

GNSO
Post-Expiration Domain Name Recovery (PEDNR) drafting team teleconference
24 November at 19:30 UTC

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<http://audio.icann.org/gnso/gnso-pednr-20091124.mp3>

On page:

<http://gnso.icann.org/calendar/index.html#nov>

Present:

Michele Neylon - RC / Acting as Chair

James Bladel - RC

Cheryl Langdon-Orr - ALAC Chair

Paul Diaz – RC

Ron Wickersham – NCUC

Alaine Doolan – IPC

Tatyana Khramtsova - RC

Mason Cole - RC

Mike O'Connor – CBUC

Berry Cobb - CBUC

J. Scott Evans – IPC

Alan Greenberg – ALAC

Ted Suzuki – IPC

Jeff Eckhaus - RC

Michael Palage - CBUC

Dave Kissoondoyal - ALAC

Staff:

Marika Konings

Margie Milam

Gisella Gruber-White

Glen de Saint Gery

Absent apologies:

Karim Attoumani – GAC

Sergey Gorbunov
Matt Serlin - RC

Coordinator: The recording has started. If there are any objections disconnect at this time. Thank you. You may begin.

Gisella Gruber-White: Good morning, good afternoon, good evening to everyone on this evening's PEDNR call on the 24th of November. We have Michele Neylon, Tatyana Khramtsova , Ron Wickersham, Cheryl Langdon Orr, Mike O'Connor, (J. Scott Evans, Allan Greenberg, Jeff Eckhaus, James Bladel, Alaine Doolan, Mason Cole, Michael Palage, Dave Kissoondoyal -- apologies for the pronunciation -- Marika Konings, Margie Milam from staff, and myself Gisella Gruber-White.

And if - we have apologies from Matt Serlin and Sergey Gorbunov If I could please also remind everyone please to state their names, this is for transcript purposes. Thank you, back to you (Allan).

(Allan Greenberg): Thank you very much Gisella. I don't think we have any items on the agenda before we go right into the meat of it and start with completing the constituency - the review of the constituency statements unless I'm mistaken. I don't have the agenda in front of me I'm afraid but that's by - from memory. If that is not wrong I turn it over to (Marika) to finish up that while I try to have a good lunch.

(Marika Konings): (Allan) are you in Adobe Connect?

(Allan Greenberg): I am in Adobe Connect.

(Marika Konings): That's one of the reasons.

(Allan Greenberg): Okay in that case I need to get to the right window if I can find it.

(Cheryl Langdon Orr): (Cheryl) here, multi-tasking is a challenge with (Allan).

(Allan Greenberg): Okay well actually I had the window with people scrolled down so I didn't see it. (Ron)?

(Ron Wickersham): Yes, thank you. Yeah you will remember last week I said that we didn't have a constituency statement from MTUC and we had our regular monthly meeting this morning prior to this meeting this morning, California time, and there is a - while it will be later there will be a statement forthcoming because they do want to have the participation. So I'm getting additional help from the more experienced people to get that finished. Thank you.

(Allan Greenberg): Thank you (Ron). Any other comments before we go into the agenda or into the real work? In that case (Marika) I turn it over to you again.

(Marika Konings): Okay, this is (Marika) and if I remember correctly I think we left it last time at Question 5, whether to allow the transfer of a domain name during a redemption grace period. That makes a point by the IPP that a transfer of a domain name should not be allowed apart from a transfer to the original registrant name holder.

This was taken and I guess (Jay Scott) can comment there but with the assumption that the after expiration of domain name was transferred actually to a different account or to a different party and I guess this

more relates to the recovery of a domain name of a transfer to another registrar. (Jay Scott) I don't know if you want to comment.

(Allan Greenberg): If he doesn't, I do. I think there's a misunderstanding here. The transfer we're referring to in Question 5 is the transfer from one registrar to another without changing the registrant. And so I think this was referred to as meaning the transfer which could happen under a registration agreement which is a different use of the word transfer. Am I misreading this or is this - anybody?

(Marika Konings): This is (Marika). That's my point as well and I think some similar comments were made during the public comment period.

(Allan Greenberg): Yes indeed.

(Marika Konings): The question wasn't phrased properly or we should set that allowed the contract or domain name to another registrar during the redemption grace period.

(Allan Greenberg): Yeah I don't think there was every any intent to ask whether we are allowing the transfer to another during redemption grace period. The redemption grace period I believe is only applicable to the original registrant should one be able to find out who that was.

(Marika Konings): This is (Marika). There was a question. Isn't an IPP to - available to the registrant that's listed in the who is? At that point does an RAE make a claim that they would like to recover a domain name?

(Allan Greenberg): Well that's an interesting question and I'll ask it of a registrar if there any. Some registrars have been known to change the who is during

the various expiration processes. If that happens and the domain is deleted does it get changed back to the RAE prior to deletion? So who is it that can exercise the RGP at that point if the who is changed somewhere along the road after expiration date? (James)?

James Bladel: Yeah (Allan) thanks, I was actually going to state something else but I'll take a swing at this question too.

(Allan Greenberg): That's okay.

James Bladel: That's okay. I think and I'm seeing this with the understanding that I believe we respond to a registrar survey that we do not change the who is at the time of expiring so I guess I'm speculating a little bit and I apologize a little bit.

(Allan Greenberg): That's fine.

James Bladel: The other registrars if I'm speaking, you know, out of school here but I think that, you know, it does complicate the ability for the RAE to recover the name in the redemption grace period in RGP which is one - in my opinion is a sound argument of why we should not permit the domain registration to move to another registrar during this period because only the original registrar would have that ability to trace back to the original RAE.

And I think that - and that kind of segues into my other statement which is in general the idea of transfers during RGPs is that the transfer process which I'm also working on (Matt McKelley)'s working group on that is very complicated. It's very fraught with confusion on the part of

registrants and it is also littered with security vulnerabilities that causes people to lose names at the hands of bad actors.

