| Emily Taylor: | All right everybody, back to work. Thanks for the lunch that was great, just exactly what was needed. So, we've got about an hour before Larry Strickling and Fiona Alexander join us by phone. I think we should get started on the next item on our agenda, which is consumer trust. I have Olivier and Sarmad, I think, as the group who worked on that paper, so perhaps one of you would like to take us through the key issues and then we can throw it open as we did last time. |
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| Olivier Iteanu: | Okay, thank you. So I will do a small introduction with Sarmad, then I'm quite sure that we'll discuss about it. Consumer. First definition of consumer, we considered that the term consumer should be interpreted broadly, not just the legal definition from my point of view which means individuals, to be very short, neither just a consumer in the DNS marketplace, that means registrant user or consumer of the services or internet benefit from the OICE for identification of for example wrongdoers. |
| | So we need a very broad definition of consumer. What is consumer trust? Probably it is a balance between accuracy on the one hand and on the other hand personal data and maybe privacy. Personal data should be processed in the ways insofar as it is accurate as I said, and not excessive. |
| Sarmad Hussain: | So let me take through these guiding principles with me to be obviously eventually substantiated from by feedback through the users themselves. Actually, one definition of consumer is individual as Olivier said, but another way of looking at consumer |

is somebody who consumes, Whois information. In that context, there are many other organizations and situations, rules which come into play as well.

One of the things which obviously we would want feedback from the group as well and eventually from public at large is that how would you want to define a consumer? We have listed three roles here, but I'm sure that if you start thinking out there are many more roles. Registry, registrars are not just producers of Whois data; they are also users of Whois data, in different contexts. Other things so consumer definition, really the first thing which we need to perhaps get your feedback on is, is it the new use that we are talking about or is it entity which consumes Whois data.

So what's really the definition of a consumer? The second thing with this consumer trust is obviously we've written about three principles here. First of all, as far as the consumer is concerned there has to be complete and correct information available about the user, whatever that information is. And it should be only available to the intended users, so for example there has to be unintended use has to be controlled somehow.

We need to really discuss what intended use of the information is and how it will control unintended use. Then we feel organizations or organizations which are giving their Whois information, first of all should know that that information is being published publicly and second of all they should actually have direct control over editing and basically updating of that information.

Currently, obviously this is done through a very, perhaps the process. Actually many of the times the consumers are not told that this data is going to be published on line explicitly, I think. Second of all, once it is published there is no easy to actually go and change that. You know, you go through the registrar, or registrar whoever you are providing this data, but maybe it's my data so why can't I have the right control over that data? So that's also part of the consumer trust, if I have the handle on it.

It's most likely going to be updated; it's most likely going to be comfortable for me that it is available online. Then the third thing which is written here is that non-authorized personnel do not have authority to access or change this information. Again, currently, I'm not sure what are the procedures in place which enable that. So these are some of the, you know, again, general principles which are probably applicable.

The next page has some other details of, so the first part of next page is actually Perhaps some thoughts on use, intended user, not intended use of this data, so that actually, probably just elaborating on what we've already said on the first page. Protecting data against bulk access is obviously something that needs to be done. That's the unintended use of this data basically, limiting publicly available data that's something which again probably is out of perhaps, to some extent out of scope of this discussion.

**EN**

Maybe in scope of this discussion, the question is if we are going to enforce Whois policy through ICANN the Whois record which has telephone numbers and e-mail addresses is that really the information which Whois should contain, or should it contain lesser information. Actually in the process of reviewing Whois implementation should actually go back and review the Whois protocol and Whois data structure as well.

Keeping the process to open the data information only to legal requests, there has to be some way of users to know that their data is being provided to other organizations if that is the case. That's also intended use, but again, if Whois information is going to be publicly available, then it's publicly available, so it depends on whether it's publicly available or some part of it is not publicly available. Then if that part which is not publicly available is provided to other organizations by the descries of registrars, the users must also be informed in that process.

But again, some of the applicable laws may actually over-ride some of those things. The other discussion which follows is actually probably so I'll take you through it in two minutes and then I guess you may actually give us feedback whether that's relevant to the discussion for this team or not. One thing which is possible is that Whois information actually contains a lot of information which perhaps, due to privacy issues, may not be able to, you know, one may not share it publicly, even though it's applicable to gTLDs, the people who are registering on these

domain names come from different countries and have different laws.

One recommendation was that Whois data should actually be segregated at multiple levels. Where you have very minimal data which is just for example that this domain name is taken or not taken by somebody which is available generally to public, the more detailed data which includes telephone numbers and personal contact information may not be available to general public but may actually be available to law enforcement agencies.

So Whois data could be graded rather than a flat set of data where everything is available to everybody. Then if you do something like we need to decide how many levels the data has to be divided and then who has access to different levels of data. The rest of the document talks about that. I think that's it.

Emily Taylor: Olivier, Sarmad, thank you very much. I think that's given us a very useful exposition and unpacking of how much is actually contained and think this probably actually just a start but it starts the ball rolling into trying to unpack the complexity of the term promoting consumer trust. I'd like us to just have an open discussion, now, people jump in with their thoughts.

Bear in mind it is just a feeling I have I think that this is probably an area where we're likely to surface quite a few disagreements about the way we approach this term. So let's not be surprised or you know, shocked by that. Let's try to surface those

disagreements now, because what we're doing, I think it came out of the discussions this morning.

Let's take a holistic view; we're getting law enforcement on the one hand and consumer trust on the other. Somehow we've got to not miss out anything important without trying to, you know, eats the elephant all in one go, to coin a phrase. Okay, so let's who'd like to jump in?

Lynn Goodendorf:     Since the Department of Commerce is a US organization and we use the term consumer in the United States quite a bit, I would say that the way the Department of Commerce uses that term; it's definitely not commercial entities. It's similar to the European concept of individuals.

That's why in the United States there is consumer protection and a government agency for that purpose, so that individuals have an avenue of recourse that is separate from lawsuits or that type of thing, so an individual in the United States can bring a complaint against a commercial entity through that agency. If that helps as far as you're thinking about it.

Emily Taylor:     James you wanted to?

James Bladel:     Hi, and thanks to the group for getting this going, too, Olivier and Sarmad. I have a number of thoughts on this section and I think, rather than just bopping them all down on the table, I'll just kind of take them a little bit more in order or in sequence. I do have a

question, or concern about registries and registrars, whether or not they should be considered consumers. I think that the answer is they are, but not always. Unfortunately it is complicated.

There is, I don't know if we've even discussed this, but there is a distinction between what we would consider to be 'thick Whois' versus a 'thin Whois' environment. Does that need more explanation, or is everybody pretty a little bit? Okay.

Unknown:             Do you want to use a chalk board, a white board?

James Bladel:        I think I should be Okay. So a 'thick Whois' is where the registry maintains all of the contact information, the technical, the registrar and admin technical and billing contacts. Whereas a 'thin Whois' maintains just the domain name, the sponsoring registrar, some status, expiration date and you know, the name service, but no contact information whatsoever.

The challenge with a 'thin registry' is that you it's where the authoritative information resides. With a 'thick' registry it's with the registry, with a 'thin' registry it's with the sponsoring registrar. The challenge is that when there's an inter-registrar operation, such as UDRP or transfer or any kind of enforcement or abuse or anything like that it causes competitors, competing registrars, to have to consume one another's Whois systems.

It's very tricky, because, you know, there's blocking, you don't want them harvesting, but you have to provide them information

so in the case   and I'm sorry I should mention there's only, in gTLDs, there's only a couple of 'thin' registries, common net.  So something like a big chunk of the names that are in gTLDs are under that model so that is very much the environment where a registry or registrar is in a consumer relationship.

This touched a little bit into the concept of a producer which, I didn't have a paper prepared, but really it is exclusively the registrants that are the producers of the information.  I like the term for registries and registrars, maintainers, or managers of the information because actually, they're not creating it from whole cloth.  It's given to them or they are collecting it from someone.  So they are maintaining it as opposed to producing that data.  Thanks.

Olivier Iteanu:           Just to react, I like the term producer, because it means for me investment.   I mean, it means investment you know there is a value; it's worth something, so we have to think about that.

James Bladel:           Registry has no contact data.  I think jobs is also thin, but

Lynn Goodendorf:      gTLDs  are under a 'thin' registry.

James Bladel:           Wow, probably close to 50%.

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|---|---|
| Unknown: | I was just going to say we do have those statistics if you'd like them I can get them for you. Not instantaneously, but we can get them. |
| James Bladel: | Let's say the elephant in the room and the blue whale in the room are thin registries and then there's pretty big drop off after those two. |
| Emily Taylor: | Okay, I think Sarmad wanted to come in and then Lutz, Wilfred, Bill, yeah, anybody else? |
| Sarmad Hussain: | So, I'm just wanting some more clarification on the definition of consumer by the Department of Commerce in US. You said it represents non-commercial entities, but you also said that it represents individuals. But then there are also institutions which are non-commercial and not individuals. Where would they fall? |
| Lynn Goodendorf: | Yeah, it's a good question, all the cases, all the issues that I've researched with the Department of Commerce the complaints are from what you would consider in European terms to be natural persons. Non-profit organizations would not be included and it's typically people who have a dispute or a complaint of some kind and they are submitting that complaint to the Department of Commerce and the Department of Commerce of course is involved with business activities. I don't know if that's helpful. |

Sarmad Hussain:     So that clarifies, it is helpful in that it actually very clearly delimits what is in the definition.  I'm just thinking whether that is enough for our work.  That definition or whether we need a larger net with.

Lynn Goodendorf:     I don't know, but when we have our phone call with Larry Strickling and Fiona, they are from the Department of Commerce and I'm thinking they might be able to give us, what their definition is that they use in the Department of Commerce because that's only my understanding of how they define it and perhaps they have a formal definition.  They probably do, that they work from.

Emily Taylor:     Thank you Lynn.  I've got Lutz.

Lutz Donnerhacke:     Thank you for the preparation.  It's a very good one.  I have a problem with, not a problem; it is just a feeling on the word trust.  Consumer trust is used more or less only for getting accurate data from Whois.  Not in for the case that somebody is registering a domain and has to give away his data.  That's even trust into the system, but not trust into the data.

     There's a difference, I made a note that the current version only refers to the latter one and I would like to include the first one that trust into the system is a completely different requirement, a short

addition to 'thin' and 'thick' from the perspective of privacy law. Thin registries are the correct implementation for reseller chains. You buy your domain from a reseller and that's your partner. That's your business partner; it is the company you are buying your domain name from. So they have the data, the manufacturer of a good is must not have the data of the customer.

It is only necessary to have the information of the next reseller. So the thin registry model is the model of the reseller chain. The thick registry model has a completely different business meaning. It means that all "resellers" are authorized people by the registrant to do the registration on the name of registrant directly on the registry. So they do not need the information any more. They are authorized to do they only get they manage to make a direct business between the registrant and the registry. That's the model of a thick registry.

