

**ICANN
Transcription
IRTP Part D Working Group meeting
Monday 18 August 2014 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 18 August 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-20140818-en.mp3>

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

Attendees:

Barbara Knight – RySG
Graeme Bunton – RrSG
Volker Greimann – RrSG
Arthur Zonnenberg – RrSG
Kristine Dorrian – National Arbitration Forum
Avri Doria – NCSG
Bartlett Morgan-NCUC
James Bladel – RrSG
Alan Greenberg – ALAC
Bob Mountain - RrSG

Apologies:

Paul Diaz – RySG
Holly Raiche – ALAC

ICANN staff:

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

Coordinator: This is the operator. Thank you for standing by. Recordings have started.

Terry Agnew: Thank you, (Jeff).

Good morning, good afternoon, and good evening. This is the IRTP Part D Working Group call on the 18th of August, 2014.

On the call today we have Volker Greimann, Alan Greenberg, Barbara Knight, James Bladel, and Bartlett Morgan.

We have apologies from Kristine Dorrain, Holly Raiche, and Paul Diaz.

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

I would also like to remind 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 welcome everyone to IRTP Part D working group for - getting towards the end here. We're at the 18th of August, and certainly thanks to those of you who may be participating you know in a vacation or semi-vacation type mode.

As per our usual sequence, could we please ask anyone that has any updates to their Statements of Interest to raise their hand now in the Adobe room or get my attention on the phone?

Okay. Hearing none, we'll then move on to take a look at the agenda, which is posted in the right-most column of the Adobe Chat screen. It was also circulated by Lars earlier.

Does anyone have any updates or amendments to that agenda?

Okay, so we'll consider that agenda adopted.

First off just some housekeeping. I apologize for missing last week's call. I was traveling the week before, and that's why - and I know there were a number of other folks that had conflicts, so we cancelled. And then was fully expecting to return to action last week, but unfortunately had some very urgent last minute travel pop up and was actually in the air when this call was scheduled, so apologies for that.

But it seems as though Lars and the rest of the group carried on you know in my absence and in the absence of maybe perhaps some others, and so thanks for that, for those of you who kind of picked up the baton and marched it down the field a little bit further.

So I think that we are now at the point where we are looking at our recommendations and we are discussing the level of consensus that we have achieved for each of those recommendations, and I think what we have found, and I think this goes back to the publication and the run up to our initial report, is that some of these are very non-controversial and enjoy widespread if not unanimous support from the members of the working group.

Some of them maybe still need some massaging and have some different opinions, so let's dive in there.

So I'm going to press upon Lars a little bit here if he can kind of help us segue from last week's conversation into where we are now.

Lars, where do we begin today?

Lars Hoffman: Hi, James. Hi everybody. Thank you for that.

Well last week it was more a frontal discussion really, but - me being at the front for the matter. So what I did in the week up running to last meeting is I filled in - I drafted some expected (unintelligible) commendations, which is - it's a subsection for each of the charter questions.

And so I just read through those, put them into context, and put them up for discussion to the group. There was not - they didn't seem to be controversial so there was no objections to any of the wording. I suspect there need to be some wordsmithing still needs to go on.

But if you want to, we can - you could go through them again, because I assume - well, you weren't obviously on the call last week, so you might want to go through them again.

And other than that, I have not received any updates on the list. I'm not sure whether (Arthur) is on the line. He's in the AC room. He's (unintelligible) audio. I can just see (unintelligible). (Arthur) had promised some changes to the document that hadn't come through yet, so for the matter, we can go through the expected recommendations again and then move on to other (unintelligible) deciding on how we want to do the (unintelligible).

James Bladel: Okay, thank you Lars. And I think that you're correct. Let's go ahead and go through the expected recommendations then. And are we testing for consensus at this point or are we still just catching any last minute edits?

Sorry if that wasn't clear for me.

Lars Hoffman: No. There were no - no edits have been made since last week. The only added (unintelligible) - the discussion we had on the list with Holly about the Executive Summary and that it's - if you scroll up to Page 2 or 3, I inserted that with Track Changes, the suggestions I made on the list that were approved by Holly.

Other than that, no changes from last week.

James Bladel: Okay. Thank you. I do remember that Holly had submitted some edits to the list as well.

Okay, so we are starting then on which page, Lars?

Lars Hoffman: Page 18 where we - so (unintelligible) already, I'm going to thank everybody just for a moment. So that is the expected impact of recommendations for the first charter question which contains two recommendations.

James Bladel: Okay, thank you.

And the expected impact is listed as 4.2.1.4, which is what are we expecting is the impact of this recommendation?

Lars Hoffman: Yes, for both recommendations. So what I've done is I've done the - the impact is just one subparagraph to (pull) up the charter questions, which in some cases had more than one recommendation.

So I put the recommendation - I - if the group wants it, there's obviously no problem on adding a paragraph for each of the individual recommendations.

James Bladel: I think it's fine to combine them. I think that Alan in the chat has asked if you could unlock the document so that we could scroll them ourselves. I think that - or unsynch, or whatever the term is there, because I think that it was jumping around for me. I don't know if that was everyone else's experience as well.