And I think we're seeing the same thing to some extent happens in the post-expiree process as well and I'm just concerned that if we're talking about here in Question 5 about commingling those two periods so that you can have both the IRTP and the post-expiree process running concurrently that really opens up the door to a lot of unintended consequences in terms of loss of names, security problems, and confusion on the part of individual registrants.

So that was the statement I wanted to get out there. But as far as changing the who is I think that it would be difficult for anyone but the original registrar to restore it to the RAE.

(Allan Greenberg): My understanding was the registree had to be able - had to know who it was based on the who is data and not necessarily the registrar.

James Bladel: Well that would not be possible in a thin registry so I don't see how that would apply for at least in that case.

(Allan Greenberg): Okay, good point. (Jeff)?

(Jeff Eckhouse): I just wanted to say (Allan) that you're right, that the registree would need to know the information for it to happen and that would - and as you said for the comment that they're both thin that would probably knock out whatever it is, 80% something, 90% of the domains that are in question that we're concerned about.

(Allan Greenberg): All right. it still doesn't answer the question of for registrars who change the who is do they change back before deleting but perhaps that's a one, that can only be answered for particular ones.

Man: I'd like to try and answer that but I'm not sure the question. When you're saying - so the name goes in - it's in expiree, right, the registrant does not do anything. The name gets deleted. What do you mean - I'm not sure what you mean by do they change it before they delete it.

(Allan Greenberg): Well there are certainly some registration agreements that allow a registrar to change the who is information past the expiration date.

Man: Yeah that's correct.

(Allan Greenberg): And the question is if they ultimately delete the name do they change it back to (Allan Greenberg) prior to deletion so I am the registrant of record should I decide I want to exercise the RGP. All right I don't think we need an answer now. I'm - it's more my curiosity than anything else at this point. We may want to look into it later. (Michael)?

(Michael Palage): Yes, thank you, (Mike Palage). So I - (James) I kind of agree with some of your statements about these concurrent sessions with changing who is and all these other things leading to potential security gaps. But what I'd like to do is perhaps let's take a step or two back and the first step is why is the who is being changed, okay, because, you know, as I think was articulated in one of the, you know, comments by (Christina Rosetta) on the public forum about how that may potentially interfere with the trademark owner's ability to enforce rights, I think we need to be looking first at the question of changing who is.

Now if in fact a registrar believes that changing the who is somehow provides, you know, additional notice to a registrant that may be looking into this who is data, one way of doing that is not materially changing the underlying data so instead of a domain name palage.com which is associated with (Michael Palage), one way of updating the data may be pending delete-(Michael Palage).

So instead of doing away with the original underlying data perhaps just amending that who is data with an additional field saying pending expiration or whatever the status may be. We're not getting rid of that true underlying data which then allows for a potential inter-registrar transfer to happen during this period while not negatively impacting the rights of trademark owners to see who is associated with this domain.

And I think that addresses your concern of, you know, closing some of these potential security gaps. I just, you know, put that out there as a consideration since you raised this topic earlier.

(John): If I can respond to that, I see there's a queue but if I can respond briefly (Allan).

(Allan Greenberg): Go ahead (John), I have one quick comment also but go ahead.

(John): Okay well I think that the two are - I think they're - I was trying to draw a distinction there or separation between changing the who is and the security issues. I think the security issues are there whether who is is changed or not but we can discuss that I think at length a little bit later.

But as far as the who is changing, you know, we don't change the who is so I don't know what other registrars do or what their motivations for

doing that is and I wouldn't want to speculate, you know, why they do that.

I'm just saying that it would be - if they did that it would be difficult for someone like Go Daddy to go and then gain that domain during a transfer during the redemption grace period because we wouldn't have - be able to trace it back to the RAE. That was my only point there.

(Allan Greenberg): Okay thank you.

(John): I wasn't advocating for it or anything like that because we don't do it.

(Allan Greenberg): Yeah (Mike) - just a comment on what (Mike) said. I think one of the indications of the difficult problem we're looking at is you gave a good argument why no one should ever change who is information. The counter argument that's being made is if a registrar is going to point my domain name at a pay per click page or worse, we don't have any control what they're pointing it at, I don't want my name to be associated with it. so right now we're in a messy ground where there aren't any good answers to some of the questions. (Jeff)?

(Jeff Eckhouse): Yeah so I'm not going to discuss, you know, reasons for one or the other, I just want to say that I think this is while interesting has - doesn't really have anything to do with transfers during the redemption period or anything else and I'd say we just shelf this and move on because it actually doesn't have anything to do with this actual topic.

(Allan Greenberg): I'll accept that. (Mike)? (Mikey)?

(Mike O'Connor): Ah, I don't respond to (Mike).

(Allan Greenberg): Sorry, I corrected myself.

(Mike O'Connor): The only - I tend to agree with (Jeff) but I do have one, two sort of broad concepts that business constituency introduced and constituency statement in the IRPD working group and that is that two things ought to happen at least. One is that if there is a name that play, one of the things that we want to do is slow the process down a bit to allow a dispute resolution process to unfold in an orderly way. And those processes tend to be slow. While at the same time we want to speedily be able to restore the name back to the appropriate state while that process is unfolding. So there just is this sort of overarching concept of speeding some things up and slowing some things down that we introduced this in IRPD and may also would be appropriate here.

(Allan Greenberg): Thank you. Since we - I just spent the last hour talking about the universe - the URS, I understand the concept of you want to go fast and slow at the same time. Anybody else? (Marika) had her hand up.

(Marika Konings): Yeah this is (Marika). Just one point I wanted to make on this issue and it's probably something to discuss in further detail when, you know, we get to the caution as a group and not as part of the constituency statement. Some PCDLDs do allow a transfer of a domain into another registrar during their version of the RGP so it might be worth looking into why they allow that and, you know, what kind of challenges that brings with it and, you know, something that could be further explored in the context of this question.

