

## **Transcription ICANN Toronto Meeting**

### **Uniformity of Contracts to Address Registration Abuse Meeting**

**Sunday 14 October 2012 at 15:50 local time**

Note: The following is the output of transcribing from an audio. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

Coordinator: Welcome and thank you all for standing by. Today's conference is being recorded. If you have any objections, you may disconnect at this time. And you may begin.

Man: The time is 3:46, the session may begin.

Stephane Van Gelder: Thank you very much. Welcome back everyone. We will now discuss uniformity of contracts to address registration abuse and Rob Hoggarth from ICANN staff will take us through the final issue report and explain what's in it -- I hope.

Robert Hoggarth: I'm glad we closely worked out an introduction. Thank you very much Mr. Chairman. This next issue addresses the fundamental issue facing many in the internet ecosystem, that's how to address various types of abuse.

One of the potential tactics in the battle against abuse is to essentially identify specific strategies that work and encourage all industry players to act in unison to approach those.

So one of the tactics the community developed and discussed ultimately with the GNSO Council was to look at uniform contract provisions targeting

specific types of registration abuse and that's the general overview of what this topic is.

Why it's important? Well, as we went through our research and - and basically reviewed the research of others in previous working groups it was very clear that registration and use abuse continues to exist - exist in at least 11 different forms.

That registration abuse does impact the security and stability of the internet. There are efforts that various members of the community having engaged in that have actually been successful in combating some of these abuses.

And that there is a general desire by some of the industry to see their consistent and uniform ways to adopt some of these best practices and some of the activities that have worked well.

And so the commission -- I'm sorry -- the council commissioned a working group to look into this about three years ago, the registration abuse policies working group.

And one of the recommendations with that working group brought back was that the council should consider evaluating whether a minimum base -- and I'm going to read specifically -- whether a minimum baseline of registration abuse provisions should be created for all in scope ICANN agreements. And if created, evaluate how such language should be structured to address the most common forms of registration abuse.

Now this recommendation was one of 14 specific recommendations that were made by the WRAP working group. And this is one of their recommendations.

I believe we had some conversations yesterday that touched on some other recommendations that the WRAP working group made. But this is a specific one that is the topic for this issue's report.

So based on the instructions of the council provided to staff we embarked on the - the research and the efforts to prepare a preliminary issue's report, that was completed by the staff and went out on public comment - went out for public notice and comment.

Staff took back that feedback adjusted the - the document itself and came up with a final issue's report which you all have before you now. Essentially, the - the issue's report is for a general areas, looks into recent history of the various inquiries that have been made on this, looked at various types of existing forms of industry agreements.

We have them on paper analysis of some of the specific agreement that exist. And then there was an ultimate determination that is required in all issue's report to determine whether the topic in this case abuse was within the scope of the GNSO policy work.

So where does that lead us? Well, you set me up Stephane to talk about what the issue's report recommends. I'm going to touch on the four major highlights here.

Based upon the research that the staff did the options and recommendations are to initiate a formal PDP. And as part of that formal working group to 1) study specific registration abuses; 2) identify specific anti-abuse practices; and 3) determine if uniform provisions would work.

And if so, the working group would then set benchmarks in define reporting requirements. Now there were some discussion again yesterday about how that might be done in view of some of the other perspectives on this issue.

One of the aspects that staff looked at in this regard was to consider doing some initial research, either internally with existing staff resources or with a

vendor to examine some of these practices, the top three that I identified there.

Or as an alternative to a PDP to ask staff directly to just move forward for input from the community, draft uniform provisions for review and comments. That's 30-page report in a very broad sort of sense. I imagine some of you have read the executive summary, some of you have read the whole thing. But I'm happy to entertain any questions or discussions. Thank you.

Jeff Neuman: I was asked to be put in the queue. So thank you Bob, I appreciate the work you've done on this. Unfortunately, I think this is an area that should have never gone to an issue report.

