
Emily Taylor:

And we thought that it would be a useful opportunity to sit down with you and to hear your perspectives on contractual compliance. I do have some slides and apologize in advance if some of it's familiar territory, particularly for those of you that we met with yesterday. But for others who are joining who may not have been in those meetings, I think it would be just useful to set a little context.

So, the WHOIS review is one of the Affirmation of Commitments reviews along with the ATRT, Accountability and Transparency Review Team, and the ongoing review on Security and Stability. Our scope is to look at the extent to which ICANNs current WHOIS policy and its implementation and clearly today our focus is on its implementation is both effective, meets legitimate needs of law enforcement and promotes consumer trust.

And so we have published an issues paper, which for those of you who were attending the registries meeting yesterday, we talked about it. We've highlighted the issues as we've seen them in very, very high level and we're hoping to develop a dialogue as our work goes on and explore those issues in more depth. Now clearly one of those issues and the focus of today's meeting is on compliance.

Now I was talking with Chuck just sort of over coffee in the lobby, I hope you don't mind me mentioning this Chuck, but he sort of expressed that it would help to be a bit clearer about why we're asking you these questions and not say asking end users these

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questions because a lot of them seem to be sort of focused on end users and their experience. Well the reasons are first of all, we are hoping to reach out to end users, to consumers, as I'm sure all of you it's quite difficult to get to the end users, even in the ICANN context.

And as particularly the registrars and to some extent the registries, you are closer to the customer and you have that sort of, you are in the middle, if you like, of the compliance effort on one hand by ICANN, and the impact that it has. You are also impacted yourselves by the compliance effort and you are part of the compliance effort to some extent.

Now, I've got a load of questions that we developed, but I wondered actually if it might be more useful to flip straight away to the last question, which is question 14. Do you think you can find it on the screen Alice? And what we've done here is just to reproduce ICANN compliance teams operating plan and principles. I don't know whether you've got, we circulated the written questions, it might be easier to see them on that.

But I think I would like to know, we would all like to know, from your perspective what you think of, what's your experience of these principles in action, the first being – ICANN works constructively with registrars and registries to foster a culture of compliance. Does anyone want to express any views on this? Should we take the two together? I think the culture of compliance, this is the overarching kind of idea and I just wanted to know – thank you Chuck.

Chuck Gomes: I'll try and get it started. One of the things ICANN has done for many years now is hold regional registry/registrar meetings and they spread them out to the various regions; we just had one in Munich in May. And I haven't been to all of those, but everyone I've been at there's always a compliance emphasis. They show compliance statistics. They talk about compliance. They talk about things coming up and so forth. So that would be one example where ICANN staff are constructively working with the contracted parties regarding compliance.

Emily Taylor: David.

David Maher: Following up on that – I remember at one regional conference one of the ICANN staff members talked about compliance and was met with a considerable degree of hostility from the audience; as I wrote a letter to the then Chairman and President of ICANN saying that I thought the staff was on the right track and there were going to be some difficulties in getting an understanding of what compliance meant.

Emily Taylor: Could you explain more about what you think underlay that hostility and whether it's the same now or different or...

David Maher: I think it is different now. I think there has been a change in attitude. But in my mind there's a fundamental disconnect here that ICANN is certainly not the policeman of the world. On the other hand if you have a compliance function, you're the policeman though; you are and you are not.

Emily Taylor: I think that this brings up back to the way this is phrased. You have a concept I would say of partnership in the way that's phrased – “working constructively with registrars and registries to foster a culture of compliance”; i.e. we're all in it together. Would you mind partly for me just introducing yourself?

Mason Cole: Of course. My name is Mason Cole; I'm Chair of the Registrar Stakeholder Group. Hi. I would say over the past couple of months in particular since Maguy Serad took over there's been a very nice improvement in the culture of compliance within ICANN. Maguy and her team have gone out of their way to contact me to talk about their goals and their objectives for the near term; make sure that that information was passed onto the registrars, which is welcome because if we understand what compliance objectives are then we're in a much better position to try to do something about it.

Registrars also have tried to be as proactive as we can be about promoting a culture of compliance within our own stakeholder group because frankly, those who are not in compliance have a competitive advantage over us. We want a level playing field in terms of good guys and bad guys and it's important to us to make sure that those who are out of compliance are dealt with in the proper way so that all of us can focus on our businesses rather than on compliance issues constantly.

Emily Taylor:

Thank you Mason. Sir did you want to make a comment as well? I didn't know whether you were asking for the mic.

Tim Cole:

No, I'm Tim Cole. I'm actually Chief Registrar Liaison so I'm on the other side. But I kind of want to echo what Mason says. I remember not too many years ago, as David mentioned, where I was scolding the registrars for shooting the messenger when the compliance person came and talked to their group. And I think we've got a totally different relationship now with compliance, I think the registrars do. And it seems to be far more constructive and I think, especially in terms of WHOIS, I think everyone recognizes that as a significant issue that needs constant addressing. But I do agree with Mason, I think there's an improved atmosphere.

Bill Smith: This is Bill Smith. I'd like to ask for more discussion on this and why there is an improvement in the relationship. So I'd just be interested in more information.

Emily Taylor: Mason.

Mason Cole: Mason Cole again. Just I think, speaking personally on behalf of my own company and not necessarily for all registrars. I think that over the past couple of, maybe the past two, three, four years compliance has been asked to fulfill a role that it's not always optimized to fulfill. As David put it, to sort of be the police force of the domain name system, and that's not really what compliance is.

And I would suspect that the compliance function within ICANN wasn't equipped to deal with – and this no slight at any one person on the compliance team by any stretch – but I think just in terms of manpower and time available and resources, ICANN compliance was not equipped to deal with all the requests that it was being asked to fulfill from the community.

And I think in the last several months compliance has gotten a better grip on what it is it intends to do and it's done a better job of explaining to contracted parties what it intends to do, which is far better. I mean we all are starting to understand the rules that each side is going to play by.

Emily Taylor: I know you said that this was a personal, from your perspective as an individual registrar, but flipping over to...sorry...

Tim Ruiz: Just so we don't leave Mason out there on his own – this is Tim Ruiz with GoDaddy and I think we concur completely with that. Compliance has been responsive, approachable, and we're very pleased with the way that compliance has gone here over the last several months. And I concur too that I think that sometimes compliance is expected to deal with things that they were never really intended to be equipped to deal with or really aren't in their purview. And we either need to deal with that at a larger level through policy or whatever so that that could be corrected if that's what the community believes to be done. But at least from our perspective, we're very happy with the way compliance has gone.

Emily Taylor: Okay, anything else on that? Did you...?

Bill Smith: So I've heard generally that compliance, as an example has a better grip on what they are supposed to do, that they haven't been resourced to do in the past. A broad set of things that perhaps, I'll use the word clarity, there wasn't clarity about what they might be doing. Sitting here, what I'm hearing is either compliance has been given clarity as to what it's supposed to do, has increased its

staff or has decreased its activities. And I don't know if any or all of those are done and if I could understand why, what has changed there.

Emily Taylor: So we go Tim and then Mason.

Tim Ruiz: Well I think probably all of the above from our perspective. And just to kind of illustrate that things can change if the community feels it's necessary. Back in, prior to 2009 there were a lot of concerns and issues over compliance. We sat down, the registrars sat down with staff; we worked out some additional tools and mechanisms to which they could enforce more compliance in areas that they felt they had weak tools in.

A new RAA was developed. I believe the majority of all registrars are now signed on to that and I think that's played a big part in the compliance efforts that they've had over the last several years. And in fact, I can't recall exactly how many de-accreditations – not that that's the goal; to de-accredit registrars – but I think that some of those tools aided in being able to address concerns with certain registrars that they had difficult addressing in the past.

Emily Taylor: We've got Mason and then I think we've got a comment from Kathy Kleiman who's joining us remotely. So Mason, please go ahead.

Mason Cole: Tim said everything I would have said. I concur; I think to your question, I think it was a combination of all three and I don't have anything intelligent to add beyond what Tim perfectly articulated.

Emily Taylor: Thank you. Kathy, good morning – good evening for you I think.

Kathy Kleiman: Good evening, good morning. Can you hear me? Am I off mute?

Emily Taylor: Yeah we can hear you very clearly.