And also to comment on an issue that (Cheryl) raised in the chat box whether this issue can get picked up by the transfers working group. And one comment that was made in the staff report on the issues report was that there are still a lot of issues that need to be dealt with within the IRTP so that, you know, it will be a good idea for this group maybe to come to a recommendation whether not to allow a transfer.

And if they would - if this group would decide yes it would be good to have the possibility of transferring a domain name, a possibility would be to defer to more technical discussion around that to one of the future IRTP working groups. That's something else to take into consideration.

(Allan Greenberg): Yeah and I think that was indeed the intent when they -- excuse me -- when the council resolution was made. (McKalie)?

(Michele Neylon): Just a couple of things. I mean, parts of the problem is between thick and thin registries. I mean, at the moment the thin registry system seems to be causing more problems than it's actually solving. I mean, as some of you know we haven't been an accredited registrar for very long so we've been building out our own systems for handling transfers and one of the problems we ran into was that transferring domains from - between registrars when using a thick model is quite straight forward. You've got - as long as you've got access to certain things within EPP the entire thing flows quite nicely. But when you come to start doing it with thin stuff it can get quite messy.

The other thing is well just comments about the - some of the PCTLDs. The very important differences with the loss of CTTLDS is that there is just basically an expired status, a quarantine status when the domain

expires. There's no 30 days then something else then something else as far as they are concerned. In the most and all cases they would hold all the data of that relationship which isn't going to be the case within registries, that's the bulk of the activity at the moment.

(Allan Greenberg): Thank you. If no one else we'll go back to (Marika).

(Marika Konings): This is (Marika) again. The next comment is the business constituency and they know that there are several indications around policy changes to the expiration process. And they prefer to defer that comment until the working group has completed its analysis on this issue.

(Allan Greenberg): Okay.

(Marika Konings): And the next comment is from the registrar stakeholder group. And they note as well complicated issue and wonder if it might better be addressed on the RTP PDP process and noting as well that it could be potential changes could result in unintended consequences and to inform them in further detail.

And then the last comment from the registry stakeholder group, they prefer to keep both processes separate and they know that a transfer be requested following the restoration of an expired domain.

(Allan Greenberg): I see no hands up. We'll go on to the general and other comments.

(Marika Konings): So the first comment made by the business constituency and know that the preliminary work of the working group appears to indicate that registrar practices in connection with a transfer of domain names post

expiration may result in data that may materially impact other stakeholders investigations.

(Allan Greenberg): I think we could say that accurately. No comments other than my facetious one. Let's go on to the next one.

(Marika Konings): Next comment is from the registrar stakeholder group pointing out that the terms of this proposal is that something bad might happen to a registration, not that there is demonstrated harm occurring and a remedy must be provided immediately. The ICANN community cannot encourage competition and innovation and then seek to regulate it without pure evidence of harm.

(Allan Greenberg): And lastly seeing no hands. Not lastly, sorry.

(Marika Konings): Lastly two more comments from the registrar stakeholder group basically noting as well no ICANN policy or registrar practice can provide full assurance against unintentional loss of a registration or against a potential bad faith behavior of a registrar or reseller.

And also pointing out that registrars are more than willing to contribute in good faith at preventing unintentional loss of a customer's name and should the community of bad actors need to be addressed, a registrar will discuss ways to do so that deliberately disrupt operations of the good actors to further distract the community from more important issues.

(Allan Greenberg): On the first of the two I would say I think all parties agree that we are not trying to create the perfect safety net which doesn't allow anyone to ever suffer any harm from doing stupid things. On the last

one I think that's part of our discussion that we need to keep on holding. Any comments general and constituency statements before we go on to the more perhaps vital input on the registrar survey?

(Michele Neylon): Just curious, why is it that we never get any constituency statements from the ISPs?

(Allan Greenberg): One would have to ask the ISPs.

(Michele Neylon): Well.

(Allan Greenberg): Hypothesizing amongst the rest of us might not be seen as being politically correct or accurate.

(Michele Neylon): I mean, I'm not too concerned about being politically correct and anybody who thinks that I am concerned about it needs to get a reality check.

(Marika Konings): And this is (Marika). One challenge might be that they actually don't have any members currently participating in this working group. And we have tried to encourage them believe me but I think they're challenged in getting sufficient participation in the different groups.

(Allan Greenberg): I think several of us are. (Ron)?

(Ron Wickersham): Yes, a question. Is a reseller synonymous with ISP in this context?

(Allan Greenberg): No I don't think they're synonymous. We have ISPs who are registrars and we have ISPs who are resellers.

(Ron Wickersham): Okay.

(Allan Greenberg): And we have ISPs who are neither and probably some who are both. In the absence of any more questions let's flip to the registrar survey and see what you can tell us on that.

(Marika Konings): Yeah this is (Marika) again. I've put together a couple of slides to take you through the preliminary findings. I'm just uploading them.

(Cheryl Langdon Orr): Ooh, pretty.

(Mike O'Connor): (Cheryl) you are easily pleased.

(Cheryl Langdon Orr): At this hour of the morning (Allan), as long as I've got coffee I'm happy.

(Allan Greenberg): That wasn't (Allan) who said that though.

(Cheryl Langdon Orr): Oh, who was it?

(Mike O'Connor): (Mikey).

(Allan Greenberg): I think it was (Mikey).

(Cheryl Langdon Orr): Oh! Seven am here in the (activities).

(Allan Greenberg): Did you have any sleep since our last meeting?

(Cheryl Langdon Orr): Of course not, sleep is overrated, you know that (Allan).

(Marika Konings): Okay to more serious stuff now. So the gist of the registrar survey was to review the current practices of registrars and we agreed that the initial survey would cover the top ten registrars which represent approximately 69% of domain registrars in the (GTLE) landscape.

