

**ICANN  
Transcription  
IRTP Part D Working Group meeting  
Monday 14 July at 15:00 UTC**

Note: The following is the output of transcribing from an audio recording of IRTP Part D Working Group call on the Monday 14 July 2014 at 15:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <http://audio.icann.org/gnso/gnso-irtp-d-20140714-en.mp3>

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

Attendees:

Barbara Knight – RySG  
James Bladel - RrSG  
Kristine Dorrian – National Arbitration Forum  
Graeme Bunton – RrSG  
Angie Graves – BC  
Holly Raiche – ALAC  
Volker Greimann – RrSG  
Rob Golding - RrSG  
Kevin Erdman – IPC  
Avri Doria – NCSG  
Bob Mountain – RrSG  
Arthur Zonnenberg – RrSG  
Chris Chaplow – CBUC

Apologies:

Paul Diaz – RySG

ICANN staff:

Marika Konings  
Lars Hoffmann  
Berry Cobb  
Steve Chan  
Terri Agnew

Coordinator: Your recordings have now begun.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. This is the IRTP Part D Working Group call on the 14th of July, 2014. On the call today

we have Volker Greimann, Holly Raiche, Angie Graves, Graeme Bunton, Barbara Knight, James Bladel and Kristine Dorrain. We have apologies from Paul Diaz.

From staff we have Lars Hoffman, Berry Cobb, Steve Chan, Marika Konings and myself, Terri Agnew. I would 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, Terri and good morning, good afternoon everyone. Welcome to our call for today. We are in the home stretch. Per our work plan we are now going to be taking a look at our final report and discussing the various charter questions.

But before we dive in can we please ask if anyone has any updates to their statement of interest please raise your hand at this time. Okay seeing none, does anyone have any updates or suggested modifications to our agenda, which appears in the right hand column of the Adobe chat room.

Okay thanks. Let's dive in. So Lars graciously took time away from his athletics fandom to finalize - I believe this is a redline version of the final report and provided us an opportunity to go through the different charter questions and their recommendations noting the differences between the final report and any modifications from our initial report.

So he and I together will walk the group through these charter questions and recommendations and then if anyone has any - we'll just - we'll take a queue at each point and we'll discuss them thoroughly before we move on, how's that?

So let's dive right in. Charter Question A, and this is regarding reporting requirements for registries and dispute providers in order to establish

precedent and trend information and make that available to community and allow reference to past cases and disputes.

Certainly this is predicated on the idea that if registries are removed the first level dispute resolution path then of course they would also be relieved from any reporting obligations.

Lars, I'm looking to see if we made any modifications to this recommendation. It looks like we did slightly add a paragraph at the top of page 2 which is the working group reviewed all comments on this recommendation that were received at the publication of the initial report as all comments were supportive of this recommendation the group made no changes.

So I think that that is self explanatory. Does anyone have any thoughts on this recommendation on Charter Question A or propose any new modifications? Berry.

Berry Cobb: Thank you, James. This is Berry for the record. Just, you know, I was looking at the exact wording of the recommendation and it says, "Outcomes of all rulings." And I'm just curious if the working group intends that for this recommendation that previous TDRPs also be published just in terms of consistency or is there an issue with that? And, you know, should we make this distinction or not?

James Bladel: Thanks, Berry. Good point. I think that the intention of this recommendation that this would be a go-forward process and would not retroactively apply to previous TDRPs but I may have that wrong. So does anyone on the working group have any strong feelings on this either way?

And I think that the question probably is best record to Kristine and to Barbara whether or not, you know, that even practical consideration to go back in time and dig up and publish those previous cases. But I thought that the recommendation would have been going forward.

I see both of those representatives would like to weigh in on this so we'll start with Kristine.

Kristine Dorrain: Hi, this is Kristine from National Arbitration Forum. Thanks, James. We don't strongly object to retroactively publishing our decisions but I will say that's because we only have six so to have to go back and try to figure out how to get those posted, yeah, it might take us a little bit to try to retroactively get them into the system and post because our system is ignoring the TDRP decisions right now so that might take a little bit of development. But by a little bit I mean like a week or two.

But I would - and this is for Barbara because I think she's got, you know, the bulk of the previous decisions and I think it'd be a - more onerous for her to have to do that so I will weigh out at this point.

James Bladel: Thank you, Kristine. Barbara, please go ahead.