For instance DNIC the registry for the E-domains used this model and they have all end customers as their direct customers and all the others are only hired agents of the registrant. The difference is important on the point if we have trouble with a domain we have to change UDRPs name tier. On a thick registry UDRP is not really available because all participants in the UDRP case has one direct partner, which is the registry because the whole reseller chain is only agents. They do not really take part in the business process.

In the 'thin' registry it is much more important because we have a reseller chain and we have to maintain it. In the UDRP case we are going to move from one reseller to another, so we need at the registry data to maintain the UDRP case. Therefore we need at the thin registry, data about end customer. It is quite controversial to the design of the registry, just to make this point here and give to the next person.

Emily Taylor: Lutz, thank you for that. Can I just clarify one point from my own understanding, not as Chair, but I think that you're very right to raise the issue of resellers and their role in the supply chain. I think my own perception is that this issue arises whether or not there is a thick or thin registry. Certainly having working in an environment of a thick registry, the issues with resellers that you highlight also apply here. It is something to bear in mind, quizzical look?

Lutz Donnerhacke: Sorry, the main point was in the very first words. In the perspective of privacy laws, follow, follow, follow, follow, follow, follow, follow, follow.

James Bladel: Just a very quick clarification that there is a distinction between registrar and reseller and I think for a second there it seemed like those were being used interchangeably. Registrars are authorized by the registry to sell names to direct customers, or to resellers. So resellers are not necessarily

Lutz Donnerhacke:        We are on consumer trust, and consumer has only one point to handle this.

James Bladel:        I'm just pointing out the distinction that they don't map directly and that resellers may have a different definition under consumer trust than it does in our ecosystem.

Lutz Donnerhacke:        Registrars are also approved by ITANA for the TLD.

James Bladel:        Yes, resellers, there is no reseller accreditation program.

Emily Taylor:        Guys let's just try, we'll just try and keep to the list.  I know that everyone wants to jump in.  I've got Wilfred and then Bill who've been waiting for a while.  Kathy did you want to come in?  Olivier would you like to come in as well?  Okay Wilfred.

Wilfried Woeber:        I'm trying to come back to the issue of the interpretation of the term consumer, so this is slightly out of sequence of Lutz, but let's see.  I do see the potential value in interpreting consumer the way that D of C might be doing it.  However, in the framework of this review process, I'm having a very severe problem with the general notion that the policies for maintaining the registration information, whatever that looks like.

Maintaining the registration information for a globally shared, unique resource or name space or value space to sort of to to have different policies or different aspects of the policies depending on the fact whether it's a consumer in one particular agency's or one particular government's interpretation, as compared to the rest of the ecosystem. Because I do see that there are some aspects for this subset of private persons or of registrants who should be protected one way or another, but I don't think it is the correct layer or the correct plane to deal with that on the registration or Whois policy.

From the point of view of ICANN from the point of view of registries, because there are mechanisms around in the real world to deal with those special requirements, in particular industries, or in particular service areas. What we are actually doing here, and this is in slight disagreement with Lutz's model or sort of example of, this is just the manufacturer and this is a reseller.

I mean you can do that with cars, you can do it with chewing gum, because the produce produces a hell of a lot of identical items and all the resellers all the distribution chain just grabs a subset of that, a bunch of that, and sells it to an individual or to another reseller.

There is a slight difference in the domain name space. What we are actually reselling to the end user is a unique item. You know. What you actually want to prevent is to have two consumers getting the same chewing gum, being sort of produced by a thick or thin registry.

It's just sort of, to dump it on the table, it doesn't fit into the current discussion but I -        the bottom line is I think we should try to find out with the representatives from the D of C, what they were actually thinking when this particular language was put into the AOC, that was one of the reasons why I started to at the very beginning ask for this interaction between the team and those parties. In due course, we might want to include some sort of alert or some sort of appendix or footnote or paragraph sort of pointing to the fact there is a different understanding with some parties as to what a consumer is.

But for the review I think we should come up with a definition that fits on a more global scale. Whether this includes then sort of a registrar or a reseller or an end user is a minor thing, because as said already in a private funny comment, there are people who business and there are businesses who are not even people. So there is no clear distinction in the industry or in the marketplace that this is a private person and this is a company. I don't think there is a basis in the Internet to make that distinction.

Bill Smith: I think one of the definitions of consumer that we could us is the one that was in the document under European law, natural person. I think that fairly, at least in my opinion, fairly accurately expresses what we would in the software industry would call an end-user. Someone who, they're a consumer; they're us when we're out, you know, when we go to a restaurant, right, or a coffee shop and buy coffee, we're a consumer, right, and do we have trust in the places that we go? To me that's clearly one definition.

I think for the purposes of our review, we have to consider other definitions. So to James, I think James was one, you know, there are consumers of the data and there are producers of the data, so anyone who consumes the data is also a consumer, in my opinion. Regardless of whether they are an individual or a corporate entity. For profit, not for profit, whatever, any entity that is consuming the data. When we talk about trust, or consumer trust, I think we have to talk about it in the large as well.

There are roughly a billion, order of magnitude, and internet consumers out there. The number may be two billion, but whatever the number is it is a big number. There are billions of consumers. There are not today, at least billions of domain names. There are much small numbers by several orders of magnitude, and I think that's something that we need to keep in our minds. The consumer trust that we may be talking about is for the billions.

Okay and so how do we - is Whois supportive of something for the billions of people. The vast majority of internet users have no idea what Whois is. Right? And actually, we don't want them to know. They don't need to know. The only reason they would need to know is if we have failed, right, as a community and consumer trust has been obliterated or severely eroded. So to me the consumer trust is are people willing to use the Internet, is it safe, is it secure, right?

Additionally, then are in addition to the billions of consumers, the other trust thing are the millions of people who are registering domain names are they willing to continue to register, Okay, because they trust in the overall ecosystem. If they have lost trust in it, right, then we've failed there as well. So, I think there are at least two aspects of consumer trust. There's the one in the large and then by orders of magnitude, smaller group that we have to be concerned with, the registrants. Are they going to continue to use the Internet?

Emily Taylor:          Okay, Kim, Sarmad, anyone else?

Kim G. Von Arx:        I'm with the sub team, thank you for such a nice job, and for giving us such a good starting point, and with Bill, that one of the definitions I think is really important, and this is with my registry hat on, dot-org. Is the first definition that a consumer is an individual or organization domain owner, that these are the

registrants. The registrants are my customers. Actually my customers through the registrars as a registry under the gTLD system, under ICANN system, I cannot register directly. GoDaddy can register dot-org database, so it's registry talking to the registrar talking to the registrant. So the end consumer of my product is the registrant.

I think they're very important and the fact that when they purchase a domain name, their data goes into this database, is made available, is something I think we really need to consider, whether that registrant is an individual or a small human rights organization or the Red Cross. I think, again, in dot-org, I think these are all consumers of domain names.

I like Lynn's idea of going to some kind of legal basis as Olivier and Sarmad did. I think in addition to the Department of Commerce, which I think of as more commercial entities working with, although there is some consumer, the Federal Trade Commission also, that does a lot of work in the United States with consumers and consumer trust, and reaching out to them.

And similar organizations all over the world, because the projection may be the individual, it may be small businesses, home businesses, so of that often goes into the purview of the Federal Trade Commission. So I'm not sure what the definition is, but I

like that idea that there would be legal basis of the terms consumer and consumer trust that we might reference, and search for.

Olivier Iteanu:    We did not comment the word trust because usually, or not, in God and I mean it's not a rational answer.  Probably the accuracy of the information is not the answer of the trust, for the trust, but that's a minimum for that.

Unknown:    Actually I completely agree with Bill, with respect to expanding the consumer definition overall, because at least I mean in Canada from following up with Kathy's point and actually with Lynn's point as well, a consumer has been defined in particular actually under the various consumer protection legislations that are Federal and Provincial actually, and they came about because of on-line transactions and one of the biggest aspects of consumer protection legislation was actually to introduce a cooling off period, so if someone actually buys something on line, then they have five days or ten days depending on what jurisdiction it is to actually rescind the contract.

A consumer generally speaking is actually defined as an individual who actually uses whatever they are buying for personal purposes or for family or for household reasons.  So that excludes completely commercial entities.  And I do agree with Bill that we should include in one sense and in one way or another in the definitions some consumer entities, because there are consumers

for our purposes, anyway, and not for example, I assume, the Department of Commerce and the Trade Commission actually are using it actually from a consumer in the sense for example that the Canadian legislation uses it to protect the consumer in one sense or another.

Because the assumption is that organizations can protect themselves in a much more effective and the balance of imbalance of power is as it is in the legal perspective is actually different. Because I mean if for example Microsoft negotiates with IBM, well, we have two big powers, but I'm negotiating with Microsoft, well, you know, there we go.

Sarmad Hussain:       There was a comment that consumers are of two types, by Bill, that one who are using the domains and one who are actually registering them so billions versus millions. I actually want to now looking forward and want to bring at least on the table that these are actually also divisible further into categories we eventually noted it down, but I wanted to emphasis, so I'm repeating it for emphasis that they are Latin and non-Latin users.

So IDNs versus non the ASCII-based and IDNs because that has implication on trust because when you have an IDN centric user accessing Whois information they want to view that information in the language they can recognize so that's something I want to add.

Lutz Donnerhacke:    I strongly oppose the extension of consumer definition. I just read the ACO again and that for all occurrences of consumer and clearly, clearly ICANN use of the word consumer is somebody who buys, obtains, maintains record, a piece of information that is maintained in some way by ICANN. So it is the end customer. The person who registered the domain name for our purpose, and we run a lot of trouble if we extend in this word here, because we are urged to do research on consumer trust, and if we extend it to a completely other definition we are fairly out of scope.

Kim G. Von Arx:    Yes I thought before our call with Larry and Fiona in the background information on the point about trust and what does trust mean, there is quote from Larry Strickling, and it's on your hand out here, on the third page that says in his own words, he's quoted as saying 'the growth of the Internet is due in part to the trust of its users. Trust for example that when they type a web-site address they will be directed to their intended web-site.

So I that that just before the call I would draw our attention to that. I guess, Lutz, I respectfully disagree with you that when I read the AOC, I feel that in the whole context of considering public interest, that the idea of consumers is broader than just registrants, that it does include internet users and people who use the internet and how they might be impacted in their use of the internet.

