
BUENOS AIRES – Identifier Technology Innovation Strategy Panel: Discussion with Panel Chair
Wednesday, November 20, 2013 – 13:00 to 15:00
ICANN – Buenos Aires, Argentina

MIKEY O’CONNOR: Hello all. This is Mikey O’Connor for the transcript. I see a good bunch of good friends and old friends on the Adobe room. 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 roll? No, because you can’t speak this time.

Do you want me to do that stuff, or...? Go around the room? Cool, that’s a good idea. Let me set things up. This is the IRTP PDP Part D Meeting for Wednesday 20th of November 2013. What we’ll do is go around the room and people can identify themselves for the transcript. I’m Mikey O’Connor from the ISPCP. We’ll go this way.

HOLLY RAICHE: Holly Raiche from ALAC.

JAMES BLADEL: James Bladel from GoDaddy.

LARS HOFFMAN: This is Lars from ICANN staff.

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GRAEME BUNTON: Graeme Bunton from Tucows.

SPEAKER: [inaudible 00:04:33] from Key Systems, gNSO councilor.

MARIKA KONINGS: Marika Konings, ICANN staff.

SPEAKER: [inaudible 00:04:56] from the .za central registry. I'm part of the .africa legal and policy team.

MIKEY O'CONNOR: Cool. Welcome. There are two folks in the back... Do you want to join us at the table? There's plenty of space. Some people are here just for electrical power. Some people just want the Wi-Fi.

ERIKA RANDALL: Erika Randall, ICANN staff.

MIKEY O'CONNOR: That's great. As usual we'll take a pause to take a look at the Agenda.

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

MIKEY O'CONNOR: Go ahead. Can people on the phone just clash with each other and announce yourselves to the rest of us?

BARBARA KNIGHT: Barbara Knight is here, representing the Registry Stakeholder Group.

MIKEY O'CONNOR: Thanks Barbara. Is there anybody else on the phone? That's it? Okay. Cool. Thanks for catching me on that. One of the things... I went through the leadership development thing earlier this week and I discovered an 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 put a blindfold on or something. Anyway, next up is any changes to your SOI and a quick look at the Agenda, which are both on the right-hand side of the Adobe screen. We'll take a pause to see if there are any issues with either of those. James has got his hand up. James?

JAMES BLADEL: Good morning. James Bladel from GoDaddy and Co-Chair. I just wanted to not necessarily make a modification to the SOI but more of a declaration that both of your Co-Chairs, Mikey and myself, will be joining the gNSO Council effective of four and a half hours from now. That's not unprecedented – that councilors would also be Chairs of Working

Groups, but it does perhaps create an interesting situation for this time next year, or a little further down the road.

When we've 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. I don't think that any of this is a problem but I want to make sure it's in our minds, that we're thinking about these potentials. They say with conflicts of interest that 90% of it is just perception; that something's happening that's not on the table.

So I wanted to put that out there and certainly remind everyone that it's well within the prerogative of the Working Group membership to ask one or more of their Co-Chairs at any time, for any reason, to step aside, if they're not comfortable with that arrangement. Marika's raising her hand. I think she's going to ask one or both of us to step aside, Mikey.

MARIKA KONINGS:

No, this is just to clarify that the Working Group guidelines actually specifically indicate that Council members are more than welcome to join Working Groups and even chair them. 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:

Certainly not trying to quote chapter and verse of either the gNSO PDP Working Group guidelines or the Council guidelines, but wanted to make sure that we're being as transparent as possible in the interest of full disclosure, and making sure that if there's a situation where someone

feels uncomfortable with an arrangement, that they're 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 see Holly in the queue, but before that we've got a few more people that have just joined the meeting. I want to have you quickly run down the line and introduce yourselves for the transcript, so we know who's here?

ANGIE GRAVES: Angie Graves, BC.

SPEAKER: [inaudible 00:09:42], Register Stakeholder Group.

KRISTENE DORRAIN: Kristine Dorrain, National Arbitration Forum.

BOB MARTIN: Bob Martin, AFRINIC.

TIM COLE: Tim Cole, ICANN.

MIKEY O'CONNOR: I don't know about you but it's always neat to put names and faces together. We've worked together in some cases for years with never meeting each other before. I just love that. Go ahead Holly.

