
JULIE BISLAND:

All right, for the transcript, this is Julie Bisland. Good morning, good afternoon, good evening, everyone. Welcome to the Transfer Policy Review PDP Working Group Call, taking place on Tuesday, the 14th of January, 2025. For today's call, we have apologies from Prudence Malinki, RrSG, Osvaldo Novoa, Council Liaison, and Jim Galvin, RySG. Also, Rick Wilhelm and Alan Barrett will be joining late. As a reminder, the alternate assignment form link can be found in all meeting invite emails.

Statements of interest must be kept up to date. Does anyone have any updates to share? If so, please raise your hand or speak up now. Seeing no hands. All members and alternates will be promoted to panelists. Observers will remain as an attendee and will have access to view chat only. Please remember to state your name before speaking for the transcription. And as a reminder, participation in ICANN including this session is governed by the ICANN Expected Standards of Behavior and the ICANN Community Anti-Harassment Policy. Thank you. And over to our chair, Roger Carney. Please begin, Roger.

ROGER CARNEY:

Great. Thanks, Julie. Well, welcome everybody. I don't have a whole lot before we get started. Just a reminder that we have two more meetings after this, and we're hoping to get our Final Report to council at the beginning of February. So, I think we're right on track and we've got the time to get this done. I think we're in a good spot, but I think we can go ahead and jump in to our agenda. And I think, okay, consensus call. I guess I can do this. And if staff wants to fill in, please do.

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I'll send out the list. Again, I think that we're in really good shape here because we've gone back over these things multiple times and I think we've all got to a good agreement on these. I think we're at full consensus on most of these and just a couple consensus ones. So, I think we're in really good shape, but I will send this out to the mailing list so that everyone gets it in print and we'll have it open for 10 days so everybody can make their comments and provide any updates that they want on that.

So I'm not sure, we'll wait until later this week to actually get through that once we get the final wording on all the recommendations, but we'll do that so that everybody has time before the end of the month. I don't know if there's anything else. Staff, do you have anything else on consensus that we need to cover, Christian or Caitlin? Okay, good. Steinar, please go ahead.

STEINAR GRØTTERØD:

Hi, this is Steinar for the record. What I normally do is that I report back to the Consolidated Policy Working Group every week based on what we have achieved in this call. And last week I discussed with the Consolidated Policy Working Group the Recommendation 33. And that resulted in that we have added another sentence to the final wording for the Recommendation 33. And the reason for this, and I just want to emphasize, it's not our goal to make some sort of a Policy that will be different from what the practice is today, that the overall majority of all transfer dispute is being handled between the registrars, and that's the way it should be in the way forward too. But it was more like an

emphasizing that we sincerely want to have a way for the registrant to be a part of this transfer dispute Policy.

We also discussed, this is not something that we don't see as we CANNOT LIVE WITH an item, it's more like a tuning in the eyes of At-Large for the Recommendation 33. And I was so lucky to discuss this also with Zak in Business Consistency. And as you will see in the comment that we have written into Recommendation 33, he agreed on what we have done together. So, I just want to inform everybody to have an eye on that one too. Thank you.

ROGER CARNEY:

Great, thanks for that, Steinar. And we will pull that up later in the agenda so we can look at that. Yeah, and to your point, maybe we'll just call it a friendly amendment at this time, as it's maybe just a clarifying point. So, and again, we'll get that covered and we'll show everyone what that text looks like. Okay, anything else from anyone before we jump on to our number three? Okay, I think we can move forward on that. Caitlin or Christian, are you guys going to cover this one, the updates to this?

CAITLIN TUBERGEN:

Yes, Roger, this is Caitlin Tubergen.

ROGER CARNEY:

Okay, great.

CAITLIN TUBERGEN:

I have that for the record, thank you. So, as a quick recap of what we talked about last week, or the two issues that support staff included some language here on, is the first easier matter is that Rich helpfully noted that there was one example missing from the examples in the implementation guidance. And that was to make clear that if multiple registry operators had more than 50,000 names each, that the total fee could still not exceed that \$50,000 threshold.

So, we added example four, which provides that if registry (A) transfers 55,000, registry (B) transfers 55,000, which totals 110, registry (A) may charge up to 25,000 or 50%, and registry (B) may charge up to 25,000 or 50%, as each registry in this very clean-cut example transferred 50% of the total names. So, we included that because that was missing. And then the other issue that the group talked about was we had included some language about registry families.

