

**Inter-Registrar Transfer Policy Part B PDP
Transcription
Tuesday 13 April 2010 at 14:00 UTC**

Note: The following is the output of transcribing from an audio recording of the Inter-Registrar Transfer Policy Part B PDP call on Tuesday 13 April 2010 at 1400 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-b-20100413.mp3>

On page:

<http://gnso.icann.org/calendar/#apr>

(transcripts and recordings are found on the calendar page)

Participants on the Call:

Michele Neylon – RrSG – Chair

Berry Cobb – CBUC

James Bladel – RrSG

Michael Collins – Individual

Paul Diaz – RrSG

Matt Serlin – RrSG

Matt Mansell -RrSG

Barbara Steele – RySG

Anil George – IPC

Chris Chaplow - CBUC

Staff:

Marika Konings

Glen de Saint Géry

Olof Nordling

Apologies:

Baudoin Schombe – At-Large

Eric Brown – RY (all Tuesday calls)

Mikey O'Connor – CBUC

Kevin Erdman – IPC

Marika Konings: The call is now recorded. Please go ahead.

I'll do roll call for you, Michele?

Michele Neylon: Please.

Marika Konings: Thank you.

Good morning. Good afternoon. Good evening, everyone. On the call today, the IRTPB call on the 13th of April, We have Michele Neylon, Barbara Steele, James Bladel, Anil George, Michael Collins, Matt Serlin, Berry Cobb; and for Staff we have Marika Konings and Olof Nordling. And Kevin Erdman has sent regret he can't be on the call. And we have been trying to call out to Baudoin Schombe, but I think the weather conditions are very bad. I know that was the case yesterday for a certain call for him.

Thank you. Michele, over to you.

Michele Neylon: And I believe we have apologies from Mikey, as well, yes?

Marika Konings: And Mikey. Yes, you're quite right -- and Mikey as well. Thank you.

Michele Neylon: Okay, thanks.

Good afternoon, everybody.

We've got quite a busy agenda today, which is probably a good thing in some respects. Matt Mansell says he's going to try joining us later, but he sent his homework to the list yesterday. So I don't know if you all had a chance to look at that.

I'm going to hand over to James now. James, you have the power.

James Bladel: Thank you. Hello, Michele, and hello, team.

Just for transcription purposes I wanted to point out that this is actually April 13, and (Paul V.) is (starring) -- so not to be a stickler to detail.

But I wanted to first, apologize for sending the documentation so late on the list yesterday. My schedule really got away from me and I spent most of the night working on the cleaning this up.

But what we have for review with this group are two documents. The first is a draft policy recommendation for an expedited transfer reverse policy, which would give a mechanism for the rapid undoing or urgent return an interregistrar transfer. There are certain conditions that must be met. There are certain restrictions that are recommended, but we can go through those in detail here on this call, and then I encourage everyone who hasn't had a chance to look at it, first apologize for giving you short notice and then ask for everyone to please take a look at that when you get a chance.

The second document was a spreadsheet, crudely and primitively following the example that Marika and staff gave us, is that we tried to collect all of the comments received when we circulated the draft policy documents. And we received some very healthy comments from registries, from Barbara and some of the folks she talked to in a registry (stake with her group). Other registrars, and I think the important thing here is that we discuss this with registrars in a variety of business models. And this was also reviewed by ICANN staff and ICANN's policy team.

So I think we've tried to get a comprehensive review of the ideas being put forth into this policy recommendation. And some healthy comments were received. Some of them were so blatantly self-evident that, you know, we have overlooked them the first time, that I went ahead and fixed the document.

But other ones I think were a little more substantive and we wanted to just kind of make a note of those recommendations and raise them for discussion within this group.

So Michele my question is do we want to dive into those in-depth today? How do you want to proceed?

Michele Neylon: I think we need to...With certain areas where we had -- where I think you recognized that we need to get some feedback from the group. So maybe if we were to kind of pick up on a couple of those, and then see how it goes.

I mean the thing, from my perspective personally, I think, you know, we need to keep momentum and keep moving, because otherwise, if we leave things go, kind of let's discuss this on the list, et cetera, I know personally I will never get around to (it). I'll have all the best intentions in the world, but I'll never do it.

And I'm sure I'm not the only person like that.

James Bladel: Right. Okay. Well I think the primary section that was raising a lot of questions that we felt probably would benefit from a group discussion were in Section 3, and I would ask if Marika could revert back to the draft documents. I don't believe there's a way we could put both up simultaneously. So I apologize for that.

Okay. Thank you.

And if everyone can take a look at this, I think Section 1 just kind of gives a bit of a background on the objective. Section 2 provides a background of the IRTP and some of the problems that we've encountered. And I think that the comments received in this area indicate that we probably need some help from staff as far as composing the historical sequence of how the IRTP came to be. I tried to do this, you know, just from the reading up on the policy and I got some of the dates wrong. And then I think some folks pointed out some various corrections.

So rather than doing that again and get that wrong, I think that that's an area where I think staff could make a contribution.

But skipping down to Section 3, the procedure, this is where the meat and potatoes of the policy is described - the policy recommendation, sorry. And it's essentially -- you know, we can go through this one line by line -- but essentially in a nutshell the policy is a mechanism that's available to the pretransfer registrar by working on behalf of the pretransfer registrants -- which may or may not have changed, and we'll get into that here in a little bit. And it is meant to cause the registry to reverse the transfer without awaiting any sort of action or being dependent upon any action from the new registrant and new registrar. And I think that's important, and we'll get into that here in just a moment.

