
ANDREA GLANDON:

We will now officially start the recording of today's conference call. Good morning, good afternoon, good evening. Welcome to the Consolidated Policy Working Group call held on Wednesday the 3rd of April 2019 at 21:00 UTC.

On today's call, we have Glenn McKnight, Gordon Chillcott, Maureen Hilyard, Etienne Tshishimbi, Marita Moll, Hadia Elminiawi, Holly Raiche, Olivier Crépin-Leblond, Jose Francisco Arce, Eduardo Diaz, Tijani Ben Jemaa, Lillian Ivette De Luque Bruges, Joel Thayer, Alan Greenberg, Jonathan Zuck, and George Kirikos.

We have apologies from Sébastien Bachollet, Kaili Kan, Vanda Scartezini, Alfredo Calderon, Judith Hellerstein, Nadira Al-Araj, Bastiaan Goslings, John Laprise, Alberto Soto, Sergio Salinas Porto, Ricardo Holmquist, and Maria Korniiets.

From staff, we have Evin Erdogan, Michelle DeSmyter, and myself, Andrea Glandon on call management. I would like to remind everyone to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. Thank you, and over to you, Olivier.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much, Andrea, and we are set for another Consolidated Policy Working Group call. A number of things today on the agenda. First, we will be looking at the ALAC policy document update. We had

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this last week, but Jonathan was not able to make it to the call, so I'm hoping that he'll be able to brief us on the discussions that took place during the ICANN 64 meeting.

Then we'll have a short intro on the identifier technology health indicators from Holly Raiche, the ITHI. Then after that, an update of course as per usual on the expedited policy development process, and on the next steps to do with phase two of the work. In fact, there is also a statement that is currently being drafted, so maybe that will be somehow merged with the policy statements. We can sort of deal with that right away rather than waiting for the policy segment a little later on in the next part, which is action item six.

We've got to make some decisions regarding statements on the dot-org registry agreement, on the dot-info registry agreement, and we also have to look at the drafting of the proposed renewal of dot-Asia registry agreement, so three.

Next is Any Other Business, so I'd like to call if there's Any Other Business to be added to the agenda or any amendments to be made to it. I'm not seeing anybody put their hand up. Usually, when I say that, somebody does put their hand up, but not on this occasion, so the agenda is adopted as it currently is displayed on your screen.

And first, we can then look at the action items from our last call. They are all completed. There was one to do with the – well, there was a note that pertained to the renewal of the dot-org registry agreement with George Kirikos who presented links providing context for a potential ALAC comment.

There was a note of a redline between the old contract and the new contract. I wonder whether we've been able to put our hands son a redline copy now to compare the contracts. I'm not sure whether staff have been able to do that, or George Kirikos, have you been able to get a hole of one?

GEORGE KIRKOS:

No, I don't have a redline software, so somebody [inaudible] perhaps or ICANN should be able to ... the redline that they actually delivered was the difference between the new gTLD baseline agreement and the new dot-org contract rather than a comparison of the existing dot-org contract with the proposed new contract.

So that's one of the main issues, I guess, that they're trying to shift everything towards the new gTLD contract which has the unlimited pricing power and the removal of pricing caps and the URF. But perhaps there might be other differences if people had a redline version instead of having to go through it annually. Thank you.

OLIVIER CRÉPIN-LEBLOND:

Okay. Thanks very much for this, George. So I'm not sure who is going to be able to do this. I don't know if staff have redlining software that can do the comparison between the two. I know that sometimes it's straight forward, but I'm not quite sure what that requires. But let's just put it on the side and see if something can be done about this.

In the meantime, I'm not seeing any other hands, so that's all for the current action item.

GREG SHATAN: Olivier, is my hand up?

OLIVIER CRÉPIN-LEBLOND: I didn't see your hand up. It is up now. Okay, must be suffering from some kind of lag over here. Sorry about this, Greg. Yes, Greg Shatan, and I see Alan Greenberg also put his hand up now. Greg, you have the floor.

GREG SHATAN: I guess you're experiencing latency, you might need to increase your bandwidth. In any case, I can generate a redline between old and new. I have redlining software up the wazoo. And actually, Microsoft Word has redlining software in it, but first you have to get the documents into Word, and I do have software that can convert PDFs into Word and then redline then from there. So I will produce that. I'm not sure if I can do it during this call, but I can certainly do it very shortly.

I redline for fun, so the only caveat is if it the documents are so different structurally that even where they are the same, the things are not in the same places or using the same language, all the redlining will show is that one document gets crossed out and the other is all new text. But we won't know until we try, so it'll be interesting to see what happens. I'll make sure it's as detailed as possible, word by word comparison so that to the extent that here are phrases, even if they're in different places, it should pick up the similarities and indicate them. But the logic is not so fuzzy or intelligent that they could pick up the same idea

expressed in different ways. We'll have to wait for some genius yet to put out there unicorn level software to do that. Thanks.

OLIVIER CRÉPIN-LEBLOND: Thanks for this, Greg. Probably artificial intelligence and blockchain technology will work this one out at some point. Or maybe IoT. Who knows? Let's go to Alan Greenberg.

ALAN GREENBERG: Thank you. The public comment page does g I've a list of the substantive changes, but I'm pretty s you're that what Greg just alluded to will make a redline pretty useless. The base agreement was restructured very considerably from the previous contracts, and the previous contracts, org versus com versus net versus whatever were quite different from each other. So I suspect a redline will not be particularly useful and either we have to rely on ICANN staff to have honestly presented the substantive differences, or someone's going to have to do an awful lot of work themselves. Thank you.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks for this, Alan. We'll find out later on this call, after the break. Okay, there is no break. So thanks for this. Let's then now move to agenda item three, and that's the ALAC policy document update with the sessions that took place at ICANN 64 that Jonathan Zuck was leading. Jonathan, you have the floor.

JONATHAN ZUCK: I wasn't on the last call when this I guess initially got discussed. This was a quick summary that I threw together of the sessions that we had and sort of what took place and what the takeaways were, and it's just out there for people to take a look at to see if they have some comments on it, etc., that they want to make to it. Is that document up?