And information gathered, the initial information was gathered by ICANN staff, by myself. Through Internet research in looking at the different agreements and information provided on registrar websites and I've been reaching out to the different registrars to help me gather that information that I wasn't able to find online or to verify information I had found.

And just to note that these are preliminary findings. These are - I have the complete findings in sort of top four registrars for pretty much all of them I have the feedback and input. I have completed my part of the research for the rest of the top ten but I'm still waiting for feedback and confirmation on some of the questions from those registrars.

And so the results are presented in this presentation cover those questions where information is either confirmed by the registrar or information that I found as a result of online research but that I have not necessarily been confirmed by the registrar but it is information that I have found online in one of the agreements or documents.

So the final result of the survey can only present feedback from all registrars and several have already indicated that they are looking at this and, you know, they are making plans to verify and coordinate with the right person or people. So I'm hoping in the next week or two weeks that we'll have feedback from everyone and I guess the group

can make an assessment whether additional research is required or not.

(Allan Greenberg): (Marika), quick question. You said that you've collected some of the information but it has not been confirmed by the registrars. Have you had any occurrences during the rest of this survey of things that you found online which the registrar said no that's not correct?

(Marika Konings): No I don't think in that way but sometimes they were able to provide some further details and so, you know, (unintelligible) notices I would have to find that yes, you know, they send notices but the registrar was unable to say well yes we sent notice on day 1, 15, and 20. So some questions. I think (unintelligible) and already provided feedback to correct me if I'm wrong. I think and most of the information was correct. It was sometimes a question of providing further details.

(Allan Greenberg): Okay thank you, got it. Thank you.

(Marika Konings): So on question 1 what is the registrar's practice in case of a registrant silence with regard to renewal. So I think almost all registrars completed the registration on behalf of the registered name holder. I'm hearing myself in an echo. As a courtesy the REE should be able to reclaim its name with most registrars. One registrar seems to practice that if auto renewal is switched off registration will move directly into RGP.

Gisella could you check on the echo please? And in that specific case the registrant actually has to go require some efforts to get the auto renewal switched off so the default there is that a registration is renewed.

And worth pointing out as well that most registrars do point out that recovery is not an obligation but at the sole discretion of the registrar. And one registration agreement even goes so far that the registrant has no rights on such registration after expiration and ownership now passes on to the registrar. Any questions on this question?

Okay moving on to question 1a. Does the registrar allow auto renew and the answer is yes for the majority of registrars. Discretion has also been interpreted as asking whether the registrars provide an auto renewal option for the registrant. And in some cases this is a default setting and a registrant needs to take affirmative action to switch off the auto renewal.

In some cases it is an option the registrant has when he registers his domain name, he can have that as an option or not. One that I found that for one registrar that they actually do not provide the option for setting your account to auto renewal. Seeing no hands.

(Mike O'Connor): Can I ask you a question? I'm sorry (Marika), this is (Mike).

(Marika Konings): Yes.

(Mike O'Connor): When you say a majority, are we talking 80%, 90%, I was just trying to get an idea here of when you say majority is this like 51% majority or are dealing like consensus 80%? I was just wondering if you, you know, I'm not asking for a specific number, maybe just your gut call when you use that term.

(Marika Konings): Yeah this is basically for almost all, pretty much a majority having received the confirmation (unintelligible) and for one I couldn't find the information. So that auto renewal at the registry level I think it's, you know, common practice.

With regard to auto renewal that the registrar provides for registrants it seems that most provide the option apart from one and then there's a difference between having that as a default option set out auto renewal or, you know, optional for the registrant to decide.

(Mike O'Connor): Excellent, and most does a lot better than majority so most helps clarify it from my standpoint so thank you very much.

(Allan Greenberg): (Marika) when you're talking about auto renew I assume this is a mode by which you leave a credit card, a valid credit card and say when it expires renew it.

(Marika Konings): Correct.

(Allan Greenberg): Okay.

(Marika Konings): Question 1b, when and how are notices sent. Notices seem to generally be sent by email. Many registrars indicating that it's sent to different contacts they have on file. Some only the registrant, also the admin contact and the billing contact and reaching out to the different contact points they have.

And some registrars provide a detailed calendar of when notices are sent. Others don't. And some of this information is available on their site, in some cases it's not. Interesting to note that two registrars

actually note in their registration agreement that notices are provided as a convenience to the registrant and not as a binding commitment. That seems to contradict the EDP.

Question 1c, notices after expiration. Four registrars have confirmed that notices are also sent following expiration and some provide some detail as to, you know, when exactly that happens. One registrar indicated that they do not send notices following expiration but they do provide information in user accounts relating to the fact that the domain name has expired. And there's a question as well we're waiting for further information or confirmation from some of the other registrars.

Question 1d, are substantial changes made to data following expiration. Six registrars note in the registration agreement that records may undergo changes such as replacing the RAE contact information with that of the registrar. Most agreements word it as may and when invited the conversation I presume that is then as well the practice and there is no further information provided here for which case it does happen or it doesn't happen and that's maybe something we need to get some further information on.

And one of the registrars and I think (James) already gave away who the registrar is, does not make a central case for (unintelligible) apart from changing the name servers.

James Bladel: Who could that be?

(Marika Konings): And question 1e, the recovery prior to RGP, and the registrars indicated that the REE may recover the domain name at least for a certain period for the normal renewal fee and in some cases it's

(unintelligible) for, you know, renew the domain name for normal renewal fees as short as three days. I think a lot of cases like 30 days or 20 days.

In other cases, you know, beyond for example the three days an additional fee may apply which in certain cases it's specified as the same as the fee that is charged during RGP.

(Allan Greenberg): (Marika), didn't you say that one of the registrars did not give any time at all? One of your earlier points.

(Marika Konings): Yes it's the last bullet point so this question is not applicable to the situation where the registration immediately moves into RGP and no order or grace period (unintelligible).

