

Report of the Ad Hoc Background Investigation Committee July 2007 ARRL Board Meeting

The Ad Hoc Background Investigation Committee is pleased to present its final report for the January 2008 ARRL Board Meeting. Please treat this report and attachments as “Board Confidential”.

This committee was formed as the result of The American Red Cross, one of our served agencies with whom we have long had a Memorandum of Understanding, announcing that mandatory background checks would be required of all paid staff and volunteers assisting the American Red Cross in disaster relief operations. The committee was charged with studying issues related to background investigations as they apply to Amateur Radio volunteers serving under the auspices of programs sponsored by the ARRL and to recommend a policy on background investigations which addresses the interests of both the league and its volunteers. The committee felt early on that it was important to get background check information from a number of our other national served agencies as well.

The American Red Cross announced in 2006 that mandatory background checks were required of their paid staff and volunteers and that the background checks needed to be completed by October 31, 2006. Apparently, the American Red Cross did not get enough staff and volunteers to complete the mandatory background checks by the original deadline, so two further extensions were announced. The completion deadline was extended to December 31, 2006 and a final deadline of March 31, 2007 was imposed.

The mandatory background checks had to be performed by a third party that Red Cross had engaged for this purpose called, mybackgroundcheck.com. The permission agreement that the candidate “signed” gave mybackgroundcheck.com and the American Red Cross the authorization to conduct a criminal background check, financial check and a mode of living check.

In February 2007, ARRL General Counsel, Chris Imlay W3KD attempted to communicate with the American Red Cross Corporate Counsel, Mary Elcano, by phone about ARRL concerns with the background checks. Unfortunately, Chris’s messages were not returned. On February 20, 2007, Chris wrote and couriered a letter to Ms. Elcano at the American Red Cross Headquarters in Washington DC.

This letter caused a response from the Red Cross General Counsel’s office and requesting a meeting. Nothing substantive resulted.

Noting the deadline date that the American Red Cross had imposed for the mandatory background checks to be completed by, the Ad Hoc Background Investigation Committee drafted a position paper for publication on the ARRL website. This committee felt it was important for our members to understand what might be required of them by a served agency. This committee further felt that it is up to each ARRL member to decide if the individual wants to complete the background check or not.

A courtesy copy was sent to the American Red Cross General Counsel's office for comment and possible revision. The American Red Cross General Counsel's office did not respond in a timely fashion.

This committee passed the proposed position paper to the Executive Committee for their review and approval. Having received approval, the position statement was published on the ARRL website on March 8, 2007.

ARRL General Counsel, Chris Imlay W3KD and ARRL Chief Technology Officer, Paul Rinaldo W4RI, met with two members of the American Red Cross General Counsel's office and two American Red Cross Disaster managers at Red Cross headquarters in Washington DC. The purpose of the meeting was to discuss the background check, however the American Red Cross team appeared to be more concerned with the ARRL & Red Cross Memorandum of Understanding which expires in September 2007. The ARRL team explained that they were not authorized to discuss the renewal of the MOU and that the American Red Cross background checks was of immediate concern. The ARRL team suggested possible alternatives to the American Red Cross background checks. The American Red Cross did not seem willing to accommodate any change to their current system.

This committee discussed the meeting Chris Imlay and Paul Rinaldo had with the American Red Cross staff and drafted a proposed update for publication on the ARRL website. The proposed update was passed to the Executive Committee for review and approval. Having received approval, the proposed update was published on the ARRL website on April 16, 2007.

Chris Imlay received an email sent from American Red Cross's General Counsel's office – Chevanniese Smith on May 25, 2007, who sent a draft regarding the ARC Background Check program.

This committee discussed the draft and did not feel comfortable with it because it appeared that Red Cross was suggesting that the ARRL could conduct its own background checks and then certify to the Red Cross that certain ARES volunteers have successfully cleared an ARRL background check. This committee felt the ARRL should not conduct background checks on volunteers and certify them as having cleared such a check.