And that was in part based on the comments about the fact that some registries that operate under the same umbrella, while individually the TLD from the registry operator may not total more than 50,000 names, as a unit or as affiliated registries, they do total more than 50,000 names. And so, that was in recognition of that comment. Support staff talked about this a little bit after the meeting and recognizing some of the comments from the last meeting that talk about is it registry operators that we're talking about? Is it registry service providers, or is it something else?

And someone in the group made the comment that ICANN has contracts with registrars and with registry operators. And ICANN does not have contracts with registry service providers. And additionally,

consensus policies can change requirements for registries and registry operators. So, technically speaking, the group can't really make recommendations about registry service providers that's not in the remit of this group.

So, we talked about there being potentially two options for the group to consider, which is to either remove that notion of a registry family or affiliated registries, or to use, to make sure that it's about registry operators and not RSPs. And what we did to account for that in the draft is to use language that's already in the registry agreements about what affiliates are. And you'll note that in, I guess it's technically the second paragraph that's bracketed, the additionally for the purpose, we added some language that accounts for the affiliated registries to account for a situation where two TLDs that are under the same, have the same registry operator or are affiliated in some way.

The minimum threshold could be calculated as an affiliate group rather than per registry operator. So, we invite the group to consider that language. And there's also an example there noting that if registry (A) transfers 25,000, registry (B) transfers 25,000 and (A) and (B) are affiliates, then in that example, they do reach that minimum threshold of 50,000 because they're affiliated. And so, registry (A) may charge a fee of up to 25,000 and registry (B) may also charge a fee of up to 25,000.

So, I think I noted this in this rambling statement, but the options are essentially to have something like this, the language can certainly be tweaked or to just remove the idea altogether when it comes to registry family. But I think the idea to include registry service providers isn't

really tenable for a Policy recommendation, at least for what this group is doing.

So, I will pause Roger and see if anybody has any thoughts on how to move forward with that, either removing or adding something about affiliates or if someone has another idea, they'd like the group to consider, we're welcome to bring those forward. Thank you.

ROGER CARNEY:

Great, thanks, Caitlin. And thanks for staff to walk through this and update this. I think it really makes good sense to, I guess, sync this with other policies and contracts so that we are using the same language, so it makes sense. The one thing I would say about the second paragraph here is, it says, the threshold may be calculated as affiliates. And I think that we probably need to put language in there that this is up to the registry operator. This is a choice of the registry operator just so that people know who's making that decision in that instance.

So, I think it's important just to make sure that that's something that like that's in there. Otherwise, I think the updates look good. I don't know if anyone else has comments on that. I think this makes sense and it clarifies and it also addresses Rich's notice of a missing example. So, Catherine, please go ahead.

CATHERINE PALETTA:

Thanks, this is Catherine. I just want to note as I think Julie did at the top of the call, I think we're missing most of our registry reps. I know internally I talked with Jim Galvin about this and I'm not going to speak

to his position. I think he should, but just noting that I don't think Rick or Jim are here. And so, we may need to get there or want to get their thoughts. They didn't show up to the call. So, thanks.

ROGER CARNEY:

Thanks, Catherine. Yeah, since they didn't show we'll make their decisions for them. No, thanks for that, Catherine. Jim actually wrote to me separately and said that he's still working on this to make sure that the registries don't have-- He said at this point, he hasn't heard any objection to it. So, he thinks it's good, but he hasn't heard from enough that he feels comfortable stating that.

So, I think that with this language update, we'll get Jim and Rick to make sure that the registries are comfortable with this and we should have a confirmation before next week. So, but Jim said he has started the process and so far, no objections to it. So, I think we're in good shape, but we'll give another week for that. So, thanks for that, Catherine. Okay, any other comments? But I think we're really in good shape on this. So, I think we're good to move forward here and Jim and Rick will opine when they can.

Anything else we need to cover on this one, Caitlin? I think we're good here and I think this is a good spot to be at. So, good. Okay, great. So, I think we can move on. And I think again, I think all of that is good to add that additional sentence in area or additional paragraph makes sense to be in there. Floating thumbs up, right on. So, I think we can jump to our next agenda item. Caitlin, were you going to do this one or

Christian? I think the good thing was there was no CANNOT LIVE WITH, but I'll let Caitlin talk.

CAITLIN TUBERGEN:

Thanks, Roger. So, nobody put anything into the CANNOT LIVE WITH table, which is great. So, we are assuming that all of the recommendations are good to go to be included into the draft Final Report. So, if we can scroll down, Christian. We did have one grammatical edit noted by NCSG, which seems fairly straightforward. And it's a helpful catch in the sense that we received a comment about how the inclusion of days could be ambiguous depending on who is calculating that.

