

# 2020-September-22: Minutes NRO EC Teleconference

**Date:** Tuesday, 22 September 2020, 11 am UTC.

## Attendees

### Executive Council:

Oscar Robles (OR)	LACNIC	Chair
John Curran (JC)	ARIN	Vice Chair/Secretary
Paul Wilson (PW)	APNIC	Treasurer
Eddy Kayihura (EK)	AFRINIC	
Hans Petter Holen (HPH)	RIPE NCC	

### Observers:

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Ashok Radhakisson (AR)	AFRINIC
Sanjaya Sanjaya (SS)	APNIC
Pablo Hinojosa (PH)	APNIC
Craig Ng (CN)	APNIC
Leslie Nobile (LN)	ARIN
Richard Jimmerson (RJ)	ARIN
Michael Abejuela (MA)	ARIN
Ernesto Majó (EM)	LACNIC
Eduardo Jimenez (EJ)	LACNIC
Kevin Swift (KS)	LACNIC
Chris Buckridge (CB)	RIPE NCC
Athina Fragkouli (AF)	RIPE NCC

## Secretariat:

German Valdez (GV)	NRO Secretariat
Laureana Pavon (LP)	Minutes

## Agenda

0. Welcome

1. Agenda Review

2. M3AAWG NRO Membership Proposal

3. Legal Team Update

a) Legal Team Action Item 200520-01. Legal Team to review any legal drafting as a consequence of implementation of recommendation #6 of the ASO Review.

b) Legal Team Action Item 200520-02. MA to work in a first draft review for the legal team of the Inter RIR Fraud Handling Communication Framework

c) Legal Team Action Item 200520-03. Legal Team to double check that the ASO recommendations 1 - 17 (except 6) are implemented.

d) Legal Team Action Item 200520-04. APNIC and RIPE NCC to lead the drafting of a position paper on the Legal Status of IP Addresses (rights to IP resources)

4. Framework for NRO MoU 2020 Third Draft.

5. RPKI Alain Durand / IANA Report

6. RDAP Measurement Project

7. ICANN Opening Ceremony

8. NRO EC 2021 Roles

9. Open Actions Review

10. Minutes Review

- 2020-August-18: Minutes NRO EC Teleconference - **DRAFT** (Pending: AFRINIC, ARIN, LACNIC)

## 11. Next Meetings

- a) Tuesday 20 October
- b) Tuesday 17 November
- c) Tuesday 15 December

## 12. AOB

## 13. Adjourn

# Resolutions

R-20200922-1 The NRO EC agrees to join the NRO to the Messaging Malware and Mobile Anti-Abuse Working Group (M3AAWG) as a supporter member with a annual cost of \$5000 USD

# New Action Items

The following action Items were assigned during this meeting:

Legal Team Action Item 20200922-1. Legal Team to advise the NRO EC the mechanism for internal coordination with the RSCG to handle inter RIR fraud cases.
Legal Team Action Item 20200921-2 – The legal team to update the table included in their document prepared on the implementation of ASO Recommendations 1-17, also adding a summary of the status of recommendations 6 and 18 for public consume.
New Open Action Item 20200921-3 JC to write up a draft review of the NRO MoU 0.1 Version considering the set of common NRO projects under discussion and the current relationship with ICANN and share it with the other members of the EC for comments.
New Open Action Item 20200921-4 PW to draft the NRO EC's position in response to ICANN as a consequence of the RPKI Study
New Open Action Item 20200921-5 OR to answer John Crain regarding the ICANN study on RDAP deployment in TLDs and inform the others of any answer received.
New Open Action Item 20200921-6 PW to prepare some bullet points or messages for the presentation to be delivered during the ICANN 69 opening ceremony

# Minutes

## 0. Welcome

OR welcomed all participants and started the meeting at 11:02 AM UTC

## **1. Agenda Review**

OR asked for any new items for the agenda.

No new items were suggested.