Kathy Kleiman: Great. Hello to everyone in the room. Question for you – the WHOIS Review Team is still hearing a huge number of complaints about ICANN, registrars, registries and WHOIS compliance. Are these residual complaints do you think; is this kind of old issues coming back up, or do you still think there's basis for the types of complaints that we're still hearing from the intellectual property community.

Emily Taylor: Kathy, you just asked the question I was just about to ask. So thank you for that. Anyone want to take the floor? Jonathan and then Tim.

Jonathan Robinson: Hi Kathy. I guess for me that would be a question of clarity of what type of complaints they are; if there's any indication of what sphere they fall into or are they specifically around WHOIS or is more broadly than that?

Emily Taylor: Kathy did you want to respond to that or would you like me to?

Kathy Kleiman: Why don't you go ahead Emily and then I'll add.

Emily Taylor: I think from my understanding, I'm sure Kathy will join in as well with her own perspective, the sort of comments that we've been getting from other communities – and it's not just intellectual property owners or one community – but a sense that the contractual provisions are more or less there, the policy is more or less there; there's stuff that we can say about it, but actually a sense that no one is doing anything to actually enforce or be compliant.

And so we're trying to understand, and it's like hearing people talking about completely different things coming here and talking to you because at the moment it's actually extremely welcome to hear your positive comments about working in partnership with the compliance team and to hear the good things and the

improvements that you perceive. And I'm wondering why the rest of the community are not perceiving that. Is it the classic thing of a time lag between improvement and the perception of improvement, or is there something that we need to explore more deeply together. Kathy was there anything you wanted to add on to that?

Kathy Kleiman: Emily you just hit the nail on the head. Thank you.

Emily Taylor: Okay. Tim.

Tim Ruiz: Again, just from my personal perspective I think it's that there are several in the community who expect something that can't be delivered because there isn't a policy in place to deliver it, there aren't the tools there for compliance to address it. Do some of those things need to be corrected; perhaps. I think too there's a lot of work going on with WHOIS. We've got a study being done on current technologies and whether the platform or the protocol needs to be updated.

We've got studies that the GNSO has approved and that are going to be ongoing. We've got the AOC team active. So I think there's a lot of information that's going to be coming, being pulled together down the road that might help to inform future policy efforts where people may feel it's lacking in regards to WHOIS.

But I think too, that this all stems from the fact that the community is trying to use WHOIS for something it was never designed to be used for. And so we're trying to back this in to basically sort of an identification database and that's not what it is. That's never what it was designed to be used for. It was strictly a technical contact database to address technical issues when there were problems with DNS.

So will we ever be able to straighten that out with WHOIS – I have my doubts about that. And that perhaps other solutions need to be considered. But I don't think it's a failing on the part of compliance, I truly don't. I think it's that we're, most registrars are complaint completely with the policies that exist and where that lacks in other people's minds and perhaps change needs to be addressed.

Emily Taylor:

Well perhaps I could ask a couple of specific questions because...and taking your comment about people expecting something that can't be delivered. I'd quite like to explore what you think people are expecting. Is it what you then elaborated to say people are expecting the WHOIS to be something it was never designed to be?

But the two things that come up again and again from other stakeholders are data accuracy and actually on proxy/privacy a sense that yes we recognize why this occurs, why this service is useful, and they're very, very complimentary for example about

the service you offer on proxy/privacy and the ability to get data when it's needed, but perceive that it's not the same across the board and that there are some, if you like, some safe havens for bad actors to hide and that nobody's doing anything. If I'm summarizing what they're saying incorrectly I'm sure others on the team will correct me on that, but maybe I could just have some thoughts. Are you satisfied with the level of data accuracy at the moment? Do you feel that that's exactly as it should be in the best possible world?

Tim Ruiz:

I don't want to capitalize the responses here but, for what it was designed for, yes. For what everyone would like to use it for, probably not. But getting there is the issue. We've had some discussion, even here in Singapore, with various groups about WHOIS validation. That sounds great to say well let's just validate WHOIS. But when you stop and think about what's involved in that with the 200 and some odd address formats that might exist in various countries and sharing that data from country to country on an international basis, it is not an easy problem to solve.

And I think other things are being looked at too. I think one of the things, one of the studies is meant to address, or I can't exactly remember what context it was in to be honest, but some discussion about potentially accrediting proxy services. So that's a possibility. But again, that's not a lacking on the part of compliance. That is just that evidently there's a lacking perhaps in

what needs to be in place, or what tools need to be there or what policies need to be in place to get everybody what they want.

Emily Taylor: Thank you very much. I've got another comment from the phone, is that you Kathy? Who wants to come in?

Kathy Kleiman: Okay. I'm having some trouble identifying speakers so that was Tim. Can I go back to an earlier comment that Tim, I think it was Tim made, on the purpose of WHOIS being – somebody said it was a technical product for technical purposes? Tim was that you?

Emily Taylor: Yes it was. Could you just repeat the question Kathy because it's not coming over quite clearly on the line?

Kathy Kleiman: Okay. Going back to the purpose of WHOIS, sort of to take it back from the accuracy, but the purpose of WHOIS...each group we speak with as a WHOIS Review Team has a different purpose for WHOIS. And there doesn't seem to be any common sense of what the original purpose was, even that is everyone seems to have a different idea. Do you think the registrars will be commenting on what they see as the purpose of WHOIS, the historical purpose and the current purpose and provide some kind of foundation

document for this, some kind of basis for this idea of the technical purpose of WHOIS as its original purpose?

Tim Ruiz: I don't know if registrars are going to do that or not. I'll just speak for myself and that is that the internet existed long before ICANN. And so that's what I'm talking about. The internet that existed before ICANN in the days of Jon Postel etc, WHOIS existed. And it's that WHOIS that has been taken and is trying to be used for another purpose. So that's what I was trying to point out.

Emily Taylor: Thanks. I think there's a question that's come up from the chat as well.

Olof Nordling: Yes indeed. It's from Rob Golding. "What complaints, so to speak, are being received and from whom" is the question. "Most of the contact we get regarding WHOIS data issues are from malicious individual attempting to disrupt the use of a domain by making spurious claims of data inaccuracy presumably hoping to cause the domain to be taken down." End of comment and question.

Emily Taylor: Any reactions to that? Chuck.

Chuck Gomes: This is more of a question for the review team. The reality of WHOIS policy development for the last 10 years has been that everybody and his brother has an opinion about it. But we haven't had a lot of objective data. Obviously that's the purpose of the WHOIS studies that the GNSO has authorized.

But in the case of compliance, one of the things, and this has been at regional meetings and other meetings with ICANN compliance staff, they have a tremendous amount of data, and they're going to be getting more, in terms of how many complaints there are, the types of complaints, etc. Is it fair to assume that the review team has already been briefed by the compliance staff in that regard?

Emily Taylor: We've had a number of sessions with the compliance team and we've also have set up a date for, there's a small group looking specifically at the issue of the implementation of WHOIS compliance and they are going to, representatives of that group are going to go and visit the compliance team onsite in Marina del Rey and really get a sense of them at work and sit with them. So we've been having a lot of ongoing dialogue with the compliance team yes.

Chuck Gomes: I'm glad to hear that. And to the extent that the review team can base its conclusions and recommendations on data versus a bunch of people's opinion, it's going to be stronger. And that applies to us too, we have our opinions too. And it's better to be based on

okay and there are a lot of – with regard to accuracy, I know ICANN staff has a lot of data on that and that needs to back up the opinions that people are having. And I'm not suggesting that there isn't areas for improvement, I know there are. But that is just my encouragement and the chat question really gets to that. There are a lot of factors involved with regard to the complaints. I'm sure there are valid complaints and there are some that are spurious as the chat suggested. But getting a handle on that from an objective measureable point of view is really critical.

Emily Taylor:

Thank you. I think Bill has been waiting for a while and then Kathy is raising her hand, so should we do Bill and then Tim, did you want to come in James? Okay. So go to Bill first and then we'll figure out a queue.

Bill Smith:

Sure. So this is Bill Smith. Kind of going backwards...I think Chuck makes a very good point that we might I think as a community, choose to look to ICANN as a focal point for a bunch of this. There are a lot of things coming in and then they get spread back out and at least my perception is I'm not seeing a lot of that information that's coming in, that data coming in turned into actionable information necessarily back out to the community or others. That's my view currently. And I think we should explore ways to do something with that.