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| Lutz Donnerhacke: | If I understand correctly that means that we are going create a area or stability and resilience? |
| Kim G. Von Arx: | I'm not sure I understand? |
| Emily Taylor: | I'm not sure.  Well, let's hear from others who come in, which is James and Bill, I've got on the list. |
| James Bladel: | Hi, so I think I may have lost the handle on who is advocating what, but, you know, it's time to wake up.  I think, and maybe I'm falling closer to Lutz's idea here, in that the bad news  there's two sides to this coin  the bad news is that a general internet user, who goes to a web-site, and let's not forget it's not just web-sites that DNS supports.  It's e-mail or FTP or all the other different services that are defined.  And the services that we haven't thought of yet, you know, that use DNS.  All of the users, the end users, that are doing these activities are not the consumers of Whois. |

However, the good news is, is that it is very easy and free for them to become the consumers of Whois when they perform a Whois query.  Which anyone can do?  Then they become a consumer of Whois.  So there's a distinction that it is the registrants or the registered name holders is the politically correct term.  And it is the people who are performing the queries on Whois.

But the people who are simply using the services that are built upon the DNS, I don't think they're proto-consumers. They're not; they have not yet consumed the Whois service. They have not produced data to add into it, nor have they requested data from it. They are simply using the service that the Whois system supports.

Lynn Goodendorf:    If I could just quickly reply though, but when you look at the AOC, it doesn't say, consumers of Whois data. In the overall document there are multiple references in the principles to consumers in general and not specifically as it relates to Whois.

James Bladel:    There are a lot of things that are in the AOC and I guess its an open question, is this review team looking at just the consumers of the topic of this review which is Whois?

Bill Smith:    So I'm struggling. I wanted to respond to something that was said earlier with respect to Latin and non-Latin scripts. I think both are important, Okay, and I think they are so important that making the distinction between them is a mistake, to say that we have this one and that one. For me, it would be good to come out and say that we need a internationalized Whois.

Okay, but the fact that we don't support, that we only support ASCII-based scripts is unacceptable. All scripts, languages etc. must be treated the same. I have been fighting this battle for over

ten years in different ways, but that's you know I'm violently agreeing with you, that we just can't continue this way. What I'm struggling with is, I think on the one hand I'm hearing that we want to sort of narrowly define consumers and consumer trust to end users, Okay.

If we do that and look very narrowly at the language in the AOC, we will be talking about law-enforcement and their legitimate use of Whois data, we will be talking about consumers and how we build consumer, and is Whois useful in generating consumer trust, their faith, the ability to rely on the integrity of the internet, but for a definition of trust, basically, to have an expected outcome when you go do something. But there will be nothing that protects or that talks about registrants.

All of us who register domain names, use and employ the internet for business or for, it doesn't have to be for business, it can be for a non-commercial activity, Okay, and someone chooses, makes a choice, to commit some fraudulent activity, deliver malware off of your system, right, whatever and you have no way, no recourse then if we choose to say 'nope, all we're talking about is consumers and law-enforcement.'

Okay, so I come back again and then say I'm happy to have a definition of consumer that talks about a natural person, I think that's, I actually believe very strongly that is who we are talking

about in consumer trust, but I also believe that the AOC is talking about the larger, the entire ecosystem. How we make sure that this entire system works. And that includes other entities having access, other than law-enforcement, other entities having access to Whois information, and in order to ensure that the Internet does run properly.

Wilfried Woeber:    I really didn't want to intervene because the discussion was very good even without my intervention, but however, what we see now it was exactly what we discussed during the discussion of law-enforcement. We will always, we should be ready, to always count both narrow and wide contents or narrow and wide definition of the same wording and maybe as we did for law-enforcement it is better to state by now that there could be different opinions how we should understand consumers.

We also should not forget that English is not the only language, which describes ICANN activities. In the Russian translation of AOC, which is available through ICANN site, the word consumers, translated into the Russian equivalent which exactly is defined under the provisions of the Russian law. So if we try somehow to explain or to make further details to our understanding what consumer is, in the Russian translation, we will be obliged to use a lot of additional wording just to express what is meant, because it will be different concept from what consumer means in the Russian language.

I think the same will be in German and Spanish and so on. So my proposal is that we should keep as we do understand that there are narrow vision and wide vision and we should, because it's not our last meeting, yes, and we can ask for third-party opinion again the public comments on this issue, to be better prepared to make the choice next time.

Emily Taylor: Thank you. And then I will just try and wrap it up before 2:30

Wilfried Woeber: Actually, I'll just forgo my comment.

Emily Taylor: Did you want to go? Okay, thank you this is, oh Kathy did you want to come in?

Kathy Kleiman: May I? For an action plan, what would, since that seems to be my, unless you were going to do it. It seems like this is a really important issue that might need some additional work on it and so I don't know if you were going to ask for more volunteers to go onto the sub team, or whatever, I think I'm actually what you were -

Emily Taylor: Not at all, I'm very comfortable. James did you have something that you wanted to come in with?

James Bladel:            Just very quickly a question and I understand we have a scheduled time frame to meet with the D of C folks, but there's a whole second page here that I don't really think we've covered in this working group.  Are we going to come back to this, or.

Emily Taylor:            By all means, I don't want to guillotine any discussions.

James Bladel:            Okay, I didn't know if we were saying we were finished with the subgroup, because I think there's a lot more to cover on the second page.

Emily Taylor:            I think that we've made some progress, I think.  There seems to be a shared understanding that the term consumer can be defined and understood in a variety of ways, there's a surprise.  That we could take a very strict narrow view of the person, the individual who is outside their customary trade and profession, and there is some sense behind that because the law affords, or in European law, which is my background.

Many laws confer a special status on that sort of person because it recognizes that they are relatively powerless, I think that Kim put that very nicely, in terms of contracts and that's why you have some consumer protection in some form or another in different jurisdictions.  So I think that's an important point that we've all discussed together, however, I come back to our earlier discussions

as many of you did, about law-enforcement if we decided to go narrow on both law-enforcement and consumers, we're going to miss out an enormous number of important people who I think, it was your point Bill, these people who are depending on Whois in some form or another.

They're sort of, if we were talking colloquially, as a business about people who are our customers, we might call them consumers in that they consume the product. We don't really care whether they are individuals, businesses, non-profit whatever, Her Majesty, you know. It doesn't really matter; they are there, so I recognize we are not in agreement. I do think we all have a shared understanding that there is a variety of ways to understand this term. I'll be interested to hear from Larry Strickling and Fiona the way they interpret it.

I would say, from my perspective, just as it's interesting to hear ICANN's views as a signatory of the AOC on what these terms mean. We are still an independent review team and it is actually it's interesting to hear. It's actually for us to determine, how we understand and interpret those terms, so just to bear that in mind. I would like to make some action points. I think we might also benefit from a very quick comfort break before the call, so shall we have a break? Then have the call and then continue with this discussion.

Larry Strickling:        Hi this is Larry Strickling.

Cory:                   Hi Larry, it's Cory, we're in London here.  There's just no microphones on at the moment so we'll be just a few minutes, we're on break.

Kathy Kleiman:          This is Kathy Kleiman.  Mr. Strickling, thank you so much and welcome.  Emily Taylor, our Chair will be here momentarily, we're just taking a break, a quick break here at SOCA, so thank you.

Larry Strickling:        Yes, that's not a problem and by the way, just so you know I have here in my office Jamie Headland and Larry Atlas of my staff, and I think Fiona's going to join as well from Los Angeles.

Kathy Kleiman:          Thank you so much, you said Jamie Headland and

Larry Strickling:        Larry Atlas?

Kathy Kleiman:          Larry Atlas Greetings all.

Larry Strickling:        I'm sorry.

Kathy Kleiman:       Greetings and good afternoon, good morning to you. Let me introduce Emily Taylor, the elected Chairman of the Whois review team and again, thank you so much for joining us this morning.

Emily Taylor:       Thank you so much it's great to have you join our meetings by phone. Thank you so much for making the time available. Perhaps we could hear your thoughts to open with and then some of our team members have prepared some questions for you. So perhaps if you'd like to make your opening comments and then we can throw it open to team members to put those questions to you. Would that be a suitable way to go forward?

Larry Strickling:     That would be fine, so let me proceed. First off, I want to thank all of you for agreeing to participate on the team, these review teams we view as a very important undertaking and we are grateful that each of you has agreed to participate in this process. Just having finished up our work on the accountability and transparency review team I have a much better appreciation for the commitment that is required to do an adequate job in these reviews and again I really appreciate that all of you are willing to put in the time and effort to do this.

It's important for ICANN, it's important for the global internet community and you all are doing very important work out there. In general with the Affirmation of Commitments, this was a document and an agreement between ICANN and us to focus on

important substantive areas that ICANN has been working in. As I mentioned we've just completed the work of the first accountability and transparency review team, but then there are these three other teams that were envisioned under the AOC and we're glad to see this one getting up and running.

I would like to emphasize that this is a review time. In other words, it was certainly not the intent of the government of the United States, and I'm sure it wasn't ICANN's intent to in effect create yet another policy development process to kind of do a denoveaux consideration of the merits of Whois policy.

We don't view that as the role of the team at all, but you are a review team and I think that the document is the starting point as you evaluate your mission and your charge and it makes pretty clear that what you are to review is the effect, the policy that has been adopted by ICANN in this area and whether or not this policy has been effectively implemented.

The first question would be does the policy work and then secondly, has it been implemented as it was intended. We think that in your work that will be the near focus, no to figure out what you think the policy ought to be but to evaluate the effectiveness of what ICANN has done. I did note that, unlike the ATRT you all weren't given a deadline for completing you work. I think we envisioned this as being a shorter work effort than the work of

ATRT and I think that should guide you as you all set your time line and set your schedule for your work effort.

In other words, that starting here now in January, I think we would see this as an effort that would probably involve several months but we'd not expect it to last through the entire year as the ATRT did last year. I think, beyond that I should maybe just pause and see what issues you all would like to talk about. I would also add that as I've started to speak I've since been joined by Fiona Alexander here in our office as well.

Emily Taylor:       Thank you very much, and hello Fiona as well. I think I should probably confess right now that in terms of the length of task, this is something that we considered on our first call, and actually revisited again this morning. I'm sorry to say that we think that it's going to take us until the end of November.

And the reasons why we think that is because we are intended to do quite a lot of outreach on the issues and just and just in our early exploration of the issues around the table this morning, our first face-to-face meeting, it is quite clear that although it's very brief, there is an awful lot of complexity in the terms of our scope.

Things like what constitutes consumer trust, what is meant by law-enforcement and applicable laws? So I just thought I'd confess

that straight away and please do give us your reactions if you have any.

Larry Strickling: Well at the end of the day, it's your committee. I'm not going to interfere with the work you're undertaking. I guess I would caution against getting too deep in the weeds as to what particular terms mean, in terms of focusing on what's really intended by the language. Which is that there needs to be a balance between consumer trust and the nature of law-enforcement, and sitting down and engaging in a really dive into the meaning of those words may be appropriate.