ANDREA GLANDON: Jonathan, I've put the link in the chat.

JONATHAN ZUCK: Okay. Sorry, I'm on the phone version [inaudible].

UNIDENTIFIED FEMALE: Okay, GDPR, subsequent procedures.

JONATHAN ZUCK: Marita says these are the talking points. I think it's a different document, Andrea. There's a summary document.

ANDREA GLANDON: I see it. Okay. Yeah, I'm getting that up right now.

JONATHAN ZUCK: Thank you.

ANDREA GLANDON: Okay, now it is up.

JONATHAN ZUCK: Thank you. Sorry, I was on vacation with my family so I might be a little out of the loop. Was this document circulated to folks to take a look at? I know I got comments from Marita, but I don't know if others have had a chance to look at this document so I don't know if [we ought to give some] time for people to read it now. Did this go out to the whole group?

OLIVIER CRÉPIN-LEBLOND: Jonathan, yes, we had exactly the same agenda item last week. I very briefly tried to make a quick summary of each one of these on the fly. I'm not sure if I failed or succeeded, but I felt that it was maybe important to put it back on the agenda this week because people will have – I hope by now – read it, and there might be some further feedback that you might receive on this.

JONATHAN ZUCK: Okay.

OLIVIER CRÉPIN-LEBLOND: Just to kickstart the discussion, as far as I'm concerned, it reflects pretty much the discussions that we had at ICANN 64. The question I have really is what next steps do we have on this, basically.

JONATHAN ZUCK: Okay. And I don't know all the places this document will go or what its purpose is necessarily either. Maybe Evin can speak to that, because that might give us some sense of the stakes associated with this document and how much effort should go into it. But Evin, where's the document going to go?

EVIN ERDOGDU. Thanks, Jonathan. I think to my understanding, that is just kind of a new thing we can do after ICANN meetings. Since this was the first meeting recently that held three policy workshops, it was useful to have a summary of outcomes of those discussions, and then also kind of circulate talking points for the community. But there was also some discussion about maybe having a document to kind of have as a reference for ALAC policy in general. So it was just in general to have a follow-up discussion to what happened in the meeting and any takeaways.

JONATHAN ZUCK: Okay. Thanks. So as you recall, the first session we had – well, these are out of order, I guess, but the first one here in this document is [inaudible] privacy, security and stability for Internet end users. I think fundamental to that discussion is that we focus the conversation on the interests of non-registrant end users from the standpoint that that's who we've chosen in this case to focus on, because, A, there's more of them, and B, the registrant end users are well represented already in the discussions at ICANN.

So at the beginning of the session, we sort of hardened out commitment to focusing on the non-registrant end user, and we had a lively panel discussion with representatives from the U.S. government, from SSAC and two from the NCSG talking about this issue. And the NCSG raised some interesting points about not making assumptions about categories of people that should have access to data [such that I confess] I hadn't really thought about too thoroughly before that, which is even law enforcement around the world vary so considerably that there are certain regimes in which law enforcement access to the information could have hazardous consequences.

But one thing that appears to be resolved in this session is that there has in fact been a deleterious impact on the ability of folks like Spamhaus and others to assess which sites are bad and which ones should be blacklisted, etc., for spam and the malware filters that we all employ now, and that data was fairly dramatic.

So from a factual standpoint, it's clear that there has in fact been a fairly substantial deleterious impact to the WHOIS going dark for this past year, which was in some dispute. There was a blog from Milton Mueller that suggested there was some data that says that maybe spam and malware had gone down, but in reality, that's explainable as it's become more difficult for us to detect.

So [it's] fairly definitive that there has been a deleterious impact. So that was basically the summary of this, and I think from a next steps standpoint, it really amounts to asking Alan and Hadia to stay the course, both on who it is whose interest they're trying to represent, and

also being focused in on these reputational systems, etc., that need access to this data in phase two of the EPDP.

But I open this up to any other conversation or concerns that people want to raise about this session. And Marita has – I confess I haven't read it yet – some concerns about the balance between the two issues in this summary, and I haven't read it yet, I'm sorry, I got home from my trip sick. So Marita, if you want to speak up, feel free to do so now.

MARITA MOLL:

Okay. Thank you, Jonathan. I know you're ill. I know what it feels like, that same thing happened to me when I got back from the trip, and it sucks.

Yes, I have been lobbying in the background that we produce a nice-looking summary document, not for ourselves necessarily, but for us to ship around to various people to whom we want to explain what we were doing. That includes our government representatives and other ALSes and things that [we need] to explain our actions and how we're feeling.

I sent a number of comments in to Evin, because I saw this and the rest of what she had produced because it's part of the work, I think, that she's doing that she sends in which ends up in a general report on ICANN 64. I was thinking we could excerpt that [inaudible] our own situation.

With respect to this one, balancing privacy and security, I really do think that it reads – it probably isn't meant to read this way, but it really kind

of reads like we completely ignored the points of view of the other side. I would like to see another line or two in there that offers a little more balance to the kind of discussion that we were having, because it wasn't a one-sided discussion, and I think many of us were pleased to hear from both sides in that discussion. So I would like to, for the purposes of all the people who are going to read this, for them to see that, yes, we had this discussion that was there, open airing of different points of view.

I had other small items on the other two, and I won't necessarily go to them. There are some wording changes that kind of changed the meaning or the suggestion under new gTLD subsequent procedures rather than saying we're looking at it with skepticism, I would say we're looking at it with caution. The word "skepticism" is not that great. A few little things like that, I also added. But the one big thing for me was just to reword that first one a little bit so that it looks more balanced. Thank you.

JONATHAN ZUCK:

Thanks, Marita, and I'll take a look at doing that. I guess the idea of this being a more public document – you've been talking about us producing something similar to the GAC communique, right? That's sort of the inspiration for this, I think, and this document when I did it wasn't an attempt to draft that, certainly. If this could end up being a feeder into that drafting process, then I could try to go back through the transcript and find some other points that they hadn't made that we should try to highlight.

