

**Transcription ICANN Buenos Aires Meeting
IRTP D Workshop Meeting
Wednesday 20 November 2013**

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.

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

Man: Hello, once again for the transcript Wednesday, November 20, 7:30 am this is GNSO IRTP community workshop. The chair will be...

Mikey O'Connor: Hello all this is Mikey O'Connor for the transcript. I see a bunch of good friends and old friends on the Adobe room. And I think we're close enough that we'll probably get underway.

James is scrambling to get plugged in but I think we can kick off the recording and do the usual preliminaries. (Natalie) are you the caller of the role? No, no because you can't speak this time.

Okay so do you want me to do that stuff is that the scheme or go around the room, cool that's a good idea. All right so let me just set things up this is the IRTP PDP Part D meeting for Wednesday, fill in the dates 20th of November, 2013.

And what we'll do is we'll go around the room and people can identify themselves for the transcript. I'll start I'm Mikey O'Connor from the ISPCP and we'll just start that way and go this way.

Holly Raiche: Holly Raiche from ALAC.

James Bladel: James Bladel from GoDaddy.

Mikey O'Connor: Lars do you want to chime in? Yes that's cool the green one.

((Crosstalk))

Man: (Unintelligible) from ICANN staff.

(Graham Bunden): (Graham Bunden) from (Tucals).

(Fark Acoma): (Fark Acoma) from (unintelligible) assistance GNSO counselor.

Marika Konings: Marika Konings ICANN staff.

(Fumla Bajju): (Fumla Bajju) from the (unintelligible) central registry I'm part of the (unintelligible) Africa legal and policy team.

Mikey O'Connor: Cool, welcome.

James Bladel: And there are two...

Mikey O'Connor: Two folks in the back do you want to just walk up to the mike...

((Crosstalk))

James Bladel: ...maybe join us at the table there's plenty of space.

Man: Some people are here just for electrical power.

Man: People just the want the Wi-Fi.

(Cara Perando): (Cara Perando) ICANN staff.

Mikey O'Connor: That's great okay, as usual we'll take a pause to take a look at the agenda and so...

Man: Let's get an introduction please from the folks on the phone.

Mikey O'Connor: ...yes go ahead can people on the phone just clash with each other and announce yourself through the rest of this?

Barbara Knight: Barbara Knight is here (unintelligible) stakeholder group.

Mikey O'Connor: Thanks Barbara is there anybody else on the phone?

Man: That's it.

Mikey O'Connor: Okay cool thanks for catching me on that. You know, one of the things I went to the leadership development thing earlier this week and I discovered and interesting thing, which is that I do fine on the phone but when I'm face-to-face I'm getting a whole lot more stimulation and I totally lose track of what's going on.

So if I completely go off the rails just give me a nudge. What I probably ought to do is just put a blindfold on or something. Anyway next up is any changes to your statement of interest and a quick look at the agenda, which are both over on the right side of the Adobe screen.

So we'll pause to see if there are any issues with either of those. James has got his hand up, go James.

James Bladel: Good morning, James Bladel from GoDaddy and co-chair. I just wanted to not necessarily make a modification of statement of interest but more of a declaration that both of your co-chairs Mikey and myself will be joining the GNSO council effective 4 1/2 hours from now.

But not unprecedented that counselors would also be chairs of working groups I'm kind of looking for staff to give me the history here. But it does perhaps create an interesting situation let's say this time next year or a little further down the road when we have submitted our final report and final recommendations to the GNSO council coming from the people who determined consensus level support in this particular working group.

And, you know, I don't think that any of this is a problem but I want to make sure that it is in our minds that we are thinking about these potentials. You know, they say with conflicts of interest that 90% of it is just perception something that's happening that's not on the table.

So I wanted to put that out there and certainly remind everyone that it is well within the prerogative of the working group membership to ask one or more of their co-chairs at any time for really any reason to step aside if they're not comfortable with that arrangement.

So Marika's raising her hand I think she's going to ask one or both of us to step aside Mikey.

Mikey O'Connor: I'm sure that's right, go ahead Marika.

Marika Konings: No this is just to confirm or clarify that the working group guidelines that you specifically indicated that council members are more than welcome to join working groups and even chair them.

So from that perspective there are no restrictions or limitations just because of the fact that you're a council member but I understand what you're saying.

James Bladel: And certainly not trying to, you know, quote chapter and verse of either the GNSO PDP working group guidelines or the council guidelines but wanted to make sure that we are being as transparent as possible in the interest of full disclosure and making sure that everyone is there's a situation where

someone feels uncomfortable with an arrangement that they are certainly aware of their ability to speak out against it and change it.

Mikey O'Connor: Thanks James it's always good to get those puzzlers out there. I'm going to - yes I see Holly in the queue but before I go to the queue we've got a few more people who just joined the meeting and I just want to have you run down the line and quickly introduce yourself for the transcript so we know who's here.

Angie Graves: Angie Graves, BC.

Simonetta Batteiger: Simonetta Batteiger on (unintelligible) stakeholder group.

Christina Rodriguez: Christina Rodriguez national arbitration forum.

(Almatan Aftra): (Almatan Afrta).

Tim Cole: Tim Cole, ICANN.

Mikey O'Connor: I don't know about you but it's always need to put names and faces together, you know, we've worked together in some cases for years with never meeting each other before and I just love that part, go ahead Holly.

Holly Raiche: Actually just a change I had stopped being chair of (unintelligible) and I've joined the leadership team for ALAC.

Mikey O'Connor: Congratulations on that and it's always fun. Volker go ahead.

Volker Greimann: I don't have an update but I would like to take this opportunity to thank ICANN staff for making this session available at a time where people are actually awake.