I don't want to prejudge it, but the important thing is to not let it obscure that we're trying to reach a balance here ensuring that these varied interests are accommodated in the approach that ICANN takes to the problem.

Kathy Kleiman: This is Kathy Kleiman. Could you just expand a little further on what that balance might mean. What you envision as a balance between consumer trust and the needs of law-enforcement. Just an example because we're seeing various different types of balances depending on how you define those terms.

Larry Strickling: Well, let's back a second because again it is not what I think it is just not particularly critical to your effort. The reason we wanted a

team made up of representatives to get input from representatives from law-enforcement and from privacy interests was for you all to make that evaluation. This is not a game where I have an answer key and we're going to see how close you come to what I think, or what ICANN may think the right answer is.

We want to take advantage of your expertise and your knowledge as you all pursue this issue and I would expect that within your first day of deliberations you will advance the ball beyond anything we would have considered at the time we were negotiating the AOC a year ago. I'm sorry to duck the question but I really don't think what I say has that much import here other than what I said which is that we are trying to ensure a balance.

We're trying to ensure that there is a process that has taken these varying views into account and has achieved a policy that works. That's we want you all to evaluate.

Emily Taylor:          Thank you very much. I would like unless you have any further comments to open with, I'd like to throw the floor open now and ask Lynn Goodendorf on behalf of the team to pose a few questions to you.

Lynn Goodendorf:      Okay, that you Mr. Strickling again for making time for us. One question is, do you, or were there any particular concerns about

Whois policy or its implementation in its current state that you would like to make us aware of.

Larry Strickling:    No.

Lynn Goodendorf:    Or are there any perceived problems, I guess, in its current state?

Larry Strickling:    Not specifically, but I'll let Fiona address that.

Fiona Alexander:    I think in terms of what US government policy has been, you know, is very much to have timely accurate access to data, and sort of long standing NONAs. Actually we subscribe to GAC principles and so if you're asking what's our official position on that kind of stuff, I think that's what it is. I think, again, we were negotiating this document what we wanted to do was make sure that the process that ICANN followed made sense.

That the policy was being implemented, that it was effective, you know, what are the components that should there be something foundation contract compliance, that kind of stuff, so I don't think there anything like a particular trigger issue that we thought you should focus on.

Emily Taylor:        Fiona, I'm sorry to interrupt you, it's Emily here.  I've just a couple of requests from the people here to ask you if you could slow down a little bit because just over the line it's a little bit difficult to understand if that's Okay.

Fiona Alexander:      Sure no problem.  Do you want me to repeat what I said?

Emily Taylor:        Just the highlights, yes please, that would be great.

Fiona Alexander:      So I think [inaudible 07:23.3] a bit late but to just to reinforce probably what Larry has said I think when we were negotiating the document we just wanted to have an assessment of ICANNs enforcement, or how the process and the policy had worked.  So the US as the United States has had a strong position in terms of timely accurate access or reliable Whois data and we are participating in the GAC principles, so those are our kinds of issues.

Again, to the extent that you are going to be doing outreach and how you do this review team which I would expect, we'll participate in that review team as part of GACing, but, you know, we can still comment as the US, and that would be the appropriate time to raise those kinds of issues.  But, I'm not sure if Larry has covered this point or not but I think it's important to note that review team processes are not a substitute for the ICANN policy

development process. I think that's critical, in particular on some of these issues.

Lynn Goodendorf:    This is Lynn Goodendorf again. I guess as a follow-up on that point, we heard Larry saying earlier that he wanted to emphasize that our work is review and not developing policy, but just for clarification for us, in the course of our work, if we see or recognize opportunities to improve the current Whois policy just from your point of view, would you expect us to include that in our draft recommendations for public comment?

Larry Strickling:    I would say, yes, with an asterisk, or with a footnote which would be again you're evaluating the policy and its implementation, so one question would be if you find and suggest an improvement, I would hope that there would be some evaluation as to why that hadn't been included in the original, or why that hasn't been included in the policy development up till now.

In other words, you may have a better idea, but I would be interested and I think ICANN and the community would be interesting in understanding had that idea been considered before, if it had been rejected why had it been rejected. If it hadn't been considered before, is there some suggestion about how the process is conducted that could be improved as well. In other words, we are concerned about processes here as much as the substance of the policy outcomes and so if you find additions, improvements,

modifications to policy I would urge that there be some sort of process discussion as well to understand how and why that idea either hadn't been considered at all or had been considered and discarded perhaps not for the best reasons.

I hope I'm being clear in that regard. In other words, improving the policy by itself I don't think would be enough and we would hope that you would take a look at the process that led to a particular policy and excluded the idea or didn't consider the idea you might have now.

Lynn Goodendorf:    Yes, thank you, that's very helpful. I don't know if any other members of the group might have further questions on that point, or not? I guess also in fine-tuning our scope of work, we've looked at the category of law-enforcement and also consumers and two examples that we have that don't clearly, they're not law-enforcement and it's kind of not clear if they fall into the consumer category, is the anti-phishing working group which would definitely be a stake holder or user of Whois data and also the uniform dispute resolution process. They're another stake holder, but it's not clear that they fall in a category of consumer. So if you could just kind of share your thinking with us on that.

Fiona Alexander:    I think, you know, in terms of the text and the way the text is crafted, in you know it says as well as experts and representatives from law-enforcement and global privacy experts, so I don't think

you should be limited by that, but you only are looking at the law-enforcement or the consumer angle. Obviously there's a link to other usage of this data, like the anti-phishing group and uniform dispute resolution process. So I don't think that would be an issue. But the catch-all phrase 'expert' denoting the use of the policy is fine.

Lynn Goodendorf: Okay, great, thank you. Then you talked a little bit about consumer trust and that's been one of our discussion points today. Is what does that really mean and who are we talking about when we talk about consumer trust and the AOC.

Larry Strickling: I think that in general that's a catch-all term for privacy interests, privacy concerns.

Lynn Goodendorf: Well, that's very helpful. I wonder if other members of the group have further questions on that. But I don't think we really touched on that in our discussions.

Bill Smith: Larry and Fiona, this is Bill Smith from PayPal. On that one, consumer trust, we certainly see consumer trust as an end-users faith and reliance on the internet ecosystem in the large. So I'm wondering if that fits your definition for the AOC or not.

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| Larry Strickling: | Yes, that's fine. |
| Bill Smith: | Thank you. |
| Lynn Goodendorf: | Yes, thank you very much because what we've been debating is how broad to define this in our scope of work or how narrow, so thank you very much. Dr. Hussain do you have a question? |
| Sarmad Hussain: | I wondering up on consumers and consumer trust. So this would mean that it would include commercial entities as well? |
| Larry Strickling: | I'm sorry could you repeat that? |
| Sarmad Hussain: | Yes, the question was that would then consumers also include commercial entities? |
| Larry Strickling: | Yes, absolutely. |
| Lynn Goodendorf: | Ok, very good. I don't have any other questions at this point in time, I want to give everyone else a chance though. |
| Emily Taylor: | This is Sharon Lemon that wanted to come in now. |

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| Sharon Lemon: | Hello there, my name's Sharon Lemon, I'm the Deputy Director of the Serious and Organized Crime Agency. New to ICANN and new to review teams and we've spent quite a lot of time this morning deliberating over the meaning of words. Specifically law-enforcement, consumer trust, and we had agreed to take on a lot more work in our sub-groups to get some consensus around what this means as a solid platform for our further work.

Just the feeling I'm getting from this conference call is that we might be over-doing that and making something more difficult than actually we're faced with. Have I got the right idea there, or not? |
| Larry Strickling: | Not being privy to your entire conversation, I'd say yes there's a danger of that from what I've just heard on this call. Yes. But again, I don't feel it's my role to be steering you any particular direction in terms of how you conduct your work. I'm happen to answer questions in terms of what we had in mind, but it really is up to the review team, to combine all the expertise of the folks there to come up with the approach that you all best address as the issue and then we'll rely on your judgments in making those and working out a plan of action and carrying it out. |

**EN**

In other words, you should take what I say with something of a grain of salt, but I am trying to share with you what we had in mind at the time we executed the AOC.

Sharon Lemon:    No it's very important, I mean the two statements I've got from this call are the one you made where you said we want you to check the policy has been implemented as intended and when your colleague said we want an assessment of ICANNs enforcement of policy as it stands. As to simple facts there, that would mean that we don't have to delve in what law-enforcement means, we just have to look of using the policy, who is using Whois currently and whether it works according to policy.

Which is quite a different approach than we've been talking about all morning where we're going to examine who law-enforcement is and who the customer is and if you're saying now actually look at the policy, look how it's being used, is it working, I can see how you'd think that we'd be done in a lot less time.

Larry Strickling:    Right, I think that's a fair statement.

James Bladel:    Hi this is James Bladel from GoDaddy. I'm in agreement with Sharon.

Larry Strickling:         James why have you done this to yourselves?

James Bladel:             I just can't escape my new hobby, review teams.  I think, it is also possible a fair statement that as the first review team, Whois review team, that we have an additional burden perhaps that subsequent review teams won't have in laying some ground work, like some definitional work.  I don't know if that is also the intention because I think these are recurring exercises, correct?

Larry Strickling:         Yes, that's absolutely true.  So there will be another team that will follow on this work, I think three years from now, and the idea is that there will be a regular review every three years of this.

Emily Taylor:            I think, to sound a defensive note on behalf of our team and what we've been discussing so far.  I think what we're aiming for as actually quite similar to what you've described, in that we are not thinking of ourselves in any way shape or form as setting or defining policy.  We're looking at it, we're looking what the existing policy is and how it meets the expectations of law-enforcement and promotes consumer trust.

I'm just as impatient as the next person about sitting around in a circle and trying to work out what words mean, but I think that it is an important process to try and understand what's roughly meant by those terms in order to find out, to answer the question  is this

doing its job. We have to know who is using it, no pun intended and what they're expecting. And then you measure what they were expecting towards what they get and there you have a little bit of a GAP-analysis on how the policy is doing.

From my perspective, what I'm taking away from your comments which are really helpful, is this sense of, first of all the focus on enforcement, how that's going and an emphasis to keep it simple, but also to ask so if you think that the policy ought to have been different in some way, and it's already been considered and rejected, is there a process learning that can take place here about how the policy is formed and how we all ended up in this situation.

I'm just going to ask anybody who has any further questions? I have Kathy Kleiman, is there anybody else who would like to come in and ask any questions of Fiona and Mr. Strickling? Okay, Kathy, go for it.

Kathy Kleiman:       Frankly our job would be much easier if you had given us a dictionary. I just want to let you know, if these terms were defined and that's so let me ask a few more questions to kind of delve into framer's intent, signer's intent, legitimate needs of law-enforcement. Not necessarily that we're bound by it, but what were you thinking, and perhaps what are illegitimate needs of law-enforcement?