HOLLY RAICHE: Actually just a change. I've stopped being Chair of APRALO and I've joined the Leadership Team for ALAC.

MIKEY O'CONNOR: Congratulations on that. That's always fun. [Vulgar? 00:10:23], go ahead.

SPEAKER: I don't have an update but I'd like to take this opportunity to thank ICANN staff for making this session available at a time when people are actually awake. [applause]

MIKEY O'CONNOR: I'm gratified to note that we have precisely the same level of attendance, no matter what time of day we have it, thus showing exactly how fascinating the work that we do on this Working Group is. Anything else in terms of...? Go ahead Marika.

MARIKA KONINGS: This may be something that... Several of you now are coming onto the Council. As I said, we always struggle in finding time for Working Group meetings, while at the same time we always say policy development is the most important thing we do. But it's really hard to get these kind of slots and not have 20 million other things that are all more important and more interesting opposite it.

Having some kind of push maybe from someone from the Council, to convey it in saying, "It would be great if we could actually have our dedicated slot of time somewhere on the schedule that would be solely dedicated to face-to-face meetings of Working Groups, to make that happen." Maybe it has to sometimes happen a little bit early, but at least get that on the radar screen, that this is really important and a lot of work can get done in this way.

MIKEY O'CONNOR:

The trick there is that we're now in a room with all the people that work on all the Working Groups. So if we schedule them in parallel, we might as well schedule them in parallel all in the same room. Sorry, I'm being facetious. Okay. Anything else in terms of SOI, Agenda, the getting ready stuff? Okay.

I've got a little slide deck that most of us have seen, but I'm going to run through it anyway because James and I went through it with the Council and when I was speaking I was fairly casual in the way I talked it off, and I shouldn't have been, because it turned out that we got into some pretty interesting discussions. 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. This is the story up until now. We are the last. We are the caboose on the train. That's what we like to think of ourselves as. Of a pretty long series of PDPs we started this one in February and we've got four out of six Charter questions done, and I'm not sure that we're fully agreed but we're certainly in a pretty late draft on those. Then we've got one big issue we're still working on, but this is one of those ones where when we pull the string we may find other things attached. I'm not sure we're quite there, but we'll get to that in a second.

Next slide would be good. These are examples of string. These are examples of things that begin to branch outward. One of the big, broad questions that we're going to tackle is the overall structure of the transfer dispute resolution policy. I'm not going to cover all that 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 or change much, especially things that have already been implemented by registrars, because that gets very tricky. We are going to take a look just to make sure that there's integrity there. I think this is really the Agenda for today; that we put together to just structure our conversation and thinking about what we should look at, and there's really three big questions: "What about the transfer dispute resolution policy?"

Really, it's two questions. It's, "What about the transfer dispute resolution policy?" 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 TDRP pile that we've begun to... I think we've made a lot of progress in the last few weeks structuring the questions. I think having that structure helps us have the conversation about how to answer them.

Really I think the goal for today is to see each other face-to-face and welcome [Sumaneta] back, because she has a standing conflict with this meeting and so this is a chance to hear from [Sumaneta], and really just take advantage of the luxury of a face-to-face meeting where we can have a conversation and see each other. As I say, that will be extremely distracting for me, but I'm going to do my best.

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

JAMES BLADEL:

Thanks. Just to recap a little bit of the conversation that occurred over the weekend when we presented this 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 proposing, and all of the potential pitfalls we should be aware of and perhaps try to avoid.

The analogy I used to Mikey is that I don't think our Working Group is going off the road, but it feels as though we're on one of those roads in

Peru 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 for the next few Working Groups. We have to proceed I think very cautiously, because we've always looked at TDRP as, "This is the mechanism that undoes transfers"

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

Maybe GoDaddy could share some data or experience here, but I have had conversations with folks internally who've had some pretty scary stories to tell about business partnerships gone bad, or divorces, or heirs fighting over a will. This is potentially what's on the other side of that chicken truck, if we're not careful in doing this.

I just wanted to put my note out there that we maybe 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's 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 elsewhere, like in a 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. On the rest of this stuff, I really do believe we've either looked at it, analyzed it, 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 could undo the whole recipe, so let's just be very cautious. Thank you.