Mikey O'Connor: Hurray, hurray and I am gratified to note that we have precisely the same level of attendance no matter what time of day you have. That's showing just exactly how fascinating the work that we do on this working group is, so.

Anything else in terms of - go ahead Marika.

Marika Konings: This is Marika and this may be something as well as, you know, several of you now are coming onto the council and because as said we always struggle in finding time for working group meetings while at the same time we always say, you know, policy development is the most important thing we do.

But it's really hard and need to get these kind of slots and not have, you know, 20 million other things that are all more important and more interesting (opposited).

So having some kind of push maybe of someone from the council to convey it and saying look, it would be really great if we could actually maybe carve out dedicated slot or time somewhere on the schedule that will be solely dedicated to face to face meetings of working groups to make that happen and, you know, maybe it has to sometimes happen a little bit earlier but at least get on the radar scheme and this is really important and a lot of work can get done in this way.

Mikey O'Connor: The trick there is that we are now in a room with all the people that work on all the working groups. So if we schedule them parallel we might as well schedule them in parallel all in the same room, sorry.

Okay anything else in terms of statement of interest, agenda sort of the getting ready stuff? Okay I've got a little slide deck that most of us have seen I'm going to run through it anyway because I went through it with the council, James and I went through it with the council.

And when I was speaking I was fairly casual in the way that I talked it off and I shouldn't have been because it turned out that we got into some pretty interesting discussion.

So I'm going to take a little bit more care in my piece of it, James do you want me to run through the front part or do you want to do the front?

James Bladel: Sure, no go ahead Mikey.

Mikey O'Connor: Okay, let me see so Lars is way ahead of me cool. So this is just sort of the story until now. We are the last, we're the caboose on the train that's what we like to think of ourselves as of a pretty long series of PDP's we started this one in February.

And we've got four out six charter questions done and I'm not sure that we're fully agreed but we're certainly in, you know, a pretty late draft on those. And then we've got one big issue that we're still working on but this is one of those ones where when we pull the string we may find other things attached.

So I'm not sure that we're quite there but we'll get to that in a second. So next slide would be good. These are examples of string these are examples of things that begin to branch outward.

So one of the big broad questions that we're going to tackle is the overall structure of the transfer dispute resolution policy and I'm not going to cover all of the history because this is among friends.

The other piece of string is that at the very end I think what we're going to do as a working group is look back across all of the prior ones and reconcile some - see if we can discover and reconcile any inconsistencies in the whole pile.

Hopefully we won't find any and hopefully we won't have to change much especially things that have already been implemented by registrars because that gets very tricky but we are going to take that (look) just to make sure that there is integrity there.

Okay Lars I think you can go to the next one. I think this is the - this is really the agenda for today that we put together to just structure our conversation and our thinking about what we should look at and there's really three big questions.

What about the transfer dispute resolution policy and really the it's really two questions. It's really what about the transfer dispute resolution policy and a bunch of associated questions and at the very end should registries continue to be in the dispute resolution chain.

But as you can see there are lots of interesting questions within that PDRP pile that we have begun to, you know, I think we've made a lot of progress in the last few weeks structuring the questions because I think having that structure helps us have the conversation about how to answer them.

And really the goal I think for today is partly to see each other face-to-face, welcome Simonetta back because she has a standing conflict with this meeting and so this is a chance to hear from Simonetta.

And really just take advantage of the luxury of a face-to-face meeting where we can have a conversation and see each other, which will as I say be extremely distracting for me but I'm going to do my best.

I think I'll just leave it open, take a queue - for folks in the room it would help me if you would use the Adobe room for the queue just so I can keep track of it. That another thing that I have gotten so reliant on that when I'm not - when I don't have it available I really mess up the queue pretty bad and James is first in line go ahead.

James Bladel: Thanks Mikey, this is James speaking for the folks on the phone. So just to recap a little bit of the conversation that occurred over the weekend when we presented the summary to council and then maybe a conversation that Mikey and I had coming in the front door.

When we got to the subject of the TDRP there was a very spirited exchange or questions regarding the downstream implications of what we were, you know, proposing and all of the potential pitfalls that we should be aware of and perhaps try to avoid.

And the analogy I used to Mikey is that I don't think our working group is, you know, going off the road but it feels like we're on one of those roads in Peru, you know, that's on the cliff and we're trying to pass a truck that's full of chickens.

We have to be very, very careful the next few working groups, we have to proceed I think very cautiously because we've always sort of just looked at TDRP as this is the mechanism that undoes transfers.

But as we expanded in IRTPC as we expanded transfers to include registrant changes and if we've, you know, handcuffed TDRP as the undo mechanism for a registrant change now we are tip toeing into a very sensitive area outside of just, you know, fraudulent transfers, outside of domain name hijackings into basically a broader range of just civil disputes.

And, you know, perhaps we can and I say we now or maybe GoDaddy could share some data or some experience here but I have had conversations with folks internally who have some pretty scary stories to tell about business partnerships going bad or divorces or heirs fighting over a will.

You know, I mean this is potentially what's on the other side of that chicken truck if we're not careful, you know, in doing this. And so I think we - I just

wanted to put my note out there that maybe we just take a look at this, take a look at exactly what we're trying to solve.

Maybe create some tests early on for TDRP to say this is starting to look like something that is beyond the scope of ICANN to solve and starting to look like more of a real world brick and mortar problem that needs to be addressed, it needs to be addressed elsewhere like in small claims court or something like that.

So I'm just putting that out there on the record that this is where I think the working group stands. All the rest of this stuff I really do believe we've either looked at it, we've analyzed it, we've spoken with compliance, we've gathered data and as a group we're all nodding our heads.

