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HELSINKI – ccNSO Members Meeting Day 2 (Part 2)  
Wednesday, June 29, 2016 – 10:45 to 12:00 EEST  
ICANN56 | Helsinki, Finland

UNKNOWN SPEAKER: We're on? Super.

UNKNOWN SPEAKER: All right. All right. It's time for a little legal stuff now. I believe we are a little bit late from the agenda, but in my mind, that's completely okay. We are ready to start the legal session of this ccNSO member meeting days here in Helsinki. I'm pretty sure you've all been welcomed to Helsinki like 10 times already, but I do want to do it one more time.

So welcome. And I hope you have enjoyed your stay. We have four presentations today, interesting topics. Something about terms and conditions, court cases, digital security, and memorandum of understanding with governments. Very wide range of topics.

To my presenters, I would like to remind you that, please talk to the microphone because I've heard we had some technical problems. And we start with David Abrahams from Nominet UK. Please, I give the mic to you.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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DAVID ABRAHAMS:

Thank you very much. Good morning everyone. I'm just looking at my computer as it gives me a nice error message. Just what you want as you start your presentation. Yeah, I'm David Abrahams. I'm head of policy at Nominet, the dot UK domain name registry. And thank you very much for giving me the opportunity to speak here.

I wanted to give a short, and it will be short, overview of some of the changes that we've made to terms and conditions in the dot UK registry, and some of the lessons that we learnt in doing that. Oh yeah, I've got to click that, don't I?

So. Unlike in the gTLD world, and probably quite like a lot of you in the CC world, Nominet has a contractual relationship with its registrants. Now we still have a registrar model, and almost all of our registrants are registered through registrars. But there is this three-way relationship that you can see on the slide.

We have the registrar agreement between us as the registry and the registrar. Obviously, there are the registrar's own terms and conditions that their customers sign up to. And then we have our own registrant terms and conditions, which are between, effectively, a contract between Nominet and the registrant of a dot UK domain name. So I'm still relatively new to the ccNSO community.

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So I actually wanted to ask all of you, how many of you in your registers, have a direct contractual relationship with the registrant of the domain name?

[SEPAKER OFF MICROPHONE]

Some, yeah.

[SPEAKER OFF MICROPHONE]

Yeah, have a contractual terms and conditions, something like that. And how many do not?

So I would say that's, you know, that's quite a majority for having that direct relationship, which is obviously gives us a slightly different relationship to the gTLDs. And for Nominet, this is quite interesting because you may know, we're running a couple of gTLDs ourselves and the backend for others, and so, we have had to adjust our thinking for the gTLD world, for those new gTLDs that we're running.

Now, to just give you the background, the registrant terms and conditions, which are the ones that I'm going to talk about are... They set out our obligations and our rules, and the obligations of the registrants.

So. Our terms and conditions were in need of a bit of an update. Now, I think I have to declare this is an interest. I am not a

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lawyer, but one of the things that any of you who manage terms and conditions and any of you who are lawyers will know, is that it is very difficult to keep your terms and conditions up to date, constantly in a rapidly changing environment, like the one that we have, in an industry that changes quite quickly.

In a legislative environment that changes quite quickly. So the way we've done that in the past is over the past probably five plus years, is that we've done, what our legal team like to call, laser surgery, because that sounds cool, laser surgery on our terms and conditions, on the detailed terms in the contract, which means that, for example, when we introduced registrations that go on longer for two years, because you can register a dot UK domain name up to 10 years, when we introduced that, we just changed the particular conditions on that.

We didn't do a full review of the terms and conditions. So, when we came to look at them in their entirety, towards the end of last year, we found that, to our slight embarrassment, that they haven't been keeping pace with changes in the industry. Our processes had changed significantly. Our registrars' processes have changed significantly. For example, we had, we no longer had any kind of paper based systems. Everything was done online, our registrants were able to access their accounts online, as were our registrars.

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And of course, we no longer routinely communicate by fax machine. But it was still quite a lot about fax numbers in the Ts and Cs. Our laws and regulations that applied in the UK had been updated. Some through UK rules, some through European rules. So, yeah, that might be a headache that we have to have all over again, relatively soon.

The other thing that we found on taking a fresh look at the terms and conditions is that when they had been last fully reviewed, there was a very different approach to the language and the tone that had been used. So the terms and conditions were very long. They had been used to try and explain what Nominet was, and what sort of organization it was, and how it would operate.

And I think, at the time, that was meant to be a consumer friendly way of making sure that people understood these things when they bought their domain name. Perhaps it was more innocent times before we all had to click on okay and agree 20 different times every time we switch on an iPhone or something like that. But I think it's fair to say that that wasn't the right place to be communicating those messages, and it certainly is not the...

The lawyers were very clear on this, and I think, you know, absolutely right on it, that in a contractual terms and conditions, is not the right place to be describing your organization and

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what your goals and vision of the internet might be. We took the brave decision of rather than doing a little bit more laser surgery, we would go and do full open heart surgery on the terms and conditions.

Now we didn't quite, we didn't quite start from scratch. But we did do, we did make some significant changes. The terms and conditions themselves came down from eight pages to six pages, which is pretty good, and that wasn't just fiddling with the margins, or the fonts, or anything like that. It was really, you know, we took some words out.

It went from 38 different sections down to 13. Now most of those were relatively uncontroversial, not many people were worried about their fax machines. But there were some which were more controversial. So, and this goes back to some of the issues of language that had been used in the previous terms.