Several findings from this committee's work:

1. Our partnership with the American Red Cross is a long standing and valuable association.

2. American Red Cross association is important as this is the main credentialing organization that provides our disaster volunteers access into disaster affected areas at this time.
3. It is not the ARRL position to dictate to our members who members should or should not volunteer their services to.
4. However, the ARRL should have a policy on background check requirements which protects the interests of the League and volunteers serving in our programs, and the ARRL should rely on this policy when Memoranda of Understanding are negotiated with served agencies.

ARRL Board of Directors adopted the following policy relating to memoranda of understandings with other parties:

“Ideally, Amateur Radio emergency communications volunteers participating in ARRL-sponsored programs should not be required by served agencies to undergo background investigations of any kind. However, it is generally acceptable for a served agency to require these volunteers to undergo a criminal background check, preferably performed by a law-enforcement entity. It is not reasonable for a served agency to require these volunteers to consent to credit checks, mode of living investigations, or investigative consumer reports. In negotiating or renegotiating memoranda of understanding that commit the League to provide volunteer emergency communications support, the League must be assured that these volunteers will not be required by the partner organization to consent to credit investigations, mode of living investigations, or investigative consumer reports.”

In August, the new Red Cross communications liaison called to introduce himself to Dennis Dura K2DCD, our new Emergency Response and Preparedness Manager. In addition, he wanted to set up a meeting with Dennis without American Red Cross or ARRL attorneys present to see how the expiring MOU could be worked. Dennis indicated that the ARRL would be happy to meet with them.

American Red Cross sent two staff members, Keith Robertory, KG4UIR, Response Technology Manager, Preparedness and Response and Kerry Vanek, Activity Lead, Response Technology Communications to Newington to meet with Dennis and Dave Patton on August 23, 2007.

Both Dave and Dennis conveyed the feeling that these two representatives of the Red Cross were sincere about addressing the needed changes in the background check agreement to make it consistent with statements that no credit checks, mode of living checks or consumer investigative reports would be required of our volunteers.

Additionally, a number of projects to be worked on jointly by ARC and ARRL were also discussed.

This meeting seemed to be somewhat optimistic compared to earlier discussions with ARC regarding the background check issues.

Subsequent contacts with our ARC contacts have not demonstrated any headway from the ARC in resolving the issues. We feel that as with the local chapters, the Disaster Response group of the ARC is sincerely interested in working out the differences to renew the MOU, however senior management or the general counsel's office for the ARC is holding back and negotiations/discussions are at a standstill at this point.

At our last committee teleconference, our committee members agreed that although the ARC-ARRL MOU had expired, it appeared that the ARC was relying upon the expired MOU being an operative agreement.

Our committee recommended to the ARRL EC that a letter from ARRL's President or General Counsel be sent to ARC's Vice President, Domestic Disaster Response, Armond Mascelli, informing him that the current MOU between our two organizations has expired and we look forward towards negotiating a renewed MOU. However, until we have an agreed upon MOU between our two organizations that the ARRL might well be unable to respond to a request for amateur radio operators made by the national ARC.

This committee felt it was important that the ARC understand that we are looking forward to renewing an MOU as long as it fits within the policies set forth by our board.

A letter under Joel Harrison signature was sent to the American Red Cross' Armond Mascelli explaining that we hope to finalize an MOU renewal by year end 2007 or the ARRL may be unable to provide disaster communications should it be requested by the ARC because of our other MOUs that were still in effect.

Although the American Red Cross informally acknowledged receipt of the ARRL President's letter, there has been no reply from Mr. Mascelli or ARC to the ARRL President..

Accordingly, this committee felt it important that the ARRL inform Mr. Mascelli and the ARC know:

1. Individual ARRL members and local ARRL Amateur Radio Emergency Services (ARES) group may continue to choose to work with local ARC chapters, however the SOU between ARRL and ARC expired on September 16, 2007, as such no formal working agreement exists between ARRL and ARC at this point
2. the ARRL is willing and desirous of renegotiating this SOU with a view to meeting the needs of the party organizations while protecting the legitimate interests of ARRL members
3. Pending successful renegotiation of the SOU ARRL will continue to endeavor to work with ARC in major or wide area disasters or emergencies on an *ad hoc* basis, consistent with the legitimate needs of its members.