MIKEY O'CONNOR:

Thanks James. The queue's developing nicely. Kristine, go ahead.

KRISTINE DORRAIN:

Thanks. I wanted to just follow on to what you said, James, because when I brought up this idea – and I don't think it was just me – of as a provider we see these sorts of questions. Those three circumstances you names are the three that we see that also get kicked out of UDRP, and those are the ones that people are constantly saying, "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?"

I'm in agreement with you that I don't know if 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. It might be that we decide that this isn't it and there is no remedy for people who've been screwed over by their web provider, or their web developer, or their business partner, or their ex-spouse. Maybe they are stuck with going to court and maybe there's nothing.

So I just wanted to echo that because I know I've been one of those people who've said, "These are the disputes we see." I just want to make it clear that I see these disputes and I wonder if these belong in this policy, but I also see that they may not.

MIKEY O'CONNOR:

Thanks Kristine. [Sumaneta]?

[SUMANETA]:

I was wondering where the original question came from, because something must have raised the question that TDRP should potentially be open to registrants, so why was that coming up, because that may point to where the real problem is. I agree with what you just said, and it might also help to look at data from big registrars, like GoDaddy or [101? 00:22:31].

I'm not really interested in, "Here's how many cases of disputes have arisen," but how many of them are actually things that are these types of questions, where you really can't make a decision? You aren't really in a position to decide between the two quarreling parties here, which one is right and which one is not right. Neither do I think the registries would be that entity that can really resolve that conflict, and/or someone like you... I don't think this can be solved this way. If we found out where the question came from to begin with, maybe there's something else to it.

SPEAKER:

Just responding to [Sumaneta's] question, the question came from – and Mikey can give the history lesson as well on this – when we did an original review, it was done after the adoption of the policy in 2004. Having written as well the [Asia part of? 00:23:27] where it came from, I think we don't have any hard data. The main reason was that we had some reports that registrants wanted a TDRP to be initiated, but the registrar didn't want to do it for the, for whatever reason it was.

That gave a sense that maybe there's a need to open it up for registrants, so they can decide themselves whether they want to initiate a proceeding without having to wait, or needing the approval of the registrar to do so. I don't think we have any hard data saying, "We received 100 requests from registrants to initiate one," or where they're saying a registrant is not doing it for them.

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

MIKEY O'CONNOR: [Sumaneta], you look like you want to come back. Do you want to?

[SUMANETA]: If this is where it's coming from, I don't know if we can, but the next question that comes to my mind is, is it that the registrars basically don't want to deal with their customer and they want to make it difficult, or is it that the registrar looks at that problem and says to that customer, "You're crazy, I can't resolve it 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"?

Without knowing that you can't really go back to answer you're question, which was, "Is this even the right policy to address this kind of dispute?" I'm just thinking that if these two business partners are quarrelling about something, GoDaddy won't know which one's right. The registry won't want to decide which one's right, they'll just get into

legal trouble. Therefore it's not really a good way to resolve the conflict for anybody.

MIKEY O'CONNOR: Mikey's scrambling for physical space. [Vulkar], go ahead.

[VULKAR]: Actually, I defer my place in the queue to you, because you've been waving longer than I have raised my hand for.

MIKEY O'CONNOR: Sorry about that. Go ahead Holly.

HOLLY RAICHE: I can be incredibly patient... At times. Having chatted with a guy who's a member of ALAC, and who's been involved in the domain business, he gets a lot of complaints of people who've 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 or business gone bad, we shouldn't touch it. That's the chicken... You're basically over the cliff, forget it.

But it's something that's 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." To me the jurisdiction is, "Is the problem within the ICANN remit?" In which case, at least be able to go to the Ombudsman and say, "Have a look at this to see if it's reasonable."

Have a place to go, and then a reason why... Somebody who's got an objective look saying, "No, that's not reasonable," or, "Look, it's between you and your business partner," "It's between you and your wife," "You're bloody incompetent," or something. But it's not an ICANN-related problem. So the fence... Is it something that can be fixed, that's within ICANN's remit? That's the circle I'd draw. If it is within ICANN's remit then we shouldn't be saying, "It's too hard." We ought to be able to fix it somehow.

MIKEY O'CONNOR:

Thanks. On to you, [Vulkar].