I just remember the big one being that we spent a lot more time talking about law enforcement than I thought we would because of the points they raised. So to me, that was the one that really stood out. But I'll go back to take a look at the transcript as well.

MARITA MOLL.

Yeah. Thank you. I realize that it's a little change of audience in that meeting so we have to kind of change the tone a bit if we're thinking of it in terms of moving it beyond our own selves. So yeah. Thank you.

JONATHAN ZUCK:

That's right. And that's why I was asking Evin where we thought this might go or who might read it, because this changed the structure a little bit.

The next session that's mentioned here is challenges and possible opportunities regarding universal acceptance. We learned about the problems associated with universal acceptance, and one of the biggest challenges is getting the word out about it. So John Laprise and I have been in communications with Don Hollander to make a more manageable attempt at getting the word out via the ALSes, and you'll hear more about that at ICANN 65, but the takeaway is that there was a pretty much universal willingness for us to engage and experiment in outreach to our RALOs and ALSes on this issue, to do education on this issue. So that's something that John will be presenting a plan for at ICANN 65. I think he's not on the call. I think I heard him in the apologies, right?

OLIVIER CRÉPIN-LEBLOND: That's correct, John is an apology for this call.

JONATHAN ZUCK: Okay. Yeah, so he and I have talked, and we talked together with Don and we've come up with a sort of manageable, more manageable than I had envisioned in fact when we were talking at the time about what that outreach might look like. So I think we've got a concrete plan that John's going to turn into a presentation to the regional leaders at ICANN 65 to get buy-in and commitment for follow-up on an outreach regarding [inaudible].

And then on new gTLD subsequent procedures, objectives for the At-Large community, we were very focused in this session on discussing communities and applicants from underserved areas and what improvements might be made there. I think Marita had some questions there, and I was talking about definition of community, that was one of the topics, but our previous comment on this was about trying to get people involved in the selection committees and review committees that know a little bit more about the different types of communities that exist to make this a somewhat more liberal review process than it was in the 2012 round. So I'll take a look at your comments in more detail on that, Marita, and we can make some additions on that as well.

And again, this underserved regions issue is one in which there might be an outreach role for At-Large to play, and John and I will look into that as well. And then finally, at the bottom of this, there was a joint GAC-ALAC statement on EPDP that we did together, so that's the gist of this

doc. Does anybody else have any questions about it? We'll look at it with an eye towards making it a more public document.

ANDREA GLANDON: Jonathan, I think Greg has his hand up.

JONATHAN ZUCK: Mr. Shatan.

GREG SHATAN: Yeah, I have my hand up. I also have my card up with a card up emoji, which unfortunately didn't translate into the chat properly. Yeah, there is no card emoji. In any case, I think this is a really good document in a lot of ways. I think we have a little bit of schizophrenia with regard to what the document is meant to achieve, or rather, there were kind of two goals that are different in [time,] one is to report what happened, and the other is to express the positions of At-Large and ALAC.

So the GAC communique, to my mind, largely does the second job, although there was some reportage in there, but the reason everyone waits with bated breath for the GAC communique to be issued is to find out what capital A advice the GAC is giving.

So I think that to the extent that the term communique has somewhat become associated with that in the ICANN world, so I would say that if we're going to do a "communique," we probably shouldn't call it a communique regardless and let's just leave that to the GAC anyway. But if we're issuing advice, we should issue capital A advice and denote it as

such. If we're reporting the positions of At-Large in a less formal way just to let people know where we stand, we should do that, and if we're going to report on what's happened and what we heard, what debates we've had, whether what we're reporting is the position of some, all or one person, that's also useful too. [But I'd] put that more into the reporting – or maybe a reportage if we're using French words for things – goal.

With regard to that, the first, I agree completely with Marita that the first blurb is a little bit skewed toward one side of the presentation, [we give Greg Aaron] a sentence and then we agree with him. And personally, I agree with him, but we didn't give [Kathy, Farzaneh,] or what I'll call the registrant side, not the other side – whatever, we didn't give them any shoutout, any substance, even if we disagree with it.

So from a reportage point of view, we didn't succeed in fair and balance [inaudible] unless we take the term “fair and balanced” to mean what Fox News does, in which case we didn't succeed at that either because we were largely trying to be fair and balanced, but I won't bring in U.S. domestic politics into this. One thing the rest of the world has that we don't have is the chance to walk away from U.S. domestic politics, so I don't want to bring it to you.

But in any case, I think we do need to reflect what happened. It was a fascinating discussion. It was one of the best things I saw in all of Kobe that wasn't beef. So I really thought it was great, and I think we should give both sides – all sides – what everyone has to say who came in to talk with us, and also what was said from the floor.

Not that we should spread this thing out. It shouldn't be much longer, but three sentences more to give some flavor. And if we want to make it a little more than that, that's great. To wrap up, I think we do need to make very distinct when we are giving formal advice, which has been rare, and should still be special no matter how often At-Large or ALAC does it, and that should come out in something that looks different, also look at the SAC documents of SSAC. You can tell when they are giving formal SSAC advice, you know it. Same thing with the GAC. If and when ALAC, At-Large chooses to do that, it should be in a form where you know it. And when we're reporting on what's happened, you should know it too. And when we're expressing kind of the sense of the group or our policy positions just as a kind of temperature taking for other goals, that's important too, but definitely, formal advice should be segregated and very obvious.

JONATHAN ZUCK: Yeah, Greg, I don't think anyone considers this to be formal advice on anything.

GREG SHATAN: I know, [inaudible]

JONATHAN ZUCK: [inaudible] sessions we had. So we don't need to keep saying that. The only formal advice we're talking about potentially is in draft form now that Alan and Hadia are working regarding phase two of EPDP. So that's the only formal advice that's being considered, and this document

contributes nothing to that, except the reporting the fact that we agreed that Alan and Hadia should draft something. That's all that took place that this is reporting on. So again, my feeling is this was going to end up being something that made its way down through the regional leaders and ALSes, etc. It's just a report on what took place when I did the brain dump on it, and not something that we're trying to put out there as a communique or advice.