So ours is more precise and accordingly the commenter noted that days should be changed to hours. And so, we'd been doing that throughout the report, but missed one in that table of reasons to knock. And so, we can go ahead and get that updated. And Christian is hopefully scrolling to where this reference is.

So, if there are no objections from working group members, we can certainly make that change in the Final Report text. I'm not seeing any hands. And I think that was the only thing in the tables, Christian. However, I do note that Steinar had some comments on a recommendation. So, maybe we can pull up where Steinar inserted the comments. And Steinar, we thought it might be helpful if you presented the comments with the language on the screen for the recommendation we're discussing and what in particular ALAC reps would like changed or

amended so that the group can see and we can go ahead and see if there's agreement to change that for the text of the Final Report.

STEINAR GRØTTERØD:

Yeah, hi, this is Steinar for the record. What we want, what we propose is to, first of all, remove the footnote. We don't think that is needed at all. It's obvious that the console will have to consider this whatsoever. And the first footnote, I think is actually not reflecting the final wording. It's in the initial proposal. The way I see it, I think it's a mix of the footnotes numbering here. And then we added a text in addition to what is proposed that the work group recommends that any such additional dispute mechanism that improves Ferguson should be additional to the current informal resolution that registrars successfully employ in the overwhelming number of instances. And as I indicated, we are not trying to make anything that breached this good practice.

And we want to highlight that whatever we come to when this process starts, it should be in the line that the registrar should be able to handle the overall majority of these disputes without any reference to the Policy. This is the cases that the registrant doesn't get the support from the registrars. Purely have no other way than go into some sort of civil action. I hope that is understandable.

There was a wide discussion in the At-Large Consulted Policy Working Group. And as I said, the present wording without over additional text is not in the category that we will put a full break or something like a minority report or something like, yeah, whatever, I don't know. So, we

hope that this is acceptable for the working group and we can go forward. Thank you.

ROGER CARNEY: Great. Thanks, Steinar. And thanks for looking at that. Owen, please go ahead.

OWEN SMILGESKI: Thanks, Roger. This is Owen Smigelski for The Record. Steinar, thanks. I appreciate the addition. It's certainly, it's good. We want to make sure that registrars do kind of work with registrants on this and that these wouldn't be a replacement for everything. But and I apologize for any of my former ICANN compliance colleagues. I see Halita on the call. From a compliance perspective, I'm not sure how that would be something that ICANN could enforce on a registrar because it's trying to enforce something that's kind of outside of the Policy, this informal resolution thing.

So, I'm just, while it's laudable, it's good. And certainly, do want those avenues available for registrants. I'm not sure how it can be referenced as something that ICANN could enforce on the registrar, unless it's just some sort of text that recognizes that it's there and doesn't actually become an enforceable obligation in the Final Report. Thanks.

ROGER CARNEY: Thanks, Owen. Zak, please go ahead.

ZAK MUSCOVITCH:

Thanks, Roger. And thanks, Owen. And thanks, Dinah, for explaining the proposed, what you characterize as a friendly amendment, Roger, which I agree with. I take Owen's point from a compliance perspective. I think we could probably make a tweak to this language in order to clearly indicate that the intent is not to prohibit registrar, any new registrant-initiable dispute resolution Policy is not intended to prohibit registrars from continuing to informally resolve disputes as they've done so successfully in the overwhelming number of instances.

And I think that's the intent of what Steinar was getting at here, is that if there were to be a new Policy, it shouldn't replace what's going on. And so, from, as Owen pointed out, from a compliance perspective, all I think we need to adjust this language to is to say that the working group recommends that any such additional dispute mechanism that empowers registrants should be additional to, and not prohibit the current informal resolution that registrars successfully employ. I think that might do it. Owen, let us know.

ROGER CARNEY:

Great, thanks for that, Zak. Owen, please go ahead.

OWEN SMILGESKI:

And maybe we could remove the word current, because what if a registrar, ABC, comes up with a super awesome new informal resolution process? We ought to make sure, we ought to encourage them to do that as well too. So maybe, yeah, there we go. I think that should work. Thanks.

ROGER CARNEY: Thanks for that, Owen. And maybe that changes to, and not prohibit any informal resolution. Does that make more sense?

ZAK MUSCOVITCH: This is Zak. That looks good to me. Thank you.

ROGER CARNEY: Okay, great. Thanks, Zak. Steinar, does that still, I think that still hits your intent on this.

STEINAR GRØTTERØD: This is Steinar for the record. Yeah, it definitely does. And thanks to both Owen and Zak for tuning this voting. It's definitely in the way we at large were thinking. So, I appreciate that. Thank you very much.