So starting with Section 3, 3.1, the expedited transfer reversal policy would be mandatory. It would be -- if this recommendation is adopted -- it would be a consensus policy alongside the IRTP and the TDRP.

The original registrar, the one that had the name prior to the transfer would be referred to in the document as the pretransfer registrar. And that's because when we start to say terms like gaining registrar and losing registrar, and then we want to reverse those terms, it gets very confusing. So I think that we standardize on a convention of calling them the pretransfer registrars.

The policy must be initiated within 60 days of the completion of the transfers. Most registrars, although it is optional, most registrars will block a name against additional transfers for a period of 60 days once it's transferred into their management. And what we're trying to do here is prevent serial transfers. So, you know, we don't want a name hopping around to registrars in the space of two months.

One of the key things that was pointed out about this policy recommendation is that, that is optional. Registrars would have to actively (MAC) a transfer

request that came in during that cooling window. And I think that, you know, we can probably benefit for some additional discussion here, because one of the ideas that was floated around was using the registry lock status for a period of 60 days to kind of remove that discretionary aspect from the registrar when it is (fraudulent) transfer.

So maybe Michele can stop there for a minute and see if there's any kind of queue for questions on that particular aspect of this recommendation.

Michele Neylon: Yes, I think that's a good idea.

Does anybody have any initial thoughts, or are you all completely so impressed with this wonderful document...

Good. Barbara has got a question. Yes, Barbara?

Barbara Steele: Hello. It's Barbara.

I personally think that if the name should be locked down for the 60 days, then I think that probably should happen at the registrar level. And then, you know, it's up the registrar if they choose to unlock it. A lot of registrars already will lock down a domain name anyway, unless, you know, the registrant opts out of that. But I think it'd be better managed at the registrar level.

Michele Neylon: Okay.

Anil?

Anil George: Thanks.

Good job. I just have a question and comment about two specific provisions. One is Section 3.5; it talks about a fee to be charged to the registrant. Is that a single transaction fee for transfer?

Michele Neylon: Anil, can we -- you just kind of put a pin in that question for just a moment. I wanted to kind of open up for comments, up to Section 3.2.

Anil George: Sure.

Michele Neylon: And then we can move to Section 3.5, because that, that is also an area that is ripe for further discussions.

Anil George: Yes, that's fine.

Michele Neylon: Okay, what was your second one -- also in that section, or?

Anil George: Yes, also in that section about the 3.43, the indemnification provision.

Michele Neylon: Okay.

((Crosstalk))

Michele Neylon: I'm making a note here about fee indemnification. I'm putting Anil's name next to it, and when we get to that I will definitely remember to pick on you.

Anil George: Okay.

Michele Neylon: Matt.

Matt Serlin: Thanks, Michele.

First off, I just want to compliment members of the subteam that put this together. This is actually a really good document. So thanks guys for the work on this.

Just to kind of pick up on what Barbara said, you know, I think I, in general, would agree with that, in that it should be handled at the registrar level. The only hesitation I have is that then we're essentially pushing the problem onto ICANN compliance at that point. Because if you have registrars that aren't following the policy, then, you know, it becomes a compliance issue. And that is a lot more difficult to manage and enforce than the detailed registries.

And so, you know -- and I don't know if (David Dees) is on the line or not, but it might be something worth sort of diving into a little more. Because, I mean I agree that it should be mandatory. We should do away with it being optional. And I think if that's the case, then registries, frankly, are probably in a better position to manage that and use, not just the registrar lock status, but a server lock status, I would think, for the first 60 days after transfer.

Man: Okay, I went ahead and put myself in the queue Michele if that's already.

Michele Neylon: All right. (Work away).

Man: Yes, so I just wanted to say I agree with Matt specifically, and Barbara, although it raises from very valid points. You know, there could be unforeseen scenarios in which, you know, all parties, the pretransfer registrar, the posttransfer registrar, and the registry working together, may want to do something during that 60 day period and, you know, would be constrained from action.

I do want to point out, however, that we're in the narrowest scope of an unauthorized or fraudulent transfer. You know, the gaining, or the registrar that it was moved to was probably selected either because it's a small registrar or a one-man shop, you know, an overseas registrar that maybe is not as communicative or doesn't have a 24-hour staff. So the folks who are hijacking domain names know exactly which registrars to target, and more importantly, which registrars to avoid.

And so I think that anything that requires them to, you know, lock or, as Matt was saying, requires their compliance with the policy, while it may be more flexible, it does leave vulnerabilities in place that we're currently seeing today.

So kind of see both sides of the value of this, but I think that in general, we're all saying that this 60 days should be mandatory and not optional.

((Crosstalk))

Barbara Steele: Hello. It's Barbara.

I think that if you're going to make it a mandatory lock, up to 60 days from a transfer, then it probably should be universal throughout the transfer policy. So, you know, I personally would prefer to see that as being mandatory across the board versus just mandatory in this particular circumstance. You know, to the extent that you would want to registries to manage that process, I can say from VeriSign's perspective that, you know, we do have a systematic restriction on transfers for 60 days from the initial registration of a domain name.

So it's not inconceivable that, you know, we could restrict, you know, transfers for 60 days after, you know, any type of transfer. But I guess, you know, obviously that's not going to restrict them from necessarily changing any other information, and it also would require development. So, you know, it would be one of those things that registry operators would need to determine when they could get it in their roadmaps for development.

So whatever way you wish to go, I think that if you're asking for the registry operators to manage this in any way, shape, or form then it needs to be something that can be done systematically. But that will, as I said, require development and it would have to, you know, obviously be discussed with the individual registries to determine, you know, what resources they have to be able to do that.

Man: Okay.