I think this is one of those things that unfortunately get kind of caught up by the low thresholds of getting an issue report and then it's still a low threshold for a PDP.

But I would remind everyone here which is very few people so I'll probably have to say it again in the council meeting. So I went back and I was actually a member of this working group back in 2009. I almost forgot I was.

But then I look back and this was a recommendation unlike all of the other ones that we've implemented this one did not have any form of consensus. There was - it was labeled and I think probably mislabeled if you go back to the records as strong support.

But let me read out the list -- there were 14 people that "voted on it". There were eight in favor and six that were against. And so you go, "Okay, well that's eight, so eight out 14 that's a majority support."

If you look a little deeper, everybody that supported it were all members of the business constituency -- all eight. The six people that opposed it were

spread out from the registries, the registrars and the non-commercial stakeholder group.

People in favor of it were Berry Cobb who at the time was a BC member, Fred Feldman from Mark Monitor BC member; Mikey O'Connor, BC member someone with the last name of Q-U-E-E-R-N is also a business constituency member, (unintelligible) which also happened to participate in the BC, Mike Rodenbaugh who is the BC. Another person from Mark Monitor and Martin Sutton who is a member of the BC, so everyone that supported it was a member of the BC

And then the people who opposed it were Greg Aaron from the registries, myself from the registries, (Nacho) from the registries, James Bladel from the registrars and Wendy Seltzer from the non-commercial.

So I don't know how we allowed it to get to the stage of being labeled strong support. But let me - let me more importantly go into the reasons at the time which I think are still relevant as to why we did not vote in favor of moving forward with this.

I'll probably have to repeat it again at the council meeting but it says, "All registries, registrars and registrants are already contractually obligated to abide by ICANN policies notably existing or new consensus policies."

That's number one, number two, "In those cases where ICANN is defined a registration abuse policy it abused definitions of policy have been clearly and consistently expressed during the consensus policy process and mechanisms specifically designed to create uniformity where it is needed. If there is a registration abuse that needs to be addressed it should be specifically identified and a specific consensus policy crafted to deal with it."

The next one is consensus policies or contractual provisions should be created only after the abuse, scope are impacted are understood. The

proponents of the PDP advocates a general and/or pre-emptive policies and those can create collateral damage and harm registrants and other parties in an unexpected fashions.

Another one is, sorry I want to skip a couple because there's a bunch of other reasons. The recommendation could reduce or move the rights of market participants to create manager-owned policies contracted parties already have and should continue to have some rights to create their own policies as long as they do not conflict with ICANN policies.

And then I would just add, you know, what I said the other day which is we focus too much on contractual language in creating contractual provisions. We really need to focus on abuse themselves and address it just like with UDRP that's registration abuse that we've decided to handle and we have a separate process for that.

We've done -- there's new gTLD agreements on our provisions, so it's my view and it's still the view of the registries - I'm hoping it's still the view of the registrars and the non-commercials who voted that way to oppose this PDP. Thanks. Sorry, Rob I know you did a lot of work, but I apologize for that.

Marika Konings: I need specification. I'm sorry, where were you reading from? Is that a registry statement or the report?

Jeff Neuman: Registration Abuse policies working group final report, Pages 94 through 96.

Marika Konings: Okay.

Stephane Van Gelder: (Thomas), you're next - you're next.

(Thomas): Thanks Stephane. I was just wondering because I didn't read it entirely. What were the 11 different registration issues just chosen?

Robert Hoggarth: I don't have a slide for those but I can quickly look it up and give you the list.

(Thomas): Okay.

Robert Hoggarth: Give me one moment.

(Thomas): I just think Jeff -- I'm not - I wasn't aware of this history personally. But it looks like it is an issue that some people that should mind about it that are not in the room. So we need to have more discussion.