[VULKAR]:

First one point to where it came from, that this might not be the right process. 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 is mainly designed for people to complain about process failures, i.e., where the registrars have not followed the correct process and therefore it's a dispute between registrars.

In searching the registrant [inaudible 00:28:25] process, which is not designed to deal with the specific cases, the TDRP is originally designed to make 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 a different solution to the problem of domain names being stolen, that could be within the ICANN remit.

That 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 being brought forward. If then a civil case is not being shown to have been brought 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 a UDRP decision in court within ten days. A similar process could be adopted where a registrar would require to lock a domain name against transfer zone 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, it would 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. But that is not a decision a registrar can take, and I think also for an arbitration panel it's also the wrong decision to make, because these are not clear-cut cases. These are usually ownership dispute cases that should be resolved in court, in my view.

MIKEY O'CONNOR:

I'm going to hijack the queue in front of my Co-Chair to just ask one question. I'm primarily going to ask it of Kristine 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 changing. I'm pretty unfrozen at the moment and curious about some things. I'm going to play my version of history and I want Kristine to verify I've got it right, and then we'll see if there's a parallel there.

My understanding of the UDRP is that essentially it's a more focused court that's smarter about a very narrowly defined issue. Taking a UDRP issue to any old court on the planet would result in really bad court proceedings, because the court would be clueless. So this is an intermediate step on the way, still, to a clueless court, but at least most of the time the DRP would be more well crafted and built with people that have deeper understanding.

The TDRP is starting to not feel quite right, for all the reasons that [Vulkar] rattled off. I'm wondering whether it would be useful to consider setting up something comparable, where registrants, when they have a dispute between themselves, have a clue-full DRP 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 IRTCP.

I think that one of the reasons why we, as a Working Group, are under a little bit of pressure right now, is because we built something in IRTCP, but what we did in that one was say, "A TDRP will work fine for that, so that's what we'll use." What we're discovering now is that it's not so fine, and the question in my mind right now is whether we should build a clue-full court. To Holly's point we shouldn't just throw up our hands and say, "This is too hard."

Or, whether we should just throw up our hands and say, "This is too hard," take it to the clueless courts and be done with it. 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 – it's a divorce, it's business failure, and maybe normal courts would be clue-full, in which case maybe we shouldn't go that way. So that's a long preamble and I'm now throwing the ball into my buddy Kristine's court. I know she'll handle it perfectly.

KRISTINE DORRAIN:

I don't know about that. I'm trying to keep in my head all the points you made. I think you're right about the focus on trademark domain name stuff going on. The other thing that UDRP brings to the table, that sometimes we forget about, is this concept of mutual jurisdiction. One of the things the UDRP did was make it possible for parties who could not normally participate meaningfully in any sort of court process.

It gives them an option that allows them to supersede the bounds of jurisdiction. That's one thing besides the focused court that UDRP brings. The idea of creating a second focused court for these transfer-related disputes, I think it's beneficial because it brings that mutual jurisdiction aspect 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.

You can get a fairly decent trademark opinion on this, at least in the US and Europe, etc., so I think that we need to think about that. So when you throw people to the court system, you leave open this issue of jurisdiction, unless there's some other way to contract around just jurisdiction. You theoretically would possibly have two contracted parties, as far as registrants go, but I don't know.

Once one's lost a domain name, now they're maybe not under contract anymore, so you've got some issues there. So I'm with you in that I'm very unfrozen in my thoughts right now too. I'm with you. I really thought it would just slide right in, I'm seeing it's not sliding right in, and I think it could be useful to think about something different.

The other thing I 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 lawyers, although there are some. It's mostly people who are maybe in the position that [Vulkar's] in, where you're working with a registry, or registrars, I guess. I'm sorry.

It's people who are really familiar with registries and registrars and the processes that ICANN goes through, the negotiations and how this works. 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 transfer agreements, and those sorts of things. So I think it's possible 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. Deepest apologies to James, my Co-Chair, because not only did I jump him in the queue but then I stuck Kristine in there too. Double-whammy. Sorry about that. Go ahead James.