## **2. M3AAWG NRO Membership Proposal**

LN said they had sent the proposal for the NRO to join M3AAWG four days ago and that he hoped everyone had had time to read it. She said they were hoping the EC would present them with questions and proceeded to provide a brief overview as follows:

M3AAWG has traditionally focused on anti-abuse in the Messaging Malware and Mobile Anti-Abuse Working Group, they have a domain abuse SIG and recently decided to change this to a full-on committee and include IP address fraud and abuse as well. They approached me through Carlos Alvarez (co-chair of the Abuse SIG) and told us it might be a good working relationship for the RIRs and M3AAWG. M3AAWG has many resources in the anti-abuse and security area that they would provide us. They've been looking to engage more with the five RIRs, but haven't made much progress on that, although they do work with LACNIC and some of the others sporadically.

LN presented it to the PSCG and they raised some questions that are answered at the end of the document for their review by the EC.

LN went over the types of membership, their cost, requirements, conclusion, etc. She added that the cost for a supporter is \$5,000 a year, which would be split amongst the five RIRs. She noted that M3AAWG has checked the NRO status and they seem to be fine with the five RIRs operating as one rather than five individual entities, but that this doesn't preclude the RIRs from joining as members – LACNIC already has a relationship with M3AAWG and ARIN is going to establish one as well.

PW checked whether the proposal was to join at the \$5000 level. He wondered whether they had decided that it was not preferable to go to a higher level, as it's not a huge expense.

LN replied that they hadn't even discussed this, as the only big benefit of full membership is the possibility of running for election for their board of trustees and she didn't know if any of them would want to do that.

HPH mentioned that, in his understanding, this working group would be both for domain names and IP addresses, and asked whether that made sense.

LN replied that it actually does make sense because it covers the whole area, fraud and abuse. Law enforcement and security are all focused on the domain area but, when we're doing training

for law enforcement, we like to say that it all starts with a number, so the basis is on IP addresses.

LN mentioned that for four years she has been working with Carlos Alvarez doing outreach globally to law enforcement and that now more of their colleagues are involved. She noted that they had done Interpol, recently Europol, that they'd worked with RIPE NCC, ARIN and ICANN and that they'd like to expand that and work with some of the other RIRs, for example, something in the cyber Americas area with LACNIC and ARIN.

LN added that they'd been getting great feedback from the other agencies and that it presents a more holistic view of the fraud and abuse that's happening today on the Internet. She mentioned that the PSCG also thinks it makes sense.

OR thanked LN. He said he had no further comments and invited comments from other members of the EC.

JC recommended they proceed with the membership.

HPH agreed.

EK said he hadn't had the chance to talk about this but had no objections.

OR noted that it seems a very appropriate relationship and approved this. He asked what the next steps would be.

Regarding the next steps, LN said that she would work with her colleagues on the PSCG to get some input. LN also said that she would send the MoU that to EC so that the legal team can check it out while she proceeds with the membership application.

All agreed and thanked LN, inviting her stay for the rest of the meeting.

LN and KS signed off.

**Resolution R-20200922-1: The NRO EC agrees to join the NRO to the Messaging Malware and Mobile Anti-Abuse Working Group (M3AAWG) as a supporter member with a annual cost of \$5000 USD**

### **3. Legal Team Update**

**a) Legal Team Action Item 20200520-01. Legal Team to review any legal drafting as a consequence of implementation of recommendation #6 of the ASO Review.**

CN began by addressing recommendation #6 of the ASO Review. He explained that recommendation #6 suggests that we should develop a process in agreement with ICANN. He observed that, with the concurrence of the rest of the legal team, his opinion is that we do not need to take these any further.

The first of ASO Review's recommendations is that we should develop procedures for steps 15 and 16 of the GPDP. These separate paragraphs recommended we flesh out the procedures in agreement with ICANN.

First, step 12 says that, if ICANN Board rejects the GPDP that has gone through the process and reached ICANN Board, if ICANN Board rejects it, then the recommendation is that we have a process with ICANN to deal with the specific paragraph in the GPDP.

CN noted that the legal team's opinion is that the paragraph actually deals with how the ASO AC is going to communicate with the RIRs in solving the ICANN Board's problem, i.e., the procedure is between the RIRs and the ASO AC, and they are already described in operating procedures of the ASO AC.