And again I have to put the caveat here, this is what I understand from the information on the website and on the registration agreement. I have asked this registrar as well to confirm that that's the case but from everything I can see is that there is - the registrant, you know, willfully switches off their auto renewal, clearly indicate that they have no interest in renewing, then the domain immediately moves into RGP.

(Allan Greenberg): An interesting sub case of that is what happens if they have indicated they want to auto renew but the auto renew cannot take effect because of, you know, credit card problem or something like that.

(Marika Konings): Yeah I think in that case I can check back but I think in that case a registrar does go back to the RE and try to make effort. I think everybody starts that process quite early on. They try to undertake

several efforts to, you know, correct the data and make sure that the question of the, you know, to get the right information. I see (McKalie)'s hand is up so maybe he has some more insight.

(Allan Greenberg): (McKalie)?

(Michele Neylon): From my own - from the way our system works and from the experience I've had with most online automated systems, if the credit card file is not valid or fails which is not always the same thing, then most systems would send some kind of notification or make at least another attempt to charge the card.

I mean, in our system if you make - if you try to make a payment using your card and it fails for whatever reason, unless somebody broke in our system on me again it should send the person an email saying, you know, your attempt to make a payment for order XYZ has failed. And I think I've seen similar type things happen with other registrars but I'm sure some of them could comment. But I think that would be fairly standard practice.

And ultimately, look we're businesses. I would be much happier if all of my clients renewed all the products and services they have from us because otherwise I don't get any money. So, you know, I can't imagine why anybody would do it otherwise, you know?

(Allan Greenberg): Okay let's keep going.

(Marika Konings): Okay so question 1f, when is the changed and what is the point. I think almost all registrars reserve the right to redirect IP addresses to a registrar designated page which may through notification or renewal

info most of the time as well and in addition (unintelligible) or other promotional information.

In one case the registrar agreement does note that the REE can actually opt out of display of registrar pages if it indicates so before expiration of the domain name registration. And one registrar agreement even goes so far to point out that it may intercept any communication request and (unintelligible) its request at its sole discretion.

(Allan Greenberg): Do you read any communication request is implying things other than the web?

(Marika Konings): I don't know. It stated it in such terms and I thought it was quite bold.

(Allan Greenberg): Okay, in the absence of any other comments let's go on.

(Marika Konings): And the question 1g, does the page say it has expired. Five registrars indicated the new page will display information that the registration has expired or information on how to renew or it might advertise it's for sale at auction of the domain and registration.

One registrar says that it does not contain any information on the fact that it has expired and of course the question is not applicable for the registrar that actually doesn't operate an auto renew grace period.

(Allan Greenberg): Okay when you say five will display information on - that the registration has expired or advertise sale, I read those as two very different things. Are you saying the agreement says they may do one

or the other or some of the five do one and some of the five do another?

(Marika Konings): Yeah I think it's more the latter. I mean, some, I mean, agreements are very broad. They basically say, you know, it may include advertisement or it may include, you know, links to other sites. You know, I think only one was specific about the fact that it could display information on the sale or auction of the website.

But many of them have a - many of them basically have a clause saying, you know, that registrars reserve the right to redirect the page to another IP address which without limitation might include page under construction, prior page may contain promotions and advertisements or links to a registrar server, service offerings, third party website, third party products and surveys, offers, or implement websites as well as advertise for sale the auction of such domain name.

So a broad range of options there and again this is one of those problems where I don't know and again I would invite the registrars to whether it's always the same for a domain that expires, doesn't depend on, you know, the point at which it is an auto renew period, or is it the same for all.

(Allan Greenberg): I think to the extent possible when you do the final analysis if you can identify how many of them say without any qualification that the page does say this domain has expired, you know, and this is what you do about it regardless of what else it may say. You know, if you can do that, that would be useful. (James)?

James Bladel: Yeah hi (Allan), this is (James). And I just wanted to make a statement here. It may or may not apply particularly to Go Daddy or to all registrars or to any. But to point out that some of the language that we may be gathering or acquiring through an analysis of registration agreements is going to use words like may do this, may do that, registrar discretion, etc.

And I think that, you know, while they're informative we would be wise not to inject too much of a conclusion or direct too much of a conclusion from that based on what we think the registrar's intentions are when in fact it could be something just as simple as I want to be able to change my expiration page without updating my registration agreement. Or I want to make a modification to the timing of the notification without having to have everyone refresh or reaccept all of these agreements.

So I think that there is, you know, a line here that we should be very, very careful not to see as a brick wall but maybe more of a chain link fence here where we're using specifically choosing language that gives us the ability to improve products, improve notifications, make changes to the way a page looks or feels or designs or what information it links to, etc., etc. without having to redesign the entire registration agreement. So I just wanted to get that out there on the table as a way of setting some context for some of the responses here.

(Allan Greenberg): I guess part of the question that comes along with that is one of the - one of our requirements is to look at this from the perception of a registrant of what can the registrant reasonably be expected to know. So those two I guess have to be balanced against each other. (McKalie)?

(Michele Neylon): I mean, I'm sort of echoing what (James) is saying. I mean, the thing is if this is based purely on terms and conditions, agreements, and other legal documents and no right minded solicitor, lawyer, advocate, insert term here for your own country, is going to allow a company be it Go Daddy, (Black Nights), or whoever to publish a document on their website without using modal verbs. By that I mean could, might, may, etc.

Being apart from anything else whether - the thing is really, you know, it's a legal document. If for example for reasons outside a registrar's control some part of some aspect of - something were to happen in a manner which was not foreseen. Because the document has to cover, you know, use language which gives you some level of protection. I mean, just to give you a really stupidly simple concept, (Cheryl) what time of the day is it where you are?

(Cheryl Langdon Orr): 7:30 am.