One of the key reasons, one of the key drivers for us updating our terms and conditions, was that last year, we decided we were going to raise the prices for dot UK registrations. But our terms and conditions stated that Nominet would price on a cost recovery basis. Now I'm not sure they knew what that meant when they put it in the terms and conditions originally, but we weren't doing that. We weren't doing that before we raised our prices, and we arguably never actually did that.

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It was true for some charges, but not for the domain registration itself. And I think that's probably what the drafters of the old terms and conditions were trying to get at, but they hadn't used precise enough wording, so it was misleading, and wrong, and it needed to change. We also, within the terms and conditions, had a commitment that if we were to change any of those terms and conditions, we would need to publically consult for at least 30 days, and I think that is one of the reasons why we hadn't made significant changes sort of more recently, because it became a much more onerous task.

We had effectively made a rod for our own back. So in suggesting that we remove that, we were looking to be able to make small changes to the terms and conditions, you know, quite easily, without having to publish notice, and you know, one of the things about these contractual changes, as it says, we will issue a notice 30 days before they come into effect, and we will do that by publishing them on our website.

And of course, the concept that consumers are constantly checking our terms and conditions website to see if it has been updated or not, it's clearly a false one. The important thing here, and of course it was a big issue in the consultation process on these changes to the terms and conditions, was that we, we were doing nothing to change our approach to policy making for dot UK, which is still very open and consultative.

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This was purely about amendments to the terms and conditions on their own. And then, and you might be detecting a thing here, but for reasons no one can quite remember around the office, we had a section that said, that if registrants weren't happy with any change in the terms and conditions, then they could cancel their registration and they would receive a [inaudible] refund.

Now, for a domain name that costs three pounds 50 a year, that refund was never going to be that much, and in practice, we had no way of doing it, because all of these registrations came through registrars. And the registrars had no way of doing it, and as far as I can tell, in the 20 years that Nominet has existed and managed dot UK, no one has ever exercised that right.

So, that was one thing, another thing that needed to change. We had already, through our laser surgery, taken some powers within the terms and conditions, to allow us to suspend domain names, if they were used in relation to criminal activity, or to any activity that would damage the domain name system.

And I know that we're probably a little bit more activist in that respect than some other registrars. One of the things that we wanted to do was make it very clear that we saw this as part of our duty, and that we didn't want to just be limited to damage to the domain name system, we wanted to, you know, I'm sure

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we've all been seen an increase in malware and botnets and the like, being detected within our registers.

And we wanted to be able to take action on that. So we broaden the scope of the definition of a registration that could be suspended. So, these were the more controversial elements within the proposals. We ran a 30-day consultation, as we were required to do under the terms and conditions. But that is significantly shorter than we would normally do.

So for a policy change, we would normally run a 90-day consultation. But we did feel that this was sufficient for the people who were likely to respond to this rather specialist topic, to make their responses. And this is what we found, and you can see 36 responses to that consultation. So, having made that point about engagement earlier in the, regarding the ccNSO survey, I now realize that that was a complete hostage to fortune.

[SPEAKER OFF MICROPHONE]

I haven't been over it. 36, we had less answers in the ccNSO survey had, but they were, as you can see, two-thirds of them came from registrars, about a third from registrants. It was actually a fairly representative cross-section that we got. But the key thing here is this wasn't seen as particularly big news in the industry, probably in part because, at the same time as we

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announced the changes to our terms and conditions, we also announced a price raise for the first time in our history, ever.

So that's a good way of making sure that people are focused on the right issues. Now, in terms of responses, there was general support for having a shorter document with tighter language. There was, as I say, concerns about some of those issues that I mentioned. Some people felt that by taking out descriptions about Nominet being a not for profit company, we were in some way trying to dilute our commitment to that, which we were not doing.

We were just saying, that's not the right place for it. And we have articles of association for the company, and that's where, where we have those things. A lot of the comments in relation, that we got in relation to the cost recovery point were quite interesting, in that they probably didn't understand the term cost recovery either.

Now that might have been our fault, maybe we didn't make it clear enough in the consultation. The, probably the most difficult balance to strike was that one over, should we consult on future changes to the terms and conditions? There was an acceptance amongst most people that small changes shouldn't need to go through a consultation process. If we change our phone number, or our address, that has to be in the terms and

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conditions, but do you need to consult for 30 days on whether you're doing it or not?

I mean, that's not really... it's a change you're going to make anyway, so there is no point consulting on it, and respondents understood that, but there were obviously other people who saw it as some kind of way of taking an unequal power in the terms. The refunds in the event of changes, nobody came up with any practical suggestions for how we should do that, unsurprisingly.

And under the domain suspensions discussion, there was widespread support for us to be able for us to act on things like malware. And I think Nominet has got a fairly good reputation within our stakeholder community for our security work, so there is a fair amount of trust, but there were obviously some people who were concerned about mission creep in saying, you know, Nominet, it's not your job.

But overall, not too many, no unexpected issues coming out of the response. So what did we decide to do? We decided to press ahead of the changes. They came into force on the 1<sup>st</sup> of March 2016, and nothing too much has happened. There hasn't been any adverse stakeholder reaction.

The one really interesting effect, I think, is by talking about this, by seeking to change the clause on refunds, we actually got

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some claims in for refunds. And this was mainly linked to the fact that some of our domain portfolio holders, when looking at the price rise, were saying, ah, maybe I'll hold a few less domains than I had before. And so they saw this as a good opportunity to claim a refund for the domains that they had decided to trim from their portfolio.