Perhaps the best way forward for Section (3.21) is to essentially capture both options. One being that this is managed at the registry level, one being managed at the registrar level. And then maybe point out that there are some tradeoffs that have to be made for each choice. And let's maybe table that for today and move on, but recognize that we have a couple of different ways to actually implement this idea that the 60 day transfer look should be mandatory.

Man: (Unintelligible)

Woman: This is (unintelligible). And just add, like if indeed on different items you have maybe different options, it might be a way as well for the public comment period to have some more broader input on it. And just from the point that this group doesn't necessarily have to resolve all the issues before putting this into the report as a proposed recommendation, but it might as well leave some of these questions open, and ask specifically for comment on those where there are indeed different options of possibilities to consider.

James Bladel: That's an excellent point. There may be something that we're missing as well.

There may be a third option that we're not considering.

Okay, well if I can move on to section -- and thank you, and we can capture those different potential remedies, then maybe we can just move on to Section 3.3.

And there was 3.3 and 3.4 were probably the area where we received the bulk of the comments. And this is essentially regarding some sort of an authorization or a documentation from the pretransfer registrar to, you know,

they would obtain from the registrant and then submit that to the registry when requesting an ETRP action.

So Section 3.3 essentially says that there must be an authorization, and this authorization has to come from the registrants. It cannot come from the admin contact. We're trying to kill a couple of different birds with one stone here.

We're trying to ensure, first, that registrars are acting on behalf of a registrant. That they're not doing this unilaterally.

Secondly, we're trying to provide a mechanism that is exclusive to the registrant, that the admin contact does not have -- is not available to the admin contacts. And being that this is a mechanism by which we could potentially resolve this -- in the most straightforward cases. I know we got into some complex discussions last week. But in the most, you know, common cases where a registrant and an admin contact disagree, the policy states that the admin contact has the ability to override - or, I'm sorry, the registrant has the ability to override the admin contact.

But what we're saying is that there's an uneven application of this out in the real world. So this would standardize the way those disagreements are handled. I know it doesn't address everything that Michael was raising on the call last week, but I think it's a start in that direction.

Michele Neylon: (Unintelligible) just pause for one second there, James?

James Bladel: Yes, pausing it on Section 3.3.

Michele Neylon: I just think we don't need to rush through this too quickly because, personally it gets a bit confusing.

Does anybody have any questions on what James has talked about up to now? Anything which is unclear, or anything that anybody needs clarification on, disagrees with?

No comments?

Okay, continue, James.

James Bladel: Okay, thanks, Michele.

Moving on to Section 3.4, this is where we kind of start to burden the staff a little bit. So we essentially say the staff is asked to develop, in collaboration with working group or subteam, and authorization form. And we've listed out some of the elements that should be included in this authorization.

Now this is not to be confused with the FOA that is spelled out in the IRTP. And I think that initially we started to go down that route and we were just confusing the heck out of people. So we backed off a little bit from that and said we needed to create separate authorization form specific to this ETRP policy recommendation.

So the authorization would have a few elements. The first is that would be an affirmation or declaration that the transfer was unauthorized, and that the registrants desires to reverse the transfer, and restore it to its pre-IRTP status. And that the pretransfer registrar is executing this policy on their behalf. So the first part, the declaration, and, you know, one might say a delegation.

Section (3.42) says the documentation, that the pretransfer registrar has verified the identity of the registrants. And we didn't want to get too prescriptive here, because this could vary quite a bit from different jurisdictions. But essentially you want to understand that you have -- the

registrar knows who they're talking to and that, that person is who they claim to be.

Section (3.43) -- and I've got a note here next to Anil's name, but (3.43) is that the PTR would be indemnified by the registrars. This is important. Registrars probably would be reluctant to wade into this area unless they felt that they had some cover.

And I'm going to get through (3.44), and then I'm going to jump to Anil. We'll just consider him in the queue already.

And then (3.44) essentially says that all these materials plus any supporting documentation will be bundled into an ETRP packet.

So what elements does anyone have any questions about, and what elements are we missing. Let's throw open the floor on Section (3.4).

Anil, did you want to do first since you...

Anil George: Sure.

I just wanted to ask you on the indemnification provision, what kind of issues do anticipate for which the pretransfer registrar would need to be indemnified? I mean what kind of liability do you think would you really be concerned about?

James Bladel: I think there's a few -- you know, I think if I had a good answer to that we wouldn't be requesting indemnification. You know, I think there's an unanticipated degree of risk that a registrar would assume in executing this, you know, policy.

For example, the registrant may be lying. Maybe they've forged the identification documents. There could be another layer of criminality or bad

behavior occurring here, like there is with just about everything in this industry, that would open the registrar up to exposure of liability with regard to the person who has the name now, the sponsoring registrar that is on the losing end of the reversal. So there's just a lot of different parties that could be affected if the pretransfer registrant is, you know, pulling a con.

Anil George: Yes, I understand. I think those are all valid things to consider -- no question.

My concern is, I think, if you're talking about a registrant, is legitimate registrant who's trying to use this policy to avoid some hijacker, they're already in a vulnerable position. So I don't know that it's quite fair to them. There has to be some type of balance I think. I'm not saying that you shouldn't necessarily be indemnified, but I think there has to be a little more balance so that the indemnification is not so open-ended as to cover all things.

I think, you know, if the particular concern is there might be a (fraud), someone posing as the authentic registrant, you know, then we should qualify the indemnification language to say that the pretransfer registrar is indemnified, you know, with respect to anyone posing, you know, by anyone posing as the registrant when it's uncovered as, you know, fraudulent.

