

Michelle DeSmyter:Dear All, Welcome to the Next-Gen RDS PDP WG Meeting on Tuesday, 30 August 2016 at 16:00 UTC.

Michelle DeSmyter:If you wish to speak during the call, please either dial into the audio bridge and give the operator the password RDS, OR click on the telephone icon at the top of the AC room to activate your mics. Please remember to mute your phone and mics when not speaking.

Michelle DeSmyter:Agenda page:
<https://community.icann.org/x/WxKsAw>

Chuck Gomes>Welcome everyone

Maxim Alzoba (FAITID):Hello All

Nathalie Coupet>Hello

Richard Padilla>Hello all

Elaine Pruis:chuck I'm just pulling into the Parking garage, could I go 2 or 3rd please

Benny Samuelson / Nordreg AB:Sorry for getting in late, train delayed because of a moose on the tracks

Holly Raiche:What a marvellous excuse

Fabricio Vayra:Hi all.

Michael Palage:No

Michael Palage:Wull dial in

Maxim Alzoba (FAITID):stakeholders might include registrants (staff members acting as private persons when registered domains in their own name)

Marika Konings:To enable you audio, you can click the phone symbol at the top of the AC room.

Maxim Alzoba (FAITID):suggestion

Chuck Gomes:Phil was an attorney for NSI.

Vicky Sheckler:in my private practice days, we used the whois system as described in this use case for diligence purposes in M&A deals

steve metalitz:@Mike Palage is expert testimony a separate use case to be considered?

Michele Neylon:You assume they'll co-operate - but I suspect they don't always :)

Michael Palage:No special use case just for me

Fabricio Vayra:@Andrew, not the case, as sometimes the M&A team needs to find domains registered by employees of the company that the company doesn't realize are registered, but that it intends to pass along in the M&A

Michael Palage:Just trying to share how I have used underlying WHOis data over the years.

Michele Neylon:+1 Fabricio

andrew sullivan:@Frabricio: you're arguing then that the RDS is necessary to supplment poor internal controls at the to-be-acquired company

andrew sullivan:I think that might be a use case that some people desire, but if that's the case we ought to make that explicit

Vicky Sheckler:andrew - its trust but verify in M&A deals

andrew sullivan:trust but verify would work under the "here are your access tokens"

Fabricio Vayra:@Andrew, that's one argument. But what I'm saying from a basic perspective, that RDS is used to verify ownership when managing one's assets

marksv:Perhaps not a necessary, but certainly a useful tool in these cases, which are less uncommon than one might think.

ELAINE PRUIS:thanks for waiting for me, I'm ready whenever you want to put me back in

Chuck Gomes:Thanks Elaine

andrew sullivan:I don't think it's uncommon. But if the argument is that the RDS is necessary and must have open access in order to support this use case, I think that should be explicit

marksv:@AS, good point

Griffin Barnett:we hear you

Richard Padilla:Yes

steve metalitz:A related use case to both Beth's and Elaine's that would not be resolved by access tokens is the business intelligence use of RDS to evaluate potential acquisition targets.

Benny Samuelson / Nordreg AB:please mute

Daniel K. Nanghaka:I think it is more than social media groups, there is also domain spamming from registrar's

Susan Kawaguchi:Any social media groups I know would not look to the whois for business marketing analysis unless looking up a specific possible acquisition

Michele Neylon:I'd use the hosting data to get an idea of that tbh

Daniel K. Nanghaka:they check out for domain owner email and send suggestions to the domain owner

andrew sullivan:To be clear, I wasn't arguing against the use case, just trying to probe its limits and understand it

Stephanie Perrin:My apologies for being late, I have a few conflicts today

andrew sullivan:Surely the argument form can't be, "This is what people are doing so it's a legit use case

Volker Greimann:I could not care less about advertizers not getting fodder for their spam campaigns

andrew sullivan:"

andrew sullivan:because if that's it, then this PDP is a waste of time :)