Barbara Knight: Thank you James. This is Barbara for the transcript. So I would support going forward I guess speculation in this particular case. And I'd have to go back and look to see if there aren't any data retention requirements. But, you know, given how far back this particular policy goes, I mean, it went into effect in 2004, I would say that, you know, given that timeframe there could be some, you know, way back in the early days where the information, you know, was not required to be retained for that long of a period of time. So I think going forward would be the best approach.

James Bladel: Thank you Barbara. Okay so we've established that it would not be necessarily easy or straightforward to publish the data and some of it may actually even no longer be available. I think does anyone have any strong feelings that there would be some sort of compelling value to having these historical cases or as they go forward approach - noting that one provider, ADNDR, already published some of those.

So, you know, does anyone have any strong objections to making this a go forward requirement and explicitly stating so? Okay, I mean, that seems to be the rough consensus of the group. And I think - I don't want to presume too much but I think that was our intention while we were writing that. So maybe Lars, if we could clarify that that would be the approach? Thanks, Lars.

Okay, all right then moving into Item - let's see, now we'll scroll down to the Page 3, top of Page 3, which is 5.2.2, Charter Question B. whether additional provisions should be included in the TDRP on how to handle disputes when multiple transfers have occurred. We deleted - will actually I think that was from a previous session.

So you can see the modifications in the second to the last paragraph on Page 4 were added by Lars. During the public comment period on the initial report the working group received comments calling for an even longer extension of the statute of limitations. However, after substantial discussions on this issue the group felt the extension to 12 months would provide sufficient protection to registrants and is therefore inadequate extension from the current six months.

The working group believes that this extension period with sufficient - we've got to fix something there - would provide sufficient time, perhaps would be the way to say that, to registrants and registrars to notice and allege noncompliant transfers and initiate a TDRP.

In addition the 12 month statute of limitation also takes into consideration the need for legal certainty of not being subject to a potential future TDRP procedures for registrars and resellers when transferring domains.

I don't have any problem with the substance of this change, I just think that the wording is a little - I ask that if you're not speaking if you could please go on mute? I hear just a little bit of background noise coming through. Thanks.

But, Lars, I don't know if you can maybe - I think that we can clean this up just a little bit here and say something like, you know, the extension to 12 months would provide sufficient protection to registrants and is therefore an adequate extension from the current six months.

I don't know, would anyone else on the working group like to take a shot at this here? I just think it's a little - it just needs a little bit of polish. No hands are going up. Okay...

Lars Hoffman: James.

James Bladel: Yes, who is that?

Lars Hoffman: It was just me. Sorry, James, this is Lars. I was just going to say I'm happy to go over the language again and tidy that up.

James Bladel: Okay. Yeah, I think that there is a missing word somewhere in the last paragraph and I think that the last sentence itself is a little unclear. So I think what we're trying to say in that last sentence is that the extended period would provide sufficient time for registrants and registrars to detect a noncompliant transfer and raise a dispute or initiate a dispute.

And in the last sentence would be, "In addition a 12 month period also takes into consideration the need for legal certainty that transfer of domain names are no longer subject to future TDRP," something like that.

So, okay so Lars is going to take a look at that. Let's scroll down now to Page 5 where we look at the recommendation associated with it. And in addition here is that this process remains subject to any contravening rulings in courts of applicable jurisdiction. While I don't disagree with that, I'm trying to remember was that part of the comments we received, Lars?

Lars Hoffman: This is Lars. Thanks, James. Yes, I added that because you might recall that - no, in fact, no ICANN Compliance, or ICANN Legal, anyways it was a staff comment, I think it was Legal actually, said that the null and void in the recommendation might be problematic because of (unintelligible) then - that this goes different than the TDRP ruling then that supersedes this according to the policy as it stands already.

And I think it was decided that the language in the working group, during the discussions that came up, the working group would like to keep that null and void to make this clear. And then it was mentioned that maybe we should add a little sentence to we emphasize that obviously any legal proceedings outside the TDRP and relevant or applicant jurisdictions would supersede it, which is not a change of policy, that's the case today already.

James Bladel: Okay thanks, Lars. I do remember that now and I think it was a discussion about our use of the term, null and void. My question is, is whether or not other recommendations or policy language also have this disclaimer that - or is it just always understood that if someone goes to an applicable court that they can - but that would overrule any ICANN policies.

And I'm just wondering if that is - certainly we want to satisfy ICANN legal with their recommendations but we also I think don't want to create a new precedent where we are explicitly - what do I want to say - explicitly noting the authority of courts because that could be seen perhaps even used in the future as an attempt to limit that authority.

