

**ICANN
Transcription
IRTP Part D Working Group meeting
Monday 09 June 2014 at 15:00 UTC**

Note: The following is the output of transcribing from an audio recording of IRTP Part D Working Group call on the Monday 09 June 2014 at 15:00 UTC. 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. The audio is also available at: <http://audio.icann.org/gnso/gnso-irtp-d-201400609-en.mp3>

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

Attendees:

Barbara Knight – RySG
James Bladel - RrSG
Kristine Dorrian – National Arbitration Forum
Graeme Bunton – RrSG
Angie Graves – BC
Holly Raiche – ALAC
Bob Mountain – RrSG
Rob Golding - RrSG

Apologies:

Paul Diaz – RySG

ICANN staff:

Amy Bivins
Lars Hoffmann
Berry Cobb
Steve Chan
Terri Agnew

Coordinator: Your recordings have been started.

Terri Agnew: Thank you. Good morning, good afternoon, good evening. This is the IRTP Part D Working Group call on the 9th of June, 2014.

On the call today we have Holly Raiche, Barbara Knight, Graeme Bunton, James Bladel, Bob Mountain and Kristine Dorrain. We have apologies from

Paul Diaz. From staff we have Lars Hoffman, Berry Cobb, Steve Chan, Amy Bivens and myself, Terri Agnew.

I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much and back over to you, James.

James Bladel: Thank you, Terri. And welcome, everyone, to the IRTP-D Working Group call for June 9. We have two meetings out from the start of ICANN 50 in London. And we have quite a bit to do and unfortunately, as we were discussing prior to the recordings starting, and I may have to drop this particular call.

So with that said, if anyone has any updates to their SOI please indicate so at this time. Seeing none, does anyone have any comments or edits to our draft agenda which appears in the right hand column of the Adobe chat room?

Okay. With that what I'd like to do at least for the first part of this call is dive into the definitions and wrap those up and put a button on these and call them done. I think that we have a couple of comments here so thank you, Holly, for that.

We have, I believe, does it change to green? Yes, if you scroll down to the second page you can see some green text that was added by ICANN staff and I believe Lars, this was coming from ICANN Legal staff, correct?

Lars Hoffman: Yeah, well it came - it came from me and then ICANN Legal has (unintelligible).

James Bladel: Perfect, thank you okay so thanks for that clarification. So let's go through the highlights here. Not every definition was touched and not all of them, even those that were touched were not necessarily substantial, but we can go through them quickly and just polish them off and call them done.

So and, Lars, just for the structure of the document the staff proposals actually are parallel or alongside the other definitions, correct?

Lars Hoffman: Yeah, James, thank you. This is Lars. Yeah, what I tried to do is following - I listened to the recording again from last week's call and tried to spend some time thinking about the whole conundrum that we have with gaining registrar, losing registrar, registrar of record and so and so forth and then complainant and respondent to.

And I think Kristine suggested, you know, we should have in the TDRP, for example, only complainant and respondent. And then there was the question originally to whether complainant contains the registrar of record or not. And I tried to think that through a little bit.

And so I only worked on those five, if you want, controversial, in inverted commas, terms. And so I pasted them after...

James Bladel: Okay.

Lars Hoffman: ...after the main bits. And so they're, I mean, they're based on obviously what the group came up with first but they're slightly altered and shortened in part. And as I said Legal thinks it will make sense.

James Bladel: Okay. And so to be clear you're proposing the language in green would then supplant the other definition. They're not in-line edits, they are just alternative definitions?

Lars Hoffman: Yeah, exactly. So what I did is, you know, if the group doesn't want to go with the suggestion that group would forward that's absolutely fine and then, you know, we go back to the red and work on that.

And that's why I didn't do an in-line correction because I wanted to - because some of them are slightly different and so I thought it'd be easier to kind of

maybe read through the green ones and think what you think of it or compare it to the red. I can also, if you want, align them next to one another and upload another document in the background if you wanted to.

James Bladel: I think we can scroll here. It's not too terrible. Let's just dive right in here and look at primarily focusing on these definitions and how they differ from the ones that we covered last week. I think we can get through them without too much difficulty.

So the first one is registrar of record; the staff proposal is the registrar of record - I'm sorry, I should mention, I'm on the top of Page 2 for those playing along at home.

The registrar of record is the registrar who sponsors a domain at the registry. The previous was the registrar sponsoring a domain name at the registry at the time when a request for transfer of sponsorship is received.

I think this - the staff proposal is less limiting so I think that's fine. Certainly would open any comments or concerns from the group. I think that we should, however, note registrar who sponsors a domain name as opposed to domain, at the registry. I think just maybe adding that clarification. And I got a green mark from Lars. I got two hands up. Bob, do you mind if we defer to staff and have Lars go with this one first and then maybe he can clear this up?