To Tim's point, I also agree that we're using the wrong tool, or sorry a tool in a manner that it was not intended for. However, that's not uncommon. Both in the physical world where you can use tolls in the manner they weren't intended and it can be effective; you can use them in ways that they're ineffective.

And that's equally true in quotable space. Without saying really whether we're using WHOIS the protocol in an ineffective way – I want to note that going back to the Green Paper and the White Paper, WHOIS mentioned – at least in the Green Paper, not in the White Paper as I recall. And it talks about the need, in both the Green and the White Paper the need to have information of the type that we see in today's ICANN WHOIS system.

So yes, the protocol predates ICANN, but the use of WHOIS in the way it is being used today, the protocol, in fact goes back to the dawn of ICANN as best I can tell. Is there anybody here that can either agree or disagree? I'm going back through the historical record trying to find when WHOIS entered. And the earliest one I can see in ICANN is in the Green Paper.

Emily Taylor:

Alright. Now, I've got a queue of people who've asked to speak and I can see that already people are sparking on Bill's question. What do we want to do? So we want to follow this thread? Does anybody want to come in before we do this because I could see that Tim, James, I think Keith wants to come in as well. Should we go with the flow? Let's see where it goes and then we can

come back to you. Please ask for the floor when you want to. Please David.

David Maher:

Just briefly I can answer that question having been involved for a somewhat longer time than most people here and having spoken to Jon Postel about it. WHOIS originally was simply a way of keeping track of the very small number of people who were then on this internet that had been developed for universities, research centers and the military and various others. And it was just a handy way of keeping track and the people involved were all friends. So nobody cared about privacy. It was just of course you give your name and address so that if there's a problem someone could get a hold of you. But that was the beginning and it has grown.

James Bladel:

Were there other folks that wanted to comment on Bill's thing or should we just move to Tim.

Tim Ruiz:

Well if it's going to be anyway I guess because I wanted to comment on that too. I don't disagree with that Bill. I think that's probably true. But the question is, and it was then probably maybe not as clear but I think it's even more so today now that we've attempted for 10 plus years – can WHOIS become what it was envisioned to be at the dawn of ICANN. I have my serious doubts.

And in fact, we're even starting to find governments having doubts. The US Government started, the NSTIC or the National Strategic whatever on identity that I don't know if any of you are aware of; and again, a lot of that is to solve some of the problems that we can't solve through WHOIS. Whether that will be successful or exactly where that will go I don't know, but I think it's clear that we've tried for so many years now to make WHOIS something that it isn't to be we have to just ask ourselves, are we going to keep kicking this dead horse or are we going to move on to something more productive.

Emily Taylor:

I think that's a very interesting comment because it sort of brings it back up to what is this whole thing supposed to be achieving. And perhaps we could think about whatever the original use of WHOIS was, there are people out there in this much larger internet who want to be able to contact the registrants of domain names. So given that that need exists – first of all, do you perceive that as a legitimate need? Mason.

Mason Cole:

Actually I don't mean to derail this, but it would be helpful if I knew some of the context for this, for the review teams own work. We're in this room exactly to contribute what to the review team? That would be helpful for me.

Emily Taylor:

Thank you. Yes, I'm very happy to give that context and continue to ask if things are unclear. We're looking, if we go back to the scope, we're looking at the extent to which the policy and its implementation is effective and meets the legitimate needs of law enforcement and promotes consumer trust. So there are a number of different concepts contained within that scope.

The element of consumer trust is one that we have been grappling with and have not yet managed to; we haven't reached a common understanding of what it is that promotes consumer trust. And our response is to do a study with people who are not commonly in the ICANN circuit across different countries to develop some understanding of their perceptions of the WHOIS is, the role of WHOIS in promoting consumer trust or otherwise. So that's one context.

And clearly if we're thinking about the implementation of WHOIS policy, we're hovering around the zone of the work of the compliance team, the work with you as registries and registrars, how it's perceived by you, and it's really useful to get the sense from you, which I'm getting very strongly that things are on the up and that you feel a more successful partnership emerging with the compliance team.

But also, I think it's fair to put to you what we're hearing from other sections of the community, which I'm sure isn't news to you because you've been in these debates as well. And to try and understand why there is this disparity between your perceptions of how it's working and the perceptions of others.

Now we've heard it might be that some of those, what people want is unrealistic or cannot be delivered with the current service; in which case, that's helpful to us but we need to understand why. Because that's not something that other people are putting to us in the same way; their frustrations are with data accuracy, but I'm not getting the same sense of frustration from you about data accuracy. Do you feel, for example, as registrars that you are always able to contact your customers if you need to? Do you use the WHOIS ever? Or do you use something else?

Before we go, does that help you with the context because if not then continue to ask.

Mason Cole: No, that is helpful. Thank you. Do you want to go first?

Emily Taylor: Okay, can we re-establish the queue because I'm confused and I'm sure...James are you waiting to come in?

James Bladel: I'm not sure where we were in the queue, I think that Kathy was also...

Emily Taylor: Kathy asked for the floor and then asked not to be in the queue.

James Bladel:

Alright then, I was mainly concerned about Kathy and then I had a comment to make, we've sprinted past it quite a bit here. So maybe if I can bring it back to some of the comments that Rob Golding made, I think some of the comments Tim is making and I think some of the concerns that I think Chuck raised as well. And I don't know if I'm making this comment as a review team member or a registrar at this point. Let's just get it out there.

One of the things I would like to see in this report, and I've expressed that during the context of the review team, is a section on stepping back from the substance of the WHOIS issue, is just say, how effectively has ICANN just managed this controversy. Has it made this problem any better or any worse by trying to line up PDPs and studies and all the light and noise that surrounds the WHOIS issue in this community, has anything come from it?

Are we in a better place because of it? Do we have a clearer picture of what we originally wanted WHOIS to be or what it aspires to be or is this all just gears grinding? And I don't know, maybe this one issue, maybe there's a couple of issues, but maybe in this particular case we have found an issue that is not appropriately solved within the multi-stakeholder bottom-up process animal that's been constructed here.

When you have a multi-stakeholder group of people coming and everybody has different expectations and different aspirations of what's supposed to happen and no one's budging and they're all mutually exclusive, well maybe that's where this whole consensus building thing starts to break down and we need to recognize that.

So, I'd like to see a section in our report of where are we going with this. Before we launch another review and another round of PDPs and another \$400,000 bank of studies, what...

Emily Taylor:

Thank you very much James. So we'll go Mason; did anybody want to come in on that, I know Bill – so we'll go Mason and then Bill.

Mason Cole:

I think James makes a good point – is a solution to the questions, plural, and there are lots of questions about WHOIS, is one available. I don't mean to be pessimistic but in the current way that ICANN is looking at WHOIS I would say probably not. Now long-term is a mutually agreeable solution to the various demands on the WHOIS system available, probably, but it would take some manner of cooperative redesign and agreement among all parties involved in the WHOIS debate to arrive at that.

And I don't think we're there yet because Tim's point I think is directly on. The demands on the WHOIS database are modern and the WHOIS database is old. And Tim's right; what's being asked of the database is not aligned with how it was originally established. And that's not good or bad, it's just the situation as it exists.

So are registrars happy with accuracy, no, we're not going to be happy until it's all accurate. But we're pretty happy with it. We

have our own customer databases. We can almost find the customer behind the domain name registration through a number of means. Now, that doesn't mean that we always meet our compliance standard because the standard for compliance, frankly, is it has to be 100% accurate all the time and if it's not, the responsibility is on us to investigate and correct. Now, we're busy taking care of customers and managing companies and attending ICANN meetings and we don't always have the resource available to fully investigate even our own database as much as we would like to do that.

But until all the parties in the community who have a stake in the WHOIS outcome can collaborate and arrive at the second generation of WHOIS, whatever that looks like, I think we're going to end up, as James correctly put it, spending money and time year after year studying a problem that we're just running into a brick wall and that's concerning.

Emily Taylor:

And if I may say before we go to Bill, I think that that sense of frustration, which I think James's question encapsulates very nicely, has run across the different communities that we have been speaking to. A sense that there's, it should be possible, but somehow it isn't possible. And I would like to understand why.