And maybe I'm just being paranoid but, you know, it's just a thought that something that we might want to note for the entirety of our recommendations rather than one specifically. Anyway, Kristine, go ahead.

Kristine Dorrain: Thanks. This is Kristine from National Arbitration Forum for the transcript. Yeah, so the UDRP does expressly give permission to dispute the RP award in (unintelligible) and it implies kind of throughout that there's this idea that

you, you know, you can kind of (unintelligible) I think it says Paragraph 2 talks about if you go to court, Paragraph 8 talks about if you go to court.

So there are references in the UDRP to going to court. And it's understood as a result of that the court proceedings supersede. I hear what you're saying but you need to give permission for something that's already permitted because now it seems like, you know, the permission is (unintelligible) on the rules and isn't just automatically there.

But I think it's always a good reminder because a lot of times the people that are reading these policies are not lawyers and haven't consulted lawyers so reminding people that suing is always an option is, in my opinion, isn't going to be harmful. And I think it's helpful at least in the context of the UDRP.

James Bladel: Thank you, Kristine. Does anyone know here to weigh in on this - on the addition of this sentence? I'm fine with it really, I just wonder if we were breaking new ground by including it and whether or not omitting it in other areas was implying the opposite, which of course is beyond the scope of any ICANN working group. Kevin, go ahead.

Kevin Erdman: Kevin Erdman. My comment is (unintelligible) great addition (unintelligible) that is has jurisdiction (unintelligible)...

James Bladel: Kevin, I'm sorry to interrupt, you're very faint and also breaking up just a little bit. I'm wondering if you could try again.

Kevin Erdman: Okay. My point was that I think this is a good addition. It clarifies that if a court finds that it has adequate jurisdiction over the matter that there is not going to be a conflict of laws so to speak between the ICANN (unintelligible) domain name registration process (unintelligible) process was (unintelligible).

In my mind it's a very good clarification particularly in this matter because there is a greater sense of whether a particular court may or may not have

jurisdiction. And if we don't clarify that the ICANN policy is (unintelligible) asserts jurisdiction then ICANN will respect its resolution. I think it makes sense to put it in and to keep it in.

James Bladel: Okay thank you, Kevin. And I think my - I wanted to raise my own hand here to put myself in the queue because I'm wondering if that also is applicable to Recommendation Number 5 when we get there which is that, you know, the 12 months to initiating a TDRP could be possible that a courts would be initiated outside of that 12 month window.

But then again I see that the recommendation specifically references the TDRP so I don't think that that's necessary to add that into that recommendation so I'll withdraw that note.

So okay so let's leave that sentence in. I think that is a good addition as it - for the reasons that Kevin mentioned and it's going back to the comment from ICANN staff and ICANN Legal.

Let's take a look now at Recommendation Number 4 where the working group recommends that a domain name be returned to the original registrar of record if it is found through a TDRP procedure that a non-compliant transfer has occurred. The TDRP as well as guideline to registrars, registries and third party dispute providers should be modified accordingly.

I think what we're saying here is that if a non-compliant - if the TDRP finds that the transfer was non compliant it goes back to the registrar of record. I wonder - I agree with this here. I think we may need some clarification here. I think it is somewhat ambiguous the way that we've worded it here. And I want to make sure we're exact in our language. But, Kevin, I see your hand is up, is that an old hand or a new hand? And there goes the hand so it must have been an old one.

Lars, my only concern with the language the way this reads now is that it could mean that the - the domain name goes back to the registrar of record at the beginning of the sequence. But I think that what we were intending is that the domain name will be returned to the registrar of record prior to the noncompliant transfer which could have occurred somewhere in the middle of a sequence of transfers.

So I think that we may want to clarify that that if you have transfer - if you have four transfers from A to B, from B to C, from C to D and from D to E and it's the third one that is noncompliant and disputed and found to be noncompliant then you don't want it going back to A, you want it going back to the registrar immediately before that transfer, which in this case I believe would be B.

So that's - or C in this case. So I think that we need to capture something to that effect in Recommendation 4. And so my recommendation would be - oh, Lars, go ahead.

Lars Hoffman: This is Lars. Sorry, James, I didn't mean to interrupt. Do you want to continue? I was just going to add something to that.

James Bladel: Just that I was going to take a swing at some language but if you have a different idea or if I've got something wrong please weigh in.