(Michele Neylon): 7:30 am where (Cheryl) is, it's 8:20 pm where I am. What time is it where you are (Allan)?

(Allan Greenberg): I can give you the time but I'm not sure why this is relevant. It's 3:20 here. Cheryl I think it's 7:20 there.

(Michele Neylon): But the simple thing is, I mean, it may seem strange but the point is that the international date line and times of the day and everything is varied on what time zone you happen to be in. So if I am offering my services based on our standard time and you were buying them based

on local time in Australia, the (unintelligible) at a different moment in time for you.

(Allan Greenberg): Sure.

(Cheryl Langdon Orr): Yeah. In fact I've already gone a day ahead.

(Michele Neylon): Yeah exactly, so it may - I'm not trying to - I mean, being quite realistic about it, there is an expectation and there's reality. I mean, we've had situations where people have said to us oh I have my domain set to auto renew. Why didn't you do this, that, and the other and God knows what else. And it's simply because, you know, the card has expired, they ignored me telling them that the card had expired so the domain whatever happened to it.

So, I mean, the thing is, you know, you have to bear in mind that when you're looking at some of these things it doesn't mean XYZ will always happen. It's a case of XYZ could happen. So, you know, just there's a lot more to it than that. I think there is a lot of nasty gray area but unfortunately that is life.

(Allan Greenberg): (Cheryl) would you like to make a comment to that point from your consumer point of view?

(Cheryl Langdon Orr): I'm happy to. It comes back though to the registrant being well equipped enough with understandable information that there is a high degree of predictability on what is going to happen. And things like I've put in an auto renew option and then my card has expired and I've literally packed my brain somewhere else, that's one thing.

Your systems or these systems tell me that there has been a failure of my card. I go oh yes, I need to change the date. Providing there is enough time for me to do that, that's perfectly valid and reasonable set of expectations on both sides of the client and supplier equation.

If a registrant then goes on to ignore those warnings as you were outlining in your example well then there's little grounds for them to be saying other - for us to say that there's little we can do to help those sorts of people nor should we. As you said earlier (McKalie) it's in your best interest to have a closed transaction and a continuation of the services.

If you have a system where it doesn't say oh by the way your expiree date on your card is now, you know, out of date or that the information does not get through to the registrant to say your expiree date is out of date, or that you forgot that the card you had on auto renew information and your card has been stolen and a new card has been issued. That's the added point where a registrant I think has any grounds for expecting an ability to redeem.

(Michele Neylon): Just coming back on that (Cheryl), one of the problems that we've seen is that in many cases even when they admit that the whatever has happened has happened through their own fault, they still try to argue with you about it.

(Cheryl Langdon Orr): This is human nature.

(Michele Neylon): But the thing is that if you're selling a product where your margin is as tight and as low as it can be for domain registrations you really don't

have - you can't really afford to be getting into these protracted arguments with every single registrant.

(Cheryl Langdon Orr): Of course.

(Michele Neylon): So in a lot of cases you end up having to defend yourself.

(Cheryl Langdon Orr): But still the best defense is to have all the necessary information which it would appear from the survey so far the majority do so that there is a high degree of predictability and expectation that the community sets on both sides of the transactional equation up front -- assuming of course that the registrant reads that and that comes back to education.

(Allan Greenberg): I put myself in the queue because I've got some comments. I spent a good part of my life both signing and writing contracts both as a service provider or product provider and a buyer. And one can write contracts in a variety of different ways to accomplish the same end.

And, you know, if you look at a newspaper advertisement you'll see a price - the price of eggs for your supermarket and there will be some tiny print at the bottom saying if we made a mistake, you know, and printed this wrong then it doesn't apply.

One can make statements that are definitive but have a best efforts clause and, you know, an exceptional circumstances clause that cover the cases where systems fail or people fail or things like that. So it really - one of them shows the intent of what you're planning to have and the other simply is vague to cover yourself and I think this can be

done in a number of different ways. There's certainly not only one.
(James)?

James Bladel: Yes, thanks (Allen) this is (James) and I just really wanted to quickly echo some of what (McKalie) said as well as respond a bit to an earlier statement that, you know, when we use language like this in a legal document is it - does it increase the opacity of the agreement to reach every registrant.

And I think the answer is yeah it probably does. It probably makes it a little harder for those without a legal background to understand. But, you know, let's not kid ourselves here -- registrants are, you know, my 12 year old daughter as well as a Fortune 500 company, registrants are individuals, churches, businesses, and some of them are also law firms as well.

So because some of them require us to include this type of language unfortunately now we all must abide by it if that makes any degree of sense. Because we have to write a universal terms of service for all levels of knowledge, familiarity, and background that could be coming through the doors there. And I think that's just part of opening this up to the broadest possible universe of registrants.

They don't all come from the same place, same degree of familiarity, you know. I would say the folks who read the document or keep up to date, I would like to think it's a high number but I think a lot of them I suspect just check the box and move on.

So, you know, it's just part of the nature of society and the times that we live in and the fact that we're appealing to such a diverse and

diverse base of registrants with just a variety of needs and backgrounds. So I just wanted to get that out there, thanks.

(Allan Greenberg): Okay, seeing no hands, (Marika)?

(Cheryl Langdon Orr): I'm sorry (Allan), if I can just - I don't know why the computer just - I wasn't able to put my hand up so I'll do it in real time. Just in response to that, here (Cheryl) by the way, of course this goes back to previous discussions we've had at several meetings including the last one. The advantages of plain language contracts comes to the fore.

And (McKalie) has also previously provided links to some of the toolkits and outlines that is valuable in the UK I believe as well as Ireland and certainly we've worked very hard in Australia in the telecommunications industry to ensure a plain language and single consumer contract for our mandatory codes.

(Michele Neylon): Oh you play dirty (Cheryl), gosh you play dirty. I love it.

(Cheryl Langdon Orr): (Unintelligible) to you dear.