I think it's probably fair to say that the cost to Nominet of providing those refunds was more than the refund itself, but we did it. And there were relatively few claims, so it didn't make too much difference to us. I think that the key lesson for us, and one I'd like to share with all of you, and Peter and I were talking about it just before we started, is don't be tempted to kick the can down the road when it comes to things like this.

It's too easy to say, oh, we'll just do a little change. It's probably worth doing the full review quite regularly, to make sure that you keep things up to date, because otherwise you end up with a long shopping list of things that aren't right. Okay? Thank you.

UNKNOWN SPEAKER: Thank you David. Very helpful and useful to hear. Now that I look my [inaudible], I would say that if there are one or two questions, we can have them now, and the rest of them we save until the end of the session. So does anyone have a question for David?

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Yes, Nigel, please.

NIGEL:

Hi David. It is working, good. First of all, congratulations. I haven't actually had the time to go read these yet, but I shall be doing very shortly. Just to comment, I'm doing my best, that's better. All right. I have to get really close.

First of all, congratulations on doing this. I kind of, thank you for giving me some work here. When we started our registry, we initially took our terms and conditions from a telephone contract, as in for a mobile phone. And we shortly reviewed that, and we stole lots of Nominet's ideas and concepts, pretty much wholesale, so it's our terms have migrated very much into the way that Nominet has done this, simply because they're big and you've set a good example.

And in fact, even in some of the things that we've done, it's actually explicitly noted now. If you look at our good practice terms, it's explicitly noted that they're inspired by Nominet. This just means I've got to go and do the same exercise now, and review how you've managed to cut some of these, because nobody reads terms and conditions.

We have had to rely on them in certain cases recently, and nobody reads terms and conditions. And they're very shocked

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when you seek to rely on them. I get more visibility [inaudible] because you've got millions of domain names, and all the problem ones come to me, but thank you.

DAVID ABRAHAMS: You're very welcome, Nigel.

UNKNOWN SPEAKER: Anyone else? Peter, yes please.

PETER: David, I was just wondering, after the public comment period, and the following adoption of the terms and conditions, did you engage to the existing registrants, did you, for instance, set up a mass mailing to alert them, hey guys, now these are the new terms and conditions are in place? Or not?

DAVID ABRAHAMS: Not. No, we didn't. And so, 10.7 million domain names, over 3 million individual registrants, no. I think that we are very, very limited in when we would communicate directly with our registrants, mainly because they don't actually interact with Nominet, so they don't necessarily recognize the brand, and the name, and so what we end up doing is creating a lot of work for

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our registrars, because people... Why is this company mailing me about my domain name? I don't know who they are.

And also, there are some... I mean, obviously, we... The good thing about having the direct relationship, the good thing about having the contractual terms, is that you can, when necessary, communicate with them. For our gTLDs, we can't. It would actually probably fall into the new spam regulations or something like that. You can't... Even though we might have the data, we wouldn't be able to use it in that way, but because we have a contractual relationship, we can.

But it has to be specifically about that, those terms. But no, we didn't do a mass mailing to tell people that the terms and conditions they never read have now changed to something that they're not going to read.

UNKNOWN SPEAKER: Wow, I envy you guys with contracts and terms and conditions, because we here in Finland, we only have the law, and try to change the law. It takes only nine years.

[SPEAKER OFF MICROPHONE]

And now, Peter, I think it's your turn. You had a court case that impacted your terms and conditions somehow, tell us about it.

PETER:

Okay, thank you. Right. Okay. Like this? All right. A bit odd, but we'll manage. Well, this is going to be very much in line with what David has just presented us, and I'm so grateful that he set the scene for me, because for dot BE, we're living in exactly the same context as Nominet does. We have a triangular relationship, registry, registrar, registrants, and our contractual link with the registrants is basically the terms and conditions.

So we're in exactly the same model. Now, we haven't gone through a change of what terms and conditions yet, but we, we're about to. The reason what cost it, is an unfortunate court case that we actually, because it has been dormant for such a long time, that we actually forgot about.

So but the, everything started in 2001, when a certain individual, I'm going to call him Mr. X...

[SPEAKER OFF MICROPHONE]

Sorry. Okay. That should be better. Yeah, I'm going to look at that slide, yeah.

So we have a certain individual that registered the name [inaudible] dot BE. Now this is a well-known local brand owned by a certain company called [inaudible], and they are manufacturers of [syrups?], that you mingle with water to have

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flavor to water or lemonade if you want. And it's also a geographical name, more specifically, it's a village in the south of Belgium.

So, the company [inaudible] files an alternative dispute resolution procedure against that Mr. X, and he regains control over the domain name. So the outcome is that the third party decider, or there is the transfer of the domain, which happens somewhere mid-February 200 and no, not 10. That should have been 2002, probably. So anyway, case closed, you would say.

Now, following the outcome of the ADR, we contact Mr. X, and we send him an invoice for the admin costs that we repay, reimbursed, to the [inaudible] company. So what I should add here, is all alternative dispute resolution is very close, it's 95 match, 95% match with the UDRP that you have in place for gTLDs.

So you need, basically you need to prove the existence of three conditions. If those three conditions are fulfilled, you again, you can get the transfer or deletion of the domain name at stake. Now, peculiar for our ADR, is a reimbursement mechanism. If you use the ADR, you get the domain name back.

We as a registry, we are going to refund you the administrative costs of the procedure. Obviously, we do want to get our money back as well, so we are going to reclaim it from the previous

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owner. And this is obviously in our terms and conditions, otherwise it would not be enforceable. So important note here, that the system of, the existence of the alternative dispute resolution mechanism, was already in place since 2000.