Bob Mountain: Yeah, this is Bob. I will gladly defer to staff.

James Bladel: Thanks. Lars, go ahead.

Lars Hoffman: Thanks, James. This is Lars. Yeah, I didn't - I should have mentioned this before. And so the purpose also of these definitions or the idea that I had behind it is that in the IRTP we only speak, when the process is concerned -

the process described only of losing or gaining registrant because the registrar of record being, if you want, a static situation.

And so once the IRTP is initiated then we switch to either gaining or a losing registrant. These are the two people that are involved. And we take the registrar of record out of the language, out of the IRTP when the process is described.

And the same goes for complainant and respondent, I mean, that's the idea the group had too that, you know, all these different terms than are in the policy are all taken out and we only talk about complainant and respondent so just to bear that in mind when you go through this. Thanks.

James Bladel: Okay, thank you for that clarification. And I think I agree that we're trying to collapse these definitions into as few as terms as possible but that may not always be possible. Bob, you're up.

Bob Mountain: Yeah, thanks James. This is Bob. Yeah, I guess the only question I had was sponsors, is that the appropriate - it sounds like it is, I wasn't too familiar with that term. You know, it sounds promotional in nature so I think if that's but if that's how this application, I mean, I'm okay with it but I just wanted to throw that out there.

James Bladel: Thanks Bob. I'll defer to staff on this but I think it is because I've heard reference to - registries will talk about which registrar is sponsoring a domain name or sponsorship of a domain name so, you know, I guess the other term that we use sometimes is under management so I don't know if, you know, if there's a preference here or if we would prefer about one - the registrar who manages the domain at the registry. I imagine the registries would assert that they manage all the registries - the names.

But, you know, I guess I would be looking for staff to maybe weigh in on this. I'm okay with sponsor, I don't think it is problematic but if we think it's unclear or could be made to be more specific I'm open to that as well.

Lars Hoffman: James if I can quickly jump in there?

James Bladel: Yeah.

Lars Hoffman: Yeah, just to say I'm not sure about sponsoring - I took that from the original definition that the group came up with and I used the same verb. But I can check, I mean, maybe Barbara knows the answer but otherwise I can check with Legal too.

James Bladel: Thanks, Lars. And it just so happens that Barbara was next in the queue so maybe, Barbara, if we could ask you to respond to that term before diving into your question?

Barbara Knight: Sure James. This is Barbara for the transcript. So a sponsorship is something that, you know, historically I think has been in the documentation. And we've not had any issues with it and it looks like Kristine is indicating that it's never been a point of non-clarity in the past for them as well. So I'm fine with keeping sponsorship in there.

Relative to my comment, when I look at the top of this and when it says definitions for the Inter Registrar Transfer Policy, you know, I almost think that's it would make sense to have the ICANN staff recommendations of the registrar of record, the gaining registrar and the losing registrar as definitions within that document.

But I do think that perhaps the definitions for the complaint, the respondent and the complaint should then be long as additional definitions within the Transfer Dispute Resolution Policy.

James Bladel: Okay thank you, Barbara, I think that's a good point is that those particular definitions don't make any sense in the IRTP unless you view them through the lens of the TDRP so that there should be a subset of definitions specific to that procedure.

Barbara Knight: Right, and if I could just add on to this? Barbara again. You know, to the extent that comment you know, we put something in there that comment you know, these are definitions that, you know, if something is not defined in this - in the TDRP then the definitions that are defined in the IRTP would govern, if you will.

James Bladel: Thank you, that makes sense.

((Crosstalk))

Barbara Knight: Yeah, a whole new set of full definitions in the TDRP.

James Bladel: Okay, that makes sense. Lars.

Lars Hoffman: Thank you James. This is Lars for the record. Yes, I completely agree with what Barbara is just saying. In fact I think that's the way forward because the IRTP doesn't talk about a complainant and respondent.

And we actually tried, on a side note, with Berry as well when we were on the Legal call common to push them towards may be coming up with a - or we tried anyway to have a, you know, a global definition of registrar. You know, the group last week, you know, we found several different definitions through our various policies but Legal is very reluctant to kind of agree or come up with what the global definition across all policies and across all agreements for this term because in the different policies they have slightly different responsibilities.

And so they suggest that at this point we proceed with the definitions for the specific policy. And so yes, absolutely, complainant and respondent should be in the TDRP definitions and the various registrars in the IRTP. Thanks.

James Bladel: Thanks Lars. Barbara, you're up next unless that's an old hand?

Barbara Knight: Thank you, James. No, it's not an old hand. It's actually I neglected to also comment on a comment that I inserted into my version which is just relating to the reference to a (nac).