And then, we will just make sure everyone's following along at home

So we see 4.2.1.4, expected impact of these recommendations. I guess if we're combining them, we should pluralize the title. Working group expects to

see improvement in the visibility, transparency, and consistency of TDRP outcomes.

I think we can say a little bit more here. We can say something along the lines of you know the - in addition to this, we can say something along the lines of beginning to collect meaningful data and statistics regarding the use and effectiveness of this policy.

Something along those lines I think would be a welcome addition, or at least I'm proposing that would be a meaningful addition in keeping with our discussion about these charter questions.

But, I would - I see a green check from Lars, but I want to make sure that others - that no one objects to that in the working group as well.

Okay. I don't see anything.

Does anyone else have any additions to the impact of these recommendations?

(Arthur): Hello? Can I say something? This is (Arthur) here.

James Bladel: Yes, (Arthur), go ahead please.

(Arthur): Hi. As perhaps you - gone unnoticed because of a certain mail server - mail server errors on the ICANN.org site, but I've submitted several comments and changes on the final draft two hours ago and sent this to Lars.

In this particular recommendation, Number 4.2.1.4, I agree with your addition, and I've added a fourth point or a fifth point to Recommendation Number 1, which is the domain name itself.

In addition, I have a question about A, the information about parties involved in the dispute. What information are we talking about? The names? The email addresses? The addresses? The phone numbers? What are we talking about?

James Bladel: So I think that if we're talking about the information about parties involved in a dispute, we did point out that the template for the Asian Domain Dispute Resolution Center was a - kind of a good starting point - a good jumping off point, or model that could be used for future reports. And so I think that that information is contained in those templates.

When you say the domain name, do you mean that that is not currently - I think that's a given, but I think if it would make everyone feel more comfortable, then perhaps we should add that, Lars, as the first item or element that is required. So A would be the domain name under dispute, and then B would be information about the parties involved in the dispute. And then C and D.

Lars Hoffman: Yes, no problem. (Unintelligible).

James Bladel: Okay, thanks, Lars.

And I noticed (Christine) has her hand up, and I'm a little surprised. That must mean the Doctor's appointment went very well. So hello, (Christine).

(Christine): Hi. This is (Christine) from (unintelligible). Yes, it went great. They removed the contact lens and we're good to go.

So I just wanted to...

James Bladel: Glad to hear.

(Christine): ...answer (Arthur)'s question.

Thank you.

I wanted to answer (Arthur)'s question. So UDRP decisions and you know pretty much all decisions run with the same template. Like you said, (unintelligible) published, but you know we have decisions too that are available in template form that just aren't published.

And then the - it's usually the name of the party and their location, so the city and country, or city, state, and country, or city, province, and country, however that works out. And then, any legal counsel that they have. So that's typically how that's published.

In fact, I don't know any - (unintelligible) GRC does, but we (go out of our way) - if the panel inadvertently includes phone number or email address, we will redact that info out of the decision before issuing it. So there usually is not anything personally identifiable other than someone's name and location.

James Bladel: Okay, thank you (Christine).

And does that correspond with the citation that we have here from ADNDRC?

(Christine): Yes. I haven't actually looked at their decisions, but I - their TDRP decisions, but their UDRP decisions are similar to ours.

I have to guess that their - all of their templates, like ours, are pretty much similar, along the lines. I would be very surprised if there was something different in the TDRP decision that is not in the UDRP decision.

James Bladel: Okay, thank you.

Okay, any other thoughts or additions to this section here, noting that (Arthur) stated that he has sent some changes to the list?

I haven't seen them yet. I don't know if you know we can have someone from staff take a look and see if those are stuck in (unintelligible) - in an email queue somewhere, because I haven't seen them either.

Okay. So then let's move on to the impact, and I believe it begins -- let's see - - towards the bottom of Page 21. Is that correct, Lars? This is for the recommendations I believe that are Recommendations 3, 4, 5, and 6 regarding Charter Quarter D, which discusses essentially the - how to handle disputes when there have been multiple transfers.

So our expected impact of these recommendations are that the working group expects A, production in domains hopping and fraudulent transfers. I don't know that we can say that. I think that we can say that this will reduce the frequency.

The group also expects more security for registrants and notice of fraudulent transfers and sufficient time to alert your registrar to take appropriate action to remedy the situation.

Agree.

If you're not speaking, could you please mute your microphone please? We have some background noise we're trying to - it's distracting.

Thank you.

Anyway, you know, I think that that is an aspirational statement. We would hope that this would reduce the incidence of hopping and fraudulent transfers. We would hope that this - we would believe that this makes this process more secure.

I don't know that we can state that this will be an expectation or an expected impact. So let me see if we can - or maybe my thinking on this is just wrong, so let's go to the queue here.

I have Alan up first. Go ahead.

Alan Greenburg: Thank you.

Well, I presume it's clear to say that we're making the recommendations because that's what we hope will happen.

James Bladel: Right.