Mason Cole:

I'm sure they are frustrated. I'm sure everybody has the same level of frustration. I don't want to get too far above this issue, but

ICANN – by ICANN I mean the corporation and ICANN the community – needs to do a very clearheaded assessment of what its priorities are and whether or not it’s overreaching in certain areas. I think that it probably is. I think that it’s overreaching in WHOIS because it’s allowed the water to become very muddy.

And ICANN has far too many priorities for it to be able to handle what it’s got on its plate right now. So, I’m not criticizing the WHOIS Review Team or the existence of the WHOIS Review Team; I’m saying ICANN needs to be very smart, particularly with new TLDs coming. They need to be very smart about how it allocates its resources and whether or not spending money, time, resources on lots of studies that ultimately really may not get anywhere is a smart thing to do.

Emily Taylor:

Thank you Bill.

Bill Smith:

Thank you. I wanted to follow on to Mason’s question about what, sort of the review team is doing here and follow up on Emily’s answer. And this is from a personal perspective, but I will project that onto some other members of the team perhaps. Basically, I think we each come to the review team with our own perspectives from the various communities. I happen to be “an independent expert” so I don’t have to report back to a constituency. But in that sense I then actually feel that I report back to all constituencies here and also those who aren’t present.

We bring those perspectives, and by doing that we enhance the ability of the team to look across everything. And early on the team had lots of frustration; and I think it's the frustration we are hearing as we do the process, go through the process from each element of the community.

There's frustration everywhere. James's point, I think, on is this just a mashing nation, are we going anywhere – I certainly share that. What I would say as a team what we've been able to do, we've been able to come together, work through some of those frustrations, we still have disagreements. We're always going to have those. But we have, I believe, managed to come to a point where we talk to each other, we understand each the issues, we recognize they are complex. And to both Mason and James, how is ICANN set up in a way to solve this WHOIS issue, in a sense. I have serious doubts about that; that the silos are problematic.

So what I believe the team is here to do is to say, I certainly am and I believe that most, well I believe all members of the team as well, we're taking an independent look at WHOIS, the mess that's there, and trying to find a way through that so that we can come back and do, as best we can, a factual based review on where things are, how we got here, and make some useful recommendations for the community. Not seeking to lay blame on anybody, it's just where are we and is there some way through this morass looking forward; beyond sort of what the review team is required to do.

Emily Taylor: Thank you. I've got James in the queue. Does anybody else want to come in at this stage? I think that we'll take James's comment, question and then perhaps move on to a different section of the questions. We're not going to get through all of them; I'm just trying to highlight the questions that – we've got one from the chat as well, sorry. We go James and then pick up the question from the chat.

James Bladel: Thanks Emily and I'll be brief. I just want to back up what Bill is saying a little bit. We all came to this WHOIS Review Team from all different areas and I think we could almost do the puppet show in predicting what everybody else was going to say about WHOIS. It was that easy to do. We all had our traditional or stereotypical axes we had to grind. And I think that we found out that, pretty quickly, that that wasn't getting us anywhere. And so maybe just as a microcosm of this group, if we can at least say that we're kind of like a little lab experiment or a Petri dish for the whole community and say we hit that frustration and exhaustion barrier pretty fast.

So now we're looking at how do we dig out of this and how do we then take what we learned to dig out of this and forming these questions and help the whole community dig out of this, if that's possible. So, I just want to back up what Bill was saying a little bit there that maybe the first couple of meetings were very tense. And I think we've all now come to an appreciation of just how complicated and tangled this thing is. And I think that there were a

couple of opinions expressed in the first meeting where I was like, well that's a little extreme and then later on I'm like, well I can kind of see why this person's come to that. So even I have had my mind changed on a couple of things. So hopefully that's a good sign and it means that there is a path forward and a way out.

Emily Taylor: Thank you. Olof, there's a question on the chat.

Olof Nordling: Indeed or rather a comment from Rob Golding. It's pretty long. "Consumers, generally, don't even know what a domain is. They simply type 'facebook.com' into the Google search box in the middle of their browser. And it's possible to have virtually infinite numbers of different services hanging off a domain, each of which 'should' have appropriate contact information. Indeed it's law in many countries.

The accuracy of any data is limited in scope. Who owns the domain is often not the person using it and rarely the consumer of a service at the domain. As regards do we as registrars use WHOIS – only for getting initial details on a transfer or in the event of a dispute over ownership; usually between web hosts admin and web site operator – meaning registrant. In answer to can we contact our clients, the registrants, yes and there's lots of resellers or the signors, they're not always the named registrant anyway." End of comment.

Emily Taylor:

Thank you very much. Is there any other comments on this? I know we're on our first question but actually as I look back at the questions that we've posed, we've covered an awful lot of them in kind of round terms. There's a couple more specific ones, which I think I'd like to run through as part of these operating principles. Perhaps we could just have a look at them and we can pause if anybody wants to take the floor. Go to the next slide.

So these are the next three operating principles published by the ICANN compliance team – that they resolve contractual compliance matters informally if appropriate. And I'd quite like to get a sense from you whether you agree or disagree, whether you've got any examples of this. Because certainly in contrast to that goal there, I've heard a level of frustration from other areas of the community where they feel that there's an all or nothing response. That there's something that's a little bit uncompliant, but that the only tool in the toolkit is termination of the contract, which even the person complaining doesn't really want, they just want it fixed. So could we just discuss this for a moment? Mason.

Mason Cole:

I think that's exactly right. For quite a while I know registrars sort of lived under that "all or nothing" universe. It was either take away an accreditation or don't. That was it. So, one of the things that we advocated for in the new Registrar Accreditation Agreement was a graduated series of sanctions that would be

imposed if a registrar were noncompliant. And I think largely that's been successful. In terms of what we see on the screen there I would say yes, resolve things informally if appropriate, sure. We don't want to get demand letters all the time. And do they aggressively pursue cases of noncompliance, yes. Although I would say, if the compliance team were here I would like to ask them for a little more clarity on what it is they're working on all the time because sometimes these things come out of nowhere and we don't really understand the context under which they're making the demand. So I think that would be useful.

Emily Taylor:

Thank you. Does anybody else want to come in on, really any of these goals up here? Do you agree with what Mason has said? Do you have any other examples to offer; something that worked particularly well, for example or something that you felt frustrated by? Any real life examples that you can help us with? Jonathan?

Jonathan Robinson:

Emily you asked the, well the team asked the question in a very broad sense. I mean are you specifically referring to contractual compliance with respect to WHOIS here?

Emily Taylor:

Well, WHOIS is our context. These are our first stab at identifying issues and necessarily they're quite unspecific, they're quite high

level and we're hoping through dialogue to refine the points and to get your guidance. So please give the example that pops in...

Jonathan Robinson: Well there's a couple of examples that you should, if you aren't aware of you should probably be aware of. There's been some dialogue I think between the registrars, certainly between the registries stakeholder group and ICANN compliance over the gap perhaps between the first two bullet points. And so it's worth, there's a formal letter written by registries constituency, Registry Stakeholder Group in one area and I don't know, Mason, perhaps you can help as to whether there was anything written by registrars or whether there's anything with regards to compliance. Has there been something else? Any dialogue between the Registrar's Stakeholder Group and ICANN on compliance recently?

Mason Cole: You mean just in general?

Jonathan Robinson: Yeah or I'm thinking of the breach letter recently that the registry stakeholder group responded to ICANN compliance on, or wrote to the Board on.

Mason Cole: No there hasn't been any formal communication from our group about that. I'm aware of what you're talking about, but no.

Emily Taylor: So that's a letter that we can find? Thanks. Bill.

Bill Smith: Yeah. I guess sort of the things I might be looking here on these questions are things like given that, at least historically, ICANN compliance hasn't had adequate staff. There's been some additions; that's good. I guess what I'm looking for and would like to understand – are there different things that ICANN staff might be able to do with regards to, and I work for PayPal; I'm in a larger group that investigates ecrime. So we have good actors and bad actors; pretty clear, white hats, black hats. We tend to look at the bad actors and aggressively go after the bad actors. The good actors we might deal we might deal with a little less formally, less aggressively. Are there things like that that ICANN could do in the compliance team; focus their efforts in some cases?

Emily Taylor: Mason, thank you.