Michele Neylon:Andrew - no - I wasn't saying that
marksv:we hear you
marksv:(said mark to the person who isn't on chat, doh)
ELAINE PRUIS:I thought the question was "how is whois being
used" not how would we like it to be used
Michele Neylon:Elaine - exactly
Chuck Gomes:@ Elaine: Either is okay
ELAINE PRUIS:ok my use case addresses how it is being used
today
ELAINE PRUIS:.)
andrew sullivan:We definitely have had anti-use-cases, many of
which are things that people are doing now
Stephanie Perrin:+1 on that one
Michele Neylon:Can we all agree that spam is an abuse? :)
Richard Padilla:+1 Michele
Maxim Alzoba (FAITID):+1
Vaibhav Aggarwal:@michele no as mail can go to spam box because
of a error in the configuration in the dkim or others
Michele Neylon:Vaibhav - oh come on - I'm talking about spam
NOT somebody breaking their mail config
Michael Palage:I agree with Marina and can attest to similar
problems involving bankruptcy cases
Vicky Sheckler:agree w/ the general principle that we should
consider the domain an asset
Vaibhav Aggarwal:cud be un intentional but otherwise yes
Vaibhav Aggarwal:domains are assets
Vaibhav Aggarwal:definitly
Maxim Alzoba (FAITID):it is more like service obligation
Daniel K. Nanghaka:I agree Domain are assets
Volker Greimann:ultimately, it is irrelevant if we consider
them as asset or not. that is for courts to decide
Michael Palage:I think the courts are still out on the whole
property v service. According to Umbro it is a service,
according to Kremin the ninth cricuit had a three part test
Maxim Alzoba (FAITID):and in some jurisdictions can not be
inherited in case of death of the natural person (cancellation of
contracts)
andrew sullivan:I think the ccTLD-as-asset and domain-name-as -
asset cases are quite different, since the case law is different
andrew sullivan:(IANAL, alas, but at least I've read some of
that case law.)
Ayden Férdeline:very hard to hear
Maxim Alzoba (FAITID):depends on the court practice , and
depends on country - I think
Jeffrey Eckhaus:I think this Working Group should steer clear
of the argument of asset or not.

Alan Greenberg:I agree Jeff.
andrew sullivan:@Jeffrey: completely agree
Alan Greenberg:Different jurisdictions may come down in different ways. Stay clear of the formal attribute which could have courts invalidate our work.
Daniel K. Nanghaka:I don't think we need to discuss liabilities, Domain is an asset
marksv:http://www.theregister.co.uk/2014/07/31/terrorism_iran_internet_icann/?userId=2618507&entrprsid=579
Stephanie Perrin:Since ICANN in general has steered clear of that one, I dont see that we have any choice in the matter. Hardly within our remit....
Maxim Alzoba (FAITID):do we see similar worldwide approach ? I doubt
Volker Greimann:jeff +1
Ayden Férdeline 2:+1 Stephanie
Michael Palage:Domain names are like light - dual characteristics of both a wave and partical.
Volker Greimann:Alan +1
marksv:alan +1
Maxim Alzoba (FAITID):+1 @Alan
Stephanie Perrin:More like black holes Mike.....
Ayden Férdeline 2:agreed... +1 Michele
Stephanie Perrin:(meant as joke, all the physicists on the group need not respond....)
Maxim Alzoba (FAITID):should we recommend to add to implications: might be limited to local legal practice?
Vaibhav Aggarwal:may b for the sake of RDS, Domaining is not part of the business here. but organizational ownership is. I would refer to Susan's face book use case
Vaibhav Aggarwal:typos regretted
Vaibhav Aggarwal:uniregistry and Verisign and donuts are live examples
Vicky Sheckler:agree w/ marina
Ayden Férdeline 2:because i heard the term 'domain investors' mentioned... i am not an accountant, but aren't assets usually depreciated over time? does this principle apply too for domain names? i thought people invested in domain names in the hope that they would increase in value over time...? (please feel free to ignore me if i am going off-track - this is just a thought that has come to mind)
Vaibhav Aggarwal:agree
Vaibhav Aggarwal:Ayden in this case domain names appreciate
marksv:I have to drop - thanks for another va;uable discussion, everyone!
Stephanie Perrin:All joking aside, I would agree with Marina

that it is high time to figure out what domain names are. However ICANN has not. Having just dug through Froomkin's old article "wrong turn in Cyberspace," which is not on our list of required reading, I am wondering why this rather fundamental definitional issue has not been resolved. If you follow his argument, it might be because the Commerce Dept had/has not authority to do policy in this area. Just saying....

Michael Palage: This issue will be decided by a court(s) of law, not by an ICANN PDP that is the cold hard reality

Stephanie Perrin: If anyone has an answer on that issue I would love to talk to them....

andrew sullivan: @Stephanie: I think the issue is considerably trickier than many people have considered

andrew sullivan: Partly because people don't understand the radically voluntary nature of the Internet

Stephanie Perrin: I agree Mike, in a vacuum a Court will have to decide...

Vaibhav Aggarwal: Domaining mostly is through Sedo and Whois privacy is a way of business

Holly Raiche: Maybe it's better to think of it as something that a registrant has a legal (enforceable) right to use. As an example, as a tenant, I pay rent and gain the right to be in a property - without owning it

Stephanie Perrin: +1 Rod, if we cannot define whether a domain name is a good or a service or an intangible asset.....we have a tough time deciding on the purpose of the records describing them....

Volker Greimann: Domain name = legal title.