Alan Greenburg: Okay. So the real issue is in the word of the title. Either we are being asked for what we hope for, or what our intent was, but expected is - you know, we're being optimistic and saying we didn't do a stupid thing. Our discussions were right on, and this is what we expect.

We may find we're wrong.

So if expected is the right word in the title, then it's the right word in the text. If we want to soften the whole thing, then I think the title is over-ambitious.

James Bladel: Okay, thanks Alan for helping me you know reconcile the - you know, the aspirational versus the expectational elements here. But...

Alan Greenburg: I mean we - yes, excuse me. We may be deluded, but you know that's the nature of the beast.

James Bladel: Okay. Well, it wouldn't be the first time any working group you know set out with good intentions and didn't hit their target.

But I think that you know we could still even make this a little bit more clear by saying something to the effect of the working group expects that domain - the practice of domain name hopping will be less effective in evading the detection and correction of fraudulent transfers. So I think that would be something I would be more comfortable with because it doesn't say reduction of the incidence. It would just say that this type of behavior will be more visible and less effective.

And I think that is something that we would hope would be the outcome of this policy, because you know we don't want to be dependent upon the influx of a new wave of dumb criminals that try to - you know, that keep stepping into the policy traps that we're trying to set up to catch them.

So I don't know if, Lars, if that made sense, or if the working group maybe has some - other members want to weigh in on this. But I think that what we're trying to say is we're trying to reduce the ability of bad guys to use this tactic, not that it will - the use of it will decrease overall.

That's a good point, Alan. We should probably work the word deterrent in there somewhere. Alan's chat said presumably, we're - word will get out that we can catch them and then they will stop doing it.

Lars can you - let's see here. Let's see if we can come up with some draft language here.

Working group expects that the practice of domain name hopping will be less effective - will become a less effective component for the conduct of fraudulent transfers. The group also expects improved security for registrants and greater visibility of fraudulent transfer - or greater or faster visibility of fraudulent transfers with sufficient time to contact their registrar and take appropriate action to remedy - and Avri proposed the term mitigate the situation.

So I don't know if you caught all that, but I got a green checkmark. Hey, fantastic.

Let's go back to Alan.

Alan Greenburg: Yes. I like mitigation, but I think you hit on perhaps the key word, that is deterrent. Will act as a deterrent. So the combination of those words I think, you know, we - Lars should be able to craft something pretty well.

James Bladel: Okay. Yes, I think we can massage that word in there as well, because once something becomes more effective, then bad guys will - unfortunately, they'll develop a new practice, but at least it will deter them from continuing this one.

So, okay. Alan, did you (have a thought)?

Barbara, you're up next.

Barbara Knight: Thank you, James. It's Barbara for the record.

So I guess I'm a little bit confused. What specifically are we expecting to be the deterrent to the - I guess to the hopping and fraudulent transfers?

James Bladel: So by decreasing the effectiveness of this practice as an evasive action, there will be the deterrent - the deterrent will be to not use this practice because it won't be as effective.

Barbara Knight: And by this practice, we're - are we referring to the domain hopping?

James Bladel: Yes.

Barbara Knight: Okay. Because I was under the impression that when we're locking the domain names is only after a TDRP case has been filed. Is that not the case?

And by that point, it could've already happened. I think we still have the 60-day lock after a transfer or an initial registration.

But if that's not - you know, if the lock is not happening I guess systematically in the case of a - you know, 60 days from the transfer, and if a registrar isn't actually putting a lock on the domain name for 60-days - I guess I'm just not sure what is the effective deterrent?

James Bladel: Okay, good points. Good questions. Let's see if we can untangle that here.

My thinking was that - and maybe I've got this wrong, but my thinking was that by - first off, by expanding the statute of limitations in Recommendation 5 from 6 months to 12 months to file a TDRP, it reduces the effectiveness of trying to cram in as many transfers as possible into that statute of limitations because there's a - the clock is running for a much longer period of time; and so therefore, trying to rapidly transfer the name does not seem to be as effective as an evasive tactic.

And then the next (unintelligible) being that I think it's going to Recommendation Number 4, which is that it doesn't matter how many transfers have occurred subsequently; if - you know, if the first transfer was determined to be invalid, whether that was the first of 12, or the first of 30, or the first of 100, that it will still be returned to the registrar of record prior to the non-compliant transfer.

So, that essentially means that the piling of subsequent transfers really had no effect. But I may be missing this, and certainly am open to you know reopening this. Not necessarily reopening the recommendations, but reopening our expected impact of this.

Go ahead, Barbara.

Barbara Knight: Thank you, James. This is Barbara again.

So I think that probably the most effective deterrent is the fact that one, there is a longer period of time in which to file you know a transfer dispute case by moving it from six months to a year.

And, the fact that regardless of the number of transfers that have occurred in that now one year period of time, which could happen you know literally every two months, the fact that the domain name if the first transfer is found to be fraudulent, all of the subsequent transfers would be undone. I think that's probably a better deterrent than you know this - you know, the locking of the domain name.

So maybe we should be you know a little bit more specific and really call that out as being what we would expect to deter the behavior.