Yes this needs to be fixed or that's working fine. This one issue though I think we need to - could undo the whole recipe so let's just be very cautious, thank you.

Mikey O'Connor: Thanks James, the queue is developing nicely, (Christina Rodriguez) go ahead.

Christina Rodriguez: Hi thanks this is (Christina Rodriguez) from NAF. So I wanted to just sort of follow on to what you said James because when I brought this idea and I don't think it was just me but when I bring up this idea of, you know, as a provider we see, you know, those sorts of questions.

Those are the three circumstances the circumstances you named are the three that we see that also get kicked out of UDRP. And those are the ones that people are constantly saying, well now what, what do I do.

If I can't take it to UDRP and I can't take it to TDRP where does it go? And I'm in agreement with you that I don't know that this is the best policy for it but

I wanted to make sure that we at least explored it to see if this is the best policy.

And it might be that we decide that this isn't it and there is no remedy for people who have been screwed over by their Web provider or their, you know, Web developer or their business partner or their ex-spouse.

And maybe they are stuck going to court and maybe there is nothing so I just wanted to echo that because I know I've been kind of one of those people who have said, now these are the disputes we see and I just wanted to make it clear that I see these disputes and I wonder if these belong in the policy but I also see that they may not.

Mikey O'Connor: Thanks Christina, Simonetta.

Simonetta Batteiger: I was wondering where the original question came from because something must have raised the question that the TDRP should potentially be opened to registrants, why was that coming up because that made point to where the real problem is.

And then I agree with what you just said and it might also help to look at data from big registrars like GoDaddy or (one and one) where I'm not really interested in here is how many cases of dispute have arisen but how many of them are actually things that are these type questions where you really can't make a decision.

I mean you aren't really in a position to decide between the two quarreling parties here, which one is right and, which is not right. Neither do I think the registries would be that entity that really can resolve that conflict and or someone like you I don't think this can be solved that way.

But if we find out where the question came from to begin with maybe there's something else to it.

Woman: I'm just responding to someone had this question where the question came from and Mikey can give the history question as well it was when the original review was done after the adoption of the policy 2004.

But having written while the issue for the things where it came from and since we don't have any hard data the main reason was that we had some reports that the registrant wanted a TDRP to be initiated but their registrar basically didn't want to do it for them for, you know, whatever reason it was.

And that gave the sense that maybe there is a need to open it up for registrants where they can decide themselves whether they want to initiate proceeding without having to wait or needing the approval of the registrar to do so.

But again I think - I don't think we have any like hard data thing, you know, we received 100 questions or 100 requests from registrants to initiate one or why are they saying that the registrar is not doing it for them.

But I think that was the anecdotal information or feedback that was received I think that inspired this question that it should be investigated, should it be opened up or not.

Mikey O'Connor: Simonetta you look like you want to come back do you want to?

Simonetta Batteiger: Well then if this is where it's coming from again I would - I don't know if we can but the next question that comes to my mind is, is it that the registrar's just basically don't want to deal with their customer and they want to make it difficult or is that the registrar looks at the problem and says to that customer, you're crazy and I can't resolve it.

And I also know that the registry won't be able to resolve it so therefore you should really not have access to this way to resolve your dispute because we don't think that it can be resolved that way.

So without knowing that you can't really go back to answer your question, which was is this even the right policy to address this kind of dispute because I'm just thinking if these two business partners are quarreling about something the registry won't want to decide which one is right.

The registry won't want to decide which one is right they'll just to get into legal trouble and therefore it's not really a good way to resolve the conflict for anybody.

Mikey O'Connor: Mikey's scrambling with physical space. Volker and Volker go ahead.

Volker Greimann: Actually I defer my place in the queue to you because she has been waiting longer than I (unintelligible).

Mikey O'Connor: Yes sorry about that go ahead Holly.

Holly Raiche: I can be incredibly patient at times. Having chatted with a guy who is a member of ALAC and who is been involved in certainly many businesses. He gets a lot of complaints of people who have just lost their domain name.

Now I think it's perfectly reasonable to say if the reason you've lost your domain name is a business partner, business going bad we shouldn't touch it this is - that's, you know, a chicken - that's basically you're over the cliff forget it.

But if it's something that the registrar has or that has happened between registries and registrars if it's actually an ICANN problem and somebody won't take action on behalf of the registrant we shouldn't be saying we can't fix it.

And to me the jurisdiction is if the problem within the ICANN agreement in which case at least be able to go to the unintelligible and say, have a look at this to see is it reasonable, have kind of a place to go.

And then a reason why you're not somebody who has got an objective of saying, no that's not reasonable or look it's between you and your business partner, it's between you and your wife, which you're bloody incompetent or something but it's not an ICANN related problem.

So that the fence is it something that can be fixed that's within our ICANN's agreement. I mean that's the kind of circle I draw but if it is through an ICANN's agreement then we shouldn't be saying to hard, we ought to be able to fix it somehow.

Mikey O'Connor: Thanks onto you Volker.

Volker Greimann: Okay maybe first one point to where it came from but this might not be the right process. I mean Mikey did a great job by trying to insert the registrant into the TDRP but the longer we looked into this the more it became apparent that the TDRP mainly designed to complain about process failures i.e. where registrars have not followed the correct process and therefore it's a dispute between registrars.

In searching the registrant it's a process, which is not designed to deal with specific cases. The TDRP is originally designed for made us at least think about the TDRP probably not being the correct venue for this.

This being said there might still be a different venue or different solution to the problem of domain names having been stolen that could be within the ICANN agreement, which could either be a different policy best practice recommendation or what I've been warming up to a requirement for registrars to lock a domain name for a certain time when a complaint about ownership is brought.