So I'll take a look at it with that air, but again, it wasn't intended, in my mind, for either of those things, so that's why it's kind of worded the way it was. I'll take another pass at it. Anyone else?

UNIDENTIFIED FEMALE: Hadia.

JONATHAN ZUCK: Hadia, go ahead.

HADIA ELMINIAWI: Okay. Thank you, Jonathan, for that. And [inaudible] the ALAC statement that the first opening statement at the first EPDP [meeting] in Kobe [inaudible] actually to this policy plenary.

So although there was no workshop session held on that during our ALAC meetings in Kobe because the opening statement was due on the first day. The opening statement was circulated, it has not been sent officially, but it states ALAC's commitments and objectives and expectations of phase two.

So in short, it sets the path forward, it clearly identifies our commitment to the work of the EPDP team, and to the interest of Internet users to the Internet users whom we represent their interests. It also mentions consumer rights and protections and points out the most important topics for us going forward.

So although there has not been an actual workshop on it, I do think if we are talking about a policy summary, it does [inaudible]. So if you agree to circulate tomorrow morning a statement and maybe we could put it in there. Thank you.

JONATHAN ZUCK:

Sure, Hadia. I think everyone would love to see it, so please do circulate it. And I think we'll end up having branching conversations about the different types of communication that we're trying to do as well, because like I said, this was a request from Evin and I quickly brain dumped basically what happened at these sessions, without an audience in mind or a purpose in mind. So we will look at all three of those pathways and the best way to proceed with them. Thanks, Hadia, so I look forward to seeing that statement. I haven't read it.

Other questions or comments? Okay, then let's pass it back to Olivier. Thanks, Olivier.

OLIVIER CRÉPIN-LEBLOND:

Thanks very much for this, Jonathan. So this discussion continues, and if any of you have any further comments that have to go to Jonathan, please e-mail them either to Jonathan or continue on the mailing list,

and then we'll see our next steps afterwards. Let's go swiftly now to Holly Raiche for a discussion on the identifier technology health indicators, the ITHI.

HOLLY RAICHE:

Thank you, Olivier. The first thing to be said is that's not what I requested. This is a session called emerging identifiers technology. It's just a really brief report – it was a session that was on Tuesday in Kobe, and it was just a description of the new technologies, but raised policy issues.

So there are really two questions that arise out of it. First, if something isn't a PDP but somebody with a really good tech brain says, "By the way, this is a policy issue that needs addressing," do we do something about it? And if so, what? And then more specifically, what are we going to do about this?

So I'll just really briefly outline what this session was about. What was described was one of the technologies, new types of transport over DNS, over the TLS layer or over HTTPS. DNS over TLS is short for DOT. DNS over HTTPS is DOH.

Both of them, the explanation was, look, normal DNS transport is susceptible to monitoring or to modification. In both the DOT or DOH, the packet's path is not so visible. So the plus for individuals is privacy. The message can't be modified, it can't even be seen, but the two policy issues that were raised by the speaker were, first, if you've got packets that are not visible, basically, they bypass any protections like firewalls an ISP would put in place to what's called a safer resolver, and the other

point that I made was, look, if you've got what are seen as safer resolvers, you wind up instead of having thousands of them that are not targets for hacking or other malicious activity, you wind up creating somewhat of a honey pot, and that itself winds up being a bit of a hazard.

There were a couple of other implications that probably are not relevant to end users, but I guess, is this something we are interested in? And given that it's not a PDP, not likely to be a PDP, do we want an additional briefing? And the reason I raise it too is I noticed on list of topics that were raised by other groups for Marrakech, DOT and DOH were raised. So I guess I wasn't the only one really interested in the issue.

So, I guess questions or comments. And yes, Olivier, it's not about ITHI.

OLIVIER CRÉPIN-LEBLOND: Yeah. Thanks for this, Holly. Well, that's what I was told it was, so that's how it ended up on the agenda as that. But sorry for the mistake on the agenda.

Would you by any chance have any access to any slides that might have been shared on that?

HOLLY RAICHE: Yes. The point is if you go to the ICANN schedule for 64, go to Tuesday, go to 13:15, the session's called emerging identifier technologies, and you can listen to the guy. You can also look at his slides. It's all there if people are interested.

OLIVIER CRÉPIN-LEBLOND: Okay. Could you please send the link to the mailing list?

HOLLY RAICHE: Yeah.

OLIVIER CRÉPIN-LEBLOND: And then we'll get everyone to have a look at it, and then we can always follow up next week and see if we want to go a little further. Because I suspect that for most people who haven't been to that session, what you've just described here is particle physics or rocket science, and you probably have to – me included – have a look at it before finding out whether we want to go more into this, and perhaps have a webinar about it or get a session up in Marrakech, bearing in mind Marrakech is going to be primarily a policy forum with fewer sessions. So it's one of these cases.

Alright, so thanks for this summary, Holly, and I'm sorry to rush things around but we are running out of time as per usual. And I was going to now suggest that we move on to the expedited PDP and next steps. Hadia Elminiawi and Alan Greenberg.

ALAN GREENBERG: Thank you. Could we have the presentation? Now, this was a discussion we started in Kobe with Hadia and I suggesting that this was an opportunity for us to give advice to the board on how they should react to the EPDP phase one final report.

Now, it's important to realize before we start on this discussion, we are giving this advice to the board, so it's important to look at what the board is both empowered to do and is likely to do.

In terms of likely, the board has really little option but to accept the draft EPDP report if they are going to not put us into a rather awkward position. And there is very little in the report that I think anyone is strongly saying "Do not implement." So the board is likely to approve the recommendations that the GNSO has approved.

Moreover, as long as this EPDP is still running and does not look like it's in its death throes or in some stalled position, the board is not likely to take any policy decisions itself. So we're not trying to influence the board to take policy decisions on outcomes. The board is however empowered to make comments on the report, and specifically on what happens in phase two. And that, I believe, is what our target should be in this advice.

So specifically, we're not trying to influence outcomes, but we do have some concerns that have been expressed along the way. And if we can go to the next slide, please.