Fiona Alexander:     Well, I don't think that I would actually take on the task of defining what a legitimate or an illegitimate need of law-enforcement is with regards to the latter, but I do think that the GAC principles can be useful in that regard. I think they sort of try to identify, you know, some legitimate needs of law-enforcement. But again, as I say to that that I don't think that I would want to define what would be illegitimate.

Kathy Kleiman:     Similarly, can we go back to promotes consumer trust, because Mr. Strickling you mentioned something very interesting, which was something that we had a sub team looking at consumer trust and they also delved into the data protection issues. Can you just talk about that just a little further, as what you were thinking of, with that special term?

Larry Strickling:     Again, I think we were trying to indicate that there are really two sets of competing views here and we chose descriptors, you know, the legitimate needs of law-enforcement and the promotion of consumer trust as a way of identifying a balance that this policy has to strike, as it tries to evaluate those competing interests.

     Again, we weren't intending these as terms of ATRT that have a very precise meaning, but much more a set of interests that we thought had to be addressed and evaluated, so, again I'm not trying

to dodge your question, but the fact of the matter is that you all are the experts and we really want to give you as much lee-way as possible to do the kind of evaluation that you all think is appropriate. It is correct, it's been observed by others on the call that I'm not convinced that you need to spend a tremendous amount of time parsing through all these terms.

You do need to have enough of a discussion for you all to have a shared view of it, but again its we've handed this off to you all as a team of experts and we're not prepared to defer to your judgments on how to conduct this inquiry. Giving you a certain amount of guidance, but we're in no way trying to strait-jacket or put you all in a straight-jacket as to how you conduct this work.

I hope we've been helpful in sharing that message with you, but we're not but again it's not as if these terms have such precise meanings that part of the effort here has to be to try to divine what the ICANN and DOC senior leadership meant when they agreed to those terms, beyond what I've described.

Unknown:         You know the other thing that I would add to that, is that people who sat around drafted this were very conscious of the fact that the document has no expiration date and that there may be evolving views in the ecosystem in time in terms of what the policies are supposed to accomplish and therefore what those terms mean. So

it was a conscious decision not to spell out the very precision enumerated definition of various terms.

Lynn Goodendorf: This is a very, very helpful discussion. I can't tell you how helpful it is, because there are numerous ways to read the same words in the same sentence. Let me ask one more question. This has to do with the first sentence of 9.3.1 and I'll read it: ICANN additionally commits to enforcing its existing policy relating to Whois subject to applicable laws. To what extent did you see the review team as perhaps delving into or inquiring into applicable laws and this sentence is part of the paragraph, the paragraph is within our purview we're trying to parse this through as well.

Unknown: I'll give a general comment and then I'll see if Fiona or Larry wants to add something, but I think that again was recognition that this policy doesn't exist in isolation from the laws of other jurisdictions, it has to be, it is clearly affected by that. Again, we're not looking for an inquiry as to whether or not, what the laws of all those jurisdictions are and how the Whois policy matches up against those, but I think it's more just that as part of the review it has to be conducted with appreciation and an understanding that this policy can't sit out there totally by itself, but is affected by individual nation's laws on these issues. Fiona, Larry, do you want to add anything.

Fiona Alexander: I think that's pretty accurate, we just wanted to acknowledge that the laws are different in different countries so whatever is developed in ICANN needed to be sensitive to that.

Lynn Goodendorf: Again, this is very, very helpful, thank you.

Unknown: If I could present a general question to the group, which is how do we go about, you know when we try to set a policy that applies across the board in ICANN, how does ICANN deal with this impact of other jurisdictions having laws that affect it without having to address any individual jurisdiction, or addressing all these jurisdictions to understand exactly what those conflicts are, I think it's much more the conceptual issue.

Larry Strickling: One thing you might consider in the context of some of these words, that you feel need definition. Rather than try to define them as an issue, it might ease your task if you take a look at how ICANN appears to have defined them in a context of establishing their policies. And whether or not you think as a review team, those assumptions are appropriate rather than trying to define them from scratch in some way.

Lynn Goodendorf: Very helpful suggestion, thank you.

| Emily Taylor: | So thank you very much. I think unless there are any further questions from the team here, I don't see anyone wanting to come forward just now. Are there any closing remarks that you'd like us to bear in mind? Thank you very much for the remarks that you've made and for the guidance that you've given us. |
|---|---|
| | I think we all understand the key point that you're making, which is that you're not trying to direct the way that we're approaching this and we're not asking you to do that, we're it's useful to understand what the signatories of this document had in mind and that's, you know, in a way that gives us a lot of freedom as well, so thank you for sharing your thoughts with us. |
| Larry Strickling: | I thought that was a perfect summation so I feel no need to add anything. |
| Emily Taylor: | Thank you, thank you for joining us, and I hope that if the need arises we can come back and ask you further questions in the future, and please do feel free to participate in the process as fully as we'd like you to. |
| Larry Strickling: | Very good thank you. |
| Lynn Goodendorf: | Thank you so much. |

Emily Taylor:        Thank you.

James Bladel:        I captured some thoughts, and you know it's way past my bedtime, but it sounds as if we've been spending a lot of time parsing language from the AOC 931 which, you know, I can tell you that the ATRT did the same thing, independently pursued the exact same path with 9.1 A through E. It sounds like the message we heard here is there's a balance out there between privacy and accountability.

That, I mean, if you could boil it down to just one sentence without the six reports or whatever, we've produced on definitions, is where is that balance and is ICANN meeting it. That was just my take away from this discussion. I do believe fairly strongly that we are kind of blazing a trail for the poor souls who have to come up behind us again in 2014 and they are going to want to stand on some sort of foundation, so I think that a little bit of extra work probably falls in our lap that we're not entitled to but, or we're not we've been sentenced to a little longer of a sentence because of that.

Emily Taylor:        Thanks, well said James. You'll be on those review teams, you know that don't you? Oh yes. Okay, I've got, Bill, Wilfred, Sharon, Susan.

Bill Smith:    Okay, I just quickly wanted, I think James made a very good summation of what we heard and I also wanted to really to emphasize that allow other to stand on our shoulders. We have I think what we have been doing, while it can be frustrating and it actually has been useful, and if we can, going forward, build something to say Okay here's actually what it means, right or at least how we took it at this point in time, we suggest you do the same and here's why we did what we did, then other groups in following years will have a much easier time, unless they choose to go down a more difficult path.

For me anyway, I got a pretty clear message, couple of messages. One is that the US government doesn't want any appearance of impropriety or attempting to influence this, number 1 and the second thing is, well the words are there, interpret them as you see fit. But we didn't mean necessarily, you know, a specific definition of this or that or the other thing. What we're interested in is the balance between privacy and the ability to have terms I would use, safe, secure, resilient Internet, something that people can trust in.

And we know that there is a balance there. Is the policy balanced -- for us perhaps to decide. Has it been implemented? Is it effective? I was actually surprised that Larry offered as much opinion as he did.

**EN**

Emily Taylor:              Thank you Bill, Wilfred?

Wilfried Woeber:           Also a couple of things I took from this, and I agree with both James and Bill to a large extent. The one thing that was interesting for me was the interpretation of the mandate by Larry, in the sense that we should not over-do it, but that we should also have a look at the reality and the network that is around us today. And that he considers this group as maybe not being the only ones to know about the Internet today, but to have enough expertise but to go ahead and do the job and not go to an extreme end, and effort to sort of include everyone and her dog. That was the message I took away.

Emily Taylor:              Sharon?

Sharon Lemon:             You know, I've got a question and a statement. The question is, the last thing that was said is ICANN's assumptions about definitions appropriate. Consider that rather than start from scratch. I mean, have we got definitions? I haven't seen them. Have we got definitions of law-enforcement and consumer?

Unknown:                   I mean I sent you one definition for law-enforcement I think that was out of a you know, a policy.

Susan Kawaguchi:      Yeah I have, do you want it sent to the list again?

Sharon Lemon:         Oh yes please, was that just law-enforcement?

Lynn Goodendorf:      But I just want to be clear that it's not necessarily an official opinion. It's what was in a policy development paper that a group at one point in time, you know, when the paper was drafted, concluded was an appropriate definition to use. In addition there have been other papers that have talked, policy development papers that have tried to draw some conclusions around, you know, whether natural persons for example, need greater protections than commercial entities for example, but these are policy development papers that are not, that were not consensus policies in the specific term that we use in ICANN.

Sharon Lemon:         Okay and the statement that I wanted to make was if we are going to spend some time which I think is perfectly valid to try and come up with some sort of agreed consensus on definitions. Then if we are going to do these, to save the next review team going through the same pain, then we have to future proof what we do. So it's not about 2011, it's about 2014 and what the Whois requirements will be then and what law-enforcement requirements will be then, and what consumers will be then. So if we're going to do it, we do it

with that in mind, and if we're just going to focus on the here and now, we needn't do it.  That's all I'd say.


Susan Kawaguchi:     This is probably premature, but it would be interesting to sort of cut to the chance because Larry definitely boiled it all down to timely, accurate access and reliable Whois data.  Is there anybody in this room that thinks ICANN has provided that?  That the policies have been implemented in a way that we are all getting accurate, timely, reliable Whois data?  I mean is that something we could agree upon, and move forward?  I mean, I assumed that's what everybody would agree to but, maybe, maybe people want. You can't agree that they are providing in?


James Bladel:     I think it's premature to start at the end.  We have a lot of fact-finding to do.  I know in my stomach how to answer that question, but in the context of this I think that that's presuming that we're going to find something that we know what we're going to find and we haven't even started.


Susan Kawaguchi:     But don't we sort of know what we're going to find?


Wilfried Woeber:     Well, I mean that is generally speaking from a scientific point of view that is absolutely a wrong way to approach any kind of empirical approach.  You cannot assume something when you actually go fact-finding because then just from a psychological

point of view you're automatically geared toward that goal. That is certainly proven from psychological experiments throughout the world.

Lynn Goodendorf: But I think really, that's what we're looking for, that's one of the things we're trying to measure, absolutely. But also I wanted to point out that I just had a little side conversation with Liz. As we look at some of these definitions of consumer trust, as we talk to Liz and Stacey tomorrow. Stacey will be talking about compliance with us and we'll ask her about those definitions too I'm sure, and Liz, some of the definitions may be coming out of the policy process which took place after these rules were implemented.

So whether they were the basis of the rules that we're going to be examining, or whether they've been something that's been part of a discussion later, just look at times and when    If there is a clear logical answer then let us know for the current policy, but I think we've still got a lot of fact-finding.

Bill Smith: So to answer Susan's question. I absolutely believe that we do not get timely accurate information and I can state that categorically for PayPal, that we do not receive accurate information from Whois. In addition there have been a number of studies, there were two fairly recently, one definitely conducted by ICANN that showed that the information, depending on your definition of accurate, is highly inaccurate in the gross sense.