And having - and if that - if a simple case is not being shown to have been brought between a complainant between the complainant and the current owner then the lock would be removed after a given time or not.

So basically it would resemble the current process after a UDRP where the losing registrant would have the opportunity to fight to repeat this vision in court within 10 days.

Assume the process could be adopted where a registrar would require to lock the domain name against transfers or name changes if a complaint is being brought for a certain time.

And then the complainant has to follow through with the court case. That would prevent any further hijacking in my view. Lock the domain name against further abuse and protect the potential rights of the registrant and the complainant whoever may be right in the end.

Bu that a decision I would strike and take and I think also for an arbitration panel also by interim the wrong decision to make it's not because these are not clear cut cases these are cases that usually ownership disputes that should be resolved in court, my view.

Mikey O'Connor: I'm going to hijack the queue in front of my co-chair just to ask one question and that is I'm primarily going to ask it of Christina but anybody else is welcome to chime in.

I'll start this off by saying that I find myself in the position of my opinion is changing so I'm pretty unfrozen at the moment and sort of curious about something.

The reason the UD - and I'm going to play my version of history, I wanted to Christina to verify that I've got that right and then see if it's - if there's a parallel there.

My understanding in the UDRP is that essentially it's a more focused court that's smarter about a very narrowly defined issue because taking a UDRP issue to just any old court on the planet would resolve in really bad court proceedings because the court would be clueless.

And so this is sort of an intermediate step on the way still to a clueless court but at least most of the time the dispute resolution process would be more well crafted and built with people that have deeper understanding.

The TDRP is starting not to feel like quite right for all the reasons that Volker rattled off but I'm wondering if it would be useful to consider setting up something comparable where registrants when they have a dispute between themselves have a clueful dispute resolution process available that's essentially totally outside of this policy.

With the exception that it would be the end game for the registrant transfer stuff that we built in IRTPC because I think one of the reasons that we as a working group are under a little bit of pressure right now is because we built something in IRTPC but we didn't really - what we did in that one was we said, well a TDRP will work fine for that so that's what we'll use.

And what we're discovering now is it's not so fine and the question in my mind right now is whether we should build a clueful court to Holly's point, you know, we shouldn't just throw up our hands and say is this too hard or rather we should just throw up our hands and say this is too hard take it to clueless courts and be done with it.

And I'm framing it that way because it would be interesting to know in the case of the UDRP the reason that we need a court with a clue is because the UDRP is a very unusual kind of dispute.

In the case of a dispute between registrants I'm not sure that's so unusual to divorce it's business failure and maybe normal courts would be clueful in which case maybe we shouldn't go that way.

So that's a long preamble and then throwing the ball to my buddy Christina who I know will handle it perfectly.

Christina Rodriguez: I don't know about that, this is Christina from NAF so I'm trying to keep in my head all the points you made. So I think you're right about the part of sort of focused on trademark domain name and stuff going on.

The other thing the UDRP brings to the table that sometimes we forget about is this concept of neutral jurisdiction. So one of the things the UDRP did was it made it possible for parties who could not normally participate meaningfully in any sort of court process.

And it gives them an option that allows them to sort of supercede the bounds of jurisdiction. So that's one thing besides the focus group that UDRP brings. So the idea of creating a second sort of focused court for these transfer related disputes I think it's beneficial because it brings that neutral jurisdiction back into it because that's really the key.

The whole reason the UDRP was written is because people didn't want to go sue everybody in Virginia. And so you - because you can get, you know, a fairly decent trademark opinion on this at least in the U.S. and Europe and, you know, et cetera.

So I think that we need to think about that and when you throw people to the court system you leave open the issue of jurisdiction unless there is some

other way to contract around just jurisdiction because you theoretically would possibly have two contracted parties as far as registrants go.

But I don't know because once one has lost their domain name now they're not with the other contract anymore so you've got some issues there. So I'm with you on that I'm very unfrozen on my thoughts right now too because I'm with you I really thought that it would, you know, just slide right in.

And say it's not sliding right in and I think it could be useful to think about something different. The other thing that I just want to throw out there because I'm in the middle of it right now is I'm working on building a specialized panel for registry restriction disputes because NAF is a provider for registry restriction disputes.

So it's not necessarily trademark layers although there are some. It's mostly people who are, you know, maybe even in the position that Volker's in where you're working with the registry or whatever so or registrars I guess I'm sorry.

So but as people who are really familiar with registries and registrars and the processes that ICANN goes through and the negotiations and how this works. So it is possible because I'm doing it to build a specialized panel that knows about transfers and knows about registration agreements and knows about registrar and transfer agreements and those sorts of things.

So it's possible I think to build a specialized panel that would deal with these types of situations while preserving this mutual jurisdiction element that's so important for UDRP. I think I addressed all your thoughts.

Mikey O'Connor: Spectacular as always and deepest apologies to James my co-chair because not only did I jump him in the queue but then I stuck Christina in there too so a double whammy sorry about that go ahead.

James Bladel: That's all right thanks Mikey and, you know, it's a good problem to have in IRTTP where we have so many people that want to weigh in on things because we haven't always had that situation.

So I just wanted to follow up to I think going back to some of what Volker was saying, I think even going back to your comment Holly and then maybe put a button in with Mikey.

And then propose some ways that we can start to bring this in for a landing and start to navigate our way out of these rocks. The first thing is when we listed all of those different situations I wasn't trying to give you the impression that we should avoid this because it's difficult.

More along the lines of because I don't believe ICANN has the authority in those situations and we shouldn't be seeking to expand that. So okay so we're all I think synchronized on that one.