Alright. The substance of what we're talking about is issues impacting accessibility to RDS data. We are looking at what is redacted, what is not redacted. We are not looking at this point about who will get access that bypassed the redaction but who will get access to data that is not redacted at all. Therefore, we're looking at what data is redacted and therefore is public.

We are also looking at the reliability of the source of the data, because data that is technically available but in fact is not reliably available may as well not be there.

And very much, we're looking at whether the discussions that took place in the EPDP were in line with GDPR and specifically whether the balance that has to be taken on privacy issues was duly considered. So EPDP is very specific in saying that, yes, there are privacy considerations and you should be protecting individuals' personal data, but there may be overriding reasons which make it more important to make the data public and that have to be considered in deciding and any given data element, is it public or not? And certainly, my belief is that in several of these cases, the EPDP just did not look at those issues at all. And go on to the next slide, please.

There are three issues that were identified. The first is Thick WHOIS. Thick WHOIS, the registry is the definitive repository, the authoritative repository for registration information. So much of it is collected by the registrar, but it is then passed on to the registry for future use.

Thick WHOIS is used where all TLDs – with one exception that have been issued under the auspices of ICANN, and for the legacy ones, it is being used for dot-org. So the only TLDs that do not use Thick WHOIS currently are dot-com, dot-net and dot-jobs. Dot-jobs is a new TLD under ICANN, but because it was being run by Verisign, ICANN allowed it to be a Thin WHOIS in line with the other Verisign TLDs.

Now, of course, there are Verisign Thick TLDs also because any ones obtained under the last round of gTLDs were implicitly all Thick.

There was a PDP which ran for over a year which unanimously agreed that all TLDs – that is all the existing ones plus com, net and jobs – should be thick. That was ratified by the GNSO and the board. It has not been implemented and in fact now is on hold.

Under the EPDP, a Thick WHOIS implementation is quite possible and allowed, but it requires that the registry and all the registrars come to an agreement that they believe it is lawful. And we know that there have been concerns expressed by some of these contracted parties that it is not lawful.

However, the EPDP did get legal input from its independent legal counsel that based on the arguments presented in the Thick WHOIS PDP report, that in the view of that legal authority, that there's nothing which makes it illegal under GDPR, and the balance in the mind of the person who wrote the opinion is very clearly that it is lawful under GDPR and it would be something that could be allowed.

That was a discussion that was never held within the EPDP, and the real substance of this point to the board is that's a discussion that must be held. There are merits in the Thick WHOIS, and they need to be considered in deciding whether indeed we should mandate Thick WHOIS for everything or not.

I think I'm going to stop after each one and ask if there are any questions or clarifications. Marita, please go ahead.

MARITA MOLL: Alan, you made the assumption that that is not going to be held, the discussion is not going to be held?

ALAN GREENBERG: At this point, there is nothing in the recommendations related to this subject that are due to be rediscussed in phase two. It is not on the table at the moment.

MARITA MOLL: Okay, but you have indicated there is a legal advice that has come in since.

ALAN GREENBERG: Yes, but there is nothing that binds the EPDP to even act on it, and at this point, looking at the workplan that has been presented, the very detailed workplan that has been presented, this is not one of the items that is currently on the table to be discussed.

MARITA MOLL: So you're assuming that no one else cares?

ALAN GREENBERG: I know other people care. The SSAC in particular has made strong statements on the need for Thick WHOIS. Some other people have not even realized that Thick WHOIS is going away. It's not said explicitly in the report, it's just done by implication. But to quote one of the contracted parties who was responsible for pushing strongly on this,

there is no longer any Thick or Thin, it is just what we decide – we the EPDP.

So there's a very strong feeling that the Thick is going away, even though it's not actually said.

MARITA MOLL:

Okay. Thank you. I'm just curious to the fact that if there's new legal advice, that someone would not be bringing this up [inaudible] us giving advice to the board.

ALAN GREENBERG:

Marita, it may well come up in discussions. I don't know. But I don't think we should wait around until it's too late to find out that it doesn't.

Greg, Jonathan and Hadia, and I think we want to cut it there because we do want to go on to the other items.

GREG SHATAN:

I'll try to be actually brief. I did listen to a lot of the EPDP calls, and certainly, you'd have to follow fairly carefully [but it's] quite obvious that Thick WHOIS was on the chopping block, and that part of the call or that part of the process reminded me kind of of the reign of terror and the rush to judgment and the [inaudible] filling up trying to get things taken care of before they took down the guillotine. And not a lot of consideration was given to trying to correspond with Thick WHOIS implementation or figure out why it was a good idea or a bad idea, but just to kind of overtake it. So I think it is important for us to take this

back in, and [inaudible] question, are we recommending that ALAC act to put this back on the table?

I think that by the advice, we're at least saying that we want the discussion to be had, which could well put it back on the table, and I think then we need to be more explicit on what our position is on Thick WHOIS, but at least given that there was legitimate advice given that legitimized that there's at least a discussion that has to be had, maybe it's battling legal advice or battling groups, but certainly not this kind of one group overtaking the other and disposing of the first like some sort of wave of [inaudible] or something. Sorry if I ruined European history, I just don't know it that well.

ALAN GREENBERG: Jonathan?

JONATHAN ZUCK: Yes. I guess to summarize, you're mostly bringing up a process point here, which is that there was a PDP advice that was out there, and it just never got discussed. And all we're really saying is let's make sure it's discussed before it's summarily dismissed. Is that right?

ALAN GREENBERG: That is all we're saying on all three points, as you'll see.

JONATHAN ZUCK: Yeah.

ALAN GREENBERG: The board is perhaps not empowered, and is certainly not likely at this point to make substantive changes in fact on the outcomes of the PDP. So there's no point in trying to convince them that Thick is important.

JONATHAN ZUCK: Right. Understood.

ALAN GREENBERG: I suspect the board already believes that, or they wouldn't have approved the Thick WHOIS PDP. So we just have to make sure that they're all aware that in fact this is what the EPDP has done, even though it's not [inaudible].

JONATHAN ZUCK: It got de facto killed, and let's make sure that it's done more consciously. Thanks, Alan.

ALAN GREENBERG: Hadia.