Mason Cole: Honestly I think they already do. I think ICANN does a good job of identifying who the good guys and the bad guys are and they do a good job of going after the bad guys. Frankly, I think it's a problem of expectations in the community about what ICANNs compliance function is. I mean with regard to WHOIS I think it's like I said before, there's nothing really wrong with the WHOIS

database as it exists per se, but there's a lot wrong with how it exists if you layer on expectations that the database is unequipped to meet.

If WHOIS is unequipped to meet those expectations and then the demand is put on compliance to try to make it meet those demands via action against contracted parties then I think you're going to continually have frustration.

Emily Taylor:

But isn't, you're all in the business of customer service so you either meet customer expectations or you manage them. Are you saying that the customer expectations are not being managed appropriately? Customer, by which I mean, customer as in a stakeholder. You were talking about the expectations in the community which are unrealistic.

Mason Cole:

Well, I don't know how realistic or unrealistic they are, but I know there are many, they're many in number. So if you took one at a time, perhaps those could be met with the database as it exists now. But if you take 100 of them or 1000 of them at the same time, it will fall of its own weight. So now, does compliance do a good job? Yeah in the aggregate they do I think. They do. It's really, I believe, a question of outside expectations by others in the community.

Emily Taylor:

James.

James Bladel:

So, just speaking as a registrar I'm not sure I'm 100% on board with that Mason. Maybe we just have different opinions and perspectives. I believe that compliance does a decent job, they're very communicative, but, and I think I've expressed this to them and to others, I think that we need to, their actions should be focused on where the harm is coming from.

And I think for example when we saw our presentation that X number of complaints that were raised to ICANN were raised via transfers, like 80% or something of their complaints had to do with transfers. So I think a lot of their activities are focused on transfers and large registrars have large numbers of transfers. So I spend a lot of time investigating what happened with this transfer and what happened with that transfer.

And I think if we, the registrar community and the compliance, could maybe step back from that and say transfers are frustrating, transfers cause people to send nasty and venomous emails, but criminals are not defrauding people via transfers. They're defrauding people through other avenues like un-contactable overseas registrars who don't operate a WHOIS system at all, or other weird sort of fringe or boundary cases that maybe are harder to investigate, but really, I think, need to be 1 of 1a of the whole triage of what ICANNs compliance should be doing with their limited resources.

Now that's just maybe a philosophical difference. So when I look at it through what I think they should be doing, I think they're misapplying their limited resources whereas others might feel like they're doing a pretty good job. But I suppose yeah, if you were to rank it just in terms of complaints, 90% of the complaints that they receive are relative to transfers so why wouldn't they delegate all their people to transfers.

Emily Taylor:

Thank you. Can I ask for other reactions to that because here we have two different perceptions of how things are going? One is that they're doing a decent job, they're communicative and so on and that it's actually others expectations that are the problem. And a difference of opinion to say actually that there ought to be some sort of prioritization within compliance within ICANN to actually go after the bad actors within, you're talking mainly about registrars because we have registries here as well, so we're talking about registrars who might be un-contactable, not providing WHOIS, really at a very low level not at all compliant.

And I think it goes back to one of the comments made right at the beginning of this conversation that those people are in fact at a competitive advantage to you. So perhaps I can ask others who haven't commented to join that and to give a reflection. Tim.

Tim Ruiz:

Yeah I agree with James, but I will say that when we do have contact with compliance staff, what I do appreciate is that they

give us an opportunity to work with them. It isn't like a black and white thing – here's what's wrong, fix it. They usually inquire what the issue is, give us a chance to explain; it's a give and take about what's taking place so they fully understand because sometimes it's not very clear, it's not easy to draw a conclusion based on complaints they might have received from irate customers or other stakeholders. So I certainly appreciate that aspect.

Emily Taylor:

Can I just ask is that something that's new, has it always been like that from compliance? Is that something, because the earlier comments were like a real sense of change...

Tim Ruiz:

I wouldn't say it's new but I think it's continually improved and we appreciate that.

Emily Taylor:

Anyone else? No? Should we go on to the next slide and see whether that sparks any ideas? Again, we're still on the operating principles, but these do provide quite a nice overall view – that they're continuing to develop and enhance procedures for consistent handling of compliance matters. And then we go very super, super, specific and maybe we can spend a while talking about this one because I think there's been a study on the WHOIS, or several studies on WHOIS data problem reporting.

And one of the things that I was quite struck by was that when you read the report of this system it sounds all fantastic until you get to the stage where “and so what happened as a result of the reporting of this data” and 83% of registrars said that they were unable to trace what happened as a result. So that left me, as an outsider, with a question about how effective is this system? And have I got the right system, because there are several acronyms that are nearly identical – am I talking about the right one? So perhaps I could just ask for your thoughts about this.

James Bladel:

Alright. Maybe I can just kind of bridge from the review team and liaise with my constituency a little bit. I think this is part and parcel with a lot of the discussion about validation of WHOIS data. I think to make, one of the best ways to make an effective argument that pre-screening registrant contact data is both not commercially practical or technologically feasible, the best way to make that is to say that we have a good, robust and responsive system for reporting bad data when we do find it and building this out and putting some teeth behind it.

Now that said, and I think we’ve discussed internally as a review team, is that WDPRS needs some work. It is what aspires to be a system of a self-regulating, self-correcting, self-healing database, looks more like a he said-she said collection of tattletales of what people should be doing and what he said she should have in her database, but doesn’t it. and so it needs to be straightened out, cleaned up, made into that robust system that I think it was

envisioned to be. And then I think that that is the best counter argument, or counter position to this idea that data needs to be pre-screened on the way in if you've got a good system that's responsible for cleaning it up once inaccuracies are detected and reported.

Emily Taylor: Thank you very much James. Any reactions? Tim.

Tim Ruiz: Well not a reaction just a question. Regarding the 83% that you quoted, just exactly what that pertained to; I guess I didn't quite grasp what that was for.

Emily Taylor: I may well have got the exact percentage, there's a report by the ICANN compliance team about how this system is going. And I can't quite remember the details but it goes – we get this many complaints, we are effective in passing them on to the registrar. The registrars all tell us that they have followed up and they're compliant in their reaction. So far so very, very good. We ask them what they did – so that the ICANN compliance, I'm sure you know then much better than I do, the ICANN compliance intervention includes these sort of multiple choice questions about what did you do with this report – it was garbage; it was malicious; it was changed; blah, blah, blah. You have a chance to feedback to the compliance team so it all looks fantastic.

However, the last link in the chain is that there is no information or no – sorry – 83% of the time there’s no link with then what happened next. So if you’re saying this is, well to take James’s encapsulation of it, here we have a responsive, effective way of dealing with bad data except no one can tell what happened. Are you happy with that?

Tim Ruiz: I still don’t quite understand what you’re quoting. I mean you say 83% can’t link back. So 17% can be so what specifically is not happening? Are 83% of registrars not responding at the end saying this is the follow up or...?

Emily Taylor: That I’m able to tell what the follow up was.

Tim Ruiz: Who is unable to tell?

Bill Smith: If I could – this is not our finding, this was information provided to us. And I’m trying to, I’m actually trying to locate it right now and I can’t. but to answer that question, in essence what we were told is basically there are a lot of numbers we’re now remembering. 99% did something, 93 this – so a large percentage of the complaints that come in from the acronym soup system, go out to the registrant and what compliance staff has reported back, I

believe, is in 83% of the cases where they then re-contacted the registrars to find out what happened, the registrars don't know what, if anything, the registrant did. And this is not to say that the registrars are doing anything wrong; I believe the registrars are actually doing exactly what they are required to by the contract. But in 83% of the cases, let's assume 100% actually made it out to the registrant and a very high percentage of the complaints actually get to the registrant, but in 83% of those cases we don't know what happened. Was any change made?

Emily Taylor: Tim in fairness, we're very happy to send you the link so that you can...

Tim Ruiz: So this isn't in regards to the problem reporting system, this is in regards to the notices that are sent on an annual basis – okay, that's where I'm getting confused.

Emily Taylor: But this is the same issue and I had a sense that I was getting the wrong intervention, but it's the same, the core issue is the registrants obligation to keep their data up to date and accurate and you are obliged to send out the annual notices, which James has spoken about his experiences of and given us a feel for how that looks as a registrar. And that it seems that the circle isn't joined up at the end...

Tim Ruiz: But there's still two different things that you're talking about – there's a data problem reporting system which is what James was referring to. The 83% that I was inquiring about was about a completely different system, and that is the annual notice. So in regards to that I just...