But to Simonetta's point the root cause is or at least that I understand it is that we have this mountain of complaints coming into ICANN regarding disputes on who is the rightful registrant of this particular domain name.

They're coming into registrars, they're coming into ICANN, they're coming into registries, they're flooding the court system and then we have this policy, which is much narrower in its scope and what it's trying to do as I think Volker and Mikey pointed out.

It's more of a process policy did you follow the process or didn't you and if you didn't you have to undo the process. It's not equipped to tackle that or to close that gap in almost all those cases.

And so my thinking is the more I think in going back to Mikey's point I find myself changing my thoughts on this as well and thinking wow we really waded into something, some deep waters here.

And not that it's hard but that ICANN's a rowboat and we've been playing with battleships. So I come back to one of the proposals that and I think it's encapsulated in our second bullet point there is the idea that if the problem that we're trying to address is that registrars are not initiating the TDRP on behalf of their registrants then require them to do so.

And the exemption list would mirror the reasons for denial but it would be very small such as you were never listed as the registrant of this domain name or this domain name expired or you are still the registrant or some other sort of, you know, blatantly obvious sorts of things because there's a lot of reasons why people lose control of domain names.

Sometimes their credit cards expired, you know, it's not necessarily a dispute but and so I keep kind of coming back towards, you know, when faced with so many unknowns and so many variables maybe the right course is to do as little as possible that you are confident will be a positive development so as to minimize the law of unintended consequences.

Mikey O'Connor: Without looking at my screen the great (carnath) predicts that Volker is in the queue.

Volker Greimann: That was a miracle tell me how you did that. Just one more thing that I just had a thought rolling around in my head is that whatever we end up with a new process and a policy and the recommendation we should bear mind that the kinds of cases that we're talking about here are not necessarily transfer cases.

They may be cases where no transfer has ever taken place domain still rests with the registrar, no owner change has taken place for example when the domain name is registered in the name of the Web host or the programmer who runs the Web site these are exactly the same cases if a transfer has taken place or not.

So bearing that in mind we should I think move away from the transfer issue and of course have something in place to prevent transfers if we end up with that to prevent further harm and further complication of the issue but also encompass these other cases as well.

Mikey O'Connor: Thanks Volker I'm going to go to Christina and then I'm then I think what I will do is I will put myself in the queue, go ahead Christina.

Christina Rodriguez: This is Christina and Volker you - that was a great segue to my next point because, you know, we talk a lot about transfer and we sometimes forget that sometimes it's a non-transfer that's an issue.

And I want to bring this up and I'm going to try to word this so that confidentiality doesn't get breached but I got a phone call coincidentally enough about two weeks ago from a registrant who says I am trying like the dickens to transfer a pretty large size portfolio of domain names away from my registrant.

My registrant knows I'm trying to do this and will not allow me to transfer they won't - whatever they have to do I'm sorry I'm not super like up on that but they wouldn't unblock them or they wouldn't provide whatever it was they wouldn't allow them to be transferred out because they were the, you know, the largest client or the only client or something.

And of course, you know, once the domain names go away the registrar is on a (pick all). And they said can I file a TDRP on this and I, you know, crack open the book and, you know, I got the, you know, hyper underlined highlighted version, you know, on my desk.

And I'm looking and I'm looking and I'm like you can try but that is not one of the itemized things that you - I said, you know, I'd love to take your money because this is a gazillion domain names but I wouldn't recommend it I said because it doesn't include your registrar isn't responding to you.

Even though so it's not (ANAC) you didn't get to (ANAC) if your own registrar are refusing. So and I don't know maybe I just don't know too much about what the answer is in that situation but I just wanted to say that if we - when we do start looking more deeply at the policy itself I would like to look at sort of the reasons for bringing a dispute.

You know, and would there be other reasons that have a rhythm that should be included in the master list of types of disputes that could be brought. I don't know you can tell me I'm crazy but I thought I'd through that out there as a little anecdote.

Mikey O'Connor: Thanks Christina I'm paying James back he's jumping in front of me.

James Bladel: No just that, you know, certainly in that situation that is a failure to execute the policy in the first place, which is a compliance issue, you know.

((Crosstalk))

Christina Rodriguez: Yes that's where I told him to go I said go call compliance here's (Victor's) number.

James Bladel: Sorry for the little sidebar but I wanted to help that registrant because I'm assuming they're trying to move their names to GoDaddy whoever they are.

Mikey O'Connor: Don't be so sure about that.

James Bladel: All right I've got two other registrars over here ready to throw something at me.

Mikey O'Connor: Thank you, this is Mikey again one of the things that's in my unfrozen thinking and we've talked about this on calls fairly recently is that we've overloaded this policy a little bit and I think that's part of the problem.

So if we said that we are taking apart a thread that may be the way to pass that truck full of chickens that's a pretty vivid picture in my mind James thank you for that your (unintelligible).

You may need one of Emily Taylor's kids cartoon graphics for us on that for our final report. I'm leaning more and more strongly towards Volker's point of view on the traditional registrar-to-registrar TDRP problem with maybe just a dash of James' put a little pressure on registrar's to actually do it scheme.

And when we've talked about this before Volker has immediately appeared in the queue saying watch out because there are times, you know, if we give registrar's completely open access to this there are going to be times when, you know, the policy does - makes us do stupid things.

And I think the way to avoid doing the stupid things is to keep this policy narrower rather than broader. I think we hit into stupid territory when we broaden the policy.

And I think where we got into trouble and we are going to have to puzzle our way out of it is when we put the registrant stuff in and see. Now we've opened up quite a lot of stupid territory.