I think those of us who are in the industry probably know what that is but what I'm wondering is if it may make sense since, you know, registrants for instance could be also reading these policies maybe we should refer to at - instead of a (nac) a denial of a transfer request. Because I think that may be a little bit clearer to those who aren't in the industry perhaps.

James Bladel: Thank you, Barbara. That's a good point. Lars, can you capture that that we need to put (nac) - maybe just a separate definition, (nac) is a denial of a transfer request by the losing registrar. Thanks. Okay, Berry.

Berry Cobb: Thank you James. This is Berry for the record. Just wanted to carry on to what Lars was saying. Definitely in terms of these definitions the scope of what we're defining here will only be in reference to this policy for what we're doing now.

But just to add some clarity, I do have an assignment where I'm going to at least create an inventory of where all of these terms are - more importantly these roles are being used in which agreements and how they're being used.

And at the very least there some sort of reference when we are doing this policy work or future policy work and how these terms, especially if they're used similarly across other agreements and/or policies so that we try to develop some consistency and of course minimize the creation of new terms

out of the air when we should try to leverage what already exists. So thank you.

James Bladel: Thanks, Berry. I think that is an excellent effort and a worthwhile, you know, worthwhile project for staff because not only create new terms where none are necessary and creating new acronyms which a lot of folks have commented is a barrier to this industry but also creating conflicts.

If you reuse a definition in multiple places and you're not precisely copying it from one policy to the other you could inadvertently introduce conflicts and this could lead to confusion down the road. So I think that's an excellent path for staff to follow. The inventory of course - if course it would be. It would be an acronym of acronyms so.

Okay so I think we've got some I think excellent contributions from Barbara, from Berry, from Lars, and some notes there about where these definitions fit in the vast scheme of things and the definition of (nac) and then the caution against creating new definitions where none are needed or duplication of existing definitions.

Okay so then let's look at the next - I'm sorry, Lars, were we on losing registrar then?

Lars Hoffman: Yes that is correct.

James Bladel: Okay. So losing registrar, the registrar who is currently - and I'm reading the staff proposal first again. The losing registrar, registrar who is currently the registrar of record and received a request for transfer of a domain name; as contrasted with the previous definition, losing registrar, the registrar of record or the registrar previous to an alleged invalid transfer.

I think the staff clean up here importantly is agnostic of any sort of dispute or complaint that would arise from TDRP or otherwise and is just instead

offering the generic term for losing registrar. Recognizing that it may at some point the losing registrar may become a claimant to a dispute and then that other part of the definition would come into play. But for the most part I think that the staff proposal is more generic. Any comments?

We have a clear queue so we'll move on then to gaining registrar. Gaining registrar as staff proposed definition, the registrar who seeks to become the registrar of record by submitting a transfer request.

So my only comment here, Lars, would be that we should mirror the language as much as possible from the previous definition. So we should say, who seeks to become the registrar of record by submitting a transfer request or a request for transfer of a domain name so that it matches the definition above it. And that's just me being a little OCD there.

We have a queue popping up here. Kristine, you're up first.

Kristine Dorrain: Hi, this is Kristine from National Arbitration Forum. And my brain is processing slowly this morning so I'm very sorry, I'm going to back up to losing registrar if that's okay?

I see a problem with the definition because it says the registrar who is currently the registrar of record and received a request for a transfer. But the losing registrar as used in the TDRP is also a registrar who is not currently the registrar of record who has somehow lost the domain name and they are trying to get it back. So that would mean that they're not actually the registrar of record.

Unless we're talking about that person is now the gaining registrar because they're trying to get back. Which is the whole point of why I don't like talking about losing and gaining registrars because it's, you know, once the domain name is lost does that party, does that registrar now become the gaining registrar?

So that's my confusion around this and that's I know one of the things that panels have as well.

James Bladel: Thanks, Kristine. And I think you've touched on the heart of the problem that we were having with the first definition which is the complainant or claimant. And I think that the proposal from staff, and I'm repeating I think what Lars - but I think Lars is explaining, but I may be missing it so I'll jump to him next.

But, is that we create the generic description of losing registrar first and then when we define claimant for the TDRP for dispute we say a claimant could be a gaining registrar, could be a losing registrar, could be a previous registrar. You know, and then we kind of broaden it from there as opposed to trying to shoehorn too much into the losing registrar term which is going to govern all of the transfers, even those that aren't subject to dispute.

So, Lars, I don't know if I'm on the right track here with what we're trying to do that we're trying to start off with a smaller unit or chunk of a concept and then build on that when we define claimant. Does that...