CN observed that the second recommendation relates to mediation and says that, if a resubmitted policy is rejected for a second time, then it should go to mediation.

CN observed that arbitration is a binding process and that the MoU currently provides that, if ICANN rejects the GPDP twice, they should go to mediation. He added that arbitration is expensive and time consuming, so having mediation would be a benefit. He observed that this is very unlikely to happen, but that if it were to happen, ICANN and the NRO could agree a procedure, as most mediation providers have a standard agreement for the process.

CN said that the last recommendation refers to step 16, which mentions an agreed procedure for the ICANN Board to initiate a GPDP. He added that the vision of the NRO EC is that anyone can initiate a policy, i.e., the Board can initiate a policy process just like any other person.

CN said that we appeared to have offered the ICANN Board the opportunity to come up with a process but that they have not responded to this offer and asked whether we should leave this issue as it is. He observed that if ICANN wants to have a special pathway to initiate the process, then it is open to ICANN to propose a process and send it to the NRO for their consideration.

CN added that Alan Barret wrote to ICANN Board in March 2019 and they did not appear to have received any substantive reply. That GV followed up in July and they got something from Lars Hoffman and Carlos Reyes saying, basically, "we're happy to talk to you want to discuss anything specific."

CN concluded by saying that in their opinion the matter should be closed.

OR thanked CN for his report and mentioned that his intention was to make sure that they had considered the answer from ICANN, sent after three reminders to the MMSI secretariat. He asked whether the legal team had had the chance to see that answer.

CN replied that he did see it, but that it did not specifically answer the questions Alan Barret posed.

OR asked whether it was safe to ignore that initial answer and say that the matter is closed to us.

CN replied that he believes so.

JC noted that in his opinion the assessment, particularly in #6, is appropriate in each case and that it appears they don't need to take any action. He added that they just need to document the matter accordingly and reflect the fact that all of this has already been accommodated.

OR concluded this discussion by saying that they will be closing recommendation #6 as the presented by the legal team.

**b) Legal Team Action Item 20200520-02. MA to work in a first draft review for the legal team of the Inter RIR Fraud Handling Communication Framework**

MA noted the proposed fraud communication framework. As a refresher, he said that this has been around for a long time, that the RSCG had prepared an initial version because they as a group had been coordinating high level pieces of information, trends and items that they are seeing and there was an interest in the potential of discussing more detailed information.

MA said they wanted to propose a framework by which they would share this type of data, so they prepared an initial proposal which was submitted to the NRO EC. The NRO EC then the legal team for its review of the draft framework.

MA said that beyond some cleanup edits, the legal team had also updated the information with a more specific definition of fraud and the acknowledgement that information sharing is limited by the law of each jurisdiction and the policies of each RIR. He said they wanted to make sure that that was specifically referenced.

MA noted that the legal team was very specific on the fact that there are legal restrictions on various jurisdictions, noting that, if there are members from the registration department of each individual RIR that wish to share case specific information, they must first consult their own respective counsel prior to providing any such information to another RIR.

MA added that within this framework, they had updated the specific information that would be shared under the framework.

MA noted that the legal team reviewed the RIR Fraud Handling Communication Framework and believe that this framework allows for some information sharing, but still requires – at least on a case by case basis – the involvement of the legal team to be able to review what type of data is being shared.

MA then invited questions from the EC.

MA said that, administratively, they envision a closed list, but not necessarily the RSCG list, as there is a significant amount of communication there that may not be relevant or necessary for the legal team to review. Instead, the legal team contemplates a separate closed list that would involve a representative from the registration departments of the individual RIRs as well as a

legal representative which would be the mechanism by which information might be requested or provided.

OR thanked MA for his reply and asked whether there were any more questions for the legal team on this topic.

Seeing that there were no further questions, OR asked if they were ready to use this communication framework for suspicion of fraud and advance with this protocol as MA mentioned it.

JC, HP, PW and EK agreed.

OR said that this was approved and asked MA to let them know if they decide how they want to implement this so it is easy to maintain and does not get out of control.