Lars Hoffman: No, no, I was just going to put into the mix obviously I presumed there that it would go back to the registrar who is - and I might have it wrong but who is initiating the TDRP - I'm sorry, you know, in the first place and therefore...

James Bladel: Yeah.

((Crosstalk))

Lars Hoffman: ...would that be the original registrar of record because that person that launches the complaint. I'm just putting that out there, I don't know.

James Bladel: Yeah, I guess the concern is with the word "original" could imply that, you know, there might have been registrars of record prior to the transfer that was found to be noncompliant.

And those could be encompassed under the word "original" so I think that, you know, if we say something like previous registrar of record or the initiating - the registrar of record that is initiating the procedure or if we say the registrar of record immediately prior to the noncompliant transfer, all of those I think would be - would say the same thing that we're trying to say in this recommendation but perhaps be a little bit more explicitly clear.

Lars Hoffman: This is Lars. No problem, I'll change the language.

James Bladel: Okay. All right so then Number 5 already mentions that we recommend the statute of limitations to launch a TDRP would be extended from 6 months to 12 months from the date of the initial transfer, if we could add that.

Recommendation Number 6, the working group recommends that if a request for enforcement is initiated under the TDRP the relevant domain name should be locked against further transfers. The working group also recommends to include a TDRP action and URS action, that the second bullet point of a list of reasons for denial were described in IRTP Section 3.

Which I believe, if memory serves, Section 3, and the second bullet point, currently only lists UDRP.

Lars Hoffman: This is Lars. And URS as well I believe.

James Bladel: Oh it does not list URS, okay fantastic. Okay excellent. Item Number 7, the working group recommends that the TDRP should be amended to include the

need for a lock on transfers being applied once a TDRP is initiated. The TDRP as well as guidelines to registrars, registries and third party dispute providers should be modified accordingly.

My question is, to the group, is this duplicative with Item Number 6? And I think that my initial reaction is no, that it is something separate. Because when you have a reason for denial that is optional ability to (nac) a transfer but locking against the transfer would be a proactive or prescriptive lock against the transfer. So I think that this is a good addition.

Kristine.

Kristine Dorrain: Sorry, I guess my microphone wasn't on. Yeah, this is Kristine from National Arbitration Forum. I think it's not duplicative and I'll tell you why. So the TDRP, as I have sort of been arguing all along, has with it the policy and then it has incorporated into the policy rules that describe how the policy should be (unintelligible) by providers.

Now the policy and the rules should be bifurcated in my opinion because when you (inter) merge the two it becomes a mess and that's what the TDRP is, it's a mess of policy and procedure. But when you get a provider implementing the rules you have - you have to - they typically follow step by step the rules of the UDRP or the rules of the URS or the rules of the TDRP.

We don't reference other policies to try to figure out how to implement the TDRP. We take the TDRP policy, look at the TDRP rules and that's how we run the process. So I want to make it really clear that when we come to implementing the TDRP when we get to this point of the rules it should say the compliant gets filed, the lock is requested the, you know, the efficiency check is done if there is one, the response has so many days.

All of those things need to be codified as part of the rules. So I don't think that the policy itself per se needs to have these - needs to say that there should

be a lock, but whatever rules we come up with, and I really hope that eventually we end up coming up with rules, as I've sort of been advocating all along, we should say that there is a lock. And I think that's what needs to - what the new TDRP needs to have is a rule set that also includes the lock.

James Bladel: Okay thank you, Kristine. I have a question - I see a green checkmark of agreement from Barbara as well and certainly publication of the rules would encourage consistency of implementation which is always welcome by service providers like registrars.

I have a question for the group and particularly for ICANN staff which is I think pushing off on Arthur's comment about the current IRTP already acquiring locking or that UDRP does.

We recently concluded a PDP for locking of transfers per domain names that are subject to a UDRP. And the question is, has that PDP been approved and implemented? And I think it has. I think it's just now moving into an enforcement phase.

And my question then becomes, is there something straightforward and parallel that we can reference with regard to the TDRP to say essentially that lock it, the same way you would if it were a UDRP. And Marika is noting that the implementation plan of that PDP is currently out for public comment.

So, I'm not sure if that helps us or if it makes this more complicated. Let's see here, I think that we can leave this recommendation as is. It does I think very clearly capture our intention that the TDRP names should be locked. I think there will be a question of implementation whether that's in, as Kristine noted, in a rule set that would be applied or developed by providers or if we can reference a parallel locking process from the UDRP that is currently very near completion.