And so we may want to think about backing out of that driveway somehow I don't exactly know the mechanics. Pivoting and, you know, then going down the lines that (Christina) and I were talking about a different gizmo to handle the registrant type disputes.

And I just sort of want to try that idea out to see if that's a path past those dang chickens because if that is then I think we've got some work to do but I think the work is fairly straightforward but, you know, if that's troubling to people this would be a good time - this is a great time to work this out.

Partly because it's face-to-face but also because it's a little bit longer meeting than normal and so we've got a little bit more flexibility. So let me recap that in fewer words.

Refocus the IRTP and its associated TDRP on transfer disputes between registrars its original purpose. Remove maybe let's try this, remove the transfer disputes between registrants from this policy and panel that through a miracle.

And then in order to get the original reason why the for the question about registrants to this policy answer I tend to agree this is a change. I tend to agree that we don't want to give registrants to this policy but rather put a little bit more pressure on the registrars to grant the request even in instances where they think the registrant is crazy and the one difficulty with that is who pays.

Okay so we've got Holly in the queue, we've got Volker in the queue, we've got me accidentally in the queue. So who went first, Holly first go ahead Holly.

Holly Raiche: Ladies before gentlemen what a gentlemen. If you open up - well sorry closed the possibility or write registrant out of the policy but write in a requirement that the dispute actually be taken.

Then from a registrants point of view and correct me if I'm wrong for them it becomes a compliance issue. They can go to compliance and say I have requested X. Compliance then has the ability to look at the factual situation to see if what's really happening is - there is a dispute the registrar has in fact not taken the action they should have.

And therefore the mechanism is not particularly costly for a registrant it becomes the responsibility of compliance to then say in fact the rules now say this is a dispute that you should have taken up and you haven't and then

that becomes the mechanism for a registrant having their issue dealt with if it's a legitimate issue. I mean is that a correct statement?

Mikey O'Connor: Close enough for me yes, Volker go ahead.

Volker Greimann: Totally going off topic with the current discussion just something that also popped into the head and my mind. When we started this it never said that this was the IRTP to end all IRTP's to mop up all remaining issues.

And there was an issue that I didn't think of when we started on this, which is something that recently became a problem again and again, which is some registrars charging outrageous fees for allowing a transfer out should we also maybe look at that in the course of the IRTP before?

James Bladel: I don't think so that was.

Holly Raiche: I think there was a meeting.

James Bladel: Yes that's not allowed under the current policy that's just a...

((Crosstalk))

Volker Greimann: Actually if you read the FA - if you read the FAQ on the ICANN page it says there yes the registrar is allowed to charge a fee to allow a transfer out.

Mikey O'Connor: Yes but I thought it was reasonable. I thought the word reasonable was in that sentence isn't that right?

James Bladel: I think we should exhaust the compliance route first but yes at least for them to...

((Crosstalk))

James Bladel: ...can't do anything before on the agenda until we have that.

Mikey O'Connor: Definitely a good one for the agenda.

Volker Greimann: I think we should pause that until we have the other problem solved but I just don't want us to clear up the IRTP without at least having looked at that.

Mikey O'Connor: For a second, for a minute but when I turned my mike on I killed your mike.

Volker Greimann: No it's there's always the last two are on so when you turn yourself on and James yourself on it shuts me off.

Mikey O'Connor: Okay.

James Bladel: I have a Mikey mute button over here the whole time?

Mikey O'Connor: Look at that it worked and you knew it amazing. Another reason I don't know face-to-face. Okay let's see what have we got for a queue. Volker you're really in the queue or is that left over from last time.

Volker Greimann: That was this one.

Mikey O'Connor: Okay (Christina) go ahead.

Christina Rodriguez: From NAF, the only thing I wanted to address was to Holly's point about the bringing the registry or the complaints to compliance where the registrar is not going to follow through.

I would only caution and I don't know I mean maybe we're putting the cart ahead of the horse but I think what we found is that verifying had what almost 100 complaints that they've actually handled.

So if you put in the policy that now your average registrant can bring a like nanna and a boo-boo someone didn't do what I wanted. We have to be

concerned that that's some kind of flood ICANN compliance was from all those claims.

And the only thing I wanted to throw out there I don't think it's a necessarily bad idea because you (unintelligible) and yes we have a - I think sometimes we don't have enough time staying on top of legitimate UDRP issues and that sorts of things so.

Mikey O'Connor: Yes and before I head to Tim I think that's one of the reasons we're going to if we sort of follow these tracks we're going to have to take a look at the requirements on a registrant to limit frivolous and abusive use of that so that's fully agreed, Tim go ahead.

Tim: Thanks I actually lowered my hand but only because I don't want to be perceived as giving an official ICANN position on the issue that Volker raised but there are two sort of competing or somewhat inconsistent factors involved with charging a fee or an exorbitant fee because on the one hand ICANN cannot say what a registrar can and can't charge for.

So that's the reason for that answer in the FAQ. However there's also a provision in the policy that says a registrar cannot prevent a transfer based on future OSC.

And if the fee is for a transfer and the transfer has yet to take place then they're holding up a transfer for fee for a future service. So in fact you could very well come up with a ruling that says that they cannot charge an exorbitant fee or a fee.

But again I'm not speaking I'm not giving you a formal interpretation but that is I believe how it has been viewed at times in the past.

Mikey O'Connor: Thanks Tim.

Volker Greimann: Thank you very much.

Mikey O'Connor: And especially since it was given entirely as a personal opinion and thus you are fully liable for any consequences. Sorry I just couldn't resist. Okay the queue is clear when do we end do we end at 11:30?

Man: Noon.