James Bladel: Okay. Do you have any proposed language or where do you think we can insert that in the...

Barbara Knight: I can see if I can come up with some. I don't have any really off the top of my head. You know, readily available.

James Bladel: Well just to avoid you know having two people holding the pen and perhaps passing them up, why don't we see what Lars can come up with with his first take, because I know he's got a couple of changes already captured.

And then when he sends that report around, can we put you on the hook to take a look here at 4.2.2.4 and make sure that it captures what you were raising here or modify so that it does?

Barbara Knight: That sounds good. Thanks.

James Bladel: Okay. So that way we don't have two people you know kind of writing past each other.

Okay, (Christine), you had a point you raised in the chat. Did you want to raise that as well, or...

(Christine): No, this is (Christine) - sorry, my mic is (unintelligible).

No. I was just sort of trying to make an observation about whether we thought that this new improved version of the TDRP was going to serve as a - like a proactive deterrent or if it was just a better way for people to bring a dispute against the crooks that are already out there?

And are crooks currently considering the TDRP when they you know engage in this area of activity? I think the answer is no. But - and so that's why I was sort of like (unintelligible) I guess.

James Bladel: Yes, thanks.

((Crosstalk))

(Christian): But (unintelligible).

James Bladel: No. It's a good point, and I think that you know it's only a deterrent if someone is aware of the policy and you know has some degree of respect for its efficacy, right.

I think that the greater deterrent you know in the event that there is a deterrent component, I think the greater deterrent is going to be the fact that the statute of limitations has increased.

I think that is something that bad guys would in fact be aware of is you know, "After six months I'm in the clear." "Oh, no. Now I have to continue to hide from the previous - you know, my victim and other - and registrars and

authorities. I have to continue evading them for another six months.” I think that will be something that perhaps will be more effective.

So that’s just - you know, that’s just my observation. I don’t believe that they are doing transfer hopping to avoid -- just answering your question in the chat -- I don’t believe they’re doing transfer hopping to avoid the TDRP. They’re just using that to avoid detection, and the statute of limitations will increase that - or decrease that ability to get away with that sort of behavior.

So the queue is clear. Good conversation everyone. I think that you know we want to work the word deterrent in there. I think it is a good term, but I think that we need to be very careful, as this conversation is demonstrating, that we’re very clear what we think is going to be the deterring factor - what behavior we are trying to deter, and why we think that that’s going to be effective.

And if we can’t articulate those, then maybe we just need to stick with visibility and effectiveness, and leave deterrent out of it. Because if we can’t substantiate it and measure it, then it’s probably just speculation on our part.

And it may feel good to say that, but if we can’t prove it, then we should probably leave it out.

So we’ll wait for the next draft of this from Lars and we’ll all take a look, and Barbara especially, to make sure that it captures your concern.

Okay, moving then to Charter Question C, whether or not disputes for registrants should be developed and implemented. We - as a result of this charter question, we came up with - I’m scrolling, scrolling, scrolling. We spent a lot of time on this. We came up with Recommendations 8, 9, 10 and 11, and 12. Oh, my. And then we have impacts as a recommendation.

You know, and just off the cuff, because I'm a reader or a consumer of this report, I'm noticing that you know the impact should be probably fleshed out a little bit more to be proportional to the number of recommendations than the length of deliberations and observations. But that's just maybe a style point.

So then I'll read this text as it stands first. Expected impacts of these recommendations. The working group expects the development of inter-registrant transfer dispute resolution options in combination with the implementation of IRTP Part C.

The working group also expects more transparent and consistent TDRP rulings through the discontinuation of the registry layer; however, whether they - this will create a barrier to access must be monitored.

The working group expects that the user-friendliness and consistency of the TDRP and IRTP ought to improve to the addition of the list of definitions (unintelligible).

So let's untangle this one.

First of, the development of an inter-registrant dispute resolution option in combination with implementation of IRTP Part C. So I think that ties back to - which recommendation does that go with, Lars?

That goes with the Recommendation 10 I believe. Let's - first off, I think that we should make sure that the impact statement is aligned with the sequence of the recommendations. So if we need to maybe restructure this so that the first thing it talks about is why we believe that this should be an inter-registrar dispute process and not something that could be initiated by registrants, I think that's - in other words, let's start with Recommendation Number 8 and then move to Recommendation Number 9, and then so on and so forth.

So the first up would be the impact of you know Recommendation 8 in conjunction with Recommendation 11. So I think that that's the first step. I don't know if anyone has any proposed language but we're reordering this now so that it makes a little more sense and tracks the recommendations a little more closely.

So I think that we should say there that the working group expects that the consistency I don't know user friendliness I don't like that term the working group expects that the CDRP will become more readily understood and consistently applied by removing the registry layer. And then we can say something like, you know, particularly in light of the increased number of TLD registry operators.

However we expect -- and I think this is an expected impact -- we expect that this will be monitored to ensure that it is not creating a barrier of access to the registrant.