Or, you know, I think we need some more qualification to just balance it out. I recognize that there are concerns that the registrar has, but I think it should be more balanced and not so open-ended.

James Bladel: Okay, that's a good point and we could probably have some additional legal assistance here. I don't believe there were any lawyers on our subteam. So, you know, we could probably mark this area for additional work.

Barbara was next.

Barbara Steele: Yes, this is Barbara.

This is going to make Anil happy -- but the registry operators would also be looking for some indemnification here as well, because we're obviously the ones that are going to be actually affecting the transfer back to the PTR. So I think that whatever is determined is an appropriate level of indemnification. I think it should also apply to the registries.

James Bladel: I have a question regarding that Barbara. I don't disagree with you. But I think that there was some discussion in our subteam about whether or not that was, you know, for the lack of a better term, built into the fact that this wouldn't become a consensus policy.

But you're saying additional, explicit protections in this section for the registry would probably be a good thing to have?

Barbara Steele: I think it would be an easier sell to the registries.

James Bladel: Okay, good idea.

And since, I'm kind of managing the queue here, I will on our (Chair), Michele.

Michele Neylon: Yes, I'm just -- this entire thing of indemnification. I think if everybody can agree that some level of indemnification should be there. I mean the main thing is I understand where Anil is coming from. You don't want to end up in a situation where -- and this was something that we discussed in our own deliberations on this as well. You know, you don't want to end up like kind of kicking somebody when they're down.

The thing that we are afraid of is somebody trying to game the system if, for example, let's say they sell a domain at an auction or in some kind of aftermarket transaction, and then realize they could have made 10 times that amount of money, if they'd been a bit shrewder about it. So you need to make

sure that, that kind of thing isn't allowed to happen. That somebody isn't going to be tempted to use this. It's a bit like say, you know, using the chargeback mechanism with your credit card company, instead of going back to the company you bought something from and asking them for a refund.

You know, it shouldn't be -- you know, it would be abusive. But I don't think we should get too bogged down in the exact terms of this if everybody agrees there should be some kind of indemnification, and we can thrash out some kind of wording that makes most people happy.

((Crosstalk))

James Bladel: That's a good point, Michele.

Anil?

Anil George: Yes, Michele, I agree with you on that. And that balance should be, you know, should include, one, the issues that you guys are raising, which are very valid. And then we just want to also make sure that if this is a policy that we're positing for registrants, we want to make sure that they'll hopefully make use of it and won't shy away because of a fear that if they, you know, make use of it, they're going to have, you know, an extremely heightened liability, because they're going to be responsible for everything. So again, you know, with your comments in mind, we have to balance that.

James Bladel: Okay.

Could we move on then to Section 3.5 with a note that the subject of indemnification needs additional work for determining what the appropriate indemnification should be. But that all parties are assuming some degree of risk, should expect some degree of protection under this policy recommendation.

Okay, we'll move to Section 3.5, and I also have a note here for Anil, which is that the pretransfer registrar may, at their discretion, charge the registrant a fee to reverse a name. We're really trying, again, strike a balance here. There is a cost involved. There is additional work. There is additional risk, as we mentioned. But we also don't want to see registrars who have a registrant coming to them holding a name for ransom, you know, because someone has been hijacked and taking advantage of the registrant that's under duress.

So we're really trying to affect a balance here by saying that yes, they have the expectation to charge a recovery fee; however, that should be in line with whatever their standard transfer fees would be. And I'm just going to point out that we have now multiple registrars and at least three of them are on the (U.S.). So we can't (say) anything in regard to pricing necessarily, we're going to be very uncomfortable with that.

But I think that it is something to point out that we think that there should be some sort of a fee associated with this service, but it should not be onerous or completely open-ended for the registrar to, as Michele said, kick the registrant when he's down.

So with that, I think we can jump to Anil if it's quick, but it looks like we have a queue building up here.

Anil George: Sure, I'll be brief.

I'm not necessarily opposed to a fee, but I guess I have a question and a comment. One is -- I mean maybe I'll make the comment first. In a fraud situation, I mean do think it's fair to impose a fee or expect a fee from the registrant when the registrant is just trying to make use of a policy to correct something that they were not responsible for. So that's just a general question.

Two, the comment would be if we end up including a fee, I think there should be just, you know, more clarity to the registrant to let them know, is it a single fee, how will it work, how is it (affect). You know, I think there should be just more particular information so that the registrant knows upfront, you know, okay, here is what I can expect.

James Bladel: Okay.

(Chris)?

(Chris Jeffer): Yes. (Chris Jeffer), speaking.

Well the UDRP has a (fee) isn't it. It's significantly more than what we're talking about here.

What always surprises me in these conversations, and I sort of tip my hat the registrars actually, for what is a very small sum of money, you know, \$10, \$20, or euro, or whatever, in these situations, sorting some of these messes out, you've got a lot of work, isn't there. And, you know, from a pure business point-of-view, looking to a particular case, you're spending a lot more time, sort of a guaranteed loss making situation.

With that in mind, if here in 3.5 we're talking about the fee for one year domain registration. (Unintelligible) is an argument not to bother with this at all because, you know, it's nothing, is it? Thank you.

James Bladel: That's a good point, (Chris). And that, later on in the document we do recommend that the year that was added to the expiration be retained - I'm sorry, the year that was added to the expiration doing a fraudulent transfer be preserved just to ensure that domain doesn't expire through this process. So it's not like they're getting nothing to show for their fee for this recovery.

And it is a deterrent to some degree, Anil, to ensure that this is only used in those cases where it is, you know, legitimate hijacking.

Barbara is up next.

Barbara Steele: Hello. It's Barbara.

