

Intellectual Property Constituency Meeting
Tuesday, June 26, 2007 2-5 PM
San Juan, Puerto Rico

Attendees:

J. Scott Evans	Burke Hansen	Marc Trachtenberg
Kari Moeller	Ute Decker	Valentina Marano
Kristina Rosette	Philip Corwin	Pedro Dias
Seth M. Reiss	Bill Jacobs	Zbynek Loebel
Karina Cortes	*Claudio di Gangi	*Jeremy Banks
Maria Farrell	Sue Jonklaas	Michael Warnecke
Andy Coombs	Stacey King	Jim Reid
David Taylor	Yoo Ji Yel	Wendy Seltzer
Maria Dias	Nick Griffin	Liz Williams
Annette Heimnehlberg	Paul McGrady	
Steve Metalitz	David Steele	<i>*By telephone</i>

1. Roll Call, Appointment of Scribe, Agenda Review

Steve Metalitz brought the meeting to order and J. Scott Evans volunteered to take minutes for the meeting. Steve phoned in to the conference center and we were joined by our remote participants. Steve cautioned that anything discussed in our meeting was “on background” as we had a member of the press was present in our meeting. Steve then asked the group to review the agenda for approval.

2. Approval of New Members, other housekeeping items

Steve introduced this agenda item and stated that Microsoft Corporation has put in an application to be a Category 1(a) member. This application was recommended for approval by the membership committee. Having no objections, Steve stated that the application will be deemed approved by the IPC council. Steve reported that we had no formal Treasurer’s Report, but our bank balance is healthy and we do have funds.

3. Whois Development (Metalitz)

Steve updated the group on the progress of the Whois Working Group. Steve says there is some agreement on some points about the OPoC’s responsibility. There seems to be some agreement that there might need to be a reveal function for the OPoC. Steve reported that there is some general concept agreement to the availability of the OPoC only to natural person, not legal or juristic persons.

Steve advised that there was no agreement on how to provide access to law enforcement and private parties with a need for Whois information that would no longer be made public under the OPOC proposal. The Working Group has a report due by end of July

2007. After this report is submitted, the WG will be disbanded and it will then be up to the GNSO to take next steps. Registries are not behind the OPoC proposal without agreement on how law enforcement will obtain access to Whois. Steve also reported that some registrars are not happy with the OPoC proposal. Steve queried the group on how we might go forward. One methodology would be to apply some of the OPoC principles to the Proxy Service model, the second methodology would be to concentrate on the “modalities of access” and the third methodology would be for the Council to gather more information or commission research on these issues for consideration by the community.

The question was raised about a study on the use of Whois for use of generating spam. The presentation seemed to contradict the same study the FTC conducted in this arena. The question was asked about the purpose of this study. The rationale seems to be that the FTC study was not accurate and there needed to be another look at the issue. The head of the security and stability committee said that the committee was only looking at the story from a purely technical standpoint.

Liz Williams stated that we would need to make a formal request to get the security and stability committee to give us a formal report on the study and its conclusion as to the technical points.

The point was made that there has been no progress on how tiered access would be handled. J. Scott Evans made the point the real debate is the points of access to the data, not the data points that are provided.

Steve Metalitz advised that Telnic has made a request to change the Whois information available for at least individual registrants. He feels that the Telnic proposal has many problems and is a dangerous precedent to set.

Avri Doria

At this juncture we were joined by Avri Doria; the new Chair of the GNSO council joined us to give us some insight into the Council. Avri explained that her rationale for requesting a visit with the IPC was to get a better understanding of the other constituencies that she was not familiar with such as the IPC. She wanted us to communicate to her what the IPC believes are important issues to our group. J. Scott articulated that primary concerns for trademark owners are the roll out of new gTLDs, finding workable solutions for access to Whois and the GNSO reform.

Avri discussed that there may be reforms that need to take place, but compromise positions on these issues. She believes that we are getting away from the hardcore divisions that have separated the constituencies. The question was asked about the other side of the reform question. Specifically, the question was asked about her views on the restructuring of the PDP processes. Avri stated that she felt that the Working Group structure has positive benefits, but she does not believe the Council should serve merely

an administrative body. Avri believes that our attitudes have greatly influenced the process and the evolution of the Council.

Steve Metalitz asked a more philosophical question. Specifically, he asked Avri who she represented as the first Nominating Committee appointee to serve as Chair. She believes that she was appointed to represent the interest of those who are not covered by one or more of the constituencies. As Chair, her role is far more neutral in the facilitating the debates. This neutrality is not going to be reflective in her votes which would follow her historical record on positions.

She believes that the Council will make greater use of the Working Group structures and offers more opportunity for greater involvement by diverse interests.

The question was asked of what is coming up on the Council's agenda. Domain Name Tasting is an issue upcoming. Reorganization recommendations may capture some of the time of the Council as it moves forward. She believes that the Whois issue will go away as an issue. New gTLDs are on the horizon and we have time pressures that will require us to look at new gTLD roll outs for future expansions.

