Terri Agnew:Welcome to the New gTLD Subsequent Procedures Sub Team – Track 2 – Legal/Regulatory Issues on Thursday, 19 January 2017 at 20:00 UTC.

Terri Agnew:agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A__community.icann.org_x_oLbDAw&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpCIgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=D1r4Z1lv7OkXvnGXCGM0eq28egJUxXGfDkklzvjdHrQ&s=h5IH1PEbyL3T2wPsLuO-nQ8yN6Qq4LJW9eVnXxV04Bg&e=

Heather Forrest:Thanks, Terri - good morning to you

Steve Chan:Sure, just say next slide, and I can move it forward for you.

Jeff Neuman:Principle D is from the 2007 GNSO Policy

Rubens Kuhl:While at NTAG, applicants concluded that ICANN COIs likely violated international guidelines against money laundring. I still think it is true.

Trang Nguyen:@Rubens, I believe the issue was around the specific criteria in the AGB that states: The LOC ust name ICANN or its designee as the beneficiary." Many banks, U.S. and international viewed the "designee" as problematic because most if not all banks need to perform certain checks on the beneficiary, and they cannot do that for an un-named beneficiary. ICANN issued an advisory (https://urldefense.proofpoint.com/v2/url?u=https-3A__newgtlds.icann.org_en_applicants_advisories_loc-2Dbeneficiary-2Drequirement-2D05feb13-2Den&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpCIgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=D1r4Z1lv7OkXvnGXCGM0eq28egJUxXGfDkklzvjdHrQ&s=Ea0wrP_3zK_591tTkryUla-1ODP89is3_NojjxOAESQ&e=) stating that it would be acceptable to name only ICANN as the beneficiary provided that the LOC is fully transferable.

Trang Nguyen:Nonetheless, COIs were an issue for most applicants. Q50 received the most number of clarifying questions, by far. 82% of apps received a CQ on Q50.

Kurt Pritz:My understanding is that If a Donuts rgistry went into EBERO, the registery would no longer be registering names, therefore the DPML would no longer be critical

Jeff Neuman:@Kurt - Is that an argument that the SRS is not a critical function?

Rubens Kuhl:Jeff, the SRS is still required to update already registered domains.

Rubens Kuhl:But any policy layer is not critical.

Jeff Neuman:@Rubens - correct.....that is the critical part, but not the rest of the SRS

Rubens Kuhl:DPML, registrant verification and all other systems, processes and human resources that are in the policy layer are not critical.

Kurt Pritz:@Jeff - no. It was an argument that we need not augment the existing core set with DPML. There might be renewals in an EBERO environment, does that require SRS?

Jeff Neuman:I want to make sure we capture Trang's statistics for the recprd

Steve Chan:@Jeff, I believe Trang's statistics are from the Program Implementation Review Report, but it's also captured in the notes.

Rubens Kuhl:Kurt, from a pratical standpoint I think it would be better for EBERO both not accept renewals and do not expire domains.

Kurt Pritz:@ Rubens The hoped for ending is that someone else picks up the EBERO operated registry. If domains are not renewed or expired, would that complxity deter a successor from standing up

Kristina Rosette (Amazon Registry):@Steve and Julie: Joined late because earlier call ran long. Can you include me among those who ran into issues with the COI during the application process? Thanks.

Cheryl Langdon-Orr (CLO):that needs teasing out then Jeff

Julie Hedlund:@Kristina: I've added you.

Alexander Schubert:i heard nothing for 10 minutes. are the phone and audio bridged?

Michael Flemming:Yes Alex

Michael Flemming:Alexandre*

Kurt Pritz:It is a complicated area but I don't know of and haven't heard any evidence that indicates augmenting the critical functions list

Cheryl Langdon-Orr (CLO):I am

Alexander Schubert:seems dialing in is required to hear everybody?

Cheryl Langdon-Orr (CLO):hearing via phone Alexander

Alexander Schubert:but hearing works fine. i hear most people - just a few not.

Rubens Kuhl:Option D.

Alexander Schubert:one would think both systems are bridged?

Trang Nguyen:@Michael, I do not know if an EBERO has ever been officially triggered. We could check if that's a request from this WT.

Trang Nguyen:Yes, will do.

Jeff Neuman:@Trang, do you need that in a letter?

Rubens Kuhl:@Trang, from IANA root zone journals I follow I believe it was never triggered... but that would only reveal actual transition, not possilble events where EBERO has been called to duty but RO went back online before a transition happened.

Cheryl Langdon-Orr (CLO):I would go with Jeff's formulation with the ask ICANN

Trang Nguyen:I think I understand the ask. Will have to take this back internally and see what information we can provide.

Kristina Rosette (Amazon Registry):To be clear, the intention is to ask "yes/no" and "If yes, on how many occasions?" without seeking identity of the RO, the issue, or which EBERO transitioned, correct?

Michael Flemming:Yes

Jeff Neuman:@Kristina - yes....but also to find out if the threshold was reached, but ICANN did not bring up an EBERO (And why or why not)

Jeff Neuman:But no attribution to any registry or EBERO

Kristina Rosette (Amazon Registry):@Jeff: thanks.

Christa Taylor:Rubens, we can't hear you. Can you speak up?

Kurt Pritz:If the COI is eliminated, this question on cost measurements does not matter much

Rubens Kuhl:There seems to be a disconnection between bridge audio and AC audio... if you are in the same side you end up hearing who talked. Weird.