Jeff Neuman: Yes, I mean this is definitely a problem with the low threshold for an issue report and especially in 2009 or no well even now there such a low threshold for getting an issue report and then even initiating a PDP that essentially one group or two groups or our stakeholder - our stakeholder commercial group wants to move forward with it an issue report, it's going to move forward. All you need is them. It's a little bit more of an initiation for a PDP.

Stephane Van Gelder: Thanks Jeff. (Jonathan), please?

(Jonathan): Jeff you may not remember this but I - I just wondered if you made the points that you just made now at the time when it was decided to undertake an issue report.

Stephane Van Gelder: Yes.

(Jonathan): It was? Okay.

Stephane Van Gelder: Yes. He did note those points at that time. Rob and then (Thomas).

Robert Hoggarth: Thank you, to answer the question about types of abuses. The WRAP working group identified the findings these 11 types: Cyber squatting, front running, gripe sites, deceptive and/or offensive domain names, fake renewal

notices, name spinning, pay-per-click, traffic diversion, false affiliation, cross TLD registration scams and domain kiting/casting.

(Thomas): So practically I a few of those we have separate processes already going on sounds like that -- on a few of them. I don't know there are some interesting some things that I was sounds to me like that really not very common.

But, you know, I personally I hear what you're saying. I can't make a personal opinion yet. I will practically need to get all of our stakeholders view on this before the Board on Wednesday or whether this is something we should follow on.

Stephane Van Gelder: Hang on a second. (Jonathan), did you want to... No? Mikey?

Mikey O'Connor: Mikey O'Connor for the transcript. On that IRP when we came up with this idea and I think one of the things to bare in mind is that we picked an absolutely terrible phrase to describe this, uniformity of contracts.

And I think it's probably too late to rescue this particular one but buried in that recommendation are some pretty good ideas. And if there were some way to leave the path open to salvage the good ideas and lose the kind of terrible choice of words, that would be really neat. I got a bright idea on how to do it, there you go.

Jeff Neuman: Yes, to respond. I think we have been responding for four years, right? I mean cyber squatting that's the UDRP reform which nobody wanted to do and has been delayed.

On the fake renewal notices we have that ongoing right now and there were a couple of others that were on there. First of all, gripe sites we - we -- it's not even in ICANN's purview in my view. So of us -- this was very frustrating at the time that it was initiated. It's very frustrating at the time as an issue report.

It's even more frustrating now that we're talking about a PDP and half the people aren't here that are probably going to decide on constituency date to vote in favor of it. And if the commercial stakeholder group votes in favor of it and one person from the non-commercials because they're not paying - paying attention, because of the fact that they voted against it in the first place, then we have a PDP.

It's crazy and then we talk about why, you know, we have volunteer fatigue. It's just -- this is one of those items that the important things that are gleaned from the report are addressed in other PDP's in other ways in the RAA contract language.

I mean god knows how much of that language is geared towards abuse. So in my view this would be a complete waste of time, a huge use of resources because you - you remember how we went through every one of those contracts.

We took sample contracts from registrars and registries. We had graphs, those really obnoxious charts, you remember to go through those. If you go through those exercises in earnest again, it's - it's crazy.

Stephane Van Gelder: Thanks Jeff. Mikey?

Mikey O'Connor: I couldn't agree with you more. I think one of the things that happened to us in the working group is that we dove down a rabbit hole that we shouldn't have.

What we were trying to answer was a question about the - the -- should be better framed something like, "What are some things that are in contracts that we should maybe take a look at?" And instead what happened is we dove into this very detailed analysis of individual contracts.

And that's part of the reason I - I certainly am not supporting this particularly PDP because I agree with you Jeff. I don't think this is the right approach, but there are some things were in that recommendation.

And I also agree with your point that much of what was buried in this recommendation has since then been picked up in other initiatives. So it's not - it's not a huge heartfelt plea to try and rescue anything here. It's just kind of an unfortunate into a badly chosen set of words.

Jeff Neuman: Just like I was taught some things deserve an end of life and that end of life may not necessarily be what you initially wanted, but you got to end it at some point.