I obviously think that it's fair that registrars be permitted to charge a fee associated with the service. I can speak from the registry perspective that in the supplemental rules is where the registries typically designate what their fee is under the TDRP for level 1 dispute resolution.

And, you know, perhaps to the extent that this is incorporated into either the TDRP or into a separate (unintelligible) policy that kind of hangs from the IRTP, perhaps the registries - excuse me, the registrars also be permitted to have supplemental rules, if you will, on their implementation of a particular policy, which would also give them the opportunity to define whatever the fees are associated with providing that service.

James Bladel: Okay. That's a good point.

Michele?

Michele Neylon: Hello. Michele, here.

Just coming back to this thing about the fees, I think we were trying to get a balance from -- I mean, from my perspective, again, it's a case of, you know, not wanting to take the registrant when they're down, et cetera. If, for example, the issue, the hijack, the problem was caused by some sort of failing on the registrar's side -- which can happen. I'm sorry, you know, you're dealing with software. You're dealing with computers. No matter how big or how much you're doing using a particular system, things can go wrong.

The thing I was looking for was something where it was a discretionary element to it, where I wouldn't be in a situation where I would be forced to charge the registrant if the issue is caused by something on our end. However, if, for example, the registrant has used a particularly weak password, has handed over every single bit of their personal information, which was solicited by a phishing email, and, you know, just generally dumb things which are very ill advised and then, you know, I don't see why they should get away with that scot free that they can get this kind, you know, get out of jail free card. They need to pay for that at some level. That was just my thought on it.

James Bladel: I am in total agreement with that, Michele. In fact, I was thinking that, you know, what about the cases where someone has used a free email service to register names and their entire portfolio is hijacked? You know, there has to be some sort of a -- let's say there has to be some sort of an economic cost for something like that. But again, leaving it discretionary so that the registrar can opt to, you know, absorb that fee as a cost if they recognize that it was their shortcoming in their system that allowed the hijack to happen.

So it's about balance, what you're saying.

Michael.

Michael Collins: Yes.

I think it's a nominal fee, especially considering the fact that the year is added to the registration. In fact, I think it's so nominal that I doubt it's much of a -- pardon me, I doubt it's much of a deterrent.

But I would like to backup, because it reminded me or made me think of something related to indemnification that I might like to add. I think that we should specifically not require the registrant to be responsible for just expenses that might be related to processing this, if it does not turn out to be

(unintelligible). If it turns out to be a bona fide hijacking and the registrant is, you know, seeking a valid return, then I think indemnification should specifically not include any expenses, since I suppose that could be assumed. Thank you.

James Bladel: Okay. That's a good point. And maybe we can make a note there for our further work on the indemnification section. I think with the fee and with indemnification, I think Anil hit on the two elements that are somewhat, are going to impose a bit of a burden on the registrant. The idea here is that while we wanted to create a useful tool to address hijacking, we didn't want to inadvertently design the world's greatest reverse hijacking mechanism. So, you know, I think we're just trying to balance the interests of all of the folks involved.

So the queue is empty. Michele, with your permission, I'll move onto Section 3.6?

Michele Neylon: Oh, please do. You're doing a wonderful job.

James Bladel: Okay.

So with Section 3.6 we start to spell out what's going to happen when the ETRP packet is submitted. We mention that there is a 48 hour window for the registry to affect some changes, specifically, to restore the original PTR as the registrar of record. The 48 hour fit was, admittedly, a little arbitrary. There are some folks that point out that if you have a revenue generating Web site a lot of harm can occur in 48 hours.

On the other hand, we recognize that while VeriSign and AffiliSys and NewStar and, you know, a lot of the larger registries would be able to, you know, for lack of a better description, push a button and make this change happen almost instantaneously. Some of the smaller registries would have trouble automating a system like this.

So open to suggestions or comments on what an appropriate time frame should be. I think that, you know, we want to preserve the expedited and rapid or urgent level of action that is called for in this policy recommendation, but we certainly don't want to make life impossible for the registries to comply.

So any thoughts on that?

Mr. Serlin?

Matt Serlin: Thanks, James.

Yes, you know, I can appreciate that, you know, we don't want to create a burden on folks, but I think that this is a case where we need to actually apply the highest common denominator and not the lowest. So I think 48 hours is too long. I think 24, probably, would be more reasonable, frankly. And it is something that we should expect, you know, not just today's registry operators to do, but registry operators in the next two, three, five, ten to be able to do years when there is a clear case of hijacking, to be able to respond and return it back within 24 hours, I think is reasonable.

James Bladel: Yes, I like that statement that you said about applying the highest common denominator rather than the lowest. And I wonder if we can maybe capture that in here somewhere.

Michele?

Michele Neylon: I like Matt's idea as well about the highest versus the lowest. I think that's a good idea.

The only thing is practicalities. That's what I'm a bit concerned with. You know, an organization like VeriSign or AffiliSys is 24-7, 365. They might not

be overly impressed with having something like a 24 hour turnaround as something imposed on them, but I'm sure they could manage to cope with this.

The thing that concerns me is that if we end up in a situation further down the road where, let's say for example, (DOS EUS) goes live for the (bass) country, and, you know, it's probably not going to be a particularly large and TLD. Twenty-four hours, I mean will they actually have staff working all the time to be able to do that. (Today) I would wonder about it.

James Bladel: Yes, that's a good point.

Barbara?

Barbara Steele: Hello. It's Barbara.