It varies considerably by registrar but it the numbers are shocking, in terms of how bad the data can be. I know that the GNSO continues to do studies, I've argued that there is no need for additional studies, if you know 25% or whatever the number is of your data is bad, don't spend 500,000 dollars figuring out whether it's 23.9 or 27.2, spend the 500,000 dollars getting that number down to 10%.

Then you can decide if you need to do another study, but I think we've already done the studies, if we then go out and conduct another study to say is it accurate, is it timely, it's already been done.

Unknown:          Yeah I just want to also agree, Bill, with what you've said and in answer to Susan's questions that most of my experience in using Whois has been investigating privacy complaints and people who believe that they have suffered some type of privacy violation and in their efforts to seek recourse from a web-site, they're unable to identify who it is.

So my experience has not really been complaints from registrants, it has been people who are I guess in this broad bucket of Internet users who believe that their privacy has been violated and that personal data has been collected about them and has been misused

in some way and then they can't even identify who it is that has collected the information about them, and so I guess, Susan, if just this straightforward question of is Whois data today accurate and reliable and complete my own experience says no, it's not and then there are all these studies that have been sponsored by ICANN, Bill has mentioned them too. They all point to that as well.

Wilfried Woeber: Mine is going to be very brief because most of that has already been said by the speakers in line in front of me. My answer to Susan's question would be I definitely would not be in a position to say yes or no. I do have a feeling, I have a strong feeling after hearing the other contributions, but I think it's really one of our jobs to not act based on beliefs on feelings but to do sort of fact based things like, this is a study, this is whatever it is. It can be cited it can be found, it can be verified. And this should then be the basis for our decision. Not the feeling and, well everything is going to be fine anyway, goodbye.

Peter Dengate Thrush: Sorry, just, I guess a couple of things, first was to I guess, agree with Bill and just add a bit of substance to what bill said. In case people hadn't seen the results of the study from last year, the ICANN commissioned accuracy study, at present the estimate is that about half of all domains have what they call full failure or substantial failure for the dollar, so full failure means undeliverable address and unlinked or missing or patently false domain name, a false name, unable to locate to interview.

Effectively complete useless data.  So I think the studies are there as Bill said, like we're looking at a high level of inaccuracy.  How that relates to what we do and how that relates to ICANN's policy and implementation are obviously matters that we need to look at.  The other thing that I just wanted to mention, and because Fiona Alexander mentioned it a couple of times in the interview and I'm not sure that it was put up with the background information that ICANN staff provided on the week.

It may have been, but there are sort of GAC-men supports on Whois which may be of interest as we go forward.  Not trying to steer the debate one way or the other, but the GAC put a fair bit of time into those principles and it has some recommendations for action as well as sort of a number of things that would be nice to see.  So it may be worth looking at that for some, Okay excellent.  Cheers. So that's all I had to say.

Liz Williams:       Actually I just have a small point to correct about the Whois studies that are pending right now. By the GNSO which is they have about 400,000 dollars budgeted, but none of the studies that they are considering really relate to accuracy.  The previous study that was done last year was an accuracy study, but the ones that are currently being considered actually relate to other matters related to Whois that I'll cover tomorrow in my presentation.

| Unknown: | Can you quickly say what they are? |
|---|---|

Liz Williams:

I can, the one that they've agreed to proceed with has to do with the misuse of information that's been harvested or that people allege has been harvested from Whois. Then there is three others that are being considered. One has to do with information about registrants, who they are, whether they use proxy services, one has to do with looking, and then two others have to do with proxy services, in particular whether there is excessive abuse associated with registrations that use proxy services and then the fourth one having to do with what happens when people request information from proxy services as to who the registrant is.

So it's the reveal or the relay of who the registrant is, so in some sense they may be related to accuracy, but they actually are focused on different things and I just wanted to just clarify that. Thanks.

Stacey Burnette:

Thank you for allowing me to make a brief comment. This group has a huge responsibility on its hands to come up with recommendations concerning Whois and I hope as part of your analysis you will strongly consider whether the current RAA provisions allow for, allow ICANN mechanisms to ensure the accuracy of data. That's a huge question.

Because without verification requirements it seems to me it is very difficult to ensure the accuracy of data and I'll talk more about this tomorrow but I was just checking into my hotel a few days ago and they said what's your name ma'am. I said Stacey Burnette, and they said can you show us some picture ID to verify that you are who you purport to be?

And I had to produce something or else they would not let me into the hotel. Verification is part of all of our lives, but it is not a part of the Whois process and so how can we verify Whois information without some type of validation requirement?

Emily Taylor: James, you're next on the list anyway, Olivier? Okay so we'll go James, Olivier, and Bill?

James Bladel: So I think this was originally promoted by Susan's question and I feel like we're a jury, Okay, and someone came up and said, 'you know I know you've just been selected and we haven't really heard any testimony but we've got some cops and some eye-witnesses and some video-tape so you really think he's guilty, right?' You know I really feel like, let's wait and let's let the facts come to light before we talk about those things.

One of the important things we were talking about accuracy. I may have a personal experience where a feeling about accuracy,

the state of accuracy today, but I agree with Stacey, that they enforce what they have to enforce, we as registrars and contracted parties fulfill our obligations, in terms of right now which is sending out reminders to the producers, the registrants and say, you need to check, validate and update these things.

I just want to be very careful that what we could say as a review team, hypothetically is that there is a huge gap between what is the tools that registrars and compliance have at their disposal versus the desired outcome of accuracy. There is a gap there. But, you know, and that could be one observation that this group came out with, but I'd be very cautious about cutting to the chase and going to the end result and saying ah, here's the problem, you know everybody's nodded their head so we've found the problem and now here's how we fix it and let's and now it's time for dinner and we're done. I think, let's make sure that we're deliberate about this process. Thanks.

Emily Taylor:          Thank you very much. I have Olivier.

Olivier Iteanu:          A short reaction of what Stacey said. The difficulty to ensure the accuracy of the data, just to remind you that some Internet registry for country domain names, years ago they checked by requesting production of official documents as they check the accuracy of data and they gave up because it was impossible to manage. So we have to keep in mind this situation.

Bill Smith:          Stacey asked question regarding verification, etcetera, so I believe very strongly that the current RAA does in fact give ICANN fairly broad powers in the contract. The "punishment" or the only course of action, I've been told by a number of parties is termination. Okay. I don't, I recognize that that is what is in the contract, saying that if somebody reports and this and that and all kinds of things go on, right, that the contract can be terminated. But I believe that ICANN has other recourse open to it if it choose to exercise it.

Sending warning letters, in addition, I believe ICANN, could itself, go out and check information and find those cases that a patently false, Okay and issue a request to change it. It does not necessarily have to come in from the outside. ICANN could be doing that. There's nothing preventing ICANN from doing those types of things. Similarly there's nothing from ICANN, there is not.

Emily Taylor:        Guys, I think, this is, this a great discussion.

Bill Smith:          The other thing is, I agree with James that we should not say, Okay we have the answer, but I believe all of the data that we need is already in the studies. If what we are doing is saying is there timely, accurate information, and is it being implemented. And is it effective?

Emily Taylor: Thanks. Lutz, Kim, Olivier, you wanted to come again did you? Hang on should we just do Lutz and then Kim.

Lutz Donnerhacke: I think the accuracy part [inaudible 51:50] from basement. It depends on what you need from the Whois data. If you are going to make [phonetic] undisban measures you will find that Whois data is horribly out of date. It is incorrect and everything else. If you are doing normal business you find the Whois data is very accurate and you reach the right pillars and can solve the right problems as you like. So it depends on the use case because it is not a technical issue.

It's not a procedural issue, it's not, and accuracy is not an issue of contracts. Accuracy is a game, it is a game between criminal people, which want to misuse the system and they only need one hole to come in. And you can can't say the Whois system is accurate or not because you can't fill all the holes. Most of them we can't even, we do not have even answers from ICANN CCTLDs which are horribly maintained, where you get almost all entry for almost all names as long as you pay for them,

And if you are considering this you can't say that any Whois data base is correct or not, it depends on correct registrar and then you can make label saying that the registrars which are doing good

maintenance or not and that's all we can do. We can't verify them 100% solution because we have to do with people and we have to do with people without doing crime, and we can't expect that all people are doing crime go and through the right idea in the right place.

Unknown:                    A comment with respect to the enforceability, and I do believe it's within, it should be within our mandate since it asks us what looking at the effectiveness of the Whois, we have to look at, because I mean anything, any policy or law is only effective if it's actually properly enforced. So we have to look at the enforceability of whatever steps have would actually put forth and then just a quick comment with respect to my personal experience when I was at CIRA with respect to the with respect to the Whois.

And we actually changed from a broad-based membership, we were a thick or we were actually a thick, CIRA still is but when I was there we were this thick registry and, but we knew that about 50% of the data that we had in our database was wrong. CIRA is actually a membership organization that means every single registrant is actually a member of CIRA.

And eventually we decided we actually have to improve the accuracy within the database, within our actual registry and we went through a huge amount of work to actually improve the accuracy by requiring for example, now copies, notarized copies of

driver's licenses or passports and so on, for membership applications, and that is actually an enormous amount of work and if ICANN was ever, if we ever actually, you know had that kind of idea to impose upon ICANN, you know, good luck.

Olivier Iteanu:    I just want to give one example of where the inaccuracy of the data is not a problem. That's about the Uniform Domain Name Resolution policy, Okay, so in that case if the contact information is not accurate, the claimant can take back its domain name easily because he is alone. And has been said, the system works because there is a system of contracts between the registrants, YPO, ICANN and you can take back your domain name very easily.

Emily Taylor:    Forgive me Kim; I'm just going to just highlight a few points that have come up both with the call from Larry Strickling and this discussion now and then I'd like to get back to issues on consumer trust. What I've taken out of the discussion with Larry Strickling and Fiona is a very well-timed, sort of just marker to say let's not just bogged down here. We, and I think that we've sort of taken that in this discussion now to go, look, let's cut to the chase, is there a problem or not?

Certainly as somebody who is a little bit removed from the nitty-gritty of gTLD enforcement and accuracy, I found it a very useful discussion, I've learnt a lot, that there seems something we're hovering around, around a general understanding of there an

expectation and we can all try and get angels dancing on the heads of pins about whether or not it's precisely the right definition, but there's a general expectation that Whois data will be, shall I say accurate as in good enough to contact.

That there is an enforcement mechanism, and what I'm hearing from people who are more experienced than I am in this is that they view the tools as problematic. That's not something that is universally shared but there certainly seems to be coming out of it an understanding of the issue. From my perspective, this is useful work from this team, because we're surfacing an issue.