HADIA ELMINIAWI: I just wanted to make a quick comment that the WHOIS topic is not actually on or off the table. It has never been actually discussed. So it's not that we are bringing it back, it's just that we want to have a discussion over the topic. And what [inaudible] for that is the legal

advice that has been received during the meetings in Kobe. So technically speaking, we're not bringing it back, we are opening it for discussion because discussion hasn't ever taken place. Thank you.

ALAN GREENBERG:

Thank you. And to be clear, Hadia's correct. The issue of Thick versus Thin as such has never been discussed. But there is a recommendation which says many of the data elements can only be sent from a registrar to a registry. Can we kill Hadia's line, please? Thank you. Data can be sent from a registrar to a registry only if there are proper agreements in place that all the parties – that is all the registrars and the registry for any given TLD – all agree that this is something they want to do, and that's not likely to happen in the world unfolding as it is right now. Jonathan, is that a new hand?

JONATHAN ZUCK:

It's not. Sorry.

ALAN GREENBERG:

Okay. Alright, next slide, please. The next one is geographic differentiation. During the discussion, there were significant claims that it's going to be too difficult to do. It's not clear why, since every registrant must declare what country they are in and must certify that that information is accurate. Nevertheless, it has been said that it is much too difficult to do.

It's also been stated by particularly NCSG that privacy is good for registrants everywhere, so why shouldn't everyone have it? And the

third point that has generally been associated with this discussion is non-EU jurisdictions may also have privacy legislation.

Now, those last two points are correct, but this PDP was chartered to address GDPR, not to address all ICANN's privacy issues, and it explicitly was set to address GDPR and not the varying privacy legislation around the world.

Privacy legislation may be in place in other countries and certainly is in other jurisdictions. In some cases, it may be more stringent. In other cases, it may be less stringent. So ultimately, registrars and registries are going to have to adapt to multiple privacy domain jurisdictions around the world, but it's not up to the EPDP to determine those.

But the more substantive discussion that I think we have to raise is that there are benefits to making information available. As Jonathan noted, there is already marked changes in malware, spam and phishing because of the inability of using WHOIS to track people down.

We're never going to go back to the old WHOIS regime. That's not the point. But we didn't even discuss the impacts on those who use the information that would be available if there was better differentiation. And that discussion must be had.

The GDPR insists that we balance these needs and the EPDP just didn't do that. To quote one of the SSAC people, we never looked at things from the point of view of the data user. And that's something which should be done.

Any comments on this one? Then let's go on to the third one. Marita, please go ahead.

MARITA MOLL:

Sorry, Alan, I was reading this previous – I thought there was also new legal information on this one. Am I wrong about that?

ALAN GREENBERG:

No, and it's mentioned in the document. It is not legal information on whether you can do geographic differentiation or whether it is legal or appropriate. The question that was asked to our lawyers is because ICANN has a presence in Europe, we have offices in Brussels for instance, does that mean that we are a European entity and therefore would have to apply GDPR universally?

Because a European entity processing data has to apply GDPR regardless of where the subject is. So the question here is, are we a European entity? And the answer came back is we don't process this data in Europe, we have a very peripheral presence in Europe. So the European offices of ICANN for instance have to treat their employees' data under GDPR, because from that perspective, they are a European entity. But from the perspective of the gTLD WHOIS or registration data, that's not something we actually process in Europe, it's not something that we decide the rules on in Europe, and therefore the opinion we received is we will not be deemed to be a European enterprise.

If we had been deemed to be a European enterprise, this whole question would be moot. We would have to apply it universally to

registrants everywhere. So the legal advice, if it had come back the other way, would have taken this question off the table completely. But what it did is it left it on the table. So yes, there were people who were using that potential that ICANN would be deemed to be European as another justification for not doing geographic differentiation, but the fact that the opinion came back the way it is really makes it not relevant to what the outcome is, and therefore, it makes it applicable to have the discussion again or reopen it perhaps, although some people don't like that term.

Now, there are a number of parties, and the ALAC representatives, the SSAC representatives and a few others believed that the way we left it is this would be discussed in phase two. The way staff has interpreted the report in building the work plan, that is not what is happening.

There also private discussions with other people involved who also believed that this was on the table for phase two, but at this point today, it's not on the table. And I won't go into the personalities involved in a public conversation. We could hold that conversation a little bit other venues. But at this point, it looks like it is not going to be on the table for phase two despite the fact that we and SSAC and others believed it would be, and therefore we are suggesting that the board take action to make sure it is discussed.

MARITA MOLL:

Okay. Thanks, Alan. So it seems to me that there appears to be some new information upon which we could build a case that this should be reopened. That's what I'm looking for, is something has happened in-

between, and we've got a good case that this should be reopened and [inaudible]. That's what you're telling me [inaudible].

ALAN GREENBERG:

Yeah. Among other things, what happened in-between is many of us left the table hearing words from the chair saying we will leave the recommendation as it is, as it was in the final report, but there will be further discussion in phase two. Those words came out of the chair's mouth. They didn't make their way into the final report or the workplan that comes out of it.

So we were operating on good faith to not halt the report going out by withdrawing consensus, and we are where we are right now, and certainly I and Hadia are suggesting that this is an opportunity to point this out to the board. Greg. We're over time, Olivier. Do we continue going and taking questions at this point, or do I just run through the last slide?

OLIVIER CRÉPIN-LEBLOND:

Yes. Thank you, Alan. We do have an extension with the interpreters, so you can proceed forward. But just be mindful of the time, please.

ALAN GREENBERG:

Okay. Greg, if you can be short.

GREG SHATAN:

I will. Briefly, it sounds like there's both a process problem, or maybe even a substantive problem that happened, however you want to characterize it in how this ended up, and on top of that, the report that ICANN is not a European entity for all purposes and all seasons will provide additional information that can feed back into that discussion that should never have been taken off the table in the first place. Thanks.