JAMES BLADEL:

It's all right. Thanks Mikey. It's a good problem to have in IRTP where we have so many people that want to weigh in on things, because we haven't always had that situation. I just wanted to go back to some of what [Vulkar] was saying, and even going back to your comment, Holly, and then to maybe put a button on it with Mikey, and then propose some ways we can bring this in for a landing and start to navigate our way out of these rocks.

The first thing is that when we listed all 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 that I don't believe ICANN has the authority in those situations, and we shouldn't be seeking to expand that. Okay, so I think we're all synchronized on that one.

To [Sumaneta's] point, the root cause is – at least as I understand it – 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. Then we have this policy, which is much narrower in its scope and what it's trying to do.

As I think [Vulkar] and Mikey pointed out, it's more of a process policy. It's, "Did you follow the process or didn't you? If you didn't you have to undo the process." It's not equipped to close that gap, in almost all those cases. My thinking is, going back to Mikey's point, I find myself changing my thoughts on this as well and thinking we really waded into some deep waters here, and not that it's hard but that ICANN's a rowboat and we're playing with battleships.

I come back to one of the proposals, and I think it's encapsulated in our second bullet point there; 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. The exemption list would mirror the reason 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 has expired," or, "You're still the registrant," or some other blatantly obvious sorts of things.

There are a lot of reasons why people lose control of domain names. Sometimes their credit card expired. It's not necessarily a dispute. So I keep coming back towards 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 log of intended consequences.

MIKEY O'CONNOR:

Without looking at my screen, the great [carnath? 00:40:36] predicts that [Vulkar's] in the queue.

[VULKAR]:

That was a miracle. Tell me how you did that. Just one more thing that I had a thought rolling around in my head on... Whatever we end up with; a new process, a new policy, a new recommendation, we should bear in mind that the kinds of cases we're talking about here are not necessarily transfer cases. There may be cases where no transfer has ever taken place, the domain still rests with the registrar, no ownership change has taken place.

For example when a domain name is registered in the name of the web host or the programmer who designs the website. 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 [Vulkar]. I'm going to go to Kristine and then what I'll do is put myself in the queue.

KRISTINE DORRAIN:

[Vulkar], that was a great segue to my next point, because we talk a lot about transfer and we sometimes forget that sometimes it's a non-transfer that's an issue. I want to bring this up and I want to try to word this so that confidentiality doesn't get breached. I got a phone call, coincidentally enough, about two weeks ago, from a registrant, who says, "I'm trying, like the dickens, to transfer a pretty large-sized portfolio of domain names away from my registrar. My registrar knows I'm trying to do this and will not allow me to transfer."

Whatever they have to do, I'm sorry, I'm not super up on that, but they wouldn't unlock them or wouldn't provide them with whatever it was. They wouldn't allow them to be transferred out because they were the largest client or the only client or something. Of course, once the domain names go away the registrar's in a pickle. They said, "Can I file a TDRP on this?"

I cracked open the book, I've got the hyper-underlined, highlighted version on my desk and I'm looking and I'm like, "You can try, but that's not one of the itemized things." I said, "I'd love to take your money because this is a bazillion domain names, but I wouldn't recommend it, because it doesn't include 'your registrar isn't responding to you'. It's not a knack. You didn't get to a knack. It's your own registrar refusing."

So I don't know. I don't know too much about what the answer is in that situation, but I just want to say that when we do start looking more deeply at the policy itself, I would like to look at the reasons for bringing a dispute, and would there be other reasons that have arisen that should be included in the master lists of types of disputes that could be brought? I don't know. You can tell me I'm crazy but I thought I'd throw that out there as a little anecdote.

MIKEY O'CONNOR:

Thanks Kristine. I'm behind James's back. He's jumped in front of me.

JAMES BLADEL:

Just that certainly in that situation that's a failure to execute the policy in the first place, which is a compliance issue, not a TDRP issue.

KRISTINE DORRAIN:

Yes, that's where I told them to go. I said, "Go call Compliance, here's Viktor'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 go GoDaddy. [laughter] Whoever they are. I've got two other registrars over here ready to throw something at me.

MIKEY O'CONNOR: Thank you. 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. If we said that we're taking apart these threads, that may be the way past that truck full of chickens. That's a pretty vivid picture in my mind, James, thank you for that earworm.