((Crosstalk))

Kristine Dorrain: This is Kristine again. But my question is is then does that not become contradictory because, I mean, I understand what you're trying to do but when you read all the definitions together you've now limited the concept of a losing registrar to the current registrar of record.

And now when my panel gets the case they're going to say - I mean they'll understand the losing registrar is the complainant, that's fine. But then they'll say but wait a second, the losing registrar is supposed to be currently the registrar of record. In this case they're not currently the registrar of record because the domain name was taken from them.

So they're going to be confused by that definition unless we now call that person the gaining registrar. I mean, so I guess I understand in theory what you're trying to do.

James Bladel: I see the point. Okay, so my recommendation is - let me see if I can fix this but otherwise I'll go to Lars. It's the registrar who was the registrar of record when it received a request for transfer of the sponsorship of the domain name, something like - something along those lines.

((Crosstalk))

Kristine Dorrain: Yes, I with you. I'm not quite sure how to make it right but, yeah. And it is currently that's the problem, yeah.

James Bladel: So we would see who - the registrar who was. And that would cover not just the immediate transfer but in the case of multiple hops we could also - so I'll see - maybe Lars is going to rescue us here Kristine. Lars, go ahead.

Lars Hoffman: Thanks James. I'm not sure I'm going to rescue you, I might make it worse. So I've obviously been thinking I mean, you know, I understand exactly where Kristine comes from.

The idea is that - and I don't know if it's feasible but the idea is that in the IRTP there is no complainant, right, it just describes the process. There are two people that are involved and one is at the beginning of the process, one is the registrar of record; and at the end of the process somebody else wants to be the registrar of record.

And so if then the process is not followed correctly we have a TDRP if conditions aren't met, and so forth. And then we have two other different people who are dealing with are the complainant and the respondent.

And so the idea would be that the IRTP would only speak to the terms, losing and gaining registrar, describing the process of moving a domain from one registrar to the other.

And the TDRP would have a slightly different subset of definitions, namely these two, complaints and respondents. And these are the only two people that are really talked about. And so in this case a complainant can be under the previous policy, under the IRTP, a losing registrar. So the one who before being started was holding the domain - was sponsoring the domain with registrar of name or it can also be the gaining registrar.

And that was the idea. I'm not saying that that makes it right the way it is but that was the thinking behind it and maybe it doesn't work but I thought I'd put it out there.

James Bladel: So thank you, Lars...

((Crosstalk))

James Bladel: ...that's not incompatible with what Kristine and I were talking which the problem is it is currently. Kristine, I know Bob's been waiting...

Lars Hoffman: Completely agree. Completely agree, absolutely.

((Crosstalk))

James Bladel: But, Kristine, did you want to add more on that before we go to Bob?

Kristine Dorrain: Yeah, I just wanted to say I think, Lars, you filled in the missing language because you said the registrar who is currently - or most recently was - which most recently was the registrar of record which doesn't really satisfy the multiple hops but which is kind of the point that James and I were just

discussing which is do we stick with the losing registrar as the current registrar of record?

And the - and then once the domain name is, quote, unquote, stolen away or whatever, then now that losing - who is formerly the losing registrar now becomes the would-be gaining registrar because they want the domain name back. I mean, in that case you could almost keep these definitions. But maybe Bob is going to add something else that I haven't thought of yet.

James Bladel: Okay well let's go with Bob then. Bob, can you rescue us?

Bob Mountain: Yeah, I have trouble rescuing myself so never mind the crew of others. So but anyway this is Bob. I'm actually (unintelligible) to gaining registrar so if we need to bring losing registrar in for a landing I will hold off and jump in when we're ready to advance.

James Bladel: Okay thanks, Bob. Just leave your hand up and we'll make sure you're top of the queue when we put this one to bed. Kristine, I liked the idea - and I think you've hit on a very important part here which is currently - so I like the idea of changing that if we can smooth out the language of - oh and I see some draft language from Lars in the chat so I'll read that out.

How about the losing registrar is the registrar who is the registrar of record at the time a request for transfer of a domain name is submitted? I think so, I think that's closer. I still would like to try and get past tense in there because I think that "is", you know, versus "was" is an important distinction here because if the transfer has already occurred then it would - yeah, so I think Kristine is responding to that point in the chat as well.

Why not just switch out your proposed language, Lars, with - switch out the is to the was and I think we got it. Any thoughts here? I got a green from Lars on that one. Kristine, does that address your concern if we took Lars's language and we swapped the "is" for the "was"?

Kristine Dorrain: Okay so, yeah, that handles the most recent hop. What if there's multiple hops?

James Bladel: Well I think in that particular case it still works. And let me see if I can explain. Because if you say I am disputing the transfer - the transfer that is under dispute that the losing registrar would have been the registrar of record, when that disputed transfer request was submitted even if other transfer requests were processed subsequent to that. So I...