ALAN GREENBERG:

I concur. Well, that's my hope anyway. Alright, next slide, please. The last of the three items is a legal-natural person differentiation. Now, this is one that is on the table for phase two. However, there is great concern that simply saying we're going to discuss it again – because it has been discussed many times – is not going to be sufficient. The reason is, number one, again, we never discussed the benefits of having information available. It was mentioned occasionally, but there was never any substantive discussion on it.

Contracted parties have been very reluctant to commit to this, because there is currently no indication within the WHOIS, within the registration data, that it is a legal entity. Some registrars, at least at this point, are using the presence of the organization field to indicate that entity is a legal person. However, we have another policy change which is essentially going to wipe out the organization field in many cases as part of the implementation of the EPDP.

So in the current world where some registrars are using organization fields, many of the organization fields will be blanked, and therefore no

longer be legal persons. So we'll redact more data because of that. And some registrars do not look at the organization field at all and simply treat everything as a natural person.

The suggestions that have come up saying, "Well, we should ask people for their legal documents proving they have legally registered in a country or in a jurisdiction to prove that they're legal," that makes it very easy for someone who's trying to masquerade as a natural person but be a legal entity. They simply have to not turn in their documents and they will be a natural person.

So even when there has been discussion of how to do this, it's been very much slanted to reduce the number of legal entities that will show up in the database. So there are a lot of difficulties in this one. It's certainly not going to be trivial to implement, but I believe that ultimately, we have to do this, because otherwise, we are giving carte blanche to blank out everything about legal persons, which GDPR provides no protection against, and virtually no countries provide general protection against release of data about legal entities. Many of them require the data to be displayed.

So that's where we are. And again, no consideration of the benefits, so there was no balancing done. It basically came down to an argument from the contracted parties saying it's going to be too difficult for us to do, therefore we don't want to do it.

There was an interesting article in CircleID published by Jeff Neuman the other day, who spent a lot of his life working for registries among other organizations, pointing out that PDPs just don't work if people have

vested interest in the status quo, and you cannot expect contracted parties who effectively have a veto in PDPs to willingly say, "Sure, I'll do this. It's going to cost me money, but hey, if you guys want it, I'll do it." It just doesn't happen that way.

Marita, and then Hadia.

MARITA MOLL:

Yeah. I have to say that I am not at all comfortable with having this one in the advice to the board. There's nothing, no new information that says anything about we need to put this on the table. It is on the table, it is going to be talked about in phase two. I don't see any benefit at all to us putting this forward, and in fact it kind of looks whiny. I'm sorry, I don't see any benefit at all to putting this in. I would vote for removing this third item from the proposed advice to the board. Thank you.

ALAN GREENBERG:

My answer to that – and I'll let Hadia give hers to that also, which may or many to be different – having sat through several hundred hours, I think it's about 3-400 hours of discussions on these subjects, I do not have any belief that if left to its own devices, this discussion will be held in a balanced way. And I believe that the new information is we now have experience with phase one of the PDP and we know how this works. So that's my answer.

MARITA MOLL: Well, I've made my case. I think that that discussion should go on inside phase two and not as part of advice to the board. It seems inappropriate to try to carry on that discussion in that way.

ALAN GREENBERG: Hadia?

HADIA ELMINIAWI: I agree with Alan that [inaudible] haven't been able, ever [inaudible]. So putting this advice to the board [inaudible] important to us. [inaudible] and also, highlights the issues that we faced in phase one. One of the arguments of the registrars on not wanting to [inaudible] differentiation is that they actually cannot rely on the accuracy of the data. And [inaudible] advice that we received from the legal counsel [inaudible] accuracy, which actually states clearly that accuracy is not only about the registrant being able to verify his or her data and correct it or delete it, but it's also about the accuracy of the data for the purpose for which it was processed.

And [inaudible] in order to ensure the accuracy of the data. So that's an important item [inaudible] discussion forward in phase two.

ALAN GREENBERG: Hadia, you faded completely.

HADIA ELMINIAWI: [inaudible] is important.

ALAN GREENBERG: Hadia, I'm afraid you faded pretty well completely, and I'm not sure many people heard what you said. You may want to put it in writing. Greg, please go ahead.

GREG SHATAN: Thanks. I agree with putting this in. I think that there's definitely a need for outside agency to make sure that this conversation takes place in a refreshed manner and not just the same shit, different day, or different phase manner, which is what I think you're concerned with.

I do think Marita has a point, which is that this needs to be written so that it doesn't just sound like whining or re-pleading, but focus on the point that - [inaudible] closer to kind of the definition of insanity which is to keep doing things the same way and expect a different result. And given that the EPDP left to its own devices is likely to do the same thing that they did the last time, especially given the way that the geographic situation, which is roughly analogous, got deep sixed in a very sketchy way, I think there needs to be bright light and specific attention paid by the board to this, and we're the ones that need to tap the board on the shoulder and say, "Hey, guys, you need to look at this," and I think you need to look at it in the context that the geo thing didn't even get this far. It somehow got throw off the bus at the last minute.

So look at those things, because otherwise, we have a situation where, as I said in the chat, all entities are EU entities and all persons are natural persons in the eyes of ICANN. I've seen a map of Europe as viewed by ICANN, and it just shows all the countries of the world. That

should not be the philosophy, and I think the board needs to at least focus on this. Thanks.

ALAN GREENBERG:

Thank you. There's strong evidence that says that we will not likely come to a complete closure on this. There will not be agreement across the board, and every single time that that has occurred in the first phase of the EPDP, it was decided that since we can't have agreement, we will side with the contracted parties. And that was true whether we were keeping the status quo from the temporary spec or we were changing it. But regardless, if we can't come to closure, then we side with the contracted parties. And that, I feel, is problematic, and I think it has to be addressed. And it's not likely to be addressed within the EPDP. The only suggestion I would make is that we may want to recommend that external studies be done, because I don't believe we could rely fully on the EPDP team itself to do that. And I'd like to gauge how people feel on that.

And the other thing I'll note is in the document, there are two versions of the advice to the board. One says in all three cases that we advise the board to request that the issue be considered, or we advise the board to require that the issue be considered.

I'm not sure the board has the power to require, but that tends to be the type of wording that's used in GAC advice, that is presuming the board has the power and telling them to act. They may choose to not act that way, but I believe the stronger version is applicable, but I would like input on that also.