I'm leaning more and more strongly towards [Vulkar's] point of view on the traditional registrar-to-registrar TDRP problem, with maybe just a dash of James's 'put a little pressure on registrars to actually do it' scheme. When we've talked about this before Vulkar's immediately appeared in the queue saying, "Watch out, because there are times... If we give registrars completely open access to this, there are going to be times when the policy makes us do stupid things."

I think the way to avoid doing stupid things is to keep this policy narrower rather than broader. I think we hid in the stupid territory when we broaden the policy. I think where we got into trouble – and we're 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.

So we may want to think about backing out of that driveway, somehow. I don't exactly know the mechanics. Pivoting and then going down the lines that Kristine and I were talking about – a different gizmo to handle the registrant type disputes. I want to try that idea out to see if that's a path past those dang chickens.

If that is then I think we've got some work to do, but I think the work is fairly straightforward. If that's troubling to people, this would be a good time to work this out; partly because it's face-to-face but also because it's a little bit of a longer meeting than normal, so we've got a little bit more flexibility.

Let me recap that in fewer words. Refocus the IRTP and its associated TDRP on transfer disputes between registrars, its original purpose. Remove the transfer disputes between registrants from this policy. Handle that for a miracle, and then in order to get the original reason why... For the question about registrants to this policy answered, I tend to agree this is a change.

I tend to agree that we don't want to give registrants access to this policy, but rather put a little bit more pressure on the registrars to grant the requests, even in instances where they think the registrant is crazy. The one difficulty with that is who pays? Okay, so we've got Holly, [Vulkar] and me, accidentally, in the queue. Who went first? Holly first.

HOLLY RAICHE:

Ladies before gentlemen. If you write registrants out of the policy but write in a requirement that the dispute actually be taken, then from a registrant's 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’ve 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 a 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.” Then that becomes the mechanism of a registrant having their issue dealt with, if it’s a legitimate issue. Is that a correct statement?

MIKEY O’CONNOR: Close enough for me. Yes. [Vulkar], go ahead.

[VULKAR]: Totally going off-topic with the current discussion, but something that’s also popped into my mind. When we started this endeavor we said that this was the IRTP issue to end all IRTPs, to mop up all remaining issues. 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, and that’s some registrars charging outrageous fees for allowing a transfer out – should we maybe also look at that in the course of the IRTP, before...?

MIKEY O’CONNOR: I don’t think so. That’s not allowed under the current policy, that’s just an issue with Compliance.

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- [VULKAR]: Actually, if you read the FAQ on the ICANN page, it says there that 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 row first, but yes, wait for them to affirmatively say they can’t do anything before...
- [VULKAR]: On the Agenda, so we have that...
- MIKEY O’CONNOR: Definitely a good one for the Agenda.
- [VULKAR]: We should pause that until we have the other problem solved, but I don’t want us to clear out the IRTP without at least having looked at that.
- MIKEY O’CONNOR: Kristine?
- KRISTINE DORRAIN: The only thing I wanted to address was Holly’s point, that the complaints to Compliance, where the registrar is not going to follow through, I

would only caution – maybe we’re putting the cart out of the horse – that what we found was that VeriSign had almost 100 other complaints that they’ve actually handled, so if you put in the policy that now your average registrant can bring a, “boohoo, someone didn’t do what I wanted,” we have to be concerned that this is going to flood ICANN Compliance with frivolous claims.

That’s the only thing I want to throw out there. I don’t think it’s necessarily a bad idea, I think we just have to have some... Yes, ICANN Compliance has a hard enough time staying on top of legitimate UDRP-related issues and those sorts of things, so...

MIKEY O’CONNOR:

Yes, and before I head to Tim, I think that’s one of the reasons that if we 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. Yes, I fully agree. Tim?

TIM COLE:

Thanks. I actually lowered by hand but only because I don’t want to be perceived as giving an official ICANN position on the issue that [Vulkar] raised. There are two 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 a future owed fee. If the fee is for a transfer and the transfer has yet to take place, then they’re holding up a

transfer for a 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. Again, I'm not giving you a formal interpretation, but I believe that's how it's been viewed at times in the past.

MIKEY O'CONNOR:

Thanks Tim. Especially since it was given entirely as a personal opinion, and thus you are fully liable for any consequences. [laughter] Sorry, I couldn't resist. Okay, the queue is clear. When do we end, do we end at 11:30? Noon? Holy mackerel. Well, 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, what do you think?