ROGER CARNEY: Great, thanks, Steinar. And thanks for bringing that forward. So, I think Steinar recommends dropping the footnote, which I think we've done before, is dropping language about the resource intensive pieces. I think we've done that elsewhere. So, I think that makes sense to remove that. Again, I think it's known, but it's not something that we have to call out in a report. And I think, again, I think this is a friendly amendment here and it's not changing anything. And to be honest, I believe that we talked about this before as we went through this recommendation earlier.

So, I think this is a good add, but I'll open it up to the working group to see if anyone has anything to say about it or make any changes or anything. So, anyone? Okay, great. I think we can go with this language then and move forward as final language here. Okay, anything else, Caitlin, on this one?

CAITLIN TUBERGEN: No.

ROGER CARNEY: Okay. All right. So, I think, are we down to our last item? And maybe let's go ahead and do item five here really quick. And then if anyone has anything, we can circle back to Rec 35 for Rick to get an understanding of where that's at. So, but Caitlin, do you want to take us through number five here?

CAITLIN TUBERGEN: Sure. I think we had mentioned this last week, but support staff has been in the background converting the group's initial report to a Final Report. And to make it very transparent as to what has changed, all texts that differs from the initial to the final has been highlighted in yellow. That includes the recommendations that have been updated.

And also, you'll notice under most of the recommendations that have been updated, unless it's self-explanatory, there will be updated rationale language, which tries to encompass or explain what the group changed as a result of the Public Comments. That's obviously for the benefit of the public commenter. And also, as the group reviews from

initial to final, what may have changed. So, you'll see some updated rationales. You may see some updated implementation guidance, et cetera, but it's all highlighted in yellow.

So, the group's assignment last week was to specifically review recommendation text, which with the exception of one recommendation in particular that text should all be stable since there were no CANNOT LIVE WITH mentioned in the group's homework assignment. And as Roger noted, we've been going over these in detail for many weeks. So, all of those updates should be captured. What we would really like the group to focus on when we distribute the Final Report, which will be shortly after this call, is the updated rationale text.

We had mentioned last week that in the updated Public Comment Review Tool where all of the comments are noted, support staff has gone in and added a rationale or response to that comment and the treatment of the recommendation based on that comment and used those rationales to update the Final Report. But the document that will be circulated, everyone will have commenting rights.

So, if you disagree with how something is categorized or if you prefer additional language, we'll have a similar review system in terms of CANNOT LIVE WITH or if you have grammatical edits. The idea would be that you review those updated rationales that are highlighted in yellow as hopefully the language from the initial report at this point isn't objectionable because it's already been published. So, that yellow text and enter it into a similar table that we've been using all along by next Monday so that we can use next week's meeting to finalize any language that might be problematic for folks.

Does that process make sense for everyone? Are there any questions about the Final Report? Okay, I'm not seeing any questions. Roger, did you have anything to add or did you want to go back to recommendation 35 now that Rich is here?

ROGER CARNEY:

Yeah, and just one comment on this, obviously we updated 33 just slightly and 35 slightly. So, it will be reflected in here when you get this Final Report. So, just take a look at those. But yeah, let's take a look at 35. Again, I think this is final language here. We made a couple of good changes, but again, Rick and I know Jim is actively working this still. So, we will look for input from them over the next week. But I think we're at a good spot and I think we've got everything we need in here in 35, but just wanted to go over it just in case Rick had questions or anything.

Some of the big things that were changed, we added examples here. Rich noted last week that we missed one and we put one in to help clarify. And then we also added a fifth one to talk about the affiliates. So, one of the big changes from last week because we're no longer talking about registry families, we're talking about affiliates as in the same thing that we use, the same language we use in policies, other policies and contracts. And this second paragraph was added to try to explain that. And again, I think that getting rid of the registry family is a good step in getting to affiliate, which again is a used term elsewhere. It is a positive thing to sync up on.

I think that again, Jim had written me offline and he said he's still working this issue. He hasn't gotten any pushback yet on this, so that's

good news. But he did look for up to another week to make sure that he can hit as many people on the registrar as possible. So, I think that we're in good shape. And again, I think this language here is what we're considering final, unless Jim throws a big wrench into this. Again, I don't think that that's going to happen, but we will give him that time. But Rick, I didn't know if you had any specific issues or questions. Again, I know that you guys were working on this. So, Rick, please go ahead.

RICHARD WILHELM:

Thank you. Thank you, Roger. Rick Wilhelm, Registries. Jim and I did not have a chance to connect before the meeting. He unfortunately had a conflict today, and so he could not attend. We're going to try and chat subsequently. And then we also have the registry stakeholder group call on Wednesday, and so we're going to try and get some additional input there. I think that the change that got made last time to capture the affiliate registries is a good upgrade. And I think that he was also positive on that one, which captures the concept of registry families. And I use that in a colloquial sense, because I think that that's what my impression of what this is intended to capture.