Emily Taylor: I apologize for the confusion.

Tim Ruiz: Yeah. In regards to that I'd just like to say that I would imagine that in the majority of those 83% of the cases where the registrar says they don't know what happened, it may not be that they don't know what happened, it's that they don't feel it's a part of their compliance activity to query and find out what happened. And so they'll respond as "we don't know". But it doesn't necessarily mean that it isn't known or couldn't be known, but a lot of times we'll get asked things that are really not a part of, really not required to do; they take a lot of time and a lot of effort and so they're just kind of like we're not going to do this.

Bill Smith: So Tim, sort of where I think Emily and I are on this, not because we've talked about it but just going through the conversation, is I'm trying to understand if, as an example, comparing to the studies that are being done, all the machinations that are

happening, are we doing a lot of work here in sending out notices and spending money, taking up your time, taking your resources away from what might otherwise be useful to your business and/or the community on a process that we can't measure or we don't know what happens? That's sort of where we're coming from is again, trying factually to say wow these numbers seem strange and would I run my business that way.

Chuck Gomes:

Obviously this is not an issue for us because we don't have the challenges that registrars have with that direct interface with the customer. But I'm trying to think, and I'm not an operational person either, but I'm trying to think operationally how you would find out what actually happened in those 83% of the cases. You might be able to automate something that would show that a modification was done, but there's all kinds of modifications. It almost seems to me, and again I'm not a technical person that's best qualified to answer this, almost seems to me that if the kind of information you're wanting on that would probably in most cases require a manual intervention, which would be extremely expensive on that number of cases.

Emily Taylor:

And really this is part, the context of asking about this is not to attack any registrars or to say what you're doing is wrong. It's actually to try and do what we were entrusted to do, which is to say is the implementation of this effective. You're getting all these

registrars, putting to them to the expense and the hassle and the down sides of sending a notice to every single one of their registrants every single year and is it effective? Is it doing what it's supposed to do? Can it be effective, to take your point? Tim, did you want to come in again or not?

Tim Ruiz:

Just to...so that's kind of the crux of it I guess. If you put this together in your report, and I think Bill made it clear, that that might be, it's carefully worded so it doesn't look like that's a failing on the part of registrars. Because I think for the most part, registrars are nearly 100% compliant with that particular policy and that aspect of it's just another piece of information as long as it doesn't look like registrars are falling down on the job, so to speak.

Emily Taylor:

No. And I really would emphasize that we're not here to throw brick bats at people. We're actually trying to do as fairly as possible and we need your help and your input to do this and to get your perspectives. We're looking at the whole picture and trying to find out really to hold a mirror up to it both on the policy side, I think James put this very well, to sort of go "is there anything we can add to the mix about why this might have caused so much controversy and problem over such a long time".

And on the compliance side, which is what we're here to discuss, to go well let's look at the goal of saying well data accuracy is something that we want, if we say we don't want to validate on the

way in, we have to say but we don't have to because we have such an effective system of dealing with inaccurate data; whether it's through this system, whether it's through the notices, or something else.

And Chuck, you've mentioned a couple of times the value of having some measures. Now the problem with measures is no one can quite agree whether they're fair or not. But people do tend to keep coming back to them and saying well it's actually like this. Whatever our opinions are this is what the world is telling us. So that's a long question. I'm wanting to know do you feel that this is effective as you can – and I'm not saying that anybody's falling down on the job, this is a chain of people and ecosystem – is it doing what it should be doing?

Male:

Maybe when we are sending these annual notices the problem is it creates support inquiries from customers who just don't even know what it is about. So that's background for registrars, but that's okay, we've implemented I guess. And then maybe ICANN could make an effort in communicating this end users; that it's their role to keep the data accurate. I guess it's already done, but that could be a good way to help us because I mean, most of the time customers just say "why are you sending me this email?" I still have my login and my password. I'm just speaking from my own personal registrar.

Emily Taylor: From what I understand you're describing an experience that other registrars have had as well. Chuck, you wanted to make a comment?

Chuck Gomes: Just following up on what I said before. Let's assume that I'm correct that a large percentage of those would require a manual intervention. One manual intervention would cost more than the annual registration fee, just from a customer service point of view as charged. So, I'm not sure the question being asked about, the concern being raised about those 83% is even realistic to consider. Now, let me get a little more specific too. It's probably not too hard to check whether a modification was done for each of those. That probably could be automated. But what does that mean? Because if there was no change needed, that's fine. So, you see what I'm getting at? To really get that kind, some data is just really tough to get and that may be a case that we're talking about here.

Emily Taylor: I think that's certainly true; that we can always think about difficulties in doing this. I think that from my own perspective, I'm not speaking on behalf of the review team, I think when you have such a large gap in knowledge and I've asked the question what does the 83% signify; is this 83% of registrars or 83% of times – there's stuff I don't know. But when you've got such a large figure there might be something to be done to improve it and

that can help you tell your story about what you're doing well. Because if you've set up all of this system and it's costing you all of this to put it in place and it's giving you all of this support mode wouldn't you like to say yeah well actually it doesn't actually do anything at the end of it; no one changes anything. Or as a result of this, you get several thousand changes. Tim.

Tim Ruiz:

I think we made all those arguments when this policy was being developed. But unfortunately we are where we are. And to some degree sometimes policies come out the way they do because we all just compromise, because it's the lesser of two evils. So I don't know, are we convinced this is a completely effective policy; not really. I think we run into a lot of the problems that have been mentioned about customers not knowing what it's for, we reported to spambots and we got to deal with that and all kind of things every year when we send those out.

But I think that that's a separate thing and then of course the reporting system I think James made some interesting points about how that could be improved. We spend a lot of time, because when we get those in that's almost like a required manual thing that we have to deal with and we've got millions of domain names so we get thousands of those things that we have to deal with on an individual basis; they're very time consuming. And in many, many cases – I can't give you a percentage – but a large number of cases there's nothing wrong. It just got reported, I don't know, somebody just exercising the system or what's going on. But

many times we end up spinning our wheels on something that was perfectly fine.

Emily Taylor:

Okay, thank you for that. okay, should we move on to a different thing? If you could fine questions 12 and 13 – you have to go back a few screens. The 12 is here I just want to hear your experiences, of which you've got personal knowledge of a compliance intervention which was particularly effective and why. And then we'll go on to the opposite side of that.

This is just really to get some real world examples that might highlight some issues or not. Does anybody want to have a go at that one? No? So we can't report back that there was any experiences of effective compliance interventions? That seems to run countered to the messages that you're giving. Are you saying it's generally effective? Is there something that worked? Or is the question not clear?

Tim Ruiz:

I think it's too specific. If you want to sit here and give you detailed examples of where we may not have been compliant on something and we worked it out with staff, I don't know how many of us are prepared to do that. I don't think we necessarily are. We've worked it out. So now we don't want to make a public issue out of it right? So I think again, just kind of reiterating some of the things we said about the way we've worked with staff and appreciating those things, some things that we think could still be

improved. But beyond that it might be difficult for some of us at least to go into detail.

Emily Taylor: I appreciate that. I think I've got a comment on chat and then I'll come to you Chuck.

Olof Nordling: Indeed there is a comment from Rob Golding. He says, "we can provide you some numbers – over 2,000 ish WDRP notices sent out in May, which only requires the registrant to check their details are correct and update if not. 71 registrants subsequently logged into our system, presumably to update their details. 16 have no email address so were posted; yet another cost we have to bear. 8 of the emails bounced and other methods were used to contact them to update old details we had with them, mailing as well as domain. And this is excluding domains marked as allowed to expire. The rest we as the registrar can only assume don't need updating." End of comment.

Emily Taylor: Thank you. Chuck.

Chuck Gomes: Yeah, in response to your request for examples – I think it's probably true of most of us in this room, that we're not involved in that level of detail unless it's an escalated case. We have people

on our teams who probably could respond to that and if that's really useful information I'm sure we could facilitate that.

Emily Taylor: Thank you.

Bill Smith: Yeah I certainly understand reluctance to provide excessive levels of detail on individual cases where you might have been out of compliance and ICANN staff was very effective in working with you. At the same time, we have anecdotal evidence if nothing else and perhaps even specific cases; people are very vocal generally when something doesn't work right. And that's definitely true in the WHOIS space.