(Allan Greenberg): She specializes in using your own words against you.

(Michele Neylon): That's quite okay, that's quite okay. (Cheryl) knows me well enough I can take it.

(Allan Greenberg): Since (Michael Palage) had to drop off the call but I'm going to use - I'll say something that he might have if he was still on the call. (James) made a rather impassioned statement about why one has to use vague language which in contracts and (Michael) has sworn to

what a good extent (James)'s company does of regardless of the words in the contract making it crystal clear exactly what is likely to happen. So I guess one can look at this from many different ways.

(Marika Konings): This is (Marika). This is maybe a question once we have the full results that we might want to go back to those that responded to say okay well we understand that this is one of your agreements but can you maybe describe to us what happens when that is actually put up there.

So moving on to the next question, 1k -- I'm skipping a number of questions here if I don't have sufficient information yet to, you know, give an accurate representation of what happening. So 1k asks the question at what point is the domain and registration made available to others.

And in most cases the registration agreement basically specifies that the registration - the registrar can in theory renew or transport a registration to the registrar account immediately upon expiration. But some specify that this in practice only happens at the end of the auto renew grace period or a certain point of time in the auto renew grace period.

Some specify that the registration is put up for auction after a certain amount of time and some dates that are provided there is after 25 days or 30 days after expiration.

Again this might be a question as well where the group might want to go back and say well agreement provides for the option to transfer the domain name but does it actually happen in practice as well or on the

basis of what assessment or what criteria is the domain name transferred or not.

(Allan Greenberg): Okay.

(Marika Konings): Question 1n, when does the name actually enter into RGP. In most cases if not all only if the registration had not been renewed by the REE or transferred to a third party. There's one registrar that specified that they do allow for the REE to notify the registrar before expiration I think and that he or she does not want the registrar to proceed with a transfer to a third party and in that case the registration is immediately deleted and entered into RGP.

And again the case where there is actually no auto renew grace period offered and the domain is specifically cancelled will immediately enter RGP.

(Allan Greenberg): Okay thank you.

(Marika Konings): So I added another question as I was looking at all these other agreements to have a comparison on the duration of the auto renewal grace period that's actually provided by the registrar to the registrant. I just thought that might be a question of interest as well to the group.

So it ranges from zero which is the case in one registrar - for one registrar where a registration needs to be moved into RGP after expiration to 30, 35, 40, and 42 days which is the different ranges I found.

(Allan Greenberg): And that is notwithstanding that the domain name may be transferred or auctioned earlier. Those seem to be a conflict in terms.

(Marika Konings): Yes but I think most of those that actually started to auction before the end of the auto renewal grace period do not actually transfer the domain to the person that has one registration in the auction period.

So if I understand correctly, and again the registrars on the call that have that practice correct me if I'm wrong, the domain name isn't actually transferred to that third party that has won it at auction at the end of auto renewal grace period. So if the REE would decide at that point in time that they want it back they can still have it despite the fact that it's up for auction as well.

(Allan Greenberg): So the implication of this slide is that with the exception of the one that has zero, the practice is that for at least 30 days one can always get the name back for some price, not necessarily specified, but the contracts do not necessarily allow it - do not guarantee it.

(Marika Konings): Correct.

(Allan Greenberg): Okay so the practice is one thing, the agreement that governs it says something else.

(Marika Konings): Correct as long as the agreement makes clear that this is, you know, provided as a courtesy and doesn't explicitly say that, you know, even though we provide it now it doesn't mean that we might, you know, provide it tomorrow or that it might change. We have the right to change it, you know, without notice. So the agreements again leave room for interpretation.

(Allan Greenberg): Okay thank you.

(Marika Konings): Then question 2, what if explicit instructions are given not to renew the registration. Most registrars seem to follow the same procedure as for no notice given and I think in only one instance if the domain had been cancelled from the registrar's system it will not be renewed and go straight to RGP. And I think it's again the scenario in which there is no auto renew grace period provided.

Question 2a, how is the request for deletion prior to expiration dealt with so for registrants request the registrar to delete the name immediately and not wait until the domain registration actually expires. Four registrars indicated that the registration is deleted upon request so immediately enters into RGP. One registrar indicated that they treat it as an expired registration so it just follows the normal expireable cycle. And I still need for the other registrars to confirm what happens there.

So then the question 3, and again I'm skipping over some questions where I need further feedback from some of the registrars to provide a more detailed overview.

Question 3 is where can information concerning expiration and deletion can be found. In most cases if not all, information is contained in the registration agreement and some registrars also provide additional information either in the form of FAQs or questions you can search in the help center or they have a separate deletion and renewal policy that are documented and provide further details.

It's not always obvious where to find the information. You know, I think as I said in previous calls, I mean, many registrars provide a lot of additional services as a part from domain registration so, you know, it's not something that jumps out from the whole page and, you know, sometimes you really have to look. As well some call it terms, agreements, service agreements. There are a lot of different terms being used, you know, websites are different so it sometimes takes some digging and some Googling to actually get to, you know, what you're looking for.

I think as we have already discussed language in registration often maybe too legal to be clear for the average registrant and often not very specific. The language like may, may not, sole discretion, there is not guarantee, can change without notice. And I think that kind of information is not always helpful or doesn't provide with a bright, clear picture of what may or may not happen.

(Allan Greenberg): (Marika) if you can go back to that one. You say that - you said that sometimes it required Googling and searching. Is that to find the clear information or to simply find the registration agreement?

(Marika Konings): I mean, for some of the registrars I tried to find the registration agreement by just going, you know, through the website and trying to find it there in a logical spot but it would take me quite some time. And actually I discovered by just putting in the name of the registrar and registration agreement into Google that would get me to the right spot in one click.

(Allan Greenberg): Okay so at least in some cases you found that it was not intuitively obvious where to find it.