So before the actual registration of this domain name, but the reimbursement mechanism was not in place yet at that time. We added it somewhere later. And this is obviously having its impact on the following of this case, because Mr. X refuses to pay for the invoice. As a consequence, we start litigation. Our base policy is that if a former registrant is a company or an individual in Belgium, refuses to pay for the ADR reimbursement, then we start litigation.

If there is somebody living outside, and especially outside the EU borders, it's simply not cost efficient to start litigation. So we had a number of cases, until now, until this one, we had won all of them, but in this case, the Court of Commerce rules against us. Somewhere in 2011. Now, we argued that well, since Mr. X registered a domain name, he is bound by our terms and conditions.

He accepted everything, including that reimbursement rule. And as the reimbursement rules are effective 2009 onwards, and the ADR case was only concluded in 2010, so clearly, Mr. X has to pay for the invoice. Now, Mr. X, however, was very brief, and he said,

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well, that's all a bit of rubbish. The only version of the terms and conditions that apply to me, are the ones that were presented to me at the time of the registration in 2001.

Now, the reasoning... Did I miss...? Did I skip...? No? Okay. So the Court of Commerce, ruled against us and its reasoning was, okay, you have indeed inserted in the terms and conditions, a right to unilaterally change the registration rules, but however, this has nothing to do with registration rules. The point of argument here is your conditions regarding alternative dispute resolution, which is not a registration rule, hence, I throw it out.

So obviously, we were not all too happy with that. It's more like a play of words than a real legal argument because well, we think that registration conditions, registration rules, it refers to the whole set of the terms and conditions. And not only to those specific technical registration rules that are going to define who and who has not right to register at dot BE.

So we file an appeal against this case, and then suddenly the case goes numb. We have an exchange of arguments, and then nothing happens for several years. And to be honest, I completely forgot about this case. And so, just two months ago, finally, we get a judgment of the Court of Appeals in our letter box. So I was pretty much startled by that fact alone, and even more startled when I start reading the thing because the court

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just reaffirms completely what the Court of Commerce has been saying.

They are hitting on the nail again, like oh yeah, you can change your terms and conditions unilaterally, but registration rules, not the rest. So, all of our arguments got basically thrown out, and Mr. X, who is, by the way, who has a history of cybersquatting, he walks. So what's the outcome and what's the lesson learned?

Well, it has been proven beyond any reasonable doubt, I would say, that the courts have a clear tendency to evaluate terms and conditions in a restrictive way, if you're in an unique market position, not to use the N word. The terms and conditions, even when the subtitle clearly says, change of terms and conditions, to the section, to make it sure that there is a price to the whole set of terms and conditions, still the court says, no, no, no, no. it's limited to your registration rules.

You cannot use this mechanism for your whole set of terms and conditions. One of our arguments was, and we thought it was fairly important that we did our very best to inform every registrant of the subsequent changes we have made to the terms and conditions. That was why I was asking the question to David, because if we go to for a major change of the terms and

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conditions, we do effectively a mass mailing to our registrants, either direct, either through the registrars.

But the court through it out. They said, well, it doesn't matter whether you informed your customers or not. I'm just not going to keep that into account. So, the only good thing that came out is that the courts, or both courts, confirmed the possibility that we can work with unilateral changes for the terms and conditions. So what are our next steps?

Well, I'm a bit pissed off, to say the least. So, our sweet revenge is going to be that we are going for a full, complete review of the terms and conditions, because as David pointed out, you have some small things that you leave on the road. That you say, well, we should update our terms and conditions, but we are not going to do that much effort for just some small stuff.

So we had already a whole bag of small stuff, that in itself, would have justified an update of the terms and conditions. But this is, of course, now we have a very dangerous precedent, that I want to neutralize as soon as possible. So obviously, now is the time to do a full and complete review. My aim is, and I'm really encouraged by the example set by Nominet because they have clearly done the same, is I want to redraft the terms and condition to exclude any kind of ambiguity, because when you draft a first set of terms and conditions, when you start your

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activities, and now you're more than a decade further ahead, there is a lot of the wording that has become vague, and that you say, well, we can still live with it.

But if you go for a full redress, it really might be the time to say, we are going to look very thoroughly into this language, and we go and set it to a new and modern standard. So and obviously, I'm going to add certain clauses, and one of them is going to be... Well, because the court confirmed that they don't care whether we inform the registrant or not, so I'm going to nail it into my terms and conditions, I'm going to say, well, every time terms and conditions change, the registrant is supposed to have accepted the most recent version, ultimately at the moment of the renewal of [inaudible] domain name.

So we had this big advantage, that we have a yearly renewal of a domain name. So each time we have, what I would call, a substantial legal contractual point that I can use as an anchor to have a silent buy-in or acceptance of the new version of the terms and conditions. So, conclusions about, keep in mind that courts are very restrictive when it comes down to the interpretation of your terms and conditions. It happened to us, but it probably could happen to each and any of you.

Also, take with you that you can be creative in your terms and conditions. In our case, we managed and got confirmation, that

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you can work with clauses that allow you to have unilateral changes, which is in a normal contractual relationship, which is some bit strange, but feel free to play with it if you see that there is advantages for your registry.

Obviously, as stressed before, working with a renewal period gives you a much wider array of changing your terms and conditions. And well, last and not least, take advantage of, what I would call, David's and my experience, to do a sanity check of your terms and conditions, because for many of us, it's a document that is somewhere, laying down there in a dark corner, but it's one of your contractual cornerstones. Please don't forget that.