It would be nice if we could somehow, and I think that's sort of the request here, to find something that is counterbalancing and redact things, don't know. Because just asking for, we believe you're telling us compliance things are improving, they are effective, etc. it'd just be nice for us if we had something. So if you can think of some ways, not in an open environment to provide stuff to us, we would appreciate that.

Chuck Gomes: And my response had nothing to do with reluctance...I don't know. But I can provide you a contact.

Bill Smith: No, I know yours didn't. There were others. But I just wanted people to understand we're looking for balance. So that's where that question really is coming from I think.

Emily Taylor: Any more on this? Mason did you want to...? No? Okay. Can we go back to find question eight? This is really the top level thing; it's going at the same issues that we've been talking about, but more pointed. How effective, if you had to put it on a scale of one to ten, how effective do you think ICANN's compliance work is in achieving accuracy and availability? I'm very happy to deal with accuracy and availability separately if you feel more comfortable doing that, but just a general feel. James.

James Bladel: Yean, I'm not answering the question, but just highlighting if we could cut this whole discussion paper, draft of questions down to one thing, it would probably be this right here. Because this is exactly what the AoC is saying – should be accurate and available access to WHOIS; so, how are they doing?

Male: Well depending on who you're talking to, I think they do as well as can be expected with the current situation, tools, etc.

Bill Smith: So a follow up to that then since it's not eliciting significant comments – and I think this was asked before, what might ICANN staff need in the way of tools, personnel, resources of one form or another to improve their effectiveness, if that's necessary. Or is too much money being spent on them?

Mason Cole: I know the compliance team has been added to recently and I believe there are open reqs for additional positions. I'm not sure even if you added 100 more people if you would actually be able to get to fully accurate 100% WHOIS. So I don't know if it's more of a resource question. To answer question number eight – how effective do I think they are – they're pretty effective. The standard that WHOIS is required to meet, fully accurate down to the period in an address, is a pretty high standard. And I don't know if additional resources are the question.

I think the premise of the question assumes that it's compliance's role to make WHOIS accuracy a priority. And I agree with that premise. I think to answer that question in the best way you have to look at what compliance's priorities are and answer that accordingly. I mean if WHOIS accuracy is medium priority for compliance right now because there are too many other pressing issues to deal with, okay that's one answer. If it's something else, then it may be a different answer.

Emily Taylor: Thank you Mason. I've got David and then James.

David Maher: Well I agree that it would take literally hundreds of people to achieve total compliance and that's hopeless to ever get that far. And I think it's inherent in a system where you have no limit on the number of registrars, they're scattered all over the world with resellers and unfortunately some of them are irresponsible; that's just a fact of life.

Emily Taylor: James you wanted to come in?

James Bladel: Yeah, maybe I'm just being a little bit of an oddball because I was focused on availability. I think there's some opportunity for ICANN compliance to improve on that; as a company that spends a lot of time and money to keep all of their critical systems, and we consider WHOIS a critical system, keeping that up with zero down time. I think it's very frustrating when we have a customer that has spent their money, opened their wallets for us for a transfer and we can't get a response from the WHOIS system from a corresponding registrar.

So I think that that's sort of when we throw up our hands and say is there any kind of a system watch dogging this from compliance to let us know that there's an availability question. I think there's an example where I think the best way that we can protect our investment and our systems is to make sure that everybody else is

held to the same standard. That's not to do with accuracy of the data at all just the availability of the service.

Emily Taylor: Thank you. Chuck did you want to come in?

Chuck Gomes: I just want to make a suggestion. I almost think, and I think James hit at this just a little bit just indirectly anyway. You really need to consider the two issues separately – WHOIS accuracy and availability. I think that's helpful to do that because they're very different animals. One of them probably has, it's more realistic, the availability one; it's more realistic probably to do some things in the near term. The other one really becomes like several people have pointed out just in the last 10 minutes, it really comes down to a cost value proposition; how much is the accuracy worth. And that's not only a business decision but a community decision in terms of that.

Emily Taylor: I think that's absolutely right and just to reassure you on that I think that that question does conflate the two, but I believe that all of us have clearly in our minds the distinction between the two. And I think you raise a very valid point about the relative ease of measuring availability and that that is something that's fairly objective to measure. Whereas accuracy, I think we all, it's clear in the comments that have been made accuracy is actually has a

range of tolerance somewhere between A++, where it's correct down to the full stop as I would say as a Brit. But then there's down at the bottom, it's good enough to make contact, which is after all perhaps what people want, what they need.

If there's something that's an abbreviation that's inaccurate, or if one of the methods works, and I think we saw that in the accuracy study. I personally found that quite helpful. I know that others found it a bit too granular. But they went through there's 23% that meet these super amazing standards, but then there's about the same kind of percentage where it's impossible to make any contact whatsoever. And I'd quite like your views on that...sorry, I jumped in and you wanted to come in.

Tim Ruiz:

No, I appreciate that explanation about the data because I think that's absolutely correct. One thing I was going to mention about availability is that there's a lot of issues around that too. I mean, because I have no idea off the top of my head how many queries we get per second on our WHOIS – it is huge. I mean we're talking in the billions of hits on a daily, weekly basis.

So, availability can sometimes be hampered just by the technical limits that some of us reach and then we're trying to match up to those. Or making sure that it's available for things like transfers, which some of could argue maybe WHOIS isn't the best thing for transfers either, but that's the way we use it today so we want to make sure that's available for transfers.

And so then do we throttle other types of access, not necessarily making it unavailable but perhaps you can't get 15 responses in a second. So there's all kinds of things, all kinds of different ways that registrars try to deal with controlling the volume that they get hit on their WHOIS and how that information gets used; if someone's trying to use it to Spam someone or for marketing purposes, those kinds of things. So a lot of issues around availability that make it completely different than the accuracy question.

Emily Taylor:

Perhaps because accuracy is a bit more of a difficult concept to really hit on what's acceptable, could I just have sense from you about what you find as an acceptable level of accuracy? And I'm not in any way trying to get you to, to put you into any difficulties with regards to your contract, but what do you perceive the expectation from users of the WHOIS rather than the contractual compliance; is that too complex? I'm just trying to get a handle on what you feel is an acceptable level of accuracy that would make complaints go away.

Bill Smith:

Well there is an element, namely the lawyers for intellectual property interests, anything less than 99.999% is unacceptable. But they also have to deal with the country codes, which is a separate issue outside our interest here. And I'm afraid that inherently – and law enforcement – if there's a serious crime and

the information needed is something that comes out of WHOIS, again, that's less than 100% is just not acceptable. That's an unfortunate fact of life.

Emily Taylor: Is that the impression that you get? I know, I'm very conscious that you guys have lived this for longer than a decade, but do you really feel that nothing less than total accuracy would satisfy the majority of law enforcement, the majority of people enforcing IP rights?

Bill Smith: That's my impression from dealing with my former colleagues in the field.

Chuck Gomes: That would be the only way to eliminate complaints.

Emily Taylor: Would it? I'm just trying to, I'm sorry if I'm pushing this point and I can see that it's not really sparking much of a reaction, but if people can contact the registrant isn't that enough? We all want something to be better, but dealing with what's the least that's acceptable.

Chuck Gomes: Emily, if law enforcement, under our present system, if law enforcement and intellectual property owners and anybody else can contact the registrant than so can a lot of other people and there's the rub; now, existing system.

Mason Cole: And I guess that was kind of related to my comment. When I think about that I guess I think two channels so to speak. I think about our responsibilities under our RAA to ICANN and consensus policy and so we take that seriously and as we get complaints and become aware of inaccuracies we take the necessary steps, blah, blah, blah. Then I think about it in the channel of our customers and serving them and giving them what they need and what they expect and sometimes what they need and what they need and what they expect at other times is privacy. So we try to provide that the best that we can too.

Some will take that on themselves to try to provide that. And even then when they try to do it in a legitimate way, such as using PO Boxes or things, now we're running into issues because those aren't addresses that you can serve. So we need to try to figure that out. So I think from a, strictly from a business point of view, just being able to contact our customers, that's what we really focus on, but there's all these other questions and issues that we need to consider and address and try to keep our customers happy and still meet our obligations to ICANN.