JAMES BLADEL:

I'm not lying Lars, that's where I was going. If we're in the last half hour, why not spend 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 we're just having that needs to be fleshed out, but a number of the other Charter questions I think are fairly close to being nailed down and don't have many dependencies with what we're talking about with TDRP.

So perhaps, since we're going to go home and then a lot of the Americans are going to stuff themselves with turkey and then we're going to start to look at Christmas shopping and things like that, I think maybe since we have targeted our initial report for early December, I wonder if that's still on the cards? I wanted to ask this group if we

believe 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. That 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 sufficient time to conduct a 45-day public comment response period in advance of the Singapore meeting. Then we can incorporate that and spend February-ish incorporating that and come to Singapore with basically a draft final.

That would be our new calendar. That would require us to really – after we have our nice, big meal – really sink our teeth into this TDRP issue. So save room. Don't have two slices of pie. Save room for this. You have Thanksgiving in Australia too, right, just not this time of year? No? Canada has it but they... You have Christmas on the beach, I thought you had turkey and maybe deep-fried it, no? Okay. Go ahead.

MIKEY O'CONNOR:

Let me regain control of this before we turn into a culinary debating society.

BOB MARTIN:

Sorry James, I had my hand up in the queue and I didn't know whether you saw me. This is Bob Martin. You sound like you did what I was going to propose, which is a work-back from if we are targeting Singapore. What would be the drop-dead date for the initial report would be December or January, or...?

MIKEY O'CONNOR: 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 James, Lars and I will take a look at that and back into the dates we need to hit.

BOB MARTIN: My suggestion might be that we not wait until the very last possible time to do it, but we give ourselves a little bit of slack-space to reach that. At least we know what the drop-dead date is and we can work around that.

MIKEY O'CONNOR: I think that's right. I think if this emerging scheme that's coming out today works, unless we hit another puzzler, that that's pretty doable, because the rest of the report's in pretty good shape. Barring surprises I think dropping that into the right slots will work. I usually have a wall of computer in front of me and I can put a bunch of stuff up, but I've got nothing, so...

LARS HOFFMAN: Very quickly, I just looked at the calendar and the submission date. If we wanted to submit an official preliminary final report, we're looking at early January really to get the initial report out, in order to get the 45 days, rework something in and republish. I believe the meeting is late March. Early December, obviously, is not doable, but it's still a very tight deadline.

MIKEY O'CONNOR: I think we could still give it a try. I think we're right at the point where we've come as a group to pretty deep thinking and pretty deep understanding, and let's see if we can crank out a draft. 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 it would be really good to move this along. Holly?

HOLLY RAICHE: Just a question: we've got IRTP Report C, which has got registrants in. 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 can 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 the IRTP C, which has been approved by the Council and Board, it's just sitting there on the deck waiting for it to roll out into production.

I think we identified that if you're changing something that's been approved but not implemented yet, maybe you ought to hold off and change it all at once. I think heads were nodding around the table that that seemed to be a sensible approach, rather than change something and change it back. I think this would definitely fall into that category, Holly, if we said, "We glossed over something in IRTP C, that as we

examined it in the context of TDRP we want to go back and unlink those two issues.”

MIKEY O’CONNOR: Yes, I think that’s right. Bob, go ahead.

BOB MARTIN: James, if we take that approach then the time limited, or auto-renew FOA, those things do not go into effect then, because the policy hasn’t [asked them? 01:03:03], or do they go into effect on their own without any further action on our part?

JAMES BLADEL: No, those would all be held up as well.

MIKEY O’CONNOR: James and I are on the Implementation Review Team and I can’t remember who else is, but we had a conversation with Tim and... Caitlin... Caitlin, welcome, there you are. Our conversation said, “Look, given all the other stuff that’s going on for registrars right now...” and we got into a software development release strategy conversation.

We said, “Look, maybe what we do is, rather than dribbling these in one at a time, we 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.” That’s what we tested at the Council and we got these nods that said, “Not a bad idea, tell us more.” Tim, go ahead.