So do a regular sanity check. That's it. Thank you.

UNKNOWN SPEAKER: Thank you Peter. Also, very helpful to hear. One thing is for sure, you never know what comes out of court.

And the other thing, seems to be sure that terms and conditions need to be checked on a regular basis. Now, there is a question waiting already. Wonderful.

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EBERHARD LISSE: Belgium is a civil jurisdiction that mainly relies on codified law, whereas many English speaking countries, in partly the United Kingdom and [inaudible] for example, are common law jurisdiction which mainly rely on precedent. Would it have made a difference if your terms and conditions say that your applicants are required to regularly review the terms of conditions and policy as published on our website, and if there is no comeback after a while, to be deemed that they would have accepted those.

Would that have made a difference in your case?

PETER: It's a very interesting question, Eberhard. And the short answer is no. Do I have 100% certainty about it? No, but from what I know, from jurisprudence, we know that many courts toss out a kind of obligation, especially if it's oriented to a private customer. It might be different for a business customer, but especially for a consumer. The courts are just going to throw it out, and they're going to say, well, you cannot put that obligation on a private consumer, that he should virtually check your website every day to find out whether something has changed in his set of rights and obligations.

So I don't think it would have made a difference.

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UNKNOWN SPEAKER: The last question.

UNKNOWN SPEAKER: I've got two questions. One is, if you would like to disclose how much money you are talking about, in this case with Mr. X. And the second question is that the amendment for the registrant being, must be knowledgeable of the most recent version of the constraints is taking it [inaudible] the finish version, where we apply the law, and there we have that ignorance of the law is not a relevant defense.

PETER: That's the difference between the legal framework and a contractual framework. It wouldn't work in a contractual framework. Regarding the costs, the fixed price for an ADR procedure, is 1,750 Euros. So that's only the administrative costs that are charged by the ADR organization that does it for us, because we don't do our own ADR. We work together with the Belgium Mediation and Arbitration Center.

So what we do is, we reimburse those costs, but not legal fees. If you hire a lawyer or an attorney to assist you with the case, that's your personal cost. We only reimburse the 1,750 Euros. So basically, that is what we invoice to Mr. X, and obviously, the

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legal fees involved with those two court litigation, seriously outnumber the value of the difference itself.

But for us, it was a matter of principle.

UNKNOWN SPEAKER: Good. Halfway through. Next one, for the next, we have a presentation from Columbia, Eduardo [Santoyo]. Did I say it right? Something about the importance of digital security.

EDUARDO [SANTOYO]: Yes, thank you. Thank you very much for the invitation and to be present here, to have the opportunity to talk about again. The relationship of this topic that we have been talking about, the terms and conditions in cybersecurity, because we are really doing a link between these two things in order to handle these [inaudible] cybersecurity.

We had included in our terms and... We have a mixed process between a registry, registrar, and a registrant relation. We are a registry who has direct registrations to some registrants, as the registrants from the domain name, from that dot GOV, dot CO, dot EDU, [inaudible], and dot ORG, [that's you?]. But we have a registry registrar system for that conduct dot CO, or for dot CO, or dot [inaudible] net dot CO.

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In those cases, we don't have the direct relationship with the registrants. So we need to manage both things. But in all the cases, so in the cases that we have contracts with registrants, where we are registrar, we have included in terms and conditions that the registration is driven in good faith, that is not allowed to have malicious activity within the, in the use of the domain name, dot CO.

And also, we have these provisions in the terms and conditions that we have with our registrars. So we ask them to include in the contract that they have with the registrants, these specific prohibitions. So, this is an important to understand what is this [inaudible] related, how we would handle this type of security [inaudible].

And probably, I'm going to go a little bit fast for a few slides, but has only [inaudible] in some specific topics.

[SPEAKER OFF MICROPHONE]

Okay. I'm going to be shorter. Okay, sorry. Yes, okay. A little thing about us. Almost all of you know that we started these new activity in 2010 to ask [inaudible] internet, nevertheless the domain name has been delegated for [inaudible] from 1991. Now, we have almost a little bit more than 2.2 million domain names registered all around the world.

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And in Columbia, all of the Colombian agency, governmental agencies use that call as the main domain. 90% of dot companies are using dot CO, and dot CO is also used worldwide for many companies. So for that reasons, we are really commitment in order to support initiative and for activities to continue the security, stability, and reliability of our domain name, because we understand that we have a big responsibility on DS.

And of course, in cybersecurity matters, we also identify that begin to have half, or more than half, the terms and conditions with our registrars and our registrants, we also have to have a very good relation with the global and the local cybersecurity community. In order to work together, in order to [inaudible], or in order to prevent the misuse of the dot CO.

And then we have relationship with many organizations worldwide. Our strategy has many, many things is to have, of course, very good standards for IT operations. We are now a company. We are a [inaudible] company. We are based in [inaudible] services as a provider. Our engineering and everything now today. We have active participation, as stakeholders at both levels, at national, regional, and worldwide.

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So we [inaudible] in cybersecurity [inaudible]... as Columbia, because that was also among data that we receive from the ICT ministry in Columbia. We have a contract with the Columbian Ministry in order to manage the dot CO domain name. And this is one of the specific requirements in the Columbian [government?].

Okay. We set in process using the terms and conditions, some specific procedures. One is that what we call rapid domain complaint process, which is precisely to ask the registrants, or the registrars, or the registrants through the registrars, to look how to compliant the terms and conditions on the [inaudible].