And I think this would be the last of the registration abuse policies working group if I -- or no maybe there's another.

Stephane Van Gelder: Hold on, there's no queue here. It's not like Jeff's running the show as it was his own, but anyone can just jump in. (Thomas)?

(Thomas): Thanks Stephane. I was just wondering in 2009 when you conducted your work was there already an objection procedure as there was now, now there is a working group guidelines against the decision that's was made on the consensus.

Because do you strike it odd that if you name all the members and point out the fact that it's just "one group" that was in favor of that. And if this was the case that there was an objection procedure against that, have you been following that?

And regardless of that I'm wondering whether we need to take a look at the working group guidelines. Because I -- it seems to me, you know, by just flooding a working group to get enough people from their own group whether they're interested in the subject or not just to provide you with the vote, would

not be the right thing to - to conduct the process. So that might be a point we need to look at in terms of the guidelines.

Stephane Van Gelder: Thanks (Thomas). Marika and then Jeff.

Marika Konings: This is the Marika, just on Jeff's point on the WRAP working recommendations. It's probably just, you know, my frustrations speaking here because if you look at the list of recommendations and that group did put in a lot of work, you know, yes we considered all of them but nothing has really been done.

And apart from a lot of staff who are going into the best practices paper and this issue report and at the end of the day council are not saying we don't think it should go any further.

I mean I'm not advocating here whether, you know, the right thing or the wrong thing on the issues themselves, but just to - just making a point and saying that, you know, we do start a lot of these efforts that indeed eat up resource that may be should go otherwise.

And then, you know, they don't go any - any further. So I think we're seeing this well for, you know, Wednesday a lot of issues on there and we might need to have a discussion Thursday.

I think it comes back to the prioritization discussion where I think it's important for the council to really consider when they ask for more work to really make sure as well that they, you know, are aware of what that entails. And that there should be some kind of support in taking that further and, you know, knowing that it's already a dead-end.

And I know there is the issue of the low voting threshold that makes it hard maybe it needs some more discussion between the different groups in saying, "Okay, how can we make it in such a way that it is something that we

both can agree on, on something that might go further?" But -- just for the record.

Stephane Van Gelder: Thanks Marika. Jeff?

Jeff Neuman: Yes, on (Thomas) (unintelligible), I don't remember if there was an objection process. But I think again that was kind of volunteer fatigue in time. There was -- going back in history and sort of addresses Marika's point.

We had a very, very aggressive -- how do I put this politely -- a very, very aggressive business constituency especially a couple of council members at the time that kept going one after another on a number of different PDP's.

And - and they were very heavily focused on registration abuse primarily because it was around the time that we were going to really get into the earnest of the new TLDs.

To counter what Marika said a lot of that work did lead into a number of provisions in the new TLD agreement. All those discussions that were kicked off a lot of them ended up in some very strong malicious abuse provisions in the agreement and also in the - in the whole applicant guide book.

So I do think there was some value there but, you know, like I said it at the time too, that we had a very aggressive initiation of a bunch of PDP's back to back to back to back and we're just dealing with the ramifications now.

I think this is one that deserves kind of the end of life.

Stephane Van Gelder: Thanks Jeff. (Thomas) and I'd like to bring this to a close.

(Thomas): Yes, maybe we should continue the discussion about that in another forum that's topic related, right. But I think it's very unfortunate that so much work has gone into this now for it potentially being bitten.

And this is why I'm asking the question about where the - the procedures of the (unintelligible) and whether we need to think about that in order to avoid something like that to happen in the future.

Stephane Van Gelder: Thanks (Thomas), thanks to you all, thanks Rob, Marika for helping out on this. We'll now bring this session to a close and immediately restart for our last session of the day which will be a meeting between the GNSO Council and the 2012 NomCom. Although, there are some members of the 2013 NomCom here including me. All right, thanks.

Coordinator: Thank you all for participating in today's conference, you may disconnect your line and have a great day or a great evening.

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