And Marika notes that the current plan is to implement those locks in November or December with a six-month implementation deadline. So we're probably looking at the first half of next year.

Okay. So let's then - does anyone else have any other thoughts on the locking? The queue is clear. Thank you for pulling that information, Marika, and I hate to put you on the spot but you always come through so it's - you're just encouraging me.

So moving on then to Page 6, we're now into Charter Question C. Charter Question C is whether - I'm sorry, I'm getting an - there's an echo. Whether dispute options for registrants should be developed and implemented as part of the policy. Registrants currently depend on registrars to initiate a dispute on their behalf.

We spent quite a bit of time on this in the development of our initial report. And we have some changes here in blue, the second to the last paragraph, notes that the use cases were further reviewed by the working group and can be found in Annex C to this report with the use cases that we went through to identify all of the situations where a registrant might wish to dispute a transfer.

This next paragraph is also new. In its public comment the BC calls for registrants, which I don't believe needs to be plural there, for registrants to be allowed to launch transfer dispute procedures. The working group duly revisited the issue and debated such an option.

Due to the fact that all potential use cases involved registrants are included in use cases in Annex C the working group remained convinced that the inter registrar transfer dispute policy, wow, that's a mouthful, is not the place to address inter registrant transfer disputes.

The working group is confident that by addressing use cases, either through an implementation of IRTP Part C or through future initial reports, see below, the concerns of the BC will be adequately addressed.

I see a queue is forming. But first off I would just note that that's - probably we need some simplification to that language because I think what we are trying to say is that we didn't put this issue that under the, you know, on the table for discussion as a result of the BC's comments and that we, however, note that all of the potential cases that we could come up with in Annex C are addressed via existing policy or will be addressed in Part C, Implementation.

It's the part about the future initial report, see below, that part - do we need a future issues report? Lars, go ahead.

Lars Hoffman: This is Lars. Thanks, James. Yeah, I think in the recommendations below if you scroll down we say that the working group (unintelligible) that if IRTP Part C does not address the issues that's come out of the use cases that then they should be looking whether these need to be addressed through future issue report. That does not change...

((Crosstalk))

Lars Hoffman: ...prior to the - that was in the initial report.

James Bladel: Okay, thank you Lars. Maybe we can just straighten up some of that last sentence there. So we'll go to the queue now. We'll go to Arthur.

Arthur Zonnenberg: Good. Hello, can everybody hear me?

James Bladel: Loud and clear.

Arthur Zonnenberg: Loud and clear. Okay, in reading our report on the Charter Question C I noticed that it primarily concerns the cost increase for the registries.

However, it does not concern the costs for the registrant. While I do agree that it would not be wise to include or to ask the registries to bear the dispute resolution perhaps I would suggest to the working group perhaps ICANN Compliance can provide an alternative to resolve transfer disputes because trademark knowledge is not necessary.

And if there is further legal knowledge necessary then that could be referred to the legal courts. In other words if you have a legal discussion with who is the true legal entity then that is something that ICANN compliance could give a no verdict on and still resolve the transfer disputes in a more cost effective way for the registrant, i.e. at a lower fee.

James Bladel: Thank you Arthur. And in fact just to clarify, I think that we discussed very extensively both in the creation of our initial report and as a result of the public comments, the impact of this recommendation would have on the costs associated not just for registries but also the fees for registrars and certainly did not want those to become a barrier. For registrants to using this, this mechanism.

I think that your recommendation for involving ICANN Compliance as a sort of a low-cost alternative is in fact captured in Annex C, which I don't have handy right now. But in Annex C we note several of the use cases would be a violation of the transfer policy itself and that ICANN Compliance could, as part of their remediation of that investigation of that compliance issue could make a recommendation to reverse the transfer if it was found to be one of the registrars just simply did not follow the process correctly.

It would only be in those cases where compliance would decide not to get involved that they would refer the dispute to one of these other mechanisms. So I think that that is captured, however we could possibly clarify that point that certainly Compliance has the option to recommend reversing a transfer as part of a remediation for noncompliant transfers.

Arthur Zonnenberg: Okay. Why not make them the first go to?

James Bladel: Well I think that they are.

Arthur Zonnenberg: Okay.

James Bladel: This is - this policy is used when that avenue does not...

((Crosstalk))

James Bladel: ...or when Compliance decides not to get involved.