So next moving - that's covers kind of Recommendations 8 and 11. We can then move to number nine working group expects that the broader Internet community will better understand the IRTP and TDRP policies by providing this list of definitions NXF something like that.

And then we can move on to Recommendation Number 10. And that's the first part of our impact statement.

So the working group expects that the implementation of IRTP C Part C will include the development of interregistrant transfer dispute options.

Something like that but considering that I'm also on that implementation team that's a little scary. Barbara you're up.

Barbara Knight: Thank you James, it's Barbara. I'm wondering if it may make sense to flip Recommendations 9 and ten so that the, you know, it goes from eight where

we're recommending not to develop a dispute option for registrants to, you know, number ten where we're saying that or recommends that staff include cooperation with IRTP Part C implementation or review team ensures that the Part C interregistrant transfer recommendations are implemented. And I don't think that they're fairly related.

James Bladel: Yes thanks Barbara. I actually - if we're open to the idea of renumbering our recommendations I think there's a better sequence here.

And I think first and foremost number nine needs to be first. We'll move that up to the top. That's, you know, you have your definitions before you dive in.

And then I believe eight and ten, you know, become more closely related because that's - then that becomes like nine and ten and they're subsequent to each other.

And then we then perhaps we move 11 do we leave that where it is or do we move that up under - yes I think we would leave that where it is then.

Okay I saw a green checkmark from somebody but it went away before I could - and there it is again and it's Barbara. Thank you Barbara.

So Lars did you catch all that? I think that we're trying to renumber the recommendations a little bit here so that those that are related and interdependent are more closely attached to each other? And then also make sure that the expected impact of the recommendations tracks that sequence.

Have we thoroughly confused Lars yet or should we just...

Lars Hoffman: James no this is Lars. Thank you. No, no problem. I've tracked it and I'll reorganize that for the next round. No problem.

James Bladel: Okay. Thank you Lars. And yes we're - so we're not trying to trick you but if it feels that way well apologies.

So what else do we want to include here in the impact? Generally I think that we need to flesh this out a little bit more because I, you know, I think that we spend a lot of time on these particular recommendations.

And I'm concerned that we're just kind of checking the box without really considering the impacts that I know we discuss in our observations.

So perhaps we can go back to the observations as well and take a look at what we, you know, what we considered. What we considered the risks, and hazards and unintended consequences of these changes might be and see if we can at least give a passing mention to them in this impact statement.

Okay then moving on to Charter Question D whether recommendations or best practices should be put in place for registrars to make information on transfer dispute options available to registrants resulting in Recommendations 13 and 14 which everyone knows the most. It's about Webpages and links and all kinds of fun stuff like that.

Expected impact of the recommendation, working group expects greater visibility and user friendliness, support and help options both on the ICANN Web site and homepage of ICANN accredited registrars and their resellers.

This is probably fine as a one sentence expected impact. I think that we may be can, you know, again I just am not a big fan of user friendliness as a term because I think it's, you know, it's not really that descriptive.

But I would say by, you know, the working group expects by highlighting the visibility of support and help options and educational materials, you know, that will improve understanding of registrants something like that.

Alan has his hand up so he wants to take a whack at this. Go ahead Alan.

Alan Greenburg: Thank you. Fourteen is probably the only recommendation that the ALAC will not be agreeing with.

The - making it a best effort or making it a best practice which has, you know, no real coercion properties for registrars and then for resellers saying pretty please put it there I do not believe is going to have a significant impact. And therefore I - this is one case where I think the expected impact is far more - far too optimistic.

I'm also by the way that a good fan of user friendliness. But the overall expectation I think is far more optimistic given that the group has decided not to make this a - a recommendation that ICANN have enforceable in the RAA.

So I really think, you know, I certainly can't support the expectation that it's going to change anything certainly on the ICANN Web site but not on the registrars and resellers.

James Bladel: Well that raises an interesting -- thank you Alan -- that raises an interesting question which is if you don't support the recommendation can you support the impact statement?

And I guess the answer is probably not, you know, you'd probably disagree with the recommendation because of the impact statement because you disagree with the impact statement.

Alan Greenburg: I personally and I've talked to (Holly) about this, you know, feel that this is, you know, in 2014 with the kind of statements that are already in the RAA for other requirements to postings that this one should be in the similar form that, that is it's a mandated requirement to post. Given that the workgroup has chosen not to go that direction I think the expectation is optimistic.

James Bladel: Okay. Thanks Alan. And I think that can I - is it safe to say that you're - that you and when I say you I mean ALAC...

Alan Greenburg: Yes.

James Bladel: ...believe that because they believe that unless something is enforceable through a contractual obligation that registrars won't do it.

Alan Greenburg: Some registrars won't do it but, you know, it...

James Bladel: That it...

((Crosstalk))

Alan Greenburg: It's the same sort of story, good guys will do it bad guys won't. And or...

James Bladel: And it needs to be universal in order to be effective.

Alan Greenburg: And certainly for the resellers registrars making a well I do remember what the exact words are making best efforts to ask resellers to do it it's a pretty weak commitment.

James Bladel: Okay. I guess I'm trying to say is that...