Mikey O'Connor: Noon, holy mackerel. Well, you know, it just shows how deeply ingrained that one hour habit is for us, you know, here we are right on the dot at one hour. I don't know Mr. co-chair anything?

Man: (Unintelligible).

Mikey O'Connor: I am not lying Lars that's where I was going.

Lars: I can't believe it you're just...

Mikey O'Connor: No I was I thought if we're in the last half hour why not spend, you know, that time looking and trying to define some concrete steps on what we're going to do next.

I think that we have an initial report taking shape, obviously we have a pretty big placeholder in here for this conversation that we're just having that needs to be flushed out.

But a number of the other chartered questions I think are fairly close to being nailed down and don't all have I don't want to say any but many dependencies with what we're talking about with TDRP.

So perhaps, you know, since we're going to go home and then a lot of the Americans are going to stuff themselves with turkey and then we are going to start to look at Christmas shopping and things like that.

I think maybe a since we have targeted our initial report for early December I wonder if that is still in the cards. I wanted to ask this group if we believe if we can wrestle with this particular issue and publish our initial report for December.

It sounds to me that where we're sitting now is the answer is no. It makes me think that we should target this particular issue for some sort of resolution by early December so that we can target our initial report for the end of the year.

That leaves us I think sufficient time to conduct a 45-day public comment and response period in advance of the meeting in Singapore. And then we can incorporate that in, you know, we'll spend February-ish incorporating that and then we'll come to Singapore with basically a draft final.

So that would be our new calendar but that would require us to really, you know, after we have our nice big meal then really sink our teeth into this TDRP issue.

Savor and don't have two slices of pie savor them for this. You have Thanksgiving in Australia too right just not this time of year? No, Canada has it, it was in October though yes so.

Woman: (Unintelligible).

Mikey O'Connor: Well you have Christmas on the beach I thought you had turkey, you know, maybe deep fried I don't know. Okay so yes Bob Mountain, let me regain control of this before we turn into a culinary debating society.

Bob Mountain: Yes thanks sorry James I might end up in the queue and I didn't know if you saw, this is Bob Mountain. You sound like you did what I was going to propose, which is a sort of a work back from if we are targeting Singapore.

So what would be the drop-dead date for the initial report would it be
December or January or it's...

Mikey O'Connor: I think, you know, let's leave this as an action rather than doing it on the fly. I think we can do it sort of the way James did but, you know, (Alarz) and James and I will take a look at that and back into the dates we need to hit.

Bob Mountain: I - my suggestion might be that we not wait until the very last possible time to do it but we find out what our, you know, give ourselves a little bit of slack or space to, you know, to reach that but at least we know what the drop dead date is and we can work around that so.

Mikey O'Connor: I think that's right, I think that, you know, if this sort of emerging scheme that's coming out today works unless we hit another sort of puzzle that's pretty doable because the rest of the reports in pretty good shape.

So barring surprises I think dropping that into the right slots or but I usually have a wall of computer in front of me and I can put a bunch of stuff up and I got nothing so another trauma.

Man: Just - this is (unintelligible) I think a rough - I just looked at the calendar and the submission date. If you want to submit an official preliminary final report we're looking early January really to get the initial report out in order to get the 45 days, re-work something in and republish because I believe the meeting is late March.

So it's still I mean (unintelligible) but it's still a very tight at that time.

Mikey O'Connor: I think we can still...

Man: It's doable.

Mikey O'Connor: ...yes we could still certainly give it a try and I think that, you know, we're right at the point where we come as a group to pretty deep thinking and pretty deep understanding and it sort of see if we can crank our a draft.

And if we can it would be really cool to hit that date if we can't I don't think it's the end of the world but, you know, it would be really good to sort of move this along, Holly.

Holly Raiche: Just a question, we've got IRTPC report C, which has got registrants E. Are we going to have to do something to say by the way we made a mistake let's take it out?

Mikey O'Connor: Yes we're going to have to do something about that because otherwise this whole thing falls apart, go ahead James.

James Bladel: If I could jump in on that, one of the other topics that we did discuss with the council and I think they were very receptive to it was the idea that we might want to put a pause on the implementation of IRTPC, which has been approved by the council it's been approved by the board.

It's just kind of sitting there on the - on deck waiting for it to roll out into production and I think we identified that if you're changing something that's been approved but not implemented yet maybe you ought to just kind of hold off and change it all at once.

And I think that there was heads were nodding around the table that that seemed to be a sensible approach rather than change something and change it back and I think this would definitely fall into that category Holly if we said, you know, we kind of glossed over something in IRTPC that as we examined it in the context of TDRP we want to go back and, you know, unlink those two issues.

Mikey O'Connor: Yes I think that's right, Bob go ahead.

Bob Mountain: I guess it seems if we take that approach then the time limited or auto renew FOA those things do not go into effect then because the policy has not done it or do they go into effect on their own without any further action on our part?

James Bladel: No those would all be held as well.

Bob Mountain: They would be held up okay.

James Bladel: Yes.

Mikey O'Connor: This is Mikey, one of the things that - James and I are on the implementation review team and I can't remember which of the rest of your are but we had a conversation with Tim and yes (Caitlan)...

(Caitlan): Who is on line by the say.

Mikey O'Connor: (Caitlan) welcome, there you are - that sort of said look, you know, given all of the other stuff that's going on for registrars right now and we got into sort of a software development release strategy conversation where we said look maybe what we do is rather than dribbling these in one at a time we sort of build a big release of policy that's a bit further out that gives people a little bit more lead time to react and prepare.

And, you know, that's sort of what we tested at the council and we got these nods that said not a bad idea tell us more, you know. So Tim go ahead.