Arthur Zonnenberg: Then perhaps clarify that in the language indeed, okay thanks.

James Bladel: Yeah, and good point, we will capture that a little or down. Lars, you had your hand up and now it's gone.

Lars Hoffman: Yeah, this is Lars. James, yeah, I just want to say - Marika pointed this out in the chat to me just as a side note that would you say that it's absolutely correct and to add to that obviously the compliance cannot act as an actual dispute resolution provider.

So as you say correctly they get involved when they can and will registrars are addressing - moving or contacting, I'm sorry, a compliance - is information on the Website that also recommended in this report. But there's a point when obviously there needs to be a dispute provider which currently is the registry or externals and that cannot be changed.

James Bladel: Right, Lars. I think that's correct. And I think to Arthur's point if the transfer itself, the process was not followed and the registrar - gaining registrar is in breach of that policy then one option for compliance would be to undo the transfer and say essentially start all over; put it back the way it was in start all

over and then of course that gives the registrant, you know, the opportunity to either re-authorize the transfer or to change their mind.

I think that you're correct however that Compliance will not insert itself in the case where two competing parties claim to be authorizing a legitimate transfer and that there's a dispute over who has rights to that domain name. Certainly those situations will probably find their way either to a dispute provider or to a court. So I think that's correct.

But I think to Arthur's point, we can probably clarify that a little bit in our language because we did cover it I think. And it would not be, you know, if it wasn't clear that we were not considering the impact that this would have on the fee structure of a registrant's ability to act as fee services and I think that we need to clarify that because that wouldn't be doing our work justice.

So next up is Berry.

Berry Cobb: Thank you, James. This is Berry. Hopefully I won't sound like too much of a wet blanket here but what I'm going to do is start with the wording from Recommendation 10. And this really applies to any of the sentences in the working group deliberations. And I think we're slightly off base here in terms of what's going to be happening if and when any of these recommendations are approved by the Council and the Board and it goes to an IRT.

So specifically in Recommendation 10 it says that, first due to IRTP-C transfer recommendations and include appropriate dispute resolution mechanisms...

((Crosstalk))

James Bladel: Berry?

Berry Cobb: Yes.

James Bladel: I'm sorry to interrupt but that's quite a bit further ahead of where we are right now - Recommendation 10?

Berry Cobb: Right.

James Bladel: I mean, is it - I guess I'm giving you the benefit of the doubt that you're seeing something here that we've missed and that it's very important that we capture it. I'm just concerned that you kind of - I'm a little lost.

Berry Cobb: I'll hold off until you think we get there.

James Bladel: Okay because we're trying to wrap up this here on Page 6 and then we can move through the changes on Page 7 and then I think we dive into the recommendations and I think that's definitely where that comes up. So if you could hang onto that will definitely circle back here in about one more page. But next up is Holly.

Holly Raiche: Yeah, Holly Raiche for the record. Just wanted - it's really a reply to Arthur. One of the problems we found - and it is addressed later - is this is not - the process is not particularly transparent to the registrant. So if we explain to a registrant in words of one syllable on the ICANN Website the whole process it will allow the registrant to understand when they can actually go to ICANN itself and say there is a problem and ICANN will be able to do something, and when that's not the case.

So I'll go that's further down in the recommendations that discussion actually does apply here in trying to say well, the registrant in some cases does have the opportunity of going to the - going to ICANN and having something done. And hopefully the language that's adopted on the Website, if we can ever find it, will be addressing exactly Arthur's point. Thanks.

James Bladel: Okay thanks, Holly. Okay, so I think that, you know, we have a couple of things we need to clean up perhaps a little bit on Page 6 but the queue is clear so let's move then to the changes on the second half of Page 7 which is further discussion on this issue.

By reviewing the use cases the working group agreed that various terms used in both the IRTP and the TDRP are inconsistent the group. The group decided to draft a list of definitions which will be applicable to the policies in order to improve its user friendliness. The list of definitions can be found in Annex F.

Hopefully that's fairly noncontroversial as we have gone through those definitions at length.

The next paragraph. The working group debated the issue of whether the registry layer should be removed from the TDRP. Removing it would lead most likely to a more consistent policy interpretation as only a few dispute resolution providers would process transfer does use rather than a growing number of registries.

In addition, registries would reduce costs as they would no longer be - I would say no longer - instead of not longer - be required to train staff to support this very infrequently used policy. This was raised by Mr. Neuman several meetings ago.