The tool is one thing that we call, internally, the registry mitigation services, is now that we are [inaudible] to provide services, including all of the registries. How would this work? We receive alerts from many different trusted sources about the use or the misuse of the dot CO domains in malicious activities. We review these alerts, and finally, we discover if some of them are really incidents that has to be handled right now, or some of them are really something that was an incident in the past, but now is not online, or is not an active to it for the system.

And [inaudible] the scope of these activities, we are talking about phishing, farming, malware distribution, malicious hacking, and defacements. We do not focus on content about

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[inaudible] privacy, cybersquatting, or other malicious activity. What for? Because we have in Columbia, and a specific law allow this first list of malicious activity that invite us to be more active in order to monitor what is happening on this, and we have for the others, more...

We have to realize more in a normal justice process [inaudible] into account. What we do if we find an alert that is actionable, and we validate that through our service that we have [inaudible] dot CO? That we do is in the cases that we are the registrar, we inform to the registrant that the domain name is being used for a malicious activity, and we invite them, according the terms and conditions to review the activity that has been in place that for domain.

In the cases that we have not relation, direct relation with the registrar, we notify the registrant, in the cases that we are working with registrars, we notify the registrar that we found that some specific domain that has been registered through to them, is being used for malicious activity, and we invite them to handle the case with the registrar.

In some specific cases as [inaudible] dot CO, or some other specific, we contact directly the registrant, but those are really exceptional cases. This is something that is, and it continues [inaudible] process and it continues [inaudible] activities, to

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review the terms and conditions, and to be sure that the registrants and the registrars are really aware that we, what are we expecting from them when we review, this is specific points in our terms and condition, and that was a specific requirement from the Columbian [ITC?] Ministry.

Some [specific] non-rapid registry monitoring system that is not actually for our side, like spam or [inaudible] or E-policy, or cybersquatting, that we do is that when we know cases about this, we [inaudible] that information to the Columbian Law Enforcement Authority, because we are not the authority to manage this.

And they have to investigate and decide to take or not action about that. Some lessons learned is, after five years of doing this, 90% of the alerts are not action, so many of them are [inaudible] because they're probably the effective party real life has been used, his side in a malicious activity and they correct that by themselves, or 56% of that are not malicious after the research.

Therefore, we view every single alert. We receive, more or less, two and two and a half million alerts for a year. So we have a lot of activity within this. And we only notify to the registrant, or to the registrar when we really identify that the malicious activity is in place.

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That we learn, is that collaboration on this is a really an important matter, more probably that having in the contract, the terms and conditions, because we found that having a very good work, acting together with other organizations, not just to share information, as LACTLD, LACNIC, and the [inaudible] working group, ISOC, or some others, has been very useful for them and for us, ending in the interest to keep a safer place for the dot CO space.

This is yes to have a map, and how are we related in the map of cybersecurity, as a registry in Columbia. We have been related with the ICT ministry, we have a contract with them. They said the policy to manage the dot CO, and they of course, execute the [inaudible] and policy support for Columbia. We have had direct relationships within the ministry of defense in Columbia. We have an agreement with them, where we provide them information about the malicious activity that we receive the information on the dot CO space, so they can do all of the intelligence that they need to do.

And there are several bodies internally in the Columbian cybersecurity policy, which is the culture, the ministry and defense, and the national [inaudible] courts, and of course, the relation that they have with other international public bodies. We have specific relation, and we have an active relationship

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with our registrars in our, in [inaudible] service, and with the registrants, to the terms and conditions, as mentioned before.

And of course, we also have a very good relation, this is not a contract, this is more agreements that we have with sources to provide us information about, we are not monitoring this space in the dot CO. We are asking for, to people who do this activity, to inform us every single bad activity that they identified on the dot CO space.

And we have been working also very close with ICANN in order to share the experiences that we have working together in all of this cybersecurity related topics with some others, [inaudible], Latin America, as ICANN invited us to work together with them to present our cases to the organizations of American States, we have with them a very close relationship.

And we had been working together in order to include our strategy to Paraguay and to Peru, invited by ICANN too. So, I have some of the slides, but it is not very relevant in order for the cases that we are discussing right now. So I'm going to stop here and to give the floor, you have questions. Thank you.

UNKNOWN SPEAKER: Thank you very much Eduardo. Interesting. A lot of work, very important topics. Digital security, that concerns us all, I believe.

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My fault, we started too late, that's why I won't give any questions right now for you, in case there is something very, very, very urgent to ask right now.

Instead, I would like to give the mic to Jay Daley, from New Zealand. You have recently signed a memorandum of understanding with your government, and we would like to hear about it.

JAY DALEY:

Thank you. So, yes, I will start, I know by explaining a little bit of the structure of the dot NZ ccTLD, because I know that many of you are confused why there are always 55 of us that come along for these meetings. So the dot NZ ccTLD, the designated manager is a membership society and a charity called Internet New Zealand. And many of you will know Jordan, who is the chief executive of Internet New Zealand.

That organization actually has very little to do with dot NZ. It works on other areas, it works as the voice of the internet, and internet users, delivers internet policy, provides community funding, which it grants, and runs community events. So our local equivalent of the IGF. Internet New Zealand owns two companies, and these companies are quite independent with their own boards.

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The one on the left is the registry, NZ RS, and I'm the chief executor of that. We are the registry. We run the marketing and channel management. We do broad technical research, and we do business development and introduction of new products. Then the other companies, the domain name commission, and Debbie is the chief executive of that. They set the dot NZ policy. They authorize registrars. They regulate the market. They handle complaints and they manage disputes. So through that policy that they set, which is what we then implement as the registry there.