Tim: I'm just going to channel Marika because I know that she will also say there are many in the community that are expecting to see action or I think at least a reasonable explanation for lack of it because I think right now they think it's all staff just not doing anything.
And so I want to be, you know, while I'm more than willing to take the heat I think doing it reasonably, doing it right is better than doing it fast but I do think

that if that's the case we need to be prepared to either communicate it and or recognize that there will be some people that are unhappy.

James Bladel: Yes and as, you know one of the non-contracted parties in the group I, you know, I would be happy to deal a little bit out front on that, take some of the heat so that it's not just staff and contracted parties who are obviously in bed with each other and have been totally cooperative blah, blah, blah.

So, you know, one of the things I would ask you Tim for some help on and (Caitlan) is if you all can frame a little bit of a message. I'm happy to carry that message but I'm thinking I'm not quite aware of all the nuances of that. So it would be nice just to have a little bit of a message to surround that as we go forward.

Empty queue it seems like we had schemed to go forward we might still hit that final report target, which would be cool but I guess in my mind I had already dropped that target.

So if it turns out we can't quite make it I really don't want to push it to hard because I think that this resolves several really complicated issues and if we can do a great job it fixes a lot of the things that IRTP was actually created to address.

And I don't want to have a three week swing in a schedule so we'll give it everything we can but, James go ahead.

James Bladel: So two thoughts on that first off I think even the transcript will back me up I said draft final because I think perhaps we could - I did say that so we can maybe put draft in parentheses in front of the final and I think we're still on target. I hate to sound like a cheerleader here but I think we can still do it.

And secondly I am basing that on one hypothesis that like attendance at early morning or IRTP face-to-face meetings the public comments received have

not necessarily translated into weeks of work and major re-modifications of the initial report into a draft final.

So I am making that other assumption as well but all of those things have asterisks after them.

Mikey O'Connor: I don't know we killed some more time we're up to 20 minutes before the hour. This one hour thing is this like bending me all out of shape it's - is there, you know, we can do the any other business thing, you know.

Volker's, you know, I think we've picked up an action to check and Tim has stepped into the breach nicely on that but we should not lose that. Anything else that people want to bring up right now?

Man: Just to confirm the next meeting.

Mikey O'Connor: Confirm the next meeting time we can do that and Christina just jumped into the queue so we'll go without further ado.

Christina Rodriguez: Okay thanks this is Christina I just had a question I stepped out so maybe you answered this question already but I know we're going to submit the final or what preliminary draft final or whatever we decided the end of December or early January.

Is there any - are we also looking at drafting a draft version of the TDRP itself by the same timeline or just the reports for that same timeline?

Mikey O'Connor: That's a really good question we're back to the reason that especially Christina and I worked and Lars worked so hard on the re-drafting of the TDRP is that the TDRP itself is not very well structured as a policy.

And we do have sort of this endless loop, how close do we - I think this is between you and me Christine.

Christina Rodriguez: Yes I think we can wrap it up in one or two more sessions I mean I can certainly take a stab at just throwing it together and then we can discuss what I put together.

Mikey O'Connor: Yes the reason we stopped is because we didn't want to go much further before we knew which way we were going.

Christina Rodriguez: Right we had lots of registrant related questions and now that we won't have those it should be pretty simple. The hardest part will be the bifurcation right, the creation of the rule separate from the policy that's probably the hardest part and we did most of that already I think.

Mikey O'Connor: Yes and the other thing is that when we extract the registrant from it now we're essentially just rewriting and clarifying the policy and driving some of our recommendations into it we're not creating that whole new mechanism.

Christina Rodriguez: Correct the only thing I think maybe I'm hearing that we're still possibly adding as James was mentioning that maybe, you know, Volker someone was mentioning about this idea about incentivizing registrars.

So if we're going to create something around that but, you know, you can put it in place while they check for that I don't think that's going to be a giant section or anything.

Mikey O'Connor: Yes and I think that then what we can do is let the policy conversation sort of shape that and drive it pretty quickly back into the details.

Christina Rodriguez: So I mean are you saying we should try to...

Mikey O'Connor: Yes let's give it a try because I think it would be good to have that whole package out for the public comment period.

Christina Rodriguez: Probably.

Mikey O'Connor: Yes, yes that's a good thought, James, somebody else in the queue? You were pointing as though there was.

James Bladel: Yes me or you.

Mikey O'Connor: You were pointing - never mind go ahead.

James Bladel: No I was pointing at my green button here but the Mikey mute button.

Mikey O'Connor: You're hurting me now.

((Crosstalk))

James Bladel: So going back to your comment and I think you were starting to take us to the confirmation of next meeting and I think, you know, we've laid out a pretty aggressive schedule so we should discuss that.

I will however point out that I will still be in the air coming back from this meeting with the scheduled time slot of Monday so just keep that in mind.

Mikey O'Connor: Yes this is Mikey I will be back. In the checkmarks give us a checkmark in the Adobe room if you can make a meeting at our regular time next Monday and we'll see and if we have a bunch of green checks then I can run a meeting.

Okay so we have green check from Holly, a virtual green check we've got a bunch of red checks coming in. Not bunch but Lars, James, Bob yes I think it's like (unintelligible).

So let's skip next Monday's meeting and we'll pick it up again - thanks for that James I would have forgotten that one too. Okay cool the second of December.

I'm looking around the room for other stuff to talk about, we could tell jokes I could teach you how to do 33 purple boards. We got almost 20 minutes left, call it a day give ourselves a little bit of a break.

Wonderful, thanks folks this was really fun I love doing these face-to-face they're just bewilderingly complicated for me that's it you can stop the recording we're done and thanks all.

Man: Thanks.

END