Also, removing the registry level would not prevent registrars from coming to an agreement amongst themselves prior to initiating a TDRP similar to the situation today. And as we noted in the working group that many registrars are able to effectively cooperate to resolve hijacking issues quickly and without involving registries or dispute providers.

The next paragraph, and I think this goes to some of the points that Arthur raised. However, the working group also noted that removing the registry

layer will increase TDRP costs for registrars and potentially registrants as they would no longer be able to file complaints with the registries but would have to file with the more expensive dispute providers.

It was also mentioned that this cost increase could create a barrier to accessing the TDRP and potentially lead to a greater reluctance of registrars to launch that dispute resolution process.

Based on this assessment the working group concluded the registry first level dispute resolution provider layer should be abandoned. I don't know if abandon's the right worded. I know that's probably from our initial report. Maybe we could say discontinued or phased out.

This sentence here might be a good place to note that for a truly noncompliant transfer the option to report the noncompliant to ICANN Compliance, you know, still remains and reversing the transfer might be one of their, you know, one of their remediation paths at the discretion of ICANN Compliance of course.

So let's take a queue on these three paragraphs here. And I see Arthur is up first so go ahead.

Arthur Zonnenberg: Hi, James. Thanks. I agree with most paragraphs and I would like to add that if the transfer dispute the fee would be lower there may be some price elasticity so there may have been more transfer disputes if the price would have been lower.

It should not be zero, as we agreed that I still think that we could lower the price barrier for registrants in a combination of giving more tasks to ICANN Compliance for clarifying that better. At the same time offering the option to use it - to use a dispute resolution provider. But in general I agree with these paragraphs.

James Bladel: Okay thanks, Arthur. I'm trying to think here if we need to add any language to the note here about the dispute providers. We could say, for example, and I'm looking in Kristina direction here to see, you know, how this might be received by a dispute provider.

But we could say that, you know, ICANN could continue to monitor the use of TDRP and, you know, understand if this change has created a barrier to the mechanism due to higher fees or, you know, in consultation with the registrants, in consultation with dispute providers, something along the lines of we should, you know, continue to monitor this going forward and just ensure that this is not becoming a barrier.

Kristine.

Kristine Dorrain: Hi, this is Kristine from NAF. And I would agree that I think the fees for the providers are a barrier. But as I had mentioned in a previous call, you know, I think there - maybe we need to do it not as a result of this particular - or maybe when it comes to implementation, I don't know. But we need to figure something out. Maybe there's, like I said, a way to make, you know, have an arbitrator be like a - kind of like the expert on this.

Because I will tell you that these arbitrators may (unintelligible) of the fee so 2/3 of the money we've got goes to the arbitrator. And these are lawyers with experience in disputes and trying to hash out (unintelligible) reviewing evidence.

They have to make a written opinion. So for that roughly \$850 that they make they can spend, you know, I've had arbitrators spend six hours and that's - to them this is almost a pro bono case because they certainly aren't working for at their regular job.

And so one of the problems is that to get the sort of high quality that you're hopefully going to get from arbitrators you're going to have to pay for it. And

so that's been one of the problems is, you know, how to make a system so that the arbitrator isn't may be spending six hours every day or to make a system where perhaps, I think we had talked about a pool going into paid the arbitrators, you know, if the concern is that the providers are going to review it as a, you know, free money from ICANN thing, maybe we cap the fees at certain, you know, providers can't raise their rates or whatever.

I mean, I'm open to suggestions but I think just saying reduce the fees isn't going to help. But I think that - and I think that monitoring is going to be good but I think it's just going to show us that in fact the rates are prohibitive.

And I don't know that we want to just wait and see if there's a drop-off as opposed to just addressing it right up front and saying how can we solve this problem right up front? I don't know, I just - I don't know that waiting and analyzing the problem a year or 18 months from now - it may just be closing the gate after the horse is out.

James Bladel: Thanks, Kristine. I, you know, I kind of want to put myself in the queue here because I do - I do tend to disagree a little bit which is that I think that - I think we are anticipating a problem because we are noting that the price will be higher. I think that is kind of understood.

I think that the part that's still to me that's unclear is whether or not this is in fact a barrier because as we noted here in our reports, and their discussions today, there are still other faster, cheaper alternatives to reversing particularly noncompliant transfers.

And, you know, I think, you know, by either working through the registrars working together or, you know, as potentially coming out of the, you know, compliance action. So I think that those still exist and I think that the question will be whether or not this is a barrier, the increased fees act as a barrier for use of the process by other parties beyond that.