Right, so we have recently signed a memorandum of understanding for the management of the dot NZ country code top level domain. This is an entirely voluntary agreement between Internet New Zealand, the parent organization, and a government department. It took 18 months of discussions and negotiations to achieve. On one side we had us three chief executives, doing the negotiation, and on the other side, was the GAC rep for the New Zealand government, who is actually in the room to answer questions as well.

And so, we sign that in May 2016. Now, people often ask us why would we enter into a voluntary agreement with government? Aren't we better off leaving no contract at all, no agreement? But we think that this tackles three important risks. Internet New Zealand, as I mentioned earlier, does internet policy, and so

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it regularly finds itself disagreeing with the government on that policy.

So, we have had two big disagreements recently. One is regulated pricing for the monopoly infrastructure, that's [copper] in the ground, and a disagreement on surveillance and interception laws. And we wanted to prevent anything that, those type of disagreements then having a contagious effect on dot NZ. The next thing that we have is that there are plenty of people, generally telecommunication companies, who claim that dot NZ profits are a public tax, and that they believe that the government should take control in distributing where those profits go. Their view is, why does Internet NZ get to decide? Our answer is because we invented it, go away. And if you invented something, you would be in a good position, but that's, a better answer might be needed.

And the other thing is that there are no authoritative documents to point to. And so, regularly, there is an assumption just to amongst the general population, that something this important must be government controlled, and there is a regular fit from newcomers who come into this, whether they come into government or into some other organization that has a role in this misunderstanding the nature of this relationship.

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So, the MOU tackles this in a number of different ways. The role of a government is very clearly defined, and thereby limited. Now, government, of course, can pass any law it likes, change its mind entirely, so that doesn't, it's not a permanent limitation, but it is a practical one, unless they choose to then take a very strong option of changing the law in that way, or tearing up the MOU.

It provides recognition and definition of the Internet New Zealand role. So that makes it difficult for third parties to challenge that and say, you know, we think we should have that money or to do something else. We already have some practices within Internet New Zealand, that have now become public obligations, and that is good because that keeps us honest, and that is in the community interest to keep us honest in that way.

The MOU has a defined process resulting concerns, which fits with RFC 1591, and the whole thing is pinned to the external documents. The RFC 1591, FOI, GAC principles, and our own TLD principles. And importantly, the MOU does not talk about funding, and it does not talk about intellectual property. Those are left as operational matters in that way. Okay.

So the role of the New Zealand government, as set out in our MOU, is that it asserts that it is responsible for ensuring the stability of the internet, that dot NZ is reliable and responsible,

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that dot NZ is run consistent with RFC 1591, and that dot NZ supports the interests of users. So yes, we are in this fantastic position where the government is now committed to ensuring that we follow RFC 1591. We could not have asked for a better result really, in that way. Okay. Because of course, the threat that many others see is that the governments don't recognize RFC 1591, and think that they have sovereign rate straightaway.

So there was a recognition then of Internet New Zealand role, recognition that it is the designated manager. So this goes back to the RFC 1591 phrase that any discussion about ownership is not relevant. This is about... Yeah, the service to the community. Recognizes that the process through which we became the designated manager was a proper process, involving the local internet community.

It recognizes that we make a surplus for dot NZ, and we use it to further the objects of Internet New Zealand, the bit I talked about before. And that those objects may include disagreeing with government. And it recognizes that we decide and implement the dot NZ market structure, and we regulate that market. And that we develop and set all dot NZ policy to benefit and meet the needs of the local community.

So it's a strong recognition there. As I mentioned, many of our existing practices become obligations, and this is something we

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were very happy with. So we commit to a high standard of public transparency, and we commit to continuing the following. Publish our annual report in a public and timely fashion.

As an incorporated society, there is no need to make it public, so it requires us to do that. Hold governance meetings in public. And again, public publish minutes. Again, there would be no legal requirement to do that without this, but we do it anyway. Provide the public reports on how the surplus from dot NZ is spent. And then engage in broad community consultation and any changes to the objects, which are the overriding principles of how we would spend it on dot NZ money, and on dot NZ policy.

There is only one new obligation which came in, which we were very happy with, and this is regularly testing the views of the broader community for these purposes: to ensure that Internet NZ is demonstrably in-touch with internet users. Now, this came about because the government minister had experience of other societies where, membership societies, where the management there had become quite strongly political and there was a disconnection with the membership.

And this is to prevent that happening, to ensure that we are keeping... Effectively we're delivering what is needed by our

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user base. Also to increase community understanding of its own views. So to help the community understand what it things, and to identify key issues of concern. So this needs a feedback loop, so this requires a public report back on the views expressed.

So finally, one of the most important bits in here is a process for resolving concerns. We wanted to make sure that there was a process that was consistent with RFC 1591. But we also wanted to make sure that this process, where the government could invoke it, was available to any significantly interested party. This is not exclusive to government.

So, stage one is open dialogue. If they are unhappy with something, they can send us a please explain notice, and notify us and give us time to resolve and come back and explain. Much the same that anybody could do, they could send us that. And we would choose where not to respond, same case.

Stage two, is initiate a community conversation, which is to say... Basically to ask some questions about our ownership. So if they're unhappy with the response in the dialogue, the community conversation would need to be multistakeholder, open and inclusive, and then to discuss the problems that they have with us, okay?