This committee will offer a motion to have such a letter sent under Background 1

The committee was also requested to investigate the potential of credentialing of amateur radio operators by a federal agency to eliminate the need for credentialing by the American Red Cross for access to disaster affected areas to enable amateur radio operators to carry out disaster communications.

The committee has investigated this possibility and feels that the opportunity for credentialing by a federal agency does not exist at this time, but may in the future.

The committee feels that it has accomplished what it is able to at this time and will introduce a motion to discharge the committee and to turn these items over to the PSC Committee and staff.

The committee chair would like to acknowledge the excellent help and support from the committee members and would like extend a hearty thank you to them.

Jay Bellows K0QB
Karl Bullock WA5TMC
Kay Craigie N3KN
Bill Edgar N3LLR, Chairman
Chris Imlay W3KD
Dave Patton NN1N
Dennis Dura K2DCD



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Office of the President
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November 28, 2007

Via e-mail and U.S. Mail
MascelliA@usa.redcross.org

Mr. Armond T. Mascelli
Vice President
Domestic Disaster Response
American Red Cross
Programs and Services
2025 E Street, N.W.
Washington, D.C. 20006

Re: Statement of Understanding, American Radio
Relay League, Incorporated and American Red Cross

Dear Mr. Mascelli:

Though we have not met previously, I am well aware of your long association with ARRL, the National Association for Amateur Radio, also known as the American Radio Relay League, Incorporated (ARRL), and your support of the long and beneficial relationship between ARRL and the American Red Cross (ARC). I am writing today in my capacity as President of ARRL to note the very serious concern that ARRL has about two issues that are harmful distractions to the common goal of our two organizations. I need your help in resolving these before any more time goes by. The two issues are the lack of a current Statement of Understanding between ARRL and ARC, and a firm resolution of the issue of the scope of background checks now required by the ARC for volunteers, including Amateur Radio operators who wish to provide volunteer services to ARC for periods beyond seven consecutive days. I would like to tell you where these two issues stand from our perspective, and see what we can do to resolve any concerns and proceed to a replacement Statement of Understanding (SOU) right away. I am constrained to note that I am not comfortable with the current lack of an SOU, and a clear absence of consensus about the background check issue.

I have reviewed the now-expired SOU between ARRL and ARC dated September 17, 2002, and executed by my predecessor, Jim Haynie, and Mr. John W. McDivitt, then the Executive Vice President of Disaster Services, ARC. That SOU expired on its face, pursuant to Section IX thereof, on September 16, 2007. The SOU called for a meeting six months prior to its September 16, 2007 termination date, for the purpose of

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reviewing the progress and success of the SOU and to determine whether it should be extended for an additional five years. While there have been, as I understand it, two meetings between ARRL staff or representatives and ARC representatives this year, the meeting for the purpose of evaluating the progress and success of the previous MOU did not occur until August 23, 2007. Thereafter, there has been essentially no progress at all, as far as I can tell.

On that date, Mr. Keith Roberatory of your staff (a radio amateur, KG4UIR, and the Response Technology Manager, Preparedness and Response), and Mr. Kerry Vanek, the Activity Lead, Response Technology Communications, met with Mr. Dave Patton, NN1N, ARRL's Manager, Membership and Volunteer Programs, and Dennis Dura, K2DCD, the Manager of Emergency Preparedness and Response, at ARRL's Headquarters in Newington, Connecticut, to discuss both the background check issue and the SOU. On the subject of the SOU, there were two primary topics of discussion. The first related to use by one organization of the logo of the other in certain published and electronic materials. The second related to direct resource requests by ARC headquarters to ARRL headquarters for deployment of Radio Amateurs nationwide. Both were legitimate issues for resolution.

Also discussed was the matter of background checks, and the discrepancy between the stated policy of ARC with respect to criminal background checks versus credit or mode of living checks, and the specific language of the consent form required by ARC's contractor, "mybackgroundcheck.com". Finally, future joint projects were discussed. While all parties to the August 23, 2007 meeting were acting in good faith and the intention was to proceed further with a replacement SOU, nothing more seems to have taken place since then. The SOU expired less than a month later, and it has now been more than two months since then, with no replacement SOU in sight.