I think to the extent that, you know, you're expecting a very tight turnaround time, as well, and I don't disagree that, you know, in the case of a hijacking, a lot of money can be at stake if a domain name is down. I think that you need to kind of qualify it, you know, basically upon receipt of a complete and valid ETRP package, then the registry will act. Because obviously if there is information that is not included in there, that may be missing that would I guess deem it an incomplete package, then we would need the option to come back and say we still need this documentation or the FOA or whatever it's going to be.

James Bladel: Okay, so not just unnecessarily how long the timer runs, but when do we actually start the clock.

Barbara Steele: Exactly.

James Bladel: Okay, good catch.

Matt?

Matt Serlin: Yes. No, I agree 100% with what Barbara said. I think it's important that the clarification.

You know, just to pick up on what Michele said, and again, you know, I'm sensitive to it and I see where you're going with it, but I guess the counter argument to that, to me it doesn't matter -- and it shouldn't matter, frankly -- the size of the TLD. If it's, you know, TLD with 50 million domains registered or if it's a TLD with 5000, if someone has a mission-critical site that's operating in that TLD and it gets hijacked, you know, the standards ought to be the same across the board.

And I think it's incumbent upon ICANN to make sure that registry operators are able to perform at the same level. And so, you know, if you have 5000 domains and if you have to have a guy on call 24 by 7, 365, then that's what you do. If you are VeriSign and you have people sitting in an office 24-7, that's what you do. But I still think it's incumbent upon us to make sure that the expectation is the same for everyone. And I'm not saying that, Michele, that you're saying that it wasn't, but I think we should really -- I think this is something that we should stick to and push for 24 hours, frankly.

James Bladel: Thanks, Matt.

We'll give Michele the last word on this one, and then if we could move on that would be great.

Michele Neylon: Yes.

No, I mean I don't disagree with Matt. I suppose the thing that I was kind of -- something which was sitting in the back of my head, was the actual backend operators for the TLDs, for the registries, regardless of the size. Unless something very strange happens, I can see a situation arising where you're

going to end up with say maybe 10 or 20 companies globally that are going to be running backends for hundreds of TLDs. So I would assume that the backend operators will have staff.

It's just something that may be just to take that into consideration. I mean, I don't disagree with what Matt is saying. I'm just trying to see how you can do something in such a manner that you don't end up putting an unnecessary burden on a community TLD or something like that. And so yes, Matt is completely right. But at the same time, what's the likelihood -- I mean there is a whole range of different things there. But we are talking about stuff that could have an impact on people's contracts, so we have to be careful.

James Bladel: Agreed.

Okay. And just a little bit of note between (3.61) and the old (3.62)s. We originally had all these different actions that we're going to request of the registries to occur. But I think Barbara and some of the folks she chatted with on the registry (unintelligible) group pointed out that it could be scenarios in which, you know, we wouldn't want the registry to implement these changes, but we wanted to provide more to the registrar.

I think we've reached a consensus that once the registry restores the pretransfer registrar as the registrar of record will -- and they are free to make whatever subsequent changes are required to fit that scenario or situation, and we wouldn't necessarily handcuff the registries and into making those changes, which conceivably some of the registrars might have to undo. So we struck those recommendations as well.

So that's the end of 3.6.

Section 3.7, we had another bit here about, you know, the 48 hour window here, which I think we've covered. We had some additional actions required. One, that the registry would notify the new registrar that the transfer was

fraudulent and that it was reversed, and that they would use the appropriate urgent communication channel, whether that is email or a poll message.

They would refund the transaction fee. Obviously, if I'm a registrar and I have received a transfer that was reversed, I don't feel like I should have to pay for that. But they would assess equivalency to the pre-transfer registrar. And this is, again, it cost offsetting idea that the registry should be able to know because this is a manual process and require some development. There should be some ability to recover their costs. And this is of course, driving the fee discussion we had earlier about the registrars.

But here is an important consideration -- (3.74) when this hijacking occurred as a part of all transfers, an additional year is added to the expiration, not to exceed the 10 year maximum - or I'm sorry, whatever the maximum is, not to exceed that.

We want to preserve that additional time on the registration. And the key element here is that, you know, this process could conceivably step over boundaries of grace periods and expirations that would really complicate and confuse the policy recommendation. So what we see in a lot of other policies - or I'm sorry, with the transfer policy is to avoid this, is that, that extra year is added as a part of, so there is a renewal, as a part of the transfer. And I think that that renewal should be part of this policy transfer as well. It should be preserved.

I'm open to -- I think we're all open to ideas on how we could remove that without introducing a whole lot of contingency about expiration and grace periods, but I think that this is really just the most straightforward approach.

Barbara?

Barbara Steele: It's Barbara.

I can say from VeriSign's perspective that the tool that we will use will preserve the year. The only thing that we would change would be the registrar of record. We would prefer not to have to remove that year, because obviously, it would require additional work on our part to develop a mechanism by which to do that.

I can say, however, though even if we were to remove the year, at the next time we run an auto renew batch it's going to pick up that domain name and it's going to auto renew it anyways. So I really don't think there's danger of the domain name, you know, expiring from that perspective. But just to be clear I like the fact that we just leave the year alone and not touch it.

With regard to the fees associated with it, I can say from our perspective, we have a mechanism that's available if the registrars are cooperative with one another and they just need us at the registry to reverse the transfer, we have -- and I think I discussed in previous calls that we've had -- the application for reinstatement of sponsorship. And because that's such a mouthful will - we'll call it ARS. And in that particular case we actually charge less per domain name than we do to actually transfer domain names. So I think we'd want flexibility on the pricing on that because we don't want to have to charge whatever the going rate is for a transfer.

James Bladel: Yes, we are open to lower fees.