**Legal Team Action Item 20200922-1. Legal Team to advise the NRO EC the mechanism for internal coordination with the RSCG to handle inter RIR fraud cases.**

**c) Legal Team Action Item 20200520-03. Legal Team to double check that the ASO recommendations 1 - 17 (except 6) are implemented.**

AF explained that this action had to do with the ASO Review and whether the recommendations they had agreed to implement had already been implemented.

AF observed that the document she sent to the list contains an extensive table of the recommendations and the implementation check. She added that the findings are that all recommendations have been implemented but two, which were considered but it was decided not to implement them.

She noted that the first of these was recommendation #12 “The ASO should establish the NRO Executive Secretary as the ASO Point of Contact (PoC). The ASO AC should establish procedures for forwarding communications to appropriate parties within the ASO,” which the ASO did not implement but they did update the contact pages for the NRO on the ASO website.

She added that the other recommendation that was not implemented was #13 “The ASO MoU should be updated to reflect the new reality of the Empowered Community and specify that the roles and responsibilities within the ASO must be clearly defined.” Again, in this case it was decided not to update the MoU accordingly, and the reason was that the NRO EC noted that the Empowered Community is out of the scope of the ASO review, and that updating the MoU is not appropriate as the updates would be duplicative of information already contained in ICANN Bylaws.

OR asked whether, together with the numbers, recommendation #6, this means that they have officially finalized this review that began five years ago.

AF confirmed this.



OR suggested that they should come up with a final report on this implementation and this list of implemented recommendations, probably saying something along the lines of “we went through this list of recommendations and saw that there was no room to implement them.”

HPH asked whether the legal team sees any problem with not implementing those two recommendations.

AF replied that they see no major issues as long as we communicate how we address the purpose of the recommendation. For the first one, the purpose is to have a clear point of contact and we can decide who that will be. The second one, the responsibilities of the ASO with the Empowered Community, they are clarified in the Bylaws and there is a reference to ICANN Bylaws in the ASO MoU. She added that she doesn't think this prohibits us from exercising the Empowered Community.

CN said the EC is entitled to review the recommendation and take whatever steps they deem necessary, that they are not required to implement every recommendation, that they have clearly considered the recommendations and come to a position which may be different from the Review. He added that in his opinion this is totally acceptable

OR said they are coming up with an updated decision on the matter.

HPH added that in his opinion this is more of a communication than a legal challenge. He said he thinks they need to be open about that they initially said they would do, that they have reviewed the recommendations and come to a different conclusion.

PW agreed with HPH and observed that they might say “we accept the review and we believe that we've implemented all the recommendations and the intent of the recommendations.”

JC also agreed with HPH and asked whether this should be published somewhere for the community or shared with ICANN, perhaps an update saying “Here's our review of these issues.”

AF agreed that it is indeed a matter of communication. She noted that it might be an accountability matter if the decision to implement the recommendations was entered into the minutes of the EC meeting, in which case they may need to come up with a new resolution to amend this accordingly.

After an all hands poll, OR observed that, from a procedural point of view, according to GV, everything is closed with ICANN regarding the ASO Review. He asked the others how they wished to go about this.

JC said that, at a minimum, they should take a vote here just to put it in the record. Regarding communication, they should see if the ICANN Organizational Effectiveness group is active, otherwise simply publishing on the website might be sufficient.

OR agreed. He said he believes the group mentioned by JC is active, but that he isn't sure who's at the front. He wondered whether they should send them a short message, adding that GV might work with the legal team to prepare a communication for this purpose.

JC proposed asking the legal team to update the table of recommendations 1-17 to include a brief version of recommendations 6 and 18 so they have a clean version of that, as he was unsure if the legal team had prepared their report on the assumption that it would be published publicly.

JC said that AF's table with recommendations 6 and 17 could be sent to the comms groups, but that they need a public version from the legal team.

OR said they'd ask the legal team to update the table with a summary of recommendation 6, making sure that everything on the table is ready to go on public record and also including a summary of recommendation 18.