((Crosstalk))

Kristine Dorrain: Okay so maybe - yeah, okay. Yeah, okay so what if - yeah, okay so what if you change that and you then you added a word that I like which is referencing the disputed transfer. So if you have multiple hops you've got one primary transfer that's the subject of dispute, right?

James Bladel: Correct. And I think...

((Crosstalk))

Kristine Dorrain: So maybe...

James Bladel: Go ahead.

Kristine Dorrain: So maybe we're talking about this registrar who is or was the registrar of record at the time the disputed request for transfer or disputed transfer occurred.

James Bladel: I think that's perfect. However, I think going back to Lars's point, I think we should capture that in the definition for claimant, not in the definition for losing registrar. But you're saying that that's going to confuse panelists?

Kristine Dorrain: Well just because we're - it seems like the - because the panels are going to look for the sort of cross - are the definitions going to be compatible with one another?

And they're going to - and what happened - and this is what currently happens, I'm doing this now because when I talk to panelists who have TDRP cases I will tell you we spend most of our time discussing the definition of losing registrar and gaining registrar. They've got the whole like legal part down, it's the - like the terms that really confuse them.

So trying to make it clear the losing registrar is not only the most recent registrar of record or the current registrar of record but might be one farther back in the hops, it has to do with the particular - the dispute over a particular transfer. So I want to just make it as clear as possible. I'm not hearing anything, did I just get deleted?

James Bladel: I'm sorry, I'm sorry, I was talking - I had a wonderful soliloquy there into the mute button so...

((Crosstalk))

Kristine Dorrain: Can we hear it now?

James Bladel: No well of course now it will just be an abbreviation. Let's put a place mark here. I think that we've got some working language. Let's go through the rest of these. We'll probably reopen this when we get to complainant. I can understand the desire to both - the competing desires, I think, sometimes to keep these as, you know, simple as possible but also make them as clear as possible and to cover all possible contingencies.

So let's keep this in mind when we come to complainant or claimant because I think that's coming up next and I think we will definitely, you know, we'll smack our heads into this again at that point.

So let's move then to the next one, gaining registrar. And, Bob, I know you had your hand up and then you put your hand down but, you know, I didn't want to dissuade you from chiming in here even though we've had a little bit more time than we thought on losing registrar.

Bob Mountain: No, not at all. No, I think I've - upon further review I think I'm splitting hairs so I sort of talked myself out of my question so we're good to go.

James Bladel: Okay, Bob. Thanks. Fair enough. And certainly don't feel like the door's closed if you want to jump back in a little bit later. Did anyone else have any other thoughts on gaining registrar which is - and just to review it's the registrar who seeks to become the registrar of record by submitting a transfer request.

And my only request to staff was to mirror the language above so whatever we land on with what losing registrar it looks very similar down below with gaining registrar.

Empty queue so we'll move then to I think the last one. And this is the big one, right, Lars? Is this the last one? Yeah. So this one is claimant. They've changed complainant to claimant. And that is - and I'll just go through here, the party bringing a complaint under this policy. And this policy at this point is the TDRP I believe, not the - not just the IRTP.

A complainant, or claimant, may be either a losing registrar in the case of an alleged fraudulent transfer or gaining registrar, in the case of an improper (nac), under this policy.

So here's where I think we've got a couple of issues. First off Kristine is noting in the chat that she prefers the term "complainant" rather than "claimant." I tend to agree. And I think that's a little more consistent as well.

But here's where I think we can address Kristine's concern that losing registrar - we need to clarify that losing registrar at the time the losing registrar involved in the disputed transfer or gaining registrar in the case of an improper (nac)/denial of transfer, who else could be the claimant? It's really just those two parties. Correct?

I'm surprised, I don't see any hands here. There's Lars, go ahead.

Lars Hoffman: Just to say that because the group actually discussed this before. I mean, I pointed this out to Legal and they could not think of a scenario where this wasn't true. And when you the respondent, in fact, I added to that the respondent is the registrar of record (unintelligible) policy. And again, they said they, you know, it immediately raise flags for them but they couldn't find any cases where that wasn't true in the TDRP obviously.

James Bladel: Okay thanks, Lars. So my take on this is, first off, I don't really have an issue with complainant versus claimant. I think complainant a little bit better. I think it's fine if we say that the complainant may either be the losing registrar in the case of alleged fraudulent transfer, or the gaining registrar in the case of improper (nac) under this policy. But obviously a transfer there has to be two parties on either end of a transfer.

And if that is the transfer that's under dispute then these are the two parties that were involved and that either side could raise the compliant. I will say, however, I do not like the definition for a respondent.