Michael Flemming:But th cost analysis would be the same, regardless, no? Even if we do get rid of the COI, the cost would still come up somewhere.

Rubens Kuhl:What I said is that EBERO has a readiness cost and an activation cost. Those costs that are COI-funded seems to only cover activation cost, not readiness cost. ICANN pays EBERO providers so they are ready even without incidents.

Michael Flemming:There would still be a cost*

Rubens Kuhl:Full disclosure: we have a contract clause in our back-end contracts to not take down TLDs that have not paid. their dues We can "snitch" them to ICANN, but won't take them down.

Kurt Pritz:The slide says ICANN "will initiate an Energency Escalation" - it doesn't say "will transfer to an EBERO" - so if the slide reflects the contract then transfer is not mandatory

Kristina Rosette (Amazon Registry):I've always understood that Emergency Escalation is completely different from transfer to EBERO.

Kristina Rosette (Amazon Registry):Section 7 of Spec. 10 sets out exactly what an Emergency Escalation is and how it differs if initiated by ICANN vs. by Registrars

Jim Prendergast:the contracted party is the front end. not the back end.

Jeff Neuman:@Jim - yes. Which is why we may want to come up with a different model

Jeff Neuman:It would be good to create a small team try and explore alternate models

Rubens Kuhl:I think ICANN said that if a registry survived 5 years, it looks solid enough.

Trang Nguyen:I was not with ICANN during the AGB development process, so don't really know how the 6 years were arrived at in Spec 8.

Christa Taylor:A pooled insurance type of structure based on data could be an straight forward solution. As long as the data and the algoriithm are conservative it could be a viable option

Christa Taylor:If the business completely failed and went bankrupt without any notice, one would think that the back-end provider could take it over with the renewal revenues to help offset the costs.

Christa Taylor:There is no 'cash cow' fund

Jeff Neuman:@Christa - There may be some legalities of the creation of an insurance fund.

Christa Taylor:@Jeff perhaps the wrong term but trying to convey the idea

Kurt Pritz:The reaction of the backend to not being paid could be governed by a backend certification program (!!)

Heather Forrest:Apologies, all - I have to drop off now for the Council meeting.

Kristina Rosette (Amazon Registry):Yes, Paul McGrady gave a rather "spirited" presentation of the many ways heading down any kind of "insurance model" could create problems for ICANN

Trang Nguyen:@Christa, in your suggested model, would there be different buy-in amounts based on number of DUMS, or would all TLDs be expected to contribute evenly to the insurance fund?

Christa Taylor:+1 Kurt it could be part of it

Jeff Neuman:But there are other ways including the appointment of "permanent EBEROs" and figuring out an amount that would compensate them for the expected amount of failures per year. Then using Registration fees to cover those costs

Kristina Rosette (Amazon Registry):Can be considered or should be considered?

Christa Taylor:@Trang needs more thought - could be DUM or another combination of DUM and minimals

Terri Agnew 2:Phil, we are unable to hear you, please check your mute button

Rubens Kuhl:Business failures can have a high correlation with selling domains for pennies, so the outlook of future registration fees may not be as good...

Phil Buckingham 2:sorry iwas on mute .

Cheryl Langdon-Orr (CLO):had to drop phone for my next ICANN call

Jeff Neuman:I believe that snce we now have a number of years under our belt, we could could use that data to seek proposals from EBEROs (past or futuree) to see if there is a fixed annual fee that they could be paid for the year to cover any eventuality (given that an EBEROs obligations are very limited)

Cheryl Langdon-Orr (CLO):will stay in AC

Rubens Kuhl:EBERO without COI could be a best of both worlds option.

Rubens Kuhl:Also have to drop the audio bridge... see ya.

Cheryl Langdon-Orr (CLO):agree Rubens

Cheryl Langdon-Orr (CLO):but happy to explore new funding options

Kurt Pritz:I agree with Rubens also. Here is a trial balloon on COI: Eliminate the COI. ICANN to fund the EBERO and temporarily maintain an abandon registry out of its regular revenue stream. This is because: (1) no registries have required EBERO intervention to date so projected incidents (and costs) should be low; (2) COI was problematic to implement on many levels (clarifying questions, different laws, etc); (3) the fees from 1000+ new registries, which is a number greater than expected, should cover costs, ICANN did not have this money when writing the Guidebook;(4) the cost of maintaining the existing registry functions is relatively low; (5) the most likely failure is a single registry business failure and the development of the backend registry marketplace would tend to guarantee that data is preserved in the event of a failure and any transition is straightforward.

Phil Marano (Mayer Brown):Protections vis-a-vis .Brand TLDs and their licensees can be dealt with through other contractual means, and might not need not be mandatory for registry operators who are not in the business of selling domain names.

Kurt Pritz:sorry for all that

Christa Taylor:+1 Jeff

Cheryl Langdon-Orr (CLO):bye guys need to leave

Kurt Pritz:I don't think as policy makers, we need to get into detailed costs. We just need to say that the COI was problematic and now it can be funded separately for a number reasons. The topic of use of auction funds or left-over funds is a differnet discussion

Jeff Neuman:@kurt said it better than me .... but same concept :)

Robert Burlingame:Thank you everyone.

Christa Taylor:Agreed Kurt. The costs would be very useful

Christa Taylor:Good day all!

Trang Nguyen:Thanks, all!