Alan Greenburg: Sorry...

James Bladel: ...there will be no improvement on this until it is, you know, 100% adopted or can you say that...

Alan Greenburg: There were...

James Bladel: ...there would be some improvement...

Alan Greenburg: I - to put a personally I have full expectation that you'll go home and put it on your Web site. I don't necessarily have expectation that it would be universal. And certainly at the reseller level it would be almost nil.

James Bladel: Okay. So let's just say it hypothetically here...

Alan Greenburg: So...

Alan Greenburg: ...and I don't mean to belabor this point but what I'm getting at here is if let's say the top 25 or top 50 largest registrars do go out and adopt this and do this does that not meld the expected impact that it would be greater visibility of support and help options?

I mean just putting it on ICANN's Web site should accomplish that. I'm just challenging the idea that it has to be mandatory...

Alan Greenburg: Okay.

James Bladel: ...in order to be effective.

Alan Greenburg: Your - I'll take what you're saying that it will increase visibility. The number will go up because it's...

James Bladel: Yes.

Alan Greenburg: ...maybe close to zero right now.

James Bladel: If it goes from zero to say 50% that's an increase in visibility...

Alan Greenburg: That's true. Technically it is true.

James Bladel: ...but falling - but it an acknowledgement that it is something short of perfection and/or total coverage right?

Alan Greenburg: Well and perhaps short of being really effective because we know that these practices are not universal across all registers.

James Bladel: Right.

Alan Greenburg: They're not all subjective to them because some make it easier for malfeasance to do things and some don't.

James Bladel: Right. Yes those registrars who are currently yes so okay well, you know, and...

Alan Greenburg: Yes. I'll grant you the wording is accurate but I think sends a message stronger than what I believe is likely to really happened. So I...

James Bladel: Okay.

Alan Greenburg: ...registered my comment. I'll be quiet now for a while.

James Bladel: No. That's - I mean it is a good point. And - but I want to make sure that, you know, even, you know, I want to make sure that we're - you're not saying something that's completely and wholly incompatible with the ALAC's edition...

Alan Greenburg: No. But I think it sends an incorrect message but it's not technically inaccurate.

James Bladel: All right. Well maybe we'll take that run. Okay next up is Volker. Go ahead Volker.

Volker Griemann: Yes just one point with respect to this I mean the current RAA already requires us to link to the benefits, and responsibility, and the rights and responsibilities document both of them as they are published ICANN.

Wouldn't it be more intuitive to have link to the information that we want to link to - that we want to have a link to also on the ICANN Webpage i.e. require ICANN to at the top of the page or at the side add a box you might also be interested in help for X, Y, Z for transfer of disputes and whatever.

So to put it somewhere where there's already a link for registrant rights because that's clearly something that's related.

James Bladel: Thanks Volker. So you're saying instead - that we wouldn't be actuated to Recommendation 13 in this respect. We would be saying that the one-stop Webpage should be accessible or reachable via the registrant rights and responsibilities page. Is that what you're driving at there sir or...

Volker Griemann: Yes. I think that's pretty much it. It should be just because if we have a process that displays relevant information then maybe we could adjust exclude them in the rights and responsibility as well as rights certain rights with respect to our - this is where you get help for - yes put it on the ICANN Webpage, put a link there where there is already a link from the registrars and from the resellers as well because resellers already required to link to the rights and responsibilities and the benefits page so just...

James Bladel: So that also addressed Alan's statement by, you know, by de facto putting it on the page that they're already required to link to then this best practice effectively becomes a mandatory contracted obligation correct?

Volker Griemann: Exactly.

James Bladel: It just kind of backdoors...

Volker Griemann: And you may also have an additional link on your Webpage as a best practice as well but as it's already linked from the rights responsibility we would not need that as a mandatory requirement.

James Bladel: Yes I understand. The only thing and I support that. I think that I'm speaking I'm kind of mixing my personal take with the, you know, with facilitating this dialogue and it's probably a no-no but no one has called me on it yet so we'll just kind of keep going.

But, you know, I think that, that is interesting. The only thing is I've been reluctant to reopen the recommendation language at this time just focusing on the impact statement.

But is that something that everyone in the group supports? And it seems, you know, fairly noncontroversial then I'm fine with that.

I just I want to be sure that everyone is recognizing that we're not changing the impact statement now we're changing the text of the recommendation itself. I just want to make sure that everybody is aware of that and is okay with that approach.

So I guess any objections to changing Recommendation 13 to note that the - this information should be reachable from that registrant rights and responsibility or registrant benefits and responsibilities area which registrars and resellers are already required to link to?

I think everybody is saying that's fine. And Alan hopefully you can go back to ALAC and say hey everybody I've got some good news.

Alan Greenburg: Well I - if I may I wasn't expecting to change the outcome. And I'm delighted with what you're - what Volker has proposed.

Just to note in the wording if I remember correctly there are confusingly two different documents that the RAA requires registrars to point to one and I think resellers for both cases.