When you say the respondent is the registrar of record under this policy it does not allow for the multi-hop scenario in which the domain name has since transferred to a third registrar and that registrar is currently the registrar of record but the respondent to the compliant is the second registrar - the losing registrar was the complainant, the responding registrar was the second registrar or the registrar of record is the third registrar.

So that - unless I'm missing something huge I think staff - the definition from staff here is missing that scenario. Kristine, go ahead.

Kristine Dorrain: Yeah, hi this is Kristine from NAF. Yeah, so with respect to the respondent - I like the complainant definition. I'm still pondering the idea of trying to resolve the definition of losing registrar with that.

But be that as it may moving on to respondent I think there is a significant concern with what you just stated, James, because the respondent - particularly from a policy - from the provider standpoint you have to go against the person that's holding the domain name still even in a multi-hop because the remedy is to transfer the domain name and the remedy is going to order the respondent to take some action. Right?

So if the - if there's three hops and the second hop was - the first hop was the invalid one...

((Crosstalk))

Kristine Dorrain: I'm sorry? Oh the first hop was the invalid one and then two more hops happened after that the party - the first two parties could have a dispute against one another but the panel can't order that new - or that second - the second registrar to give the domain name back to the first registrar because that second registrar no longer has it.

So ultimately at the end of the day the only registrar that can do anything is that - the final registrar that holds it, they have to fix the problem ultimately at the end of the day unless I'm clearly misunderstanding something.

So ultimately I don't think that the - that although the other intervening steps may have been fraudulent and bad and wrong, and those parties may have to be brought in to explain their actions, the order can only go between the two

parties and if we don't have the party that currently holds the domain name in front of us then the whole purpose is for naught.

James Bladel: Okay. So let me see if I've got this. And I put myself in the queue because I want to both try to address that but also put a different spin on this and that's a registrar. So suppose - I think you've touched on something important here. And I think the answer that we may not like is that there may actually be multiple parties, more than two, involved in a complaint.

Because if I am, hypothetically, holding a domain name as a registrar, call me Registrar C. And I find out that prior to transferring the domain name from Registrar B to my registrar, Registrar C, that there was a previous transfer between Registrar A and B and that transfer is under dispute how can I possibly be a respondent on the actions - on the appropriateness or the legitimacy of the actions that were taken on the part of Registrar B?

And the answer is: I can't without somehow involving Registrar B in this process. I understand what you're saying, Kristine, is that ultimately Registrar B's actions may require that I, Registrar C, take the domain name and transfer it back to Registrar A. But I don't know that I can respond on their behalf. So I'm a little confused on that regard.

And so I think that respondent...

((Crosstalk))

Kristine Dorrain: Yeah, I agree that everybody has to be involved.

James Bladel: Right. So I think respondent - we can't leave the registrar of record out of the picture because they're the ones that are going to have to enforce the decision. So they have to be part of it. We can't leave the, you know, I don't know what we call them.

The gaining registrar of the alleged fraudulent transaction, something like that, are also - also going to have to be involved here because they're the ones that have the FOA, for example, or they're the ones that are going to be able to determine - provide the documentations and authorizations necessary to demonstrate that the transfer was or was not legitimate.

So I think if - Lars, I don't know if this is making sense but I think that the definition from staff is missing some important components here. I'll put hand down and go to Kristine.

Kristine Dorrain: Hi, thanks, James. This is Kristine. I completely agree. And this brings me to a new sort of epiphany here that I think the actual policy itself, not the definitions, needs to include a sort of mandate or requirement because this is a consensus policy that would apply to all the registrars.

That if (unintelligible) are named as an intervening registrar in one of these multi-hop transfers you do have an obligation to respond to a panel request for information about these other hops.

I mean, the complainant may not be able to or whoever is involved may not be able to step forward and know who all the registrars are or whatever but if the panel has the authority to, you know, to make inquiries and figure out who the people are who have been involved in the hops then they can go in and do some investigation and get some information.

So we probably need to make that a requirement that all the registrars that had touched the domain name in between are required to provide information.

James Bladel: Let me think on that for a minute. And let's suppose that they didn't, isn't that just a forfeiture or a default?

Kristine Dorrain: Yeah, I would think that - as with UDRP it's like the panel can infer, you know, any sorts of, you know, not bad faith or not bad faith as a result of failing to respond. I don't know what position that puts the parties in. I mean, does that make it harder for the person saying my domain name was fraudulently transferred away when bad faith actor - intervening bad faith actor registrar, you know, not only did this bad faith transfer but then also quickly transferred it away?