**Legal Team Action Item 20200921-2 – The legal team to update the table included in their document prepared on the implementation of ASO Recommendations 1-17, also adding a summary of the status of recommendations 6 and 18 for public consume.**

**d) Legal Team Action Item 20200520-04. APNIC and RIPE NCC to lead the drafting of a position paper on the Legal Status of IP Addresses (rights to IP resources)**

AF observed that this item has to do with an investigation and research on the legal status of IP addresses, a project RIPE NCC is working on with APNIC, for now, and that their findings will be shared with the rest of the legal team. She said the reason for this is that RIPE NCC is established in Amsterdam (a continental law jurisdiction) and APNIC in Australia (a case law jurisdiction), so they have both legal systems covered.

AF explained that the idea is to come up with a position paper that includes the two positions and share it with the legal team.

OR asked how they plan to consider legal systems other than the Dutch and Australian and specific cases.

AF said that they haven't discussed it yet with the legal team but said a possible way forward might be to perform investigations in all five RIR regions.

OR asked if there were any questions for AF.

AF said that it's important to highlight that they are talking about two different legal systems: the American system, which is very similar to the Australian system and very much based on cases, and the continental system which is based on laws (court decisions don't have exactly the same value as laws, so there can be two different decisions).

PW said having two different views on this was an interesting dilemma and asked whether the legal team had thought about how to reconcile both views. He wondered if it's possible to have a paper or position that clearly says that there are two views or, if not, what would be the way forward.

MA said that PW had identified an interesting challenge and dilemma, adding that, as they discuss the issue across the different jurisdictions, the way they would be able to come to a common position paper and solve the challenge is by being cognizant of the individual legal systems of each RIR and then taking a step back and assuming a common position on property rights, on the status of IP addresses, that ultimately will apply regardless of the jurisdiction. It should be a position that the NRO EC can take regardless of the legal system.

OR thanked AF for advancing this update on the research.

OR asked AF if she would be reporting to the EC and if there was a timeline for this, to which AF replied that they will report as soon as they have something concrete and that they are discussing a timeline with the legal team to send the EC something from the entire legal team.

OR thanked all members of the legal team and invited them to stay on the call.

The legal team left the meeting at 12:11 UTC.

#### **4. Framework for NRO MoU 2020 Third Draft.**

PW said that the document hasn't come a long way from the last version, but that they thought it would be useful to collapse everything into a single document with notes on where everything came from. He added that there were not many edits except for one section where he took the liberty of trying to simplify or harmonize the language that came from the Joint Project Agreement. He said that JC had expressed an interest in taking it from here.

JC said the last version he received was 2020 version 0.1, adding that he'd been going through that version and making mark up. He asked that if there is a more recent version, to please send it to him.

JC concluded by saying that he will have a draft version of this by the end of the week, a substantial cleanup and reordering for discussion so the other can see if it's a step in the right direction and, if not, discard it.

**New Open Action Item 20200921-3 JC to write up a draft review of the NRO MoU 0.1 Version considering the set of common NRO projects under discussion and the current relationship with ICANN and share it with the other members of the EC for comments.**

OR thanked JC for his offer and said the others would follow up as soon as the document is complete.

#### **5. RPKI Alain Durand / IANA Report**

JC said that OCTO had put out an RPKI study and that he had learned that Alain Durand had talked to a number of their staff.

JC noted that this document contained some very bizarre assumptions about how ARIN does things and that he needed to correct those for accuracy, but they went ahead and published it.

JC said that some members of the RIR staff had seen it but that this was not the same as a joint activity.

JC observed that there is actually another one in the pipeline regarding RIR RDAP measurement work and that he's interested to see how they will handle that.

OR agreed with JC that this is not the institutional way to handle this.

OR said he could try to talk to him about this.

HPH also observed that it was said to him that it's mostly factually correct with regards to the technical specs and limitations of RPKI. The main concern with the document was that it raises concerns and risks that we are already investing in addressing, making it seem worse that it is.

He added that some of the content referring to a policy proposal that has already been withdrawn is already outdated, a common problem with this type of research.

JC concluded by saying that they need to agree with the general sentiment of a strong message to ICANN, but that they need do it very carefully so that it doesn't come across as unreasonable.

OR asked if everyone agreed that they should begin drafting a statement, considering JC's suggestion.