Barbara Steele: Yes, so I mean obviously anything that we would do, and I'm assuming anything that that the other registries would do in their implementation of this is they would define whatever the fees are within their supplemental rules, and it would be very clear. And I personally can't imagine that it would be an onerous fee.

James Bladel: Yes, and that's a good point. And I think here we are making it at least, if not a requirement, we're putting a stick in the mud for start of negotiations that,

you know, reversal fee we shouldn't start at \$1000 and then talk them down from there. We want to keep it in line with some of the other fees.

So those are really good comments.

Michael?

Michael Collins: Hold on. I'm having trouble with my mute button again. Thank you.

Yes, I see that we have a notice for what the registry should do after the reversal. But there isn't any instructions for what the registrar should do to preserve the status of this, to preserve the domain, in case there is a dispute about this being a fraudulent transfer that's been reversed.

And there's no due process included that I see for the losing registrar of possibly a losing registrant in case that registrant is different than the one the initiated the reversal.

James Bladel: Michael, you touched on a subject that is very typical of a big chunk of our discussions with other registrars and on the subgroups. I think there's some mention of it down below, but I would concede that we need more work in that area.

If we can move to Section 4, and just talk about restrictions and essentially this would be prohibitions where...

Oh, I'm sorry. Barbara, did you...

((Crosstalk))

Barbara Steele: Sorry about that. Yes I actually just wanted to add to that.

I know that we had taken out the registry kind of, reverting the name back to the registrant and the (name servers) and all that. So you may want to add that back in as a registrar responsibility, because I think now that it's kind of silent. And I think that it probably should be clear that the registrar would be able to take those actions once the name is back in their control.

James Bladel: Okay, that's a good point. So we're talking about Section (3.62), those areas that we crossed out, we might want to figure out which of those we have now delegated to the registrar, so we want to require, for example, (3.62), the second iteration, restoring the contact data.

Barbara Steele: Correct.

James Bladel: Okay. That's a registrar responsibility.

Barbara Steele: Exactly.

James Bladel: So moving into Section 4, where we discussed some of the restrictions and limitations of the policy, we wanted to make sure that the ETRP is not used to reverse transfers that were the result of implementing a UDRP decision. It's not eligible for names that are pending UDRP decisions or the subject of UDRP complaints. So we don't want our policy working against each other.

We didn't want it to be, you know, names that were a part of a bulk transfer that were not eligible or names that were a part of an ICANN sponsored reallocation, associated with like the termination of accreditation. We didn't want folks, you know, using this policy to muddy up that process. And I think that any name that is involved in pending litigation would also be off limits. But I think that raises the question of how will the registrar and registry be made aware of that, and that's probably something that we need to develop as well.

ETRP, once the transfer has been reversed, the pretransfer registrar has the name back again. They may deny future transfer requests for a period of 60 days. Again, just inserting a bit of a cooling off period to ensure that if there is any dispute over the transfer itself or the reversal of the transfer, that the thing is not going to hop around the globe, that we will have an opportunity to address those.

I see Anil's hand up, but I just want to get through 4.3 and then we can kind of address the queue here on this entire section.

Section 4.3, essentially touches on what Michael was saying was that this is really an urgent correction mechanism and not meant to be a dispute resolution policy. So if the registrant, or registrar, who locked the name as a result of this reversal feels that, "Hey, this wasn't a hijack." This was a legitimate commercial transaction, or this was a legitimate transfer and I challenging the information that's in the ETRP. And I challenging the claims of the registrants.

We just want to mention that this policy no longer applies and would need to escalate to, you know, Barbara mentioned ARS, or other registry specific services, UDRP and, of course, everyone retains the right to go to court.

And then, Section 4.4 discusses that the pretransfer registrar, you know, in the case where they notice that someone may be potentially abusing this system, may block these, you know, the policies from use by certain registrants or entities that the feel that a certain name or certain individual is abusing the system.

And then instead, refer them to some of the other processes and procedures and revenue that are outlined in Section 4.3.

So let's throw open -- well we don't have a lot of time, but we're really rolling downhill now. So we throw that out to the queue for Section 4 and we could start with Anil.

Anil George: Yes, thank you.

I just have a quick question on the bulk transfer. I'm presuming your goal here is to not block an entire group of domains that are being transferred but if among them there is one either knowingly or unknowingly, as a part of a hijack, is that still subject to this process or is there a way to allow that, if that occurs?

James Bladel: Honestly, I don't think that's a scenario we had considered, Anil. So, you know, maybe we should probably make a note of that and discuss that as we go forward.

Michele Neylon: I think the bulk transfer, James, that's a particular type of transfer, which would be special. Like for example, the VeriSign (allowance) for partial bulk transfer where, for example, you could decide to move few thousand dotcoms from one registrar to another registrar in one fell swoop.

James Bladel: Michele, didn't that also presume that the registrar that was losing a bulk or partial bulk transfer was -- well now we're getting into the part 3 of our IRTP, or part B.

I think that a longer conversation -- I don't know...

((Crosstalk))

Michele Neylon: Yes, I think it's a complicated conversation, but I don't think the bulk transfer - - the reason why we've listed it there is it's not like a bulk transfer made by an end-user. In other words...

((Crosstalk))

Man: Right.

Michele Neylon: (Unintelligible). If I was making -- let's say for example, Anil, that I have 20 domains with Go Daddy that I want to move to Black Ice, because Black Ice are wonderful and Go Daddy (unintelligible).

Anil George: Okay.

Michele Neylon: Sorry, James, I had to do that.

So let's say I'm moving all 20, or 50, or even 100, or maybe even 1000 as a registrant. If that kind of bulk -- that's not the bulk transfer that we were talking about. It's more of the bulk transfer being done at a different level, you follow me; registrar to registrar, or you know, transfers using a different process.