And that's - and whether or not the volume of TDRPs will increase from their current very low level to something more substantial or, you know, I think will they disappear entirely and then if so does that mean that the policy itself is just not - just not all that effective.

So I guess it's because of those uncertainties that I'm reluctant to offer specific solutions or remedies at the time in our report and instead do feel fairly strongly about the idea that we should call for this to be monitored going forward and addressed upon the detection of a problem rather than just acknowledging that the problem is unavoidable.

So that's just my thoughts here and I would welcome if anyone else wanted to weigh in here. I see some notes in the chat here. I think - Arthur notes that TDRP should not necessarily be the first option. Kristine notes that there are other options.

And Berry notes that there is this - the registry and the registrar working together to resolve the issues prior to any TDRPs being initiated. And I think that is something that we have discussed is that this unwritten, unspoken policy or process - it's not really a policy, but this process by which service providers, you know, work together to untangle the most clear-cut cases and resolve them as quickly as possible.

And I think that we are then noting that TDRP and everything that follows after it is in fact an escalation process above those types of processes, including ICANN Compliance. Excuse me.

So let's - Lars, I hate to - oh I'm sorry, Barbara, you're up next.

Barbara Knight: Thank you, James. This is Barbara for the record. So I agree with everything that you were saying, James. And I think that there's also the fact that, you know, throughout the course of all the PDPs that we've had associated with IRTF the implementation of the (TEAC), so if there is, you know, kind of a

high profile hijacking it gives yet another option for a resolution - a quick resolution before it even has to get to, you know, the more formalized escalation.

So that's kind of - I would consider that the first escalation point, you know, in the event that it's, you know, high profile hijacking, you know, if you go through the (TEAC) channel and then, you know, if they're still not resolution than I think that it could ultimately get to the dispute resolution providers. So just a thought.

James Bladel: Yeah, that's - thank you, Barbara. That's an excellent thought, and that's exactly - was the thinking behind setting up the (TEAC) channel. So to put Lars on the spot a little bit, since he's still in such a good mood, we will ask Lars to perhaps capture at the end of the, so we have three paragraphs in blue here and then I guess a little - a few words at the beginning of the fourth paragraph.

So at the end of the third paragraph the sentence that ends in "dispute resolution process" Lars, I think we want to capture something to the effect of asking ICANN to monitor this, you know, the use of TDRP going forward. And be prepared to initiate further policy work if it is determined that this - a change in the structure is creating a barrier to access, to this dispute mechanism for registrants.

And I think that well acknowledged that we see the potential for a problem coming down the tracks but we don't necessarily want to jump in and presumed to fix it right now.

Okay, well that takes us to about three minutes before the top of the hour. We'll probably let Barbara have the last word here because I have to actually go to another meeting which is going to take a little bit of setup on my and so if I could have one or two minutes for that that would be fantastic.

Barbara, go ahead.

Barbara Knight: This is Barbara. So I guess the other question I would want to say too is with regard to measuring whether or not they are increasing, we almost have to also see, you know, kind of what some historical data has been at the registrar level for resolution of disputes to determine whether or not, you know, we're seeing more of those actually being resolved their which is reason why we're not seeing as many going.

So I think we have to be careful. I do think that is good to monitor the transfer disputes and whether or not we are seeing a decrease in those. But we also need to make certain that we are determining whether or not they were actually resolved prior to even getting to an escalation point of having to file a formal dispute with a provider.

James Bladel: Thanks, Barbara. That's a good point. There is a missing data set there and that registrars are typically not capturing or reporting that data. I think that really the source data is going to be, you know, the level of complaints coming into ICANN Compliance regarding transfers that were not able to be disputed because of the theme differential. So - but I think that's correct as well.

So with that let's wrap for today. Thanks everyone for this. I think that we've made good progress now in reviewing this. And, Lars, got a couple of changes captured there and we will pick up our review next Monday at the top of Page 8 with that paragraph there.

So thanks everyone for that, and we'll look for you next week.

Holly Raiche: Thank you.

((Crosstalk))

Lars Hoffman: Thanks, James.

((Crosstalk))

Man: Thanks everybody. Thanks. Bye-bye.

Man: Thanks, all.

Terri Agnew: Thank you, everyone, for joining today's meeting. Please disconnect all remaining lines. (Ayesha), if you can please stop the recording.

END