(Marika Konings): No. As I said, you know, this is partly as well the websites are differently structured and, you know, provide different products and services. So, you know, it sometimes required a bit of digging of trying to find the right spot.

You know, to be honest as from a customer perspective, you know, that's not the first thing I would normally go and look for on their website. I want to be able to find it but I don't think I would expect it with a big banner on top of a website. I probably would find that disturbing because I don't want that information at that point.

James Bladel: (Allan) this is (James).

(Allan Greenberg): Yes, go ahead, sorry.

James Bladel: Yeah just real quickly I want to point out that while the registration agreement may be difficult to find just, you know, going to the front of the site and looking for it, maybe more conspicuously featured in fact required reading when someone actually goes through the process of registering names. I think that's a balancing act.

You know, does it take away a little bit from the registrants ability to line up all their candidate registrars and, you know, get their registration agreements side by side? I mean, possibly but it's that balance of making sure that it comes up when it's needed so that it is read at the most appropriate time. So I think that's just something that we try to accomplish there.

(Allan Greenberg): Presumably before I have to give my credit card number.

James Bladel: Absolutely. But after you see the prices so there you go.

(Allan Greenberg): You don't like the idea of not showing the prices or the agreement until after you get the credit card?

James Bladel: No I think if (Marika) were to do a survey on that she would find that those are - it may indeed have a very large banner associated with it.

(Allan Greenberg): (Mikey)?

(Mike O'Connor): This is sort of a comment about the whole (unintelligible) that (Marika) just made. A lot of us are on a lot of the same working groups but in the registration abuse working group I was on a sub team along with (Barry Cobb), I wish he was on this call today where we...

Man: He's on Adobe.

(Barry Cobb): I'm here, I joined late.

(Mike O'Connor): Oh good deal. Well I'm going to use your document in vain so if I get off the rail just slap me around a little bit. (Barry) is really the guy that took the point on this thing and he wrote a document and I'm going to paste the link into the chat if it doesn't post me the way it did. Yeah, it worked.

In which we were looking at the uniformity of the contracts as it might impact registration abuse. And several of suggestions that the sub team is coming up with might apply here as well. One of the suggestions is that there - while we don't really want to cap the

creativity or put registrars in a straightjacket, at the same time we thought that it might be good to establish a baseline of what kinds of language ought to be in every agreement.

And I'm feeling the same way about the material we just covered, that we don't necessarily want to put the registrars in a straightjacket about the way that domains are handled post-expiree but we might want to establish a flow that says here are the minimums, if you want to go beyond those fine.

Another thing that he mentioned in this document is sort of the notice - the notion of a consistent channel for handling problems. You know, I think one of the troubles that registrants have is that because everything is different it's hard to call your neighbor and say (Mikey) you've got domain names. I'm in trouble. I've let my domain name expire and now I don't know what to do. And because my neighbor might not be a customer of the same registrar that I am, I can't really offer them very good advice because there isn't a consistent way to get out of a problem like that.

And so I just throw this out as sort of parallel work that's going on in other working groups as an example of an approach to maybe dealing with this, nothing more.

(Allan Greenberg): Thank you. Anybody else before we go ahead if there's more to go ahead with?

(Marika Konings): This is (Marika), I have one comment to make and it's one that we spoke about before as well is that one of the options that considers aside from registrars having as much information available on their

website and maybe that could be a requirement to provide a valid link to ICANN to, you know, post it in a central place. So if you're looking for this information they also have another alternative to look for that without having to dig through an extra agreement. You know, I don't know if that's something that will be workable, it may be something to consider.

(Allan Greenberg): (Mikey) is that a new hand or an old hand? It's an old hand. All right (Marika) do we have more?

(Marika Konings): Yeah no, just the last on the questions. And again I would like to thank all the registrars that, you know, so far have contributed and provided information. And those that haven't yet I'm hoping that they will be able to provide feedback shortly on those questions. I know some not a participant in this group so I do hope we get feedback from those as well.

And I'm working through our registrar liaison team to make sure that we're reaching out to people here I know ICANN and hopefully can provide through that. Are there any other questions?

(Allan Greenberg): I think if we need proof that ICANN's rules do not constrain at least registrars to do everything in lock step but give them opportunities for innovation and flexibility, this report shows that. But if it's good or bad we won't comment at the moment but it certainly seems to be true. Any other comments, any questions? Can I assume we'll meet again next week, same time same place? Any dissention? No?

(Cheryl Langdon Orr): Nope.

(Allan Greenberg): I'm told there may be four STI meetings next week on the trademarks issues so my schedule may end up being somewhat even more hectic than this week but assuming no major conflicts then we'll continue. Otherwise I may try to get someone else to chair in my place. If there are any other comments.

(Cheryl Langdon Orr): Perhaps while (McKalie)'s not on we should push him forward as the potential chair if you're not available. I'd agree to that before he gets back on the call.

(Allan Greenberg): He seems to be still on the Adobe chat room.

(Cheryl Langdon Orr): Yeah but I'm saying it on the phone bridge.

(Allan Greenberg): Report here he's got an IRTP meeting to chair that same morning. He might go easy on us. All right, well if things go worse to worse we may even have to cancel one but let's play it by ear until then. And (Ron) has a comment.

(Ron Wickersham): Yeah just a question on stuff that came up on the mailing list. I can't remember if it was from you (Allan) or someone else but about a broadening document or something that was promised and then was coming along. Is that - does anyone know if that's still happening?

(Allan Greenberg): I think everything is still happening but nothing has happened. As I said, I have been rather busy on the GNSO STI thing so I haven't been as cruel a taskmaster as I should have but I'm going to try to follow up on things this week. So I think things are still happening but I'll report back next week. Anything else before we adjourn a few minutes early? I thank you all for your patience and for your contributions. Bye-bye.

Man: Bye-bye.

Woman: Thank you.

Woman: Bye.

END