One is called registrants Rights and Responsibilities. The other is called Registrants Benefits and Responsibilities. One came out of the 2009 RAA and one out of the '13. And they were never quite rationalized.

James Bladel: Well one was community development and one was...

Alan Greenburg: Yes.

James Bladel: ...yes. I and...

Alan Greenburg: Well no. The - even the first one wasn't community developed.

James Bladel: Oh wow.

Alan Greenburg: There's a third one that's that one the registrars don't point to if I remember correctly. Both the other ones were created by ICANN because remember...

James Bladel: So...

Alan Greenburg: ...the 2009 one said if ICANN ever develops such a thing then you must point to it.

James Bladel: You know Alan yes there are multiple documents floating around out there that call themselves this. This is the problem. I don't know that it's going to be solved...

Alan Greenburg: No, no I'm...

James Bladel: ...in our report.

But yes it is something and it is something that I will tell you that registers raised during the RAA negotiations when this new one started to surface is hey a wait a second I thought we already had this, you know, so yes...

Alan Greenburg: Yes no, no...

James Bladel: ...I totally acknowledge that.

Alan Greenburg: I wasn't trying to fix that ugly part although someone should one day. I was just...

James Bladel: Yes.

Alan Greenburg: ...saying that as we - when we do the wordsmithing of the rewording make sure that we're pointing to a document which is in fact fully mandated.

I don't much care which it is but just make sure that we're not incorrectly using the terms rights and...

James Bladel: I agree that we should be precise in what we're calling it. And the good news for Lars...

Alan Greenburg: That's correct.

James Bladel: ...is I think they're both required to be...

Alan Greenburg: Okay. I think they are too.

James Bladel: ...linked.

Alan Greenburg: I think they are too.

James Bladel: So I think that, you know, it's yes but I agree that somebody someday needs to figure which document we're talking about.

Alan Greenburg: Correct. And 14 probably needs to be reworded to say in addition as a best practice or just drop it altogether.

James Bladel: Yes. Okay so that's fun.

Alan Greenburg: Thank you.

James Bladel: All right so let's see if I can scroll back down. I would say yes let's change the language in 14 the working group recommends that as an additional best practice ICANN accredited registrars blah, blah.

Okay then moving to charter question - did I skip one? Are we on Charter Question E now? No that's right we're on E okay. I thought I skipped D but Charter Question E whether existing penalties for policy violations are sufficient or if additional provisions, penalties for a specific violation should be added into the policy?

Observations, and that yielded Recommendations 15 and 16 working group recommends no additional penalty provisions be added to the existing policy.

The working group recommends that GNSO consensus policy avoid policy specific sanctions rather the sanctions should be consistent throughout policies and (unintelligible) RAAs as in the case of 2015 RAA.

Expected impact, the working group expects to see a general discontinuation of policy specific sanctions.

I don't know that - I don't disagree but I don't think that that's currently going on now except hold on the add grace period limits has a specific sanction in that it has a fee structure associated with excessive deletions during the add grace period.

So I think that is a policy example of - as far as I know it's the one and only example of a policy specific sanction. So as a working group do - are we saying that we want that to change?

I think what we're trying to say is the working group expects to see consistent application of uniform sanctions for policy violations in new policies developed something like that because I don't think we're saying we want to go back and pull that out of add grace period.

I - maybe I'm overthinking this. Anybody want to weigh in on that? Berry go for it.

Berry Cobb: Thank you James. This is Berry for the record. Yes and no we don't want to revisit editing these recommendations but the way 16 is worded seems very general at all when our scope or context is in regards to the transfer policy.

So somehow should this be narrowed down so that it aligns with the scope of this working group because as you pointed out, you know, maybe future policies could be developed and that there is agreement that there could be some sort of specific sanction based on that policy.

But it seems to make it generic that this will never allow it to happen again? James you may be on mute unless I stumped you.

James Bladel: I'm sorry. I had some really brilliant things to say too. You guys missed it. So what I was going to say is it's a good point.

And I think that we didn't capture that or try to thread that needle a little bit by saying avoid as opposed to well some sort of something stronger like prohibit or whatever.

But if we need to make that clearer so that we're comfortable because I think that you are correct this working group does not have the authority to put that constraint on future policy development working groups.

So if there's some way we can say that, you know, as a, you know, as a guidance for future working groups, you know, we recommend that policy specific sanctions be avoided unless, you know, determined to, you know, to be absolutely necessary or something like that.

Alan is going to bail me out here. Go ahead Alan.

Alan Greenburg: No I'm not going to bail you out. I'm going to add to the confusion. This is one of the recommendations which as I was reviewing it not having really taken part in most of the discussions.

I was willing to accept but didn't understand. I mean if some future PDP you're right we don't have the authority to bind the GNSO to do anything. We can provide words of guidance which some future workgroup can ignore or not.

But if some future workgroup decides on specific sanctions associated with a specific policy then it inherently becomes part of the RAA and, you know, and therefore 16 no longer applies.

And whether it's consistent or not with the - with all policies depends on, you know, how onerous this particular infraction is and what the penalty is.

So I'm not sure this really says a lot but maybe I'm missing some big core substance, you know...