I mean, I'm not saying it's always the registrar's fault; I'm just like putting a hypothetical out there. And then didn't reply to the TDRP request against them so, you know, I don't know if that puts, you know, our Party A in a rough spot but there should at least be some sort of mandate that they reply because, you know, we could go there, we could say - let's say they don't reply, do we - is that a compliance issue then? I mean, as with UDRP if a registrar doesn't reply.

James Bladel: I think this is a much bigger issue, Kristine. And maybe we can come - circle back after we tackle the definition of who the respondents are and then we can talk about what their responsibilities are as far as replying.

My concern is is that if I'm obligated to reply to something and I lose a proceeding based on failure to respond then that means that I am guilty until I demonstrate my innocence in some respect as opposed to saying I don't believe that this claim has any merit and I'm confident that the panelists will find that. I think it's a bigger issue than just compelling a party to respond.

Kristine Dorrain: Right, but after...

((Crosstalk))

Kristine Dorrain: ...all those intervening registrars won't have anything to lose. They already don't have a domain name so they don't have a stake in the game at this point.

James Bladel: I think that's correct and I also believe that that's true of the registrar of record in a multi-hop scenario. And I also believe that they - that anything that we could ask of them would probably shed very little light on that original transfer which did not involve them in the first place. So I don't know that they would have anything valuable to contribute.

But let's - can we just - I feel like this is important but it's not exactly what we're trying to capture with the definition of respondent.

Kristine Dorrain: Oh yeah, absolutely. I was throwing that out there as just something that occurred to me. If we could just bookmark that for later.

James Bladel: Yeah, please don't lose it especially as we, you know, start to put the finishing touches on our final report. But I think that, you know, first we can kind of capture who the respondents are and then we can move to, you know, what they must do and what their responsibilities are.

So, you know, okay so we're back to respondent and we're saying here that the respondent is the registrar of record under this policy. And I think that we need to expand that to include the multi-hop. So a party against which a complaint is brought the respondent is the registrar of record under this - so can we say something like this, a party against which the complaint is brought, or the registrar - and/or the registrar of record.

The respondent can include - the respondent will also include the losing registrar at the time of an alleged - and then we go back to what we were saying before, alleged fraudulent transfer or gaining registrar alleged fraudulent - and so it's tortured but I think what we're trying to build upon the complainant, we just want to have the mirror image of complainant but we want to make that registrar of record is included in there as well.

So we could say something like if we wanted to mirror it the party responding to a complaint under this policy the respondent may be either, a losing registrar in the case of an improper (nac) or a gaining registrar in the case of an alleged fraudulent transfer and the registrar of record.

So I'm basically taking the previous definition of complainant and flipping it inside out. Kristine.

Kristine Dorrain: Yeah and I think that sounds great. And I was actually - before you - before you read that into the record, which I do agree with, I was going suggest something even more generic which is just the first sentence, a party against which the complaint is brought. Once you've defined the complainant, in my - excuse me, in my mind, the converse automatically flips so to the respondent.

So I just wanted to throw out there that it's possible to be even more generic. But I do not disagree with what you suggested so we can leave it at that.

James Bladel: Okay. Okay. And I think the only difference was I was trying to capture there might be one complainant but there could be two or more respondents. But that's okay. I think we've got it. Lars, I think we're closing in here. I don't know if you were able to capture all that? Oh green checkmark. Love green checkmarks.

Okay so that is the definitions except for one more and this is the one I actually had the comment on. And hopefully it's, you know, I don't get too much pushback from staff. But when they note down here that the registrant is the individual - I'm reading now the footnote of proposed definition of registrant.

The registrant is the individual or organization that registers a specific domain name. The individual or organization holds the right to use that specific domain name for a specified period of time provided certain conditions are met and the registration fees are paid.

The person or organization is the legal entity bound by the terms of the relevant service agreement with the registry operator for the TLD in question. For the purpose of this policy the registrant is also the only individual or organization that, along with the administrative contact, can authorize a registrar transfers and otherwise disposition of the use of the domain name.

The registrant supersedes the administrative contact in case of disagreement. The registrant's transfer authorizing power does not supersede any obligations or actions resulting from possible legal proceedings.

So here's my issue with this - oh, I'm sorry, I see Barbara's hand up. Go ahead and go first there, Barbara.

Barbara Knight: Thank you, James. You may be getting ready to say some of what I'm planning to say. But when I read through that, which is a (unintelligible) size and I see that it's actually an excerpt from the existing TDRP, it concerns me it says this person or organization is the legal entity bound by the terms of the relevant service agreement with the registry operator for the TLD in question.

Registry operators don't have agreements directly with registrants. I think that should be a registrar agreement.