So, then if they do have that conversation, there is a potential where stage three is reached, where there is a community

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consensus that the management of dot NZ is inconsistent with RFC 1591, and that there is a better local RFC 1591 compliant manager out there that this could be transferred to. If all of those three steps are made, and followed, and then within Internet NZ, we would agree, and would support the transfer to another designated manager.

Now, we... There are circumstances that we can understand when all of us that are currently in positions within that, with the overall group there have left, it has been replaced by people who share very different principles, and very different views, and they attempt to turn it into something very different.

So we are not really protective of ourselves as individuals, we're protecting against a chain in our organization that would no longer suit RFC 1591 by doing that. So, that's it.

UNKNOWN SPEAKER:

Thank you Jay. And that really was it. I was honored to be here with these four gentlemen. Thank you for listening, the legal session today. Now, it's time for lunch, after one and a half hour, we come back here. And there is a question. We can have questions. [Inaudible] our time for questions, but what about the lunch? Sure, we can have questions. As many as you wish.

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UNKNOWN SPEAKER: That was quite interesting, this session. Well, Jay, I have a question for you. You know that we have something like what you have organized, we have had it for quite a few years. The objective is slightly different because it's really aimed at ensuring the stability of dot NL, making sure that it's always available, it's not so much on how we govern it. I'm interested to know, can your contract end? And what happens if it ends?

And my second question is, if I understood you well, it's with Internet NZ, the contract. So I would also be interested in if the contract ends, or if you run this four step process, and the conclusion is, we have to transfer dot NZ to somebody else, can the two subsidiaries, can they still remain? Or is the whole thing, and you have to replace everything.

JAY DALEY: Okay. Yes, either side can cancel, by a letter to the other one. There are no particular implications from that, in the MOU. We couldn't have or expect anything else, other than that really, as a way forward. But it would be a very symbolic gesture, and it would then lead to considerable community discussion, which is the intent. It brings the community back into seeing this as something important, and stepping up to have some involvement.

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The structure that we have is a structure that is never intended to be there forever. It has changed before, and will probably change again, at some point. And yes, if there were to be a transfer, then all of that would be replaced. This is the structure of the two subsidiary companies, is merely a mechanism for delivering dot NZ. And if there was a transfer to a new designated manager, then a new mechanism would be put in place.

We have no idea what that would be.

UNKNOWN SPEAKER: Okay. Thank you.

UNKNOWN SPEAKER: [Inaudible], Malawi. I wanted to find out again, from the dot NZ experience, who initiated the MOU? How as it initiated? Was it from the government side? Or was it from dot NZ side? I also wanted to know, how it is linked in government. Government has a whole big structure. At what level does it link into government? And finally, what happens when the structure of the government side changes?

How does the MOU take care of this?

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JAY DALEY: Okay. There had been discussions about this on and off for many years. So it was initiated by us, but that's a very light touch because there was already some willingness at the other end to be talking about these things, okay?

The second part of your question...?

UNKNOWN SPEAKER: At what level...?

JAY DALEY: At what level, right. So in the government, it is signed by the Chief Executive of Ministry, and but it has had the eyes of a minister over it, but it has not been signed by a minister, and does not require the cabinet approval at that level, okay? And, third part?

UNKNOWN SPEAKER: Change in the structure on the government side.

JAY DALEY: Right. So thank you Carlos. This is intended to help with that, because when a new minister comes in, there is a very clear document that sets out for that minister where these things stand. And that minister can be briefed in that regard and shown that. So it's meant to help.

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UNKNOWN SPEAKER: Okay. [Inaudible] from Chile. A question about the Belgium. As I understand it, the outcome of the court case was that you could change the terms and conditions regarding to registrations, but not about other stuff. So you decided to do a full rewrite. What would happen if Mr. X were to go to court, why would the court not decide that in your [inaudible] right, you could change only those provisions about registrations, but not about other things?

PETER: You need to make a distinction between what you can't change, and what you can change unilaterally. So if we say, we are going to have a full redress of the terms and conditions, at a certain moment in time, it will automatically apply for all new registrations, obviously. It will also apply, unless heavily disputed in court, for the existing ones. Usually it doesn't come that far. In this specific case, Mr. X has no reason whatsoever to start litigation, because he walked away with it anyhow.

Even if we would change the terms and conditions now, it would not have retro effect on his position. We will never be able again to send this gentlemen an invoice, unless of course, we succeed in having confirmation of that rule that we are planning to put in the terms and conditions right now, that ultimately the moment you renew your registration, you ought to be aware of the then

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applicable version of the terms and conditions. Now where is the legal risk? And that's probably why it touched upon.

If we would have a new case against Mr. X, and expose that he did not have only one name at that time, registered in 2001, but he has to, or another similar case that dates early from 2000s. Yes, there is a chance that the court are going to reconfirm, and to say, well no, registration rules you can change unilaterally, not the rest. So now you have changed the whole set of your terms and conditions, fair enough for all new registrations that have been registered since then, but you cannot imply it retroactively.

So there is a legal risk there, but if I don't do anything, the situation is only going to be worse. So at least what we should try to do is try to fix it. But if historical cases like this would pop up, we might be in problem. Now luckily enough, I don't suspect that there will be many cases of this. Either you have now already pending litigation, or at least disputes, or there will be none in the future.

So, I'm quite okay with it, but yes, there might be a legal risk. But it's going to be, it's always going to be limited to cases like reimbursement of ADR costs. I don't think it will go further than that.

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UNKNOWN SPEAKER: Any more questions? Comments? If not, I kick you out for lunch.

Be back at 12:30.

Be back at 1:30, not 12:30.

**[END OF TRANSCRIPTION]**