

## **Transcription ICANN Toronto Meeting**

### **Fake Renewal Notices Meeting**

**Sunday 14 October 2012 at 09:30 local time**

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Coordinator: Excuse me, this call is being recorded, thank you. You may begin.

Stephane Van Gelder: Welcome back everybody, this is the second session of the day for the GNSS working weekend. We will now be talking about fake renewal notices and we have (Mason) on the call from the registrars to take us through an update in this regard. Thank you, (Mason).

Mason Cole: Thank you Stephane. Good morning everyone, so just to start off with a bit of review on this issue. Your call after the drafting team led by Mikey O'Connor produced their work, the council discussed the results of the drafting teams work and the registrars volunteered to take the issue from there for a brief time to talk to our membership about what might be the most effective way to address the problem.

In an email in early September, I proposed four steps that might lead us to some kind of solution to help address the problem. First being, talking with ICANN's compliance desk about the GNSS concerns and see whether or not there is an avenue for compliance to address the matter through the RAA.

Second was to communicate to authorities in the effective jurisdictions, mainly the US and Canada, but sometimes elsewhere, to make our concerns known to them, you may recall that consumer protection authorities in the US and Canada have taken action against one particular bad actor in this scenario and imposed some penalties.

So we wanted to make sure that Consumer Protection Authorities were aware of what was happening because they frankly may not be. And then come back and report our findings to the council, and if those methods didn't seem to bear any fruit then we could try to form a legal opinion on whether or not some language would be available in the accreditation agreement to give compliance enhanced tools to work on the problem.

So we're about half way through that process, and in an email of accounts before we arrived here in Toronto and provided a bit of an update, but I'll go through that briefly now.

As I reported, I spoke with compliance last week and what I learned was there had been fewer than one hundred complaints made to compliance since 2008 on fake renewals. Now that does not mean that the problem is not significantly greater than that, because we know that it is.

That is merely the number of complaints that ICANN has received, it may be that a registrant doesn't know to complain to ICANN about a fake renewal notice. So in that context complaint volume as you might guess helps form a priority list for compliance and so this has been sort of simmering on the back burner for compliance, but it doesn't rise to the top of the list of problems, but they certainly are aware of it and they're certainly willing to help us do something about it.

We talked a bit about the accreditation agreement and as we've discussed it doesn't contemplate marketing speech, which you sort of could unfortunately characterize this as. So one avenue that could be pursued perhaps, again

this needs some legal interpretation, is whether or not there is an enforcement action by an authority, if that can be used against a bad actor to compel compliance and another, compel them to stop their behaviors with a threat against their accreditation agreement.

So that gets into areas of applicable law and various jurisdictions that I know I'm unqualified to deal with, but we would need to involve ICANN's council. So our next step in the stakeholder group is to continue collecting evidence of this which I've already asked our members to do and I'm pleased to tell you I've already started receiving.

And our legal advisor is already going to help us put together this evidence and organize it in a way where we can report it to US and Canadian Consumer Protection Authorities to see if they can revisit the issue and maybe make a more effective, you know, take a more effective blow against the bad actors.

So we think that has a couple of benefits, one is in the US anyway, the FTC, Federal Trade Commission, they do this all day every day, they're quite good at it and we want to give them an opportunity to exercise their authority in a way that would probably be a more effective.

Then we could deal with the existing tools that we have now. And if there's an additional judgment against these bad actors, that does give ICANN compliance more leverage to act on their own and compliance agrees with this approach I think.

So as I've said I've asked Registrars to start providing evidence on bad actors, as we know, there is one main bad actor, there are a couple of others. So we want to get as much evidence as we can and have our attorney help us put together as compelling of case as we can present to the authorities.

So as a next step we'll do that and then I'd like to report back to the council on the impact of that. So that is, I think what our stakeholder group's agreed to next steps are. I just might ask Mikey, he's here to chime in on this.

Mikey O'Connor: Thanks (Mason), this is Mikey O'Connor for the transcript, I was the chair of the drafting team and mostly I wanted to sing harmony and say verily to what (Mason) had just said.

I think there are a couple of things to highlight. One in terms of the compliance conversation that (Mason) had, I'd like to make the connection between what (Mason) said which is that compliance hasn't heard a lot of complaints with another issue that is on your agenda which is the uniformity of reporting item.

One of the reasons to do that is that within that uniformity of reporting is the fact that many cases, people simply don't know where to report issues. So I don't think it's necessarily indicative of anything that there's only been one hundred complaints.

I think the problems in that regard that users and consumers don't know that ICANN compliance is a place to forward the deluge of these sorts of things. So I think it's great that the conversation is going forward, but I think the council has something on its agenda that it could use to amplify that. So that's one connection I'd make.

Another connection I would make is that (Aisha) in the (BC) is from the international chamber of commerce and I'm sure would be a great ally in terms of bringing that organization into this conversation and might be happy to help with that in any way because I know that there is very strong interest in the commercial stakeholders group in this issue.

This is something that does bear a lot on businesses in several respects and also ISPs which is the constituency that I am in, because in many cases, ISPs are the people that sort of take these to the front line.

So again I think there is plenty of alliance to build there and I'd be happy to help with that in any way. Then finally just too sort of summarize the standpoint, the situation from the standpoint of the chair of the drafting team.

I think is entirely consistent with where the drafting team came down, we were chartered to go out and conduct a survey to see whether there was really an issue there, we came back with a survey that included yes indeed there was.

And provided we got a little bit outside our mandate in suggesting a whole bunch of different ways to tackle this. And I think that the approach that (Mason) is in the middle of in proposing is entirely consistent with the feelings of the drafting team, so I just want to sort of sing harmony to what (Mason) just said. Thanks.

Mason Cole: Thanks Mikey, I would appreciate some help with this if the BCU would be open to that, I think the registrars would certainly welcome that.

Stephane Van Gelder: Thanks Mason, Mikey you have a question from (unintelligible).

Man: It's not a question; it's more of a comment. Just in support of what Mikey was saying just because compliance didn't get that many, doesn't mean that there isn't a serious issue. We've had probably 200 complaints in relation to fake renewal notices and we're not the largest registrar out there.

People don't know to complain to ICANN, they're going to complain to the registrar, they're going to clog up our customer service staff with the issue. ICANN is not something that they know about nor do they care about.

Mason Cole: And I want to be clear to the council too that we're not relying on compliance's figures to demonstrate the problem, we know there's a problem. If compliance said fewer than one hundred complaints since 2008, and with the evidence that Mikey collected and the drafting team's work and with what I've received, I will have more than 100 examples on my own within a couple of weeks. So we're not relying merely on compliance's figures, I want to be clear to the council about that.

Stephane Van Gelder: Thank you. Any questions or comments? Looks like you were very clear (Mason).

Mason Cole: Thank you.

Stephane Van Gelder: Okay, I guess we'll end this session early and convene back at 10:00 for questions to our candidates for the election of the new GNSS council chair. Operator, this session is now over. Thank you.

Coordinator: Thank you.

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