What I'd like to say is it's now 3:30. We're going to stop at 6:00. By 6:00 I think we'll all be pretty tired. I was hoping that we would have been a little further in the agenda than we are, but I'm not panicking yet. What I'd like to clear up today is to finish off the consumer trust, discuss applicable laws and have some time on producers, a short amount of time on producers. If we can I would like to start an initial discussion on the action plan as well.

I think, to be honest, I think we'll feel a lot better going into dinner and into the second day if we've focused on some concrete actions. So, can we say that at quarter past five, wherever we are, we will go on to the action plan. All right. I'm seeing energy levels are pretty low. I suggest we have a break for ten minutes, come back and do some actions on consumer trust. And then move on to

applicable laws and producers, aiming to wrap that by 5:15. Anyone violently disagree?


Bill Smith:     Actually I just have a suggestion.  I just think maybe we want to just talk about producers before applicable law because it might fit better with that exactly.


Emily Taylor:     Thank you, James.


James Bladel:     Thank you and I'm just trying to get back to that document about consumer trust.


Emily Taylor:     Hmm.


James Bladel:     And I've lost it.  Ah, thank you very much.  There is a conflict or a contradiction that I just wanted to point out that we need to resolve and that is; in the AOC it references unrestricted public access, but then here it discusses protection against bulk access.  Now to me, that sounds like a restriction.  So, I just wanted to point out that we have now - I personally would favor the definitional work that's been done by the sub-team over what's the language that's in the AOC because completely unrestricted in all cases almost sounds like people have the right to as much Whois data as they want and I think that is definitely not the case.  Thank you.

| Emily Taylor: | Okay?  I'll go.  Bill, Liz, okay. |
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| Bill Smith: | And if I recall the agreements, it's been awhile since I've read them, there actually are requirements for bulk access but there are limitations to that.  Okay?  So the unrestricted – I agree there is some tension there between unrestricted and the restrictions that have been put on the bulk access. |
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| Emily Taylor: | Okay.  Kathy did you, Liz -- same thing.  Did, okay, so how are we going on?  Next steps.  Oh, Peter? |
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| Peter Dengate Thrush: | Maybe I flinched at the wrong time.  I was half thinking of putting my hand up - just how about…just to start the conversation…just a quick one.  I think it would be good if we did a similar thing with the promotes consumer trust.  We, in terms of consultation, in the next step toward whatever tone we decide with law enforcement.  So if we're going to ask the community questions about law enforcement, how about we ask them a question about definition of consumer trust?  Make it consistent.  Do it at the same time. |
|---|---|

| Emily Taylor: | Okay.  I'm sure that's not a controversial statement.  I think that people – I'm seeing nods around the table for that.  Oh, what I'd like to ask is: we've got so far working on this issue, we've got |
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Olivier and Sarmad and I'd like a couple of other people to take part in that work as well. I've got Lynn, can we - Peter. Fantastic, great, so we've now got two teams of four working on different issues. And perhaps we can go on the same basis as we did with the law enforcement and say please, will you draft up your definition, run it by the group, and then we'll be aiming to get out to a consultation on that. So I've got Sharon and then Bill.

Sharon Lemon:    I wasn't volunteering. I was just going out for this law enforcement thing. What I was going to suggest was in light of that conference call, whether each group should try and go on in the previous definition that's been attributed to the definition so we can just have that as background. So although it might have been used in the policy after the revise came out, at least somebody, and somewhere has spent some time on what consumer trust means. So I don't know whether that can be put together by ICANN or whatever.

Emily Taylor:    Yes, well said and perhaps we could ask the staff to kindly sort of supply some of those definitions to those working groups. Can I also, just taking up a point that I think came through very loud and clear to me form those discussions is: let's not get too bogged down in these definitions. We're not going to be doing the final work on them. We're not even going to be, I'm sure we won't be completely satisfied by them. If we get, I think we'll be winning if we get to something that at least gives us a clue how to continue

with our work and actually lets other people understand, broadly speaking, how we understand these terms. Then that's, let's say, good enough. Not perfect.

I think we have an agreed next step here. We have a group. Thank you for volunteering: Sarmad, Olivier, Lynn, Peter, Bill; who will be working on a definition, a working definition, assisted by staff. If you could highlight any working definitions that already exist, that would be great. Run it by the team and we'll be going out and consulting on those. Okay? Agreed. Thank you.

Now let's go on to producer. James, I know that you volunteered on this and did somebody else volunteer? Susan and Wilfred.

James Bladel:          Well I'll go ahead and lay down on the sword that we really haven't had a chance to convene on this. But you know I think especially and emphatically in light of the conversations with the NTIA folks, was that the concept that there was just this gap missing when we talk about consumers and we talk about law enforcement. But we really need to establish, I think someone used the term "chain of trust", we needed to talk about where the Whois data is coming from.

I think there is a misconception in some circles that registries and registrars are the producers of Whois data and I just thought perhaps some definitional work that is coming from, that is self submitted, is coming from the registered name holder. It is a, what

do we call it, a self selecting data set and that registries and registrars maintain that. That we have responsibilities to make that available and we have responsibilities to make that, to make sure that the registrant understands the penalties for submitting false data and that they review it on a periodic basis.

Now again, the responsibility is to remind them of their obligations, but we don't necessarily have the wherewithal to enforce the obligations on themselves. So I think just drawing this distinction between where out of the ether Whois data comes from and the producers of Whois data versus the maintainers of Whois data. So that was really all I wanted to emphasize with that definition and just let, since we hadn't had a chance to convene beforehand, we'll let Wilfred and Susan – give them privilege to chime in now.

Wilfried Woeber: Because it's, it's I think directly related to that activity, Mikhail and me, we just briefly got together and came up with a set of questions that are directed at ICANN, primarily, but it's more or less the same thing. What we would like to learn is: what is ICANN's view on this ecosystem? Sort of, where is the stuff coming from, who is the - who or what are the consumers?

What exactly is the financial basis? And who and what are the, what we call the, I came up with the term the pre-datas. Like sort of in the real world you have something to feed on and then you have the regular sort of harvesting activities and then there are

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others coming in which you don't want to have in the system. And I think this is directly related to that. As soon as we understand what the financial and the responsibility background of that is, I think we can complete two things at the same time, more or less.

Unknown:    Have you sent these questions to the group? Is this one of the pieces of paper -?

Wilfried Woeber:    I have sent it to the two Chairs and to Elise and I think it's printed. But it was, it was pretty late due to personal reasons, didn't make it in time. So I hope we can - I'll deal with that after the meeting. Or tomorrow, but -

Emily Taylor:    If I can just chime in here. Thank you very much for those questions. And I had a little conversation with the ICANN staff. Some of the questions we're asking are quite involved and will take awhile to get the answers back. So I think if we have the initials to scan through tomorrow during your presentation and then ask you to come back with more considered replies in time to the questions that would be very helpful. Susan, as a member of the team, the subgroup, please -

Susan Kawaguchi:    So, I didn't focus with James and Wilfred on this, unfortunately, but I should have. Thank you. One of the questions that is key to me

and the producer of Whois data is James, you just defined the registrar was the only producer and from using the Whois data, I often run into problems when it's a reseller who is providing the Whois data.

And then I chase it back to the registrar and expect the registrar to provide data. And I was wondering, I found different experiences with that in use of Whois data, and I was wondering if you knew what the responsibility of the reseller to provide the information. Maybe they're not producing it, but they're providing it. Or is it, is a registrar because they've contracted, they have a contract with the reseller or vice versa.

James Bladel:          Okay, I'm probably going to fumble on this a little bit because -

Susan Kawaguchi:       I didn't put it very clearly.

James Bladel:          Lack of sleep. I can describe our ecosystem and then I can speculate on how others are doing it but I can't speak, you know, the registrar of record, that is maintained at the registries, even the thin registries, is responsible for maintaining that Whois data. The registrant, whether that's the reseller or the reseller's customer, has obligations to keeping that record current and up-to-date.

So I guess from my perspective, if a reseller is functioning properly,

their role is transparent.  It is the registrant and the registrar of record who may be a wholesale registrar with intermediary, many layers of resellers in between.

If the reseller is appearing, or the web hosting company, or the website designer or some other entity is appearing in the Whois data as the registered name holder, then they are the producer of that data.  They may have another customer who they are doing it on their behalf and there may be several layers and chains of registrants as well.

Susan Kawaguchi:        Okay.

James Bladel:           But ultimately there are only two entities; the registrar of record, the maintainer, and the person who is listed as the registered name holder.  There may be layers in between that are artificially - that the market has created additional complex distribution channels, but I still think the definition is valid for those cases.

Susan Kawaguchi:        So if in a case where you can just not get a Whois,  you can get a thin Whois, but cannot find a thick Whois, and it's a reseller, you know it is, well, in the thin Whois you can find the registrar and you talk to the registrar and they say "oh no, that's a reseller account. You'll have to talk to them." and sometimes they divulge that but literally there is nowhere on the net that I can find the Whois record

Emily Taylor:                    If I can just - this is very -


Susan Kawaguchi:          I know. It's real detailed.


Emily Taylor:                    No, it's actually - I was actually going to say that this is a source of frustration that I'm hearing. Obviously we're not going to be able to unpack all of the issues, but I think that the sort of concept of who is the creator of this data. Who's got control over the data? Who gives it and who has responsibility for it?

So as I understand it in those terms, it is the registrant who is ultimately in control of the data that's been given, but then once it has been given there are two people, two legal persons, who have responsibility for it. There is the registrants themselves, and they have various penalties if they don't comply, and there is the registrar of record who also bears a responsibility; may not have necessarily the means of control.

But if you look at the concept of responsibility and control, the registrant has control, has a sense of responsibility maybe. The registrar of record also has a responsibility, not necessarily control. The role of the reseller, their role in the ecosystem, the supply chain: their role in complicating, fuzzying up the picture is an important one, which I think we note. So what do we want to do on

producers?

Do we want to make this grouping take on a similar task to what we've done before? Do we want to have a bit more discussion on the issues? Is there somebody, I think we need a bit more of you. Also, I'm just raising a concern that we've got. Wilfred, I think you're on three or two groups already. Let's just -

Wilfried Woeber: Two and a half.

Emily Taylor: Okay, two and a half. I think lets share the load. If you're not in a group and you feel that you can contribute. So we've got: James, Susan. Any others who perhaps aren't -

James Bladel: This is it. This is a small -

Emily Taylor: Small point.

James Bladel: Small part of the definition.

Emily Taylor: Okay.

James Bladel:             Maybe just two is probably.

Emily Taylor:             Okay.  Step - okay, we're fine.

Wilfried Woeber:           I'd still like to be in this one because of the resource registry background because we are having similar things.  So I might not be as active in this one as in the others, but I'd like to keep my plug in.  Thank you.