I'll point out that the public comment ends on the 17th of April, and I think we would be wise to submit this to the board no later than the end of the public comment. So we have a finite time to come to closure on this, and that's two weeks.

I see Jonathan has his hand up, and then I'll turn it back over to Olivier. By the way, this has been posted to the Wiki, and I strongly request that people make comments in the Wiki comment field for your thoughts on this. Jonathan?

JONATHAN ZUCK:

Yes. Thanks, Alan. I guess I'm wondering, to address - [inaudible] raised, is the real issue, getting back to the brass tacks of, as you said, the SSAC mentioned, of making sure there's a conversation about the importance of the data, to the [use] of the data and the implications of that. And does it make sense to make that a topic in and of itself? That the board requires at least take place.

ALAN GREENBERG:

I believe it is required. There was one interesting instance towards the end of the EPDP where it was decided that we should have a study done as to the costs associated with something, and the wording was explicitly the cost of contracted parties. Not the cost to anyone else, only to contracted parties. And I think we have to break that barrier.

JONATHAN ZUCK: Yeah. I'm just wondering if taking it up to that level makes that about a conversation that didn't take place that we want to have take place as opposed to critiquing how something took place. That's all.

ALAN GREENBERG: Yeah. If you look at the actual document, it tries to make the case that we're talking about process. we are not asking the board to intervene on the outcome, but we want the process [inaudible].

JONATHAN ZUCK: No, understood. I get that. I guess i was trying to [inaudible] Marita's point that in fact this legal versus natural was discussed, but we're not happy with how it was discussed.

ALAN GREENBERG: No, we're not – certainly, the point that I'm trying to make is we have no belief that the discussion in the second part will go any differently, that is, left in stalemate, without a real balancing of the benefits and costs.

JONATHAN ZUCK: Okay. And maybe that gets to that point. I was going to say that this balancing test itself is the bigger point for both this and geographic names, and it's pulling that out [inaudible].

ALAN GREENBERG: And Thick WHOIS.

JONATHAN ZUCK: Yeah.

ALAN GREENBERG: Maybe Thin WHOIS is the right answer, but we haven't had the discussion.

OLIVIER CRÉPIN-LEBLOND: Alan, Jonathan, sorry about this. The music wasn't me. But I think that the interpreters are going to have to leave shortly, so we do need to get a move on and perhaps follow up on the mailing list, and then we'll have a longer session about the EPDP during next week's call, if that's okay with you.

ALAN GREENBERG: Well, remember, next week's call is only a week away from the deadline. We really need people to contribute things in a new draft before then. We can't wait for next week's call to have the discussion.

OLIVIER CRÉPIN-LEBLOND: I would suggest that the robust discussion takes place on a point by point on the mailing list, and then next week, we should just address the points that we don't have consensus on.

ALAN GREENBERG: I would suggest the Wiki, not the mailing list, but whatever is in vogue today.

OLIVIER CRÉPIN-LEBLOND: The Wiki would be fine. Okay, sorry for stepping in, but we do need to end this call soon. The interpreters have to go, and we are 20 minutes past the official end of this call, which was originally supposed to be 60 minutes in length.

Let's go to Jonathan for the policy comment updates. And I understand that there'll be three, dot-org, dot-info and dot-Asia registry agreement.

EVIN ERDOGDU: Thank you, Olivier. Go ahead, Jonathan.

JONATHAN ZUCK: No, go ahead, Evin.

EVIN ERDOGDU: I'll just be brief as the interpreters need to leave soon. As Olivier mentioned, there are two public comments for decision. Those are the proposed renewal of dot-org registry agreement which George Kirikos mentioned at the beginning of this call going over the redline versions of the two versions, and then also proposed renewal of dot-info registry agreement, and both of these close on the 29th of April.

There are currently no assigned penholders to these, but perhaps we would like to open that up for discussion.

JONATHAN ZUCK: Thanks, Evin. If folks have some ideas about what we might want, if we want to comment on this and what those comments might be, please e-mail me and I'll make a little summary of what the end user aspects of these are on the next call, and we'll get more specific. I don't think we've delved into these enough to make a decision just now. So George, if you've got some bullet points, send them my way and we'll make a presentation on it on the next call.

GEORGE KIRIKOS: I noticed on the public comment page they just added dot-biz as well, so it looks like there's probably going to be a mailing from ICANN saying that there's a Neustar renewal of dot-biz, so it looks like they're basically lining up to eliminate the price controls and to impose the URS. I haven't looked at the pages yet, but that's my guess.

JONATHAN ZUCK: Yeah, sounds good. We'll go into this in more detail the next call.

GEORGE KIRIKOS: Great. Thanks.

JONATHAN ZUCK: Thanks, folks. Back to you, Olivier.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Jonathan. And I understand that Greg is going to be able to supply us with – if it does work – a redline copy, if that’s possible, between the previous agreement and the current agreement, at least for the dot-org one.

So that’s all we have time for today. We’ll follow up on the mailing list. Is there Any Other Business? And I'm seeing Jonathan, you have your hand up still.

JONATHAN ZUCK: Sorry, old hand.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks. So there being no other business, we need to look at our next call. The call will take place next week. And what is the rotation?

ANDREA GLANDON: That would be 13:00 UTC for next week.

OLIVIER CRÉPIN-LEBLOND: So next week on the 10th, 13:00 UTC. That works for me. Does that work for you, Jonathan?

JONATHAN ZUCK: Sure.

OLIVIER CRÉPIN-LEBLOND: Okay. Well, thank you very much, everyone, for being on this call. Particularly large note of thanks for our interpreters who have stayed an extra 23 minutes into this call. We'll follow up on the mailing list. And I think this call can not be ended. So thank you, everyone, and speak to you soon, and follow up on the mailing list. Thank you.

JONATHAN ZUCK: Thanks, everyone.

ANDREA GLANDON: Thank you. This concludes today's conference. Please remember to disconnect all lines and have a wonderful rest of your day.

[END OF TRANSCRIPTION]