Michael Palage: The U.S. Court of Appeals for the DC Circuit really threaded the needle, in affirming the lower court but on different grounds. This decision is really worth a careful read by those interested in this topic

Volker Greimann: time limited, but renewable

Vaibhav Aggarwal: @holly ownership is transferred in the course of investment and m&a

andrew sullivan: I don't see why we need to know what this thing is in order to decide the uses of the records

Volker Greimann: VA: You can transfer titles

Holly Raiche: What is transferred is a right to use - a legally enforceable right - to use

Vaibhav Aggarwal: @corrected tenancy is transferred

Vaibhav Aggarwal: right @Volker

Stephanie Perrin: +1 Michele

Holly Raiche: I'm not saying tenancy cannot be transferred - BUT it is a right to use

Vaibhav Aggarwal: yes

Michael Palage:For those advancing the "service" side,the best comparable is telephone numbers. A vanity 800 telephone can be an important asset used in business, and that "asset" can be transferred. However, if you fail to pay you telephone bill and that service will be cancelled and you will lose that "service/asset"

Vaibhav Aggarwal:right to use gets transfer legally

Marina Lewis:In the chat now...thanks everyone for their comments!

Michele Neylon:Michael Palage - good example

steve metalitz:@Michele, in your example, the difference is not different use of the DN but different characteristic of registrant (individual v. company).

Vaibhav Aggarwal:@michale example 1-800-flowers

andrew sullivan:I feel that the nature of domain names is too metaphysical a problem for us. All we need is to answer how people actually use the RDS and how we want/don't want people do use it

Vaibhav Aggarwal::-)

Michele Neylon:@Steve - not entirely true. Some ccTLDs base the right to private whois on domain usage

Michele Neylon:eg Nominet

Michael Palage:Michele ironically the whole Sunrise concept which I authored as the CHair or Working Group B back in 2000 was based on the right of first refusal used in the telephone market when 800 telephone people were given right of first refusal to 888. Telephone numbers have always been a good parallel for reference, despite most ICANN types adverse to telephone numbers and the ITU.

Michael Palage:sorry for the typos

Maxim Alzoba (FAITID):@Michele, some of ccTLDs are not showing anything ... even via WHOIS

andrew sullivan:Telephone numbers are a useful analogy in some cases, but there are significant disanalogies

Vaibhav Aggarwal:one example - Twitter verification : they use the who is information for general public to verify the handle

Stephanie Perrin:Unfortunately the privacy rights also parallel the 800 numbers after the new switching system came in...no ability to block disclosure.

Volker Greimann:Interesting. In the cases I have seen on our platforms, criminals tended to rather not reuse information but rather use phone book entries from various places around the world in their registrations. Re-using data makes similar domains rather easy to detect.

Michele Neylon:Maxim - very true

Marina Lewis:Everyone...I need to jump off for a all. Thanks

again for comments.

Stephanie Perrin:Thanks Marina, interesting case

ELAINE PRUIS:I too have to drop off. Thanks for the interesting use cases and discussion.

Alan Greenberg:Doamin registrants sure are an innovative bunch.

Vaibhav Aggarwal:thanx marina

Alex Deacon:very important use case - one used often by our teams.

Dick Leaning:Michele - thats not too unsula as they need to keep track/remeber what they have done as well - as they will use variiations for different providers

Holly Raiche:@ Stephanie - the 'right to use' can be costrained by what is technically possible. We are really discussing whether the 'right to use' includes the right to have the information (or some of it) be constrained

Vicky Sheckler:@alex +1

Stephanie Perrin:Absolutety agree Holly. Right to use does not carry with it a duty to disclose....

Holly Raiche:@ Stephanie - or the opposite: the 'right to use' is now subject to RAA provisions - it is public.What is being discussed is whether it also includes the ability not to disclose some or all of the information

Stephanie Perrin:The tenant analogy is a good one. Bad tenants list in Quebec just got thrown out as a breach of privacy law, even though as a landlord I would love to know who is in the habit of not paying their rent, or wrecking the place.

Vaibhav Aggarwal::-)

Stephanie Perrin:Landlord association had to destroy the list they were sharing.

Volker Greimann:afternoon would make remote participation easier for Europe

Marika Konings:Please complete the doodle poll at <http://doodle.com/poll/ngd7k9dybkwctchx>

Marika Konings:if you have not done so yet

andrew sullivan:I'm afraid I have a high-priority interrupt here and have to drop. Bye all

Holly Raiche:Bye Andrew

Vaibhav Aggarwal:will doodle shortly

Vaibhav Aggarwal:ciao

Vaibhav Aggarwal:yiipppeeee

Maxim Alzoba (FAITID):bye all

Nathalie Coupet:bye

Patrick Lenihan:Thanks to Each and All!

Fabricio Vayra:thanks, all

Vlad Dinculescu:thanks all. bye

Vaibhav Aggarwal:bye guys thanx

Susan Prosser:bye
Richard Padilla:bye all
Ayden Férdeline:thanks all