4. New TLDs

Kristina advised everyone of the status of the Council's progress in the new TLD report that has been published. Council has identified six key principals and from these a list of recommendations for staff to implement. There are 3 principals that are still in flux. She reported that principal 1 in the Report is still facing a great deal of push back because some believe that the protection discussed in principal one should be limited to famous and well-known. Kristina believes that she was successful in convincing the staff about problems with the "famous and well-known marks" limitation. There was some discussion about the need to have mechanisms to resolve disputes between parties with divergent views on conflicts between the TLD strings and third party rights.

Kristina believes we are probably going to see another version of the implementation report. As of today, there will be a fee required to object to any string. It is unclear how much the fees associated with any challenge would be. It also not clear what effect that challenge would have on future rounds.

The next controversial recommendation has to do with the morality legal issue. NCUC has a great objection to this provision because NCUC believes it impinges on freedom of expression rights. The problem is that staff has difficulty in identifying how these challenges would be determined. Kristina believes that ICANN needs to have a mechanism for dealing with these challenges.

Lastly, the recommendation regarding objections from institutions of a community supposedly being represented by a particular new TLD proposal. NCUC has taken a position that it is a violation of freedom of expression.

Ute brought forth the point that we may want to question the NCUC's opposition to this recommendation because it seems to serve the very groups that the NCUC claims to represent. We are looking for a final report by mid-August.

An Ad Hoc Implementation Working Group that is charged with putting together challenge, dispute resolution and start-up procedures for the roll out is being established to assist new registries with establishing these mechanisms within their new registries. Steve Metalitz asked Kristina what she and her colleagues on the Council need from the IPC membership to assist them in moving this process forward.

5. Revision of Registrar Accreditation Agreement/Registrar Practices

There was a session on this in the plenary session. Because of the RegistryFly debacle, ICANN has become more aware of the need to have processes in place to handle registrar/registry failovers. Six issues have been identified for which changes to the Registrar Accreditation Agreement may be proposed (see below). The timeline is for there to be proposals for review and consideration by the LA meeting. Steve believes we need to put forth proposals for consideration during the process and he made a call for volunteers to take a look at the RAA and make suggestions for possible changes. Our timeline would be to have some concrete proposals together in the next month or two.

Presentation by Stacy Burnette, ICANN Contract Compliance Officer

Our goal is to make visits with Stacy a routine part of our in-person meetings. Stacy provided us with the current ongoing compliance activities that are important to the IPC. About 1 month ago, ICANN made an announcement on its website about two new Whois compliance audits. Preliminary findings will be made available in July 2007. Hope to have full reports on both of these audits by end of 2007. The plan is to make these audits annual events not just a one off audit. Stacy reported that the majority of the deficient registrars identified in the first audit have been rectified.

Stacy then discussed the six proposed amendments to the RAA. 1. Accreditation by Purchase. RegisterFly's original application was questioned and then closed so RegisterFly simply went out and purchased an accredited registrar to circumnavigate the process. There is a suggested amendment to put in provisions whereby a purchaser would need to prove its ability to meet the accreditation standards. 2. Group Responsibility for Family of Registrars. ICANN wants the ability to go after the subsidiary organizations. 3. Contractual Relationships with Resellers. The proposal is to amend RAA to augment the relationship between Registrars and resellers. Registrars have stated that they own this problem. 4. Operator, Skill, Training and Testing for all ICANN accredited registrars. One representative from each accredited registrar would need to be tested to ensure they have the necessary skills. 5. Data Escrow Requirements for Privacy and Proxy Service information. The proposal is to amend the RAA to require registrars to data escrow the private information. 6. Additional Enforcement Tools.

ICANN is advocating the amendment of the RAA to include graduated penalties for non-compliance.

What can the IPC do to assist the in the compliance programs? She believes we could have a small ad hoc group to assist her in dealing with UDRP non-compliance by registrars.

Stacy requested that we try and be patient as she tries to negotiate changes in compliance. Stacy deferred to Kurt on the RAA amendments.

6. Domain Name Tasting

There is an issues report that has been delivered to the Council for consideration. Kristina has discussed the Issues Report with Alan Greenberg of the At-Large Advisory Council, which is the group that formally requested its preparation. There was some discussion at this point about what action the IPC representatives should take at the Council meeting.

7. Telnic Presentation – Jim Reid

.tel is very different from any other TLD is out in the market today. .tel is about contact information not content. The technical workings of .tel is very different because it does not take you to content but to contact information. Data protection is driving the request for the alteration to the registry agreement. .tel got guidance from the UK Information Commissioner's Office that the ICANN registry agreement is in violation of UK's data protection law. UK Commissioner will not allow Telnic to circulate the letter publicly, but it has been shared with Staff and will be shared with the ICANN Board when they consider the issue of allowing for the contract revision. The .tel representatives state that these issues have only recently come to the forefront. Their research indicates that some form of tiered access was needed. His position of "paid-for" access to access to registry database for legitimate business purposes is something that the Commissioner wants to see in order to avoid data mining. The point was raised that the Whois restrictions that Telnic is requesting would put all ICANN accredited registrar's in breach of their agreement. The point was raised that why couldn't Telnic refuse to offer their services to individuals that choose to opt out. This was not an acceptable compromise and the Telnic representatives did not believe this solution would comply with the UK privacy law.

After some further discussions surrounding the .tel Whois proposal, the meeting was adjourned due to lack of time.