TIM COLE:

I'm going to try and channel Marika, because I know that she will also say there are many in the community that are expecting to see action, or at least a reasonable explanation for lack of it, because I think right now they think it's all staff just not doing anything. While I'm more than willing to take the heat, I think doing it right is better than doing it fast, but I do think that if that's the case then we need to be prepared to either communicate it, and/or recognize that there will be some people that are unhappy.

MIKEY O'CONNOR:

Yes, and as one of the non-contracted parties in the group, I'd be happy to be a little bit out-front on that and 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 co-opted, blah blah blah. One of the things I'd ask you, Tim, for some help on, and Caitlin, is if you all can frame a little bit of a message then I'm happy to carry that message.

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 have a scheme 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 too hard.

I think that this resolves several really complicated issues, and if we can do a great job then it fixes a lot of the things that IRTP was actually created to address. I don't want to have a three-week swing in a schedule jeopardize that. So we'll give it everything we can, but... James, go ahead.

JAMES BLADEL: Two thoughts on that are that, first off, I think... The transcript will back me up. I said 'draft final', because I think... I did say that. So we can maybe put drafted 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.

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. Thanks.

MIKEY O'CONNOR: Right. I don't know... We've killed some more time. That was good, we're up to 20 minutes before the hour. This one-hour thing is bending me all out of shape. We can do the Any Other Business thing? I think we've picked up an action to check, and Tim has stepped into the bridge nicely on that, but we should not lose that. Anything else that people want to bring up right now?

LARS HOFFMAN: Just to confirm the next meeting?

MIKEY O'CONNOR: Confirm the next meeting time? We can do that. Kristine just jumped into the queue so we'll go... Without further ado...

KRISTINE DORRAIN: Thanks. I just had a question... I stepped out so maybe you've answered this question already. I know we're going to submit the preliminary, draft final or whatever we decided, at the end of December, 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 Report by that same timeline?

MIKEY O'CONNOR: That's a really good question. We're back to... the reason that Kristine and I, and Lars, worked so hard on the redrafting of the TDRP is that the TDRP itself is not very well structured as a policy. We do have this sort of endless loop. How close do we...? I think this is between you and me, Kristine.

KRISTINE DORRAIN: Yes. I think we can wrap it up in one or two more sessions. I can certainly take a stab at throwing it together and then we can discuss what I've put together tomorrow?

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.

KRISTINE DORRAIN: 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 rules separate from the policy? That's probably the hardest part, and we did most of that already, I think.

MIKEY O'CONNOR: 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.

KRISTINE DORRAIN: Correct. The only thing I think maybe I'm hearing that we're still possibly adding, as James or [Vulkar] was mentioning... Someone was mentioning about this idea of incentivizing registrars. If we're going to create something around that... You can put in placeholder text for that. I don't think that's going to be a giant section or anything.

MIKEY O'CONNOR: I think then what we can do is let the policy conversation shape that and drive it pretty quickly back into the detail.

KRISTINE DORRAIN: I'm hearing you say we should try to draft...

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.

KRISTINE DORRAIN: Probably.

MIKEY O’CONNOR: Yes. That’s a good thought. James, is there somebody else in the queue? You were pointing as though there was?

JAMES BLADEL: Yes, me. I was pointing at my green button here, the Mikey-mute button. Going back to your comment, I think you were starting to take us to the confirmation of the next meeting? I think we’ve laid out a pretty aggressive schedule, so we should discuss that. I will however point out that I’ll still be in the air, coming back from this meeting, on the regularly scheduled timeslot of Monday. Just keep that in mind.

MIKEY O’CONNOR: 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 if there are a bunch of green checks. If so, I can run a meeting. Okay, we have a virtual green check from Holly. We’ve got a bunch of red checks coming in. Not a bunch but Lars and... James, Bob... Yes, it’s looking like a no, so let’s skip next Monday’s meeting and we’ll pick it up again in a week.

Thanks for that James, I would have forgotten that one too. Okay. 2nd of December? Cool. I’m looking around the room for other stuff to talk about. We could tell jokes? I could teach you how to 33 purple birds? We’ve got almost 20 minutes left. Shall we call it a day and give

ourselves a little bit of a break? Wonderful. Thanks folks, this was really fun. I love doing these face-to-faces. They're just bewilderingly complicated for me. That's it. You can stop the recording? We're done. Thanks all.

[END OF TRANSCRIPT]