Emily Taylor:

And I think that you're both sort of coming to a similar point is that you have a balancing act to perform. You've got people who want the data, you've got to look after your customers as well; and if the data is beautifully available to everybody, it's available to everybody and that's going to upset people and clearly a lot of you have responded by offering professional privacy/proxy services which are very popular. And actually, I don't hear complaints from the intellectual property people or the law enforcement people about privacy/proxy services where they know that they will get the data and they can predict what will happen.

Bill and then Chuck. I'm sorry, Kathy, would you mind if we went to Kathy first? I think she's been waiting for a while. Is that okay? Kathy would you like to go ahead?

Kathy Kleiman:

Sure, thank you. Going back to the – this is a fascinating discussion everyone – going back to the issue of contactability; does the data have to be 100% accurate to be contacted? So what we're seeing now with the proxy/privacy is an all or nothing; the data is all private or almost all private except for the registrant name depending on whether it's a proxy or privacy system, but the rest of the data is private or the data is all available.

But this idea of contactability – so if someone provides an accurate email address but doesn't chose to provide an accurate physical address; maybe it's a religious minority, a political minority, a natural person, a single mom, they just don't want to put that

physical address there. Is it the sense of the group here that this 100% accuracy level that's been set is the right level? Certain ccTLDs have gone to a contactability standard – as long as the registrant is contactable by whoever is trying to contact them through at least one mechanism, then that's sufficient. Should ICANN be moving in that direction as well?

Emily Taylor:

Thank you very much Kathy. Would anybody like – before we go to you Bill – would anybody like to pick up Kathy's thread there? Okay, Bill.

Bill Smith:

I'll pick it up quickly. I think Kathy makes some good comments and I think there are suggestions hidden in there. Going and looking at ccTLDs, what is being done with respect to contactability and I think ICANN, speaking individually, ICANN both the org and corp should be looking at this as a way forward out of this morass.

Emily hit a very good point on proxy/privacy services. My understanding is that law enforcement is actually okay with them where they provide the service they claim to provide, I'll put it that way. One of the issues that I see is that those services are, if not entirely, largely outside of ICANNs purview. They're not really, as best I can tell, really talked about currently other than in the hallways. Yes, they're provide but there aren't any contracts, there's no way to enforce the claims that are being made. So our

company, PayPal, we go look, when we hit privacy/proxy services we frequently get ones that fail to respond to anything. And that's a huge issue because in our view there are a number of them that operate merely to serve the criminal market. And there's no way to go after them in this ecosystem. It has to be done through international courts and things and that's extremely difficult.

Emily Taylor: Thank you. Chuck you wanted to come in?

Chuck Gomes: If there's anything we should have learned in the last 10 years it's that we're never going to find a solution if we focus on an either/or of the two extremes, like Kathy described. Now, that's also a very complex problem though because, for example, who do we authorize to have access. That's a very complicated problem in a global environment. So all of us should look at all of this in the context of huge complexity; there are no easy solutions. Do I think we shouldn't try to find solutions; absolutely not. I think we need to work together to try and find solutions and start solving those problems, but we shouldn't be, as long as we focus on an either/or of the two extremes we're going to get nowhere.

Emily Taylor: Thank you very much for that Chuck. Now we've got 10 minutes left; a hard stop at 11. What I'd like to do is just to start to wrap this up and I'd like to ask you if there's anything that you think we

should have been asking you, or anything that you want to put across to us in this last while, that you want us to take into account; thinking particularly about compliance, but really any aspect of WHOIS. Or, going back to James's point when I think he opened, the whole process within ICANN that you've come back to Chuck, about why is it that we've been circling around this issue for so long and is there anything that this review team can do to help break that cycle? Do you have a comment on chat? Do you, Olof?

Olof Nordling:

Indeed, a question and a comment from Rob Golding. First the question, actually questions – “do ICANN compliance regularly check the availability of Port 43 WHOIS from the radar details. References to the Canoe John Circle ID article which incorrectly in many cases listed the registrars that were claimed to be noncompliant.” Question – “as ICANN through the RDE has access to list of domains at each registrar could they do regular checks and publish percentage of availability.” Those are the sets of questions. And he adds on a positive note – “I can appreciate larger registrars have issues of scaling and am impressed by those like GoDaddy that keep a high volume WHOIS running smoothly 24 out of 7 out of 365.” End of comment.

Emily Taylor:

Thank you very much. Does anybody...

Male: Just as a brief way of response – the compliance team made the rounds yesterday of a number of groups and they had a presentation and one of the slides in that presentation talked about the Port 43 WHOIS monitoring that they do undertake regularly and get a 99% compliance rate. What I think happens sometimes though is that registrars will limit, they'll put a limit on how many times you can access or a rate limit accessing to WHOIS, that sort of thing to limit poaching of the data or something. So I think sometimes people's problems are because registrars will at times limit the access to their Port 43.

Emily Taylor: I think that's appreciated. I expect that – well James, why don't you go ahead.

James Bladel: This is something we've discussed in the context of the review team and I would just say when it comes to transfers, we can tell the difference between quota exceeded versus non-responsive service; there's a difference and we can tell. So hopefully the ICANN system that's monitoring this for compliance can also tell that difference.

Emily Taylor: Thank you very much. Does anybody want to raise any general issues or point us in the direction of something we should be looking at?

Bill Smith: I'd ask if you have any input, what are we doing right, the review team, in your opinion and what are we doing wrong? I certainly am open to that. Our job is to do an independent review for ICANN the .org and we're taking input and we want constructive criticism, both good things and bad things.

Emily Taylor: Tim and then James, you wanted to say something?

Tim Ruiz: Well one thing I will say I think this was certainly right and I really appreciate the opportunity to answer those questions and provide some input. Thank you.

Emily Taylor: Thank you very much. James.

James Bladel: Yeah so now I'm trying to speak to what I think is my constituency and Kathy's constituency is really want you guys to be as blunt and candid with us as possible of what you think of this review team and its efforts. I think there's really one major way we can fail and that is for this group, the RT4, to put out recommendations that are split and divided and look just like the rest of the, rehash the whole WHOIS controversies at the review team level; I think that's one way to fail. I think another way to fail is to put out a whole bunch

of fluffy WHOIS recommendations that go on to the pile of the mountain of disregarded and ignored WHOIS information that's been accumulated over the years.

So how do we avoid those two fates for this Working Group? Because I can tell you, it's a lot of work, it's a lot of time, it's a lot of, we got a lot of Europeans and Australians in the group, which means I have to do conference calls at like three in the morning and four in the morning and stuff like that. So please help us maintain some value in what we're doing and make sure that what's coming out, if not happy with it at least a lot of people can at least nod their head and say this is a step in the right direction, this is the first step out of this quicksand.

Emily Taylor: Thank you. David.

David Maher: I think you're, the best contribution that you can make is a truly comprehensive and analytic study of where we are. I don't see any possibility of your advancing a policy solution and in many ways it's not appropriate for a review team to do that. But there has been so much smoke and clouds and confusion about the status of the WHOIS that a really good report bringing together different viewpoints, showing the technical issues and weaknesses of the system, impossibility of total accuracy that I believe is wanted by some parties. So I think you're on the right track and that as I say,

a comprehensive report on the status will be helpful in moving forward.

Emily Taylor: Chuck.

Chuck Gomes: Thank you Emily and thanks again, like others have said, for this session and the chance to interact as well as othr sessions we've had this week. Now, I said this yesterday and I'm convinced that all of you are fully cognizant of this and will not go this direction, but I think, like David just suggested, there is the risk of making policy recommendations and I think that's a risk that should be avoided. But I want to say something else about that and that is that it might be very helpful if you could make some suggestions with regard with focus of policy work. I think that would be welcome and helpful. If you're able to come up with something there.

Emily Taylor: Thank you. Well, thank you very much for your time and the level of interaction this morning. And also thank you very much for giving us James and Kathy as your appointed people because both of them have contributed not only a lot of very, very hard work at all sort of ungodly hours, but a depth of understanding about what it is really like to operate these systems. So thank you for that. And I would encourage you if there are things that you don't feel

that you can say in an open context to us, to use Kathy and James as a conduit for your comments and really back up what James is saying – be as blunt as you can. Help us to really get under the skin of this and understand what it's really like. Thank you very much. And you can obviously come to any of us if you would like to.

[End of Transcript]