by saying that the way the transfer proceeds as the way I described it in the full report - I being James Bladel - describes in the full report is incomplete. Please allow me to add some important elements pertaining to the FOA and other elements. And then he's laying out here the sequence of the transfer process as he sees it.

I'm trying to find a way that we can capture what he's saying here without going through this entire thing. Does anybody have any suggestions or are we just going to have to brute force our way through this one on the call?

((Crosstalk))

Lars Hoffman: I mean, if you - sorry, James, this is Lars, if I may?

James Bladel: Yeah.

Lars Hoffman: If scroll down...

((Crosstalk))

Lars Hoffman: Sorry, yes, if you scroll down...

((Crosstalk))

Lars Hoffman: Yeah, if you go to Page 12 the - that's the last paragraph is just quickly get you all there - it says that currently three factors are required. He kind of sums it up there in that last paragraph although there's some additional information above. I'm happy to provide a shorter summary of this for next week if you'd like to but I think for the purpose of - I mean, we've only got four minutes...

James Bladel: Yeah.

Lars Hoffman: ...it sums it up at the bottom there.

James Bladel: Well we're very near the end here. I'll give Bob the last word. We're near the end of our call. We're going to end up reviewing these comments. so for next week can we maybe tee it up here and ask, you know, if we can parse this thing - boil it down to maybe just two or three succinct paragraphs here. I think we - it's understood that he believes that FOAs are dinosaurs and we need to get rid of them.

And, Bob, go ahead.

Bob Mountain: Yeah, I would agree with you, James. I think (Arthur) obviously put a fair bit of time into drafting his argument so I think it would be fair to, you know, give it its due. Also, though, just a general comment I think in the past we've had members of this working group who are quite opposed to things that would dilute the security of domains, you know, Mikey O'Connor to be specific.

But, you know, representing the domain owners interest so I would think that, you know, given the, you know, the general philosophy of the working group, you know, in previous discussions along these lines I think we'd want to be very careful before we remove anything that would contribute to domain security and the security of domain owners just as a general comment, you know, on (Arthur)'s recommendation here.

James Bladel: Yeah, thanks Bob. I think that that is - you know, I think that's exactly where, you know, what kind of allowed us all to arrive at our original recommendation which is, you know, hey, these things are just another piece of bureaucratic paperwork except, you know, in that 1 in 100,000, 1 in 1 million whatever shot where you need to undo something or piece together a transfer after the fact.

So let's propose that Comment 28 and 29 - I see Comment 30 - the last comment is really just a general note of support from the ALAC so I don't think that there's really anything to discuss there. But Comment 28 and 29 deal with this issue of FOAs. Let's tee those two up for next week. We will start our call with those.

And then we will take a look at definitions afterwards. But I think that, yeah, if we can ask Lars and, you know, you can go ahead and throw something - I'm sure you've got pictures, you know, throw darts at or something for me asking this.

But if you could maybe take a look at this, make sure that we're capturing (Arthur)'s concerns and that we are, you know, being true to his sentiment and his - and his - the information he's introducing into this conversation and that's all adequately captured we will then address that and then we'll put the ICANN statement under a microscope as well - the statement from Compliance and then we'll determine what our path forward is on those two points.

But, I mean, in general I think we did very well. We got through the entire comment tool except for those two remaining outstanding items we can do next week, same time. We'll tee those two up and then we're getting close to where we can do a second pass and see what remaining to-do items are on our list to incorporate into our final report.

So thanks, everyone, for your help and excellent contributions to this effort. And, you know, one step closer to the finish line. So have a great Monday, everyone.

Woman: Thank you, James.

Lars Hoffman: Thanks, everybody.

Bob Mountain: Thanks, James.

Terri Agnew: Thank you, everyone, for joining today's meeting. (Brian), if you could please stop the recordings?

END