ARRL's concerns about the ARC's background check policy go back considerably longer. On February 20, 2007, ARRL's General Counsel, Christopher Imlay, wrote to Mary S. Elcano, Esquire, ARC's General Counsel, concerning the background check policy that had been announced by the ARC, and which was to take effect on March 31, 2007 (an extended date). The policy did in fact take effect that date, but no written response was received to Mr. Imlay's letter. There was a meeting on this subject, which I understand you attended, on March 20, 2007, at ARC headquarters, involving Mr. Imlay and our Chief Technology Officer, Paul Rinaldo on ARRL's behalf. Following that, however, there still is no common understanding between ARC and ARRL about the background check policy. In a nutshell, the problem is this: The ARC states that, for Amateur Radio operators who volunteer to provide communications for the ARC and at disaster sites for more than a seven day period, a criminal background check only is required. Amateur Radio operators can probably accept that. However, though the ARC has stated repeatedly that credit checks and mode of living checks will not be

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conducted, the consent form that is required by “mybackgroundcheck.com” clearly and unequivocally states that such checks not only are being consented to by the person who signs the form; it also says that credit and mode of living checks *will* be conducted. This is not an acceptable situation for ARRL, as we have told your representatives many times. Despite efforts by the ARC General Counsel’s office to address this with ARRL representatives, no progress has been made. At the August 23, 2007 meeting at ARRL Headquarters, the ARC representatives claimed that the ARC would review the language on mybackgroundcheck.com and would make it consistent with what they claimed was actually occurring: that criminal background checks only were being conducted. They also offered to consider an FAQ document concerning security of personal data. They offered to investigate the classification of ARRL as a “partner organization” which would exempt Amateur Radio volunteers from the background checks. Of these followup items, I am not aware of any resolution of any of those issues.

Armond, to be entirely candid, ARRL benefits from its relationship with the ARC, and I believe that benefit flows both ways. Doubtless, the public benefits tremendously from the relationship. However, the ARC’s apparent inability to resolve the problems with the consent form for background checks, and the absence of a current SOU between ARRL and ARC, are having a distinct chilling effect on the willingness of Amateur Radio operators to provide communications services for the ARC. We may not, candidly, be able to provide sufficient volunteers when necessary, unless these issues are resolved. Furthermore, we have obligations and commitments to other served agencies with which ARRL does have existing Memoranda of Understanding.

So, it is past time to resolve these matters. It is urgent that the background check matter be resolved first, because it will not be possible for ARRL to enter into an SOU with ARC unless and until that matter is resolved. ARRL’s Board of Directors adopted the following policy in July of this year:

Ideally, Amateur Radio emergency communications volunteers participating in ARRL-sponsored programs should not be required by served agencies to undergo background investigations of any kind. However, it is generally acceptable for a served agency to require these volunteers to undergo a criminal background check, preferably performed by a law-enforcement entity. It is not reasonable for a served agency to require these volunteers to consent to credit checks, mode of living investigations, or investigative consumer reports. In negotiating or renegotiating memoranda of understanding that commit the League to provide volunteer emergency communications support, the League must be assured that these volunteers will not be required by the partner organization to consent to credit investigations, mode of living investigations, or investigative consumer reports.

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It will be necessary for this policy to be reflected in any subsequent SOU to be entered into between ARC and ARRL, and it will be necessary to either exempt ARRL-sponsored Amateur Radio communications resources from the ARC's background check policy altogether, or alternatively to modify the consent form, which is the root of the problem.

It is in any case necessary to resolve the SOU matter without further delay. If it would be helpful, we will provide you with a draft replacement SOU for consideration. But it will be necessary to agree on replacement terms and execute a new SOU before the end of 2007, because the current situation is not conducive to seamless disaster response communications by Amateur Radio. At any time convenient for you, Mr. Patton, Mr. Dura, and Mr. Imlay are available to negotiate the details of the new SOU and the necessary modifications to the ARC's background check policy as it applies to Amateur Radio volunteers and the Amateur Radio Emergency Service program.

I will be pleased to meet with you at an early time to execute the revised SOU.

Kind regards,

Joel Harrison
President

Cc: David Patton
Dennis Dura
Christopher Imlay

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