I think that where it is right now, the only thing that it doesn't capture, and I don't know if there's any real easy answer to this, is a situation where there's an RSP involved. But I don't know that, for example, if you've got an RSP that is serving multiple registries or registry families where all of them are below the threshold, but then the RSP's total is above the threshold. But at the same time, and my eyebrows are sort of raised here.

I don't have any language to suggest at this moment to solve that problem, nor do I even know for sure that that should be a problem that is solved, because RSPs don't have standing in this situation, because they're subcontractors of the registry operators. And if we start to give RSPs subcontractors standing, then we would also need to think, and the registrars would say, well, then we need to start giving standing to the registrar service providers that provide back-end services to registrars.

So, I don't know that there's any way to, quote-unquote, fix that problem, or even consider it to be a problem. And apologies if that ground was trod during the meeting last week when I was on holiday. So, I think that this is a good step forward. And Jim and I are going to, I also note that it doesn't, this doesn't come up that often. Yeah. So, we're probably pretty close. I probably need to have a conversation with Jim. We need to run, we're going to cover this tomorrow during the registry stakeholder group call, and we should have some feedback. That's pretty solid next week. Let me stop there. And maybe some other folks have some comments. I see Caitlin's hand is up. Thank you.

ROGER CARNEY:

Great. Thanks for that, Rick. Yeah. And we did touch on the RSP and the contract issues last week. We didn't solve anything. But I think what we got to hear in this updated language is we're going to make that the RL's responsibility, and they can do what they need to do with their subcontractors. So I think that, again, we walked down that path a bit last week and decided that you're right. And what you brought up is that we don't want subcontractors or service providers to have any, or

to have to go down that path. So, I think the language update this week hopefully covers that. But Caitlin, please go ahead.

CAITLIN TUBERGEN:

Thanks, Roger. I think both of you covered this, so I'll make it brief. But just for Rick's benefit, we did talk at the beginning of the call about the quandary about the registry service provider or other umbrella companies. And after talking about this internally, consensus Policy recommendations can affect the contracts of registry operators and registrars. So, it's not really within the remit of this group to make recommendations about registry service providers or registrar service providers, et cetera, which is exactly what you said, Rick.

So we talked about the options before the group are either to include something about an affiliate relationship, which would allow for affiliated entities, if their total exceeded \$50,000, then there could be a fee, or to remove that entirely and keep it as it is today, where there's not really that affiliate example. The affiliate example was added to some feedback from both registries, and I believe in the comments about how there might be a family that reaches that threshold, but individually, they don't.

So to account for the administrative work that the family is doing in managing that bulk transfer, it might be an idea to add something about a family relationship. And when we talked about what that could look like. We added what's already in the contract and how affiliates are defined, since that's existing language, and it's not throwing a new concept that might be out of the remit of this group to do.

So, we have some additional text in the recommendation, as well as implementation guidance about what affiliate means, as well as lastly, an example in that list of examples of how fees could be calculated if there are two affiliates, and they could potentially reach that minimum threshold in that very clean-cut example. So, hopefully that's helpful.

ROGER CARNEY:

Perfect. Thanks, Caitlin. And thanks, Rick, and to Jim for the work on this. Again, I think this is as final as we're going to get it, and I think Rick and Jim can come back to us with any issues they hear tomorrow or over the next week. But I think we're good here and we can go with this. Any other comments? I think we're on to any other business for the meeting. So, anything from anyone?

CHRISTIAN WHEELER:

I can't raise my hand, but I just wanted to ask a question because I'm just reading it. So, in this text, for example, if registry (A) transfers 25,000 names, I also see a similar text, for example, 5, if registry (A) transfers 25,000 names and affiliates. Do we want to keep both of these or just one or the other?

ROGER CARNEY:

Thanks, Christian. I the second one talks about the fee. So, I think that there's a slight difference that both the languages are useful. Just my thought.

CHRISTIAN WHEELER: Got it. Great.

ROGER CARNEY: Okay. Anything else anyone has? Any other business? Again, staff will get this final language out shortly and we'll get to that, and then we'll get consensus done as well and get that out to the working group so everybody has time to look at both of those. Well, excellent. I can give everyone time back today. Again, two more meetings and we should have this report off the council. So, I think we're in good shape. Thank you, everyone. And we'll talk to you soon.

JULIE BISLAND: Thanks so much, Roger. Thanks, everyone for joining. This meeting has concluded.

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