Anil George: Okay.

And, you know, maybe it's a matter to clarify for the registrant who's going to make use of this process to know that they're not precluded from using the process for the former bulk that you were saying this does not concern.

Michele Neylon: Well the thing with all the stuff Anil is we're trying to make it clear that this is for a narrow set of circumstances.

Anil George: Right. No, I mean consistent with that, it might be helpful to just clarify that it does not push you out of the process, if you're talking about a bulk transfer, not at this higher level that you guys are talking about, but a more ordinary one.

Michele Neylon: Oh, okay.

((Crosstalk))

Man: Anil...

Michele Neylon: Oh, I see what (she) means.

James Bladel: Yes, I think that's a good point, and originally we had listed out several different flavors of bulk transfers and I think it was one of the recommendations in the spreadsheet that we just consolidate them all under the heading of bulk transfer. But if in doing that we introduce confusion, then perhaps we should break them back out.

Anil George: Yes, that might be helpful because I think you're talking about, you know, registrants that don't have the same level of sophistication that, you know, registries and registrars have. So they're going to think of this as a term of (art) in their (car lots).

James Bladel: Okay, thanks.

Can we go to Michael.

Michael Collins: Thank you.

I think that coming back to the comments I made before, maybe this is the place we can address them. Section 4.2, we talked about the registrar may elect to deny future transfers. I think that we need to require the registrar to deny transfers, because I think as a part of the locking this up and then enabling the other registrar to dispute this possibly for another registrant we need to keep it from slipping away into, you know, multiple transfers. Because it could be the person that initiated this that committed a fraud, not the person at the other.

So I think that what we had talked about when we initially started talking about it, an expedited process, was one that would just bring the domain back to its original state, while a dispute could be heard if there was a dispute. And I think that would require it to be locked.

And I think that in 4.3 we probably need to address more specifically how to dispute that this was a fraudulent or erroneous transfer that ended up being reversed through this process. Thank you.

James Bladel: Okay. Thanks, Michael. And we'll note that.

Olof?

Olof Nordling: Yes, a very brief comment; I think that in order not to overburden the document, probably plenty of explanations that can be at one point in time, (wrote) into some of explanatory notes rather than being a part of the policy itself, in order for all the clarifications to be onboard, and such. Otherwise, you may need to come up with a number of, I'm thinking about 4.3, for example, that we're mentioning the remedies in such cases.

And so I think that's typically a case for something you would like to put in explanatory notes for further informing those who are reading it, rather than having it as a part of the actual policy document.

((Crosstalk))

James Bladel: That's a good point.

((Crosstalk))

Olof Nordling: Just a thought. Perhaps not right now, but in due course, so you get a crisp and clear language in the policy document that's possible.

James Bladel: Well I think that that's a good point and it also does not limit us to new mechanisms that pop up in the future that aren't specifically or explicitly called out in this document. So it's a good idea not to have them in here necessarily.

Olof Nordling: Because if you have it in the policy itself, it becomes (cast in stone) and it's very difficult to change.

((Crosstalk))

James Bladel: Very quickly, and I want to wrap this up here. I know we're a few minutes over, but Section 5 indicates there's some roles for ICANN as well, and I'll just kind of let folks take a look at that. But, you know, they should publicize this policy, make sure that registrars are complying with it, and they might also ask the registries to report on abuse. I didn't want to dive too deeply in there because there is a potential for either a Section 6 or an overall discussion which I wanted to, recognizing the time, I want to make sure we don't dive into today.

But this idea that has come up on the subteam and it came up a little bit today, that this policy itself, could be abused and could introduce new wrinkles or concerns into the domain investor's community. And, you know, personally, I have a couple of thoughts here. One, is that, you know, when you put the various arms on one side of the scale, I think that the harm that's occurring now, likely is disproportionately higher than the harm that would be created by potential folks looking to, you know, cause trouble in the domain investors market.

And secondly, I think, you know, especially with recent high profile hijackings, you know, I would hope that the folks in that community would see the value in cleaning up the bad actors in that area, so that folks know that they're not purchasing hijacked domains.

And I think that, that is probably going to have to be the selling point to that community of this policy, is that, you know, trust and confidence in what it is that you believe that you're buying as opposed to worrying about what might additional delays or documentation might be required you're a seller. So I think that hopefully that we can state that in such as way, either in a Section 6 or in an overarching introduction to make that a little more palatable so that we can get the support of that community.

And with that, we have reached the end of this document. We're 9 minutes over. So Michele do we want to adjourn for today, and then hope that we have a spirited discussion on the list?

Michele Neylon: I think we should respect people's afternoons -- unless, do people want to continue on. I don't think -- do they want to drop off, or how are they fixed?

James Bladel: Yes, I've got another call I've got to run to, so I need to drop off.

Man: (Chris), I've got to drop off this time thanks.

Woman: (Unintelligible)...

Michele Neylon: Okay, well listen, how about this -- look we've got this (unintelligible) for people to have a look over the document that James sent out and we can pick up next week. Would that work for everybody?

Man: Yes.

Woman: Yes.

Man: Works great.

Michele Neylon: Okay.

Man: That's good.

Michele Neylon: Okay, and then we could take it from there.

James are you dashing off this minute or can I grab you?

James Bladel: Can you give me 10 minutes biological, and then, yes, I'm at your disposal.

Michele Neylon: Yes, perfect. Thanks.

TMI is the correct phrase I think I'm looking for.

Okay, thanks everybody, and speak to you all next week.

((Crosstalk))

Man: Yes, thanks.

Man: Good bye.

END