James Bladel: Well and, you know, I think I don't think you're missing any big issue here Alan. I think that there is a little bit of context though that we're skipping over

perhaps which is that, you know, when this was proposed the 2001 RAA was prevalent.

And it was noted that compliance, you know, part of the complaint was this outdated issue that compliance didn't have anything in their toolkit except termination. They didn't have ways to enforce consensus policy except to terminate them.

And so this - the charter for this working group came included some language about maybe take a look at what short of termination what could be done as far as sanctions.

And I think what we were saying as a working group is that the newer versions of the RAA are a little bit more involved and give compliance some other levers to pull short of termination and that therefore since these new RAAs have a built in sanctions structure it's not necessary for that to be reinvented on a per policy or a PDP basis.

Now I don't know if that's something you guys can support but that's to me that's where this is. That's the genesis of this. So go ahead Alan.

Alan Greenburg: Yes. I guess from again a perspective of someone diving into this far too late if we got extra pay for the number based on the number of recommendations we made 15 and 16 would be quite good things given that we don't - I'm not sure what they're really adding.

James Bladel: Okay.

Alan Greenburg: I don't object to them but I don't really...

James Bladel: Well 15 at a minimum in my opinion 15 at a minimum has to be there because that's one of the charter questions that we were asked too...

Alan Greenburg: Well yes but...

James Bladel: ...look at.

Alan Greenburg: ...that means we make a decision not to make a recommendation. We don't need a recommendation not to do something.

James Bladel: Okay. I mean that's one way of looking at it.

Alan Greenburg: That's his style. And as I said I'm not objecting to it.

James Bladel: I okay. I disagree. Just personally I think if your charter asks you a specific question you should even if the answer is in the negative or...

Alan Greenburg: James we have disagreed on far more onerous things than this.

James Bladel: Well and I'm sure we will again. So I feel like at a minimum 15 needs to be in there. Now if the working group wants to revisit the, you know, the legitimacy of 16 I think that was something that we kind of arrived at fairly early and landed on fairly strongly.

But if the winds have shifted on that I'm certainly willing to revisit that. But I don't know if we have - the queue is clear Alan. So I guess that means nobody except for you and I really care that much.

Alan Greenburg: Yes. And I don't care that much. But it just - it lacks clarity. And I, you know, I like things that are better...

James Bladel: Yes.

Alan Greenburg: ...are concise and easily understandable by someone reading them after the fact.

And all most people are going to do is read the recommendations not the...

James Bladel: Right.

Alan Greenburg: ...body of the report.

James Bladel: That is - yes that's ICANN survival Tip 101. I notice that we are at the end of our time here. I think that I'm just going to weigh in here.

I think the bulk of the recommendations are fine. I think that Recommendation 15 answers the question and Recommendation 16 does no harm.

Perhaps we can add, you know, the - the working group recommends that GNSO consensus policies avoid policy specific sanctions, you know, comma where possible, or where feasible, or, you know, not at all costs but just something like, you know, unless it absolutely must make sense or something and then it waters down to the point where Alan's position starts to become clearer which is why it's there at all.

But going back to the impact statement the, you know, I think that the working group expects to see, you know, no transfer specific sanctions resulting from this policy. And, you know, we can just leave it short and sweet like that.

We've got to folks in the queue now. We're at the top of the hour. I will indulge them if the rest of the group can hang on for just a little bit and I know they'll be brief. Berry go for it.

Berry Cobb: Thank you James. I posted into the chat. Again I just - I'm curious whether we need or whether the working group should consider to be a hint more specific and throw in the IRTP policy?

You know, again that is only the scope of this working group this takes it out greater. So I'll just leave it at that. Thank you.

James Bladel: Yes Berry I think that's a helpful intervention to be specific about which policy we're referring to. I don't have any objections to that. And Alan you get the last word.

Alan Greenburg: Just I'm happy with what Berry said. A question have we had a lot of policy specific sanctions coming out of working groups out of PDPs?

If not then I don't think we can see a discontinuation of them. I can't...

James Bladel: Right. Yes and...

Alan Greenburg: ...recall any off the top.

James Bladel: Yes. That was my concern with that as well because that - really what we need to do is we're saying 4.2.5.4 -- and this is to Lars -- is the current text is reflective on Recommendation 16 which we all had agreed is very mushy at best.

We really need to just take 4.2.5.4 and change the impact to focus on Recommendation 15 and leave it at that. And not speculate on what future PDPs will do. I would be happier with that. And I think maybe if we can capture that that'll make a lot more sense.

I have a green checkmark from Lars. And that's how we're going to close it for today. So thank you everyone for a I thought a very productive and spirited discussion as we continue to slog our way through this report.

We are getting near the end. I would say that with that in mind those of you who still have contributions, or changes, or edits the clock is ticking on making sure you get those in before the, you know, in order to make sure that we have ample time to discuss them as a group.

So with that we'll adjourn for today. And thanks everyone. And see you next week.

Coordinator: That concludes today's conference. All participants may now disconnect.

END