James Bladel: Bingo. That was one of the first things I was going to pick up on as well, Barbara, which is that we need to say under the terms of the registration agreement, which is I believe how it's referred to in the RAA, with the registrar. You know, and I think, Lars, we can probably just massage that a little bit. But I think the switch here is that it should be the registrar's registration agreement, not the relevant service agreement with the registry operator.

Another point that I was going to raise is that we said essentially the registrant registers a specific domain name. I don't like that. Sometimes domain names are acquired differently, they don't register them, they are acquired via an aftermarket, they're acquired as part of another product set like a Website or Web building tool or something along those lines.

What I propose is the registrant is the individual or organization - and then we take out everything and skip all the way down to "that holds the right to use a specific domain name for a specified period of time." So I don't like the bit about registers a domain name and then I think that we can just skip all the way down.

So I got a green checkmark on that from Kristine and a green from Lars, which may be an old green and then green from Barbara. Oh, five greens. Okay...

((Crosstalk))

Angie Graves: Angie agrees.

James Bladel: Angie, and thank you, Angie. We'll take that as a verbal green. And then going down to the bit here where it talks about the registrant's authority to transfer as well as the administrative contact I don't disagree with anything that's written here I just feel like it's very, very redundant given that all of this is explained in the definition of transfer contact that already appears in the IRTP and also describes the different authorities where the registrant supersedes the admin contact as far as transfer contact.

So I don't really have a problem with it, I just question whether or not it's necessary to add that - to repeat that here. So that's - I'll lower my hand here and see does anyone else have any thoughts or questions or concerns about the definition of registrants?

The queue is clear. And with that I think that means that we have, you know, slain this dragon and we have completed the review of our definition. So we've got 8 minutes left in our call. I think we'll just go to Kristine here. You'll have the last word and then we'll wrap up and get ready for next week. Kristine.

Kristine Dorrain: Hi, thanks. Kristine from NAF. Just a quick question on the definition of transfer policy at the bottom, were we going to change that to say IRTP or something like that so we understand that this is now referred to as the IRTP? Or was that not going to happen? I thought somewhere we talked about defining IRTP or maybe - oh Holly has that comment at the very top of the document and I think that the word - where we talked about transfer policy that's a perfect place for it.

James Bladel: I tend to agree that needs to be cleaned up. And if we leave that language in then it should reference IRTP and not transfer policy. Barbara.

Barbara Knight: This is Barbara for the transcript. I actually was just going to lower my hand because I agree with what you all were saying and I kind of penciled in some modifications to the definition but it sounds like we're working on it elsewhere so I can send them along if you want.

James Bladel: Okay thank you. There were a couple of other definitions there after the green bit but my understanding, Lars, and please correct me if I'm wrong, is those were untouched and those are the definitions that we agreed upon during our last call. So okay green light there.

So all right thanks, everyone, for this. I think it was good. It was an important exercise. You know, it did - you know, understanding it did consume, you know, quite a bit of our call time but it is, you know, definitions are - anybody who's, you know, worked in - on these policies or tried to implement them later or tried to determine whether someone is implementing them or

following them correctly knows that definitions are 90% of the game sometimes.

So I think it's good that we spend some time on this and think of it as investment in reducing ambiguity for future generations of people involved with transfers and transfer disputes so hopefully that helps.

I would ask, Lars, to in the next day or so to circulate a clean copy of the definitions so that we can all just take one last look at them and kind of sign off and give our green checkmarks to those. Unless there's something that has really gone off the rails I do not recommend that we spend any time on definitions next week. I think that we're finally to the point where all the definitions worked and continue just on the list if there's any polishing that still needs to be done.

So next week is the 16th and we will have our last meeting prior to the point where everybody departs for ICANN London for those who are going. Perhaps we can get an understanding on the list of who will and will not be in attendance at ICANN 50 in London so maybe we can take that as an action item as well, Lars, just get an idea of the size of the group if we haven't already done that.

And we will take up - we will begin with some of our outstanding items relative to the public comments received and we'll start taking a look at our final report and how that's coming together. I don't think, you know, on the 16th that we'll be ready for a read-through but hopefully we can at least agree upon some of the language that will need to be inserted or modified as a result of the public comments and at that point we'll then be prepared to really just kind of sand down the rough edges after coming out of London and put this - put the final report front and center for, you know, some of the first early meetings in July.

So that's the proposed schedule. Thank everyone for your time and your attention to the details in these definitions. I think we arrived at a good place. Thank you to the staff as well because I know that this has been a - an iterative process for Lars and Legal as well. So thanks, everyone, and we'll see you next week.

((Crosstalk))

Lars Hoffman: Thanks, everybody. Bye-bye.

Berry Cobb: Thanks, James.

Kristine Dorrain: Thanks.

Terri Agnew: Once again, that does conclude today's conference. Please disconnect all remaining lines.

END