JC added that, if OCTO publishes a paper, people may misrepresent this as ICANN's views. In his opinion, the challenge is that there's research being done that the world assumes is authoritative and collaborated with the RIR system and ICANN isn't taking the right level of care.

JC said he's in favor of a strong message. Because when research activities or studies are done of the registry system it's assumed that ICANN has tight coordination with the RIRs, just as when someone reads the resulting paper coming out of OCTO ICANN they assume it's an ICANN study. ICANN needs to avoid doing studies of the internet number research system without taking coordination with the RIRs.

OR agreed.

**New Open Action Item 20200921-4 PW to draft the NRO EC's position in response to ICANN as a consequence of the RPKI Study**

## **6. RDAP Measurement Project**

OR presented the topic. He said he'd shared a couple of messages on the subject and that they believe our RDAP implementation is more mature and wanted to have a look at this, but that it is more sensitive topic that generates mixed feelings, one of the regarding how to coordinate projects.

PW completely agreed and said they should reply constructively. He said he doesn't understand what the distribution, the results or the purpose of the study will be, so it would be good to be clear on that.

PW then added that if they don't provide any warning or advise on the RIR's RDAP state, the result is not going to be very positive in terms of consistency and completeness. In his opinion, there are two options: a) let them know the state of the RIR's RDAP, or b) ask them to defer the RIR work until we finish.

JC observed that the RIR RDAP system is in flux and varies by RIR and said that he doesn't know if John Crain or his research is aware of that. He suggested they could say they are not averse to supporting this activity and that they'd like to know more, perhaps refer this to the ECG. He stressed that the RIRs don't want to have issues with their customers or with the RDAP we have today.

OR said they could also answer that the RIRs are ok with them starting this project, but that if they are about to publish something regarding the consistency of the answers, mainly from the numbers of the RIR implementations, then the RIRs would like for them to talk to the ECG before publishing anything in that regard.

JC agreed. He said one of the things they could do is show how good coordination works versus bad coordination.

OR asked whether his suggestion was enough for the topic that had been raised the day before.

All agreed.

**New Open Action Item 20200921-5 OR to answer John Crain regarding the ICANN study on RDAP deployment in TLDs and inform the others of any answer received.**

## **7. ICANN Opening Ceremony**

OR commented that he'd already answered to ICANN that they will accept the four-minute time slot during the opening ceremony. He asked whether PW could send some bullet points or messages of what he thinks could be delivered as a message during the opening ceremony related to resilience, the work of the NRO, or any other messages that could be included in this four-minute time slot

OR said they'd stick to the messages that PW mentioned, that he'd share them to see if anyone has something to add.

**New Open Action Item 20200921-6 PW to prepare some bullet points or messages for the presentation to be delivered during the ICANN 69 opening ceremony**

## **8. NRO EC 2021 Roles**

OR reminded everyone that they have confirmed the rotation scheme and in 2021 RIPE NCC will chair the NRO EC and the coordination groups, that LACNIC will be the secretary and vice chair, and that ARIN will be the treasurer.

HPH said that they'd be happy to accept the role.

## **9. Open Actions Review**

OR proposed skipping the review of open action items and ask GV to send them a reminder and follow up on that.

## **10. Minutes Review**

- 2020-August-18: Minutes NRO EC Teleconference - **DRAFT** (Pending: AFRINIC, ARIN, LACNIC)

OR asked AFRINIC and ARIN to review these minutes and noted that he will also review them himself.

## **11. Next Meetings**

- a) Tuesday 20 October
- b) Tuesday 17 November
- c) Tuesday 15 December

OR said they need to confirm these meetings.

JC said that Richard Jimmerson would be covering him for the November meeting.

PW said he would not be around for the October meeting but that he would be available on 13 October.

OR asked whether everyone agreed to hold the October meeting on the 13<sup>th</sup> and everyone agreed.

HPH asked whether it would be realistic to schedule these meetings for two hours.

OR agreed and asked everyone to block two hours on their calendars.

## **12. AOB**

OR and the others welcomed LP and introduced her.

### **13. Adjourn**

OR thanked all participants and adjourned the meeting at 1:11 pm UTC