Emily Taylor:             I wasn't trying to discourage. I was just trying to keep an eye on workload.  So that team of three, so if the team of three agree to we're going to set out time frames at the end but in the same pattern develop some working definitions, run them by the group, let's go out to public comment on them.  Okay?  Applicable laws, now we've got several choices on how we tackle this weighty subject.

We can - there's a broad spectrum of approaches from - I think in the military they call it "Big hands, small map" like THERE, right?  There are lots of applicable laws, people.  We know that.  Or we can go right to the other end of the spectrum and say should we produce a compendium of all the applicable laws in every possible circumstance?  Now, ok?  No?  Wilfred says yes. Okay. Okay, so I don't know how many of you had a chance to look at that privacy law library that I distributed "The Morrison Enforcer", but that

gives you a taste of just how many laws are out there just under the category of privacy law. It's huge.

Sharon Lemon: During the conference call, the last comment that Fiona made was on applicable laws and she said you don't want to go into the definitions of that. You just need to consider that there are different laws in different countries and how can ICANN cope with setting policies in their environment.

Emily Taylor: So what I'd like to do is ask Omar and Kim to just introduce the subject, tell us where you got to. And then? Yes? I'd like our discussions to focus less on the substance of what is an applicable law in different jurisdictions. I think we can go on probably for the rest of the year on that. Let's try and focus our remarks and our approach on what is going to be a workable approach for this group on the subject of applicable laws. Okay, so over to you Omar and Kim.

Kim G. Von Arx: Omar and I haven't actually had a chance to meet. But we've just collaborated on it over e-mail and the last, the very last draft I edited it a little and I have not consulted with Omar so he might have some comments or objections with respect to some of the edits I made. But I don't want to actually go into the details that I discussed in the paper itself. I just wanted to highlight the big parts, which I thought are important. I do understand Bill's particular

comment with respect to that he actually posts on the mailing list that applicable law absolutely has, as Emily actually pointed out as well, has a vast sea of possible documentation out there.

And I however, do believe that at the core of the question that actually addresses the Whois in particular is actually going to be based, or should be based, in privacy law and data protection overall. And I put down actually in bullet point number 3, sort of the three main reasons I thought, at least suggests that privacy might actually be the foundation.

And then after that, however, once that is established, then absolutely the question as to what other laws for example impact the legitimate interest of having access and use and whatever else of the Whois, is then going to be a question of other areas within the legal framework from whatever states we're talking about.

And that's pretty much it. I'm sure there's going to be lots and lots of comments and disagreements, but at least I wanted to put out this particular paper as an introduction to the topic and help at least and facilitate the discussion so we don't just walk around, jump around the bush.

Emily Taylor:                    Thank you very much, Kim and by the way -

Kim G. Von Arx:               Omar? Do you have any comments, Omar?

Emily Taylor:                    Yes Omar, I was just going to thank both of you for this work on behalf of the whole team.  Before I throw the floor open, can I ask you, Omar, if you have any comments to add to Kim's remarks.

Omar Kaminski:                  I would.  Thank you, Kim, for this late draft.  It's a work in progress.  We want to improve this a little more or a big more.  Thank you.

Emily Taylor:                    Peter wants to come in.  James, Kathy, Bill.

Peter Dengate Thrush:            Perhaps this is a controversial thing to say but I'm not convinced just at the moment that this is something we need to answer.  The, if we read the sentence which talks about applicable laws, it says that ICANN commits to enforcing its existing policy subject to applicable laws.  So this is presumably something that ICANN is doing right now.  It's presumably something that ICANN has given some thought to.

How it's enforcing it in accordance with applicable laws to the extent that we make recommendations that are going to be relatively broad and then they'll be picked up by the relevant policy making parts of ICANN who will give full consideration to the details such as: not doing anything which will cause people to break

applicable laws.  I'm not sure how much time we need to give to it to be perfectly honest. Perhaps I'm missing something.  That's just an initial thought.

Emily Taylor:          James?

James Bladel:          Yep, coming down pretty much in the same direction as Peter.  I think that to dive in here and try to be prescriptive is futile and we won't get there and it will be constantly – the ground will constantly be shifting under our feet if we try to do that.  Perhaps it's enough to ask ICANN what their view is on this and how it affects their contracts.

And if they feel there are sufficient safeguards in their contracts to allow people to make the claim that the contract is a counter to their local law.  And what the procedure is for making that claim and verifying that claim and doing something about it.  I think that's probably as far as we would have to take it.

Emily Taylor:          Kathy?

Kathy Kleiman:         Listening to Peter and trying to echo it back.  Is it?  It sounds like a question that might be legitimate for us to ask is: is ICANN enforcing its law?  Is Whois policy subject to applicable laws?  If

that's the case, then at least some sense of applicable laws, maybe not all of them, but that this idea…Lynn, what was the term you used? General themes, general common themes and principles of data protection privacy laws might be relevant. And in addition to asking ICANN, it sounds like a question we should be asking the community as well and those people that we're reaching out to: perhaps law enforcement, the ICANN community, just to kind of do a check on this. I think - Peter?

Peter Dengate Thrush: Oh, sorry. I didn't want to jump in but look; I agree that it could come up somewhere. What I was saying was in terms of trying to define it, I think we should not. I think Bill…if nothing else James' comment "the ground shifting under our feet" even if we did manage to think we'd defined it, there's nothing to stop countries from making new laws whenever they do. I know privacy laws in my country are currently under review and there's going to be new legislation and this will be happening all the time.

If ICANN staff can't tell whose policy isn't being effectively implemented because of national laws and so on, obviously we can follow those paths down and there's a whole bunch of questions we can ask about it. But I think trying to define it is going to be difficult.

Bill Smith: Sure. First, I'd like to thank Omar and Kim. This is, it's not quite a treatise, but I think it's a very good document in terms of privacy

and what is out there and the fact that it is very broad. It's all around the world, and there is a fair amount. There's also a lot of depth to it as well. I share Peter's and James' opinion. I believe on terms of if we attempt to define and be proscriptive, we will spend all of our time, and then some, attempting to do that and it will only be effective for a moment in time because it will change the next second.

So I would prefer that we not go too far in this. I think it may be appropriate, though, to talk about privacy in some detail. To explain: ok, there is tension between privacy and what I would describe as consumer protection or consumer trust. There are consumer protection laws, many of them around the world, and I think there is tension between the privacy of data protection and consumer protection at times. One time they're on the same side and on other times they're on opposite sides.

So, but I also think it would be important of us if we're going to do that, to also mention that there, as is in the document, there is privacy data protecting criminal, torte, contract, regulatory and many, many more. Fisheries were one I hadn't thought of. Right? Okay. But yeah, I can imagine why a fisheries agency would want to have access to Whois information. I hadn't thought of that before. To me it shows sort of the breadth of this.

And if nothing else, putting that down, how broad this really is for groups that follow; to say really, you have to consider everything. It isn't just this or this or this. It's, the internet is very broad.

Emily Taylor:                      Kim?


Kim G. Von Arx:              I just have to say that I'm fading here very quickly so I might not be very coherent.  But actually in response to the previous three: Peter and James and Bill, I do believe that we need to define.  And I'm not saying it has to be legally and completely accurate and boxed tight into a watertight box, but we should define applicable law. Otherwise our analysis and our review of, for example our legitimate interest, is absolutely futile.

How can you determine legitimate interest based on nothing?  We have to at least base it on something and then work our way from there.  And in order to actually understand what legitimate interest is, we have to understand what is it actually that is being protected. And for all intent and purposes, the Whois information, the personal information Whois database, is protected under various state privacy regimes, under the international convention on privacy laws and has been obviously implemented actually by a number of countries in the constitutional rights.

And once we have established that, at least in principle, personal information is actually protected then we can actually chop off some pieces and say there is legitimate interest based on, for example, law enforcement reasons for criminal law, who knows what.  But I don't believe that just approaching this from a vacuum

and just leaving it "as is" is going to lead us or help us lead us down the most efficient path.

Emily Taylor:             Kathy, Bill, Lynn.

Kathy Kleiman:        Just a thought on how valuable the discussion with Larry Strickling was on this.  Because I wrote down: he said it a few times, that one of the questions they expect us to look at is this balance between privacy and accountability.  And this seems to me to be key is, I mean a number of applicable laws appear to go under consumer trust and the investigation.  But this here is, this is about the other side of that seesaw, the balance, which is data protection and privacy.  So I think we have to look at it.

And I'm in favor of everyone who does not want to do a deep dive into every privacy and data protection law in the world but the common principles, the common themes.  Because this has been a sticking point within ICANN for years, frankly. And at some point we'll hear from the Article 29 Working Party, they were sorry they couldn't come in this meeting, but they might be a good place to start asking some questions.

Bill Smith:             I agree that data protection is one of the things that was mentioned in the call, ok, and the tension between that and accountability. However, if we take as a starting point that data protection is the

first thing that we must deal with, ok, or it is of paramount importance, I would suggest that we're going at it backwards. Because if we look at this data, Whois data and it's intended use, historically it was intended for use by the public; anyone who had access, and for certain purposes as evidenced in the GAC Principles as an example: assisting businesses, other organizations and users, combating fraud, complying with relevant laws, safeguarding the interests of the public.

Okay. That's the purpose for this information. So maintaining it and so the purpose is to make it available so that entities can safeguard the interests of the public, I believe. So that's one thing that is the purpose of this. And the data protection laws, I believe you would say "Ah so the purpose of this is to do such and such". It's made available, is it being used in that manner?

And if so, then that is a perfectly legitimate use of the data that is made available publicly. Other us of it, would not be legitimate. But to start and say "Well, we have to make sure that data protection on this data is absolutely maintained" is backwards. It's not how Whois started, ok. And the data protection laws came well after this started. Yes?

Emily Taylor: Okay. Okay people, we're not going to sort out the substantive issues here. I hear you. I've got Lynn here. Lynn, James, Lutz, Kim, Michael. Anyone else? Sharon? You might as well come in. Okay. So let's go. Lynn.

Lynn Goodendorf:        Okay, because I follow privacy law around the world, I think it's important to say that one of the challenging things about privacy law is that it's still an emerging area of law. That even though there are a lot of laws that have been created, there are very few decisions and court rulings and case law that typically are used as ways of interpreting how the law is applied into actual practice. So because of that, that's why.

Emily Taylor:           Sorry to interrupt you, Lynn. Can we have just one conversation at a time?

Lynn Goodendorf:        Yeah. I'll just briefly restate that privacy is an emerging area of law. So there is very little in the way of case law and court rulings and lawsuits and that type of thing: decisions that would provide more detailed guidance on how the laws are applied and interpreted in actual practice. And so this is one of the challenges of trying to, I guess coming back to "Can we boil the ocean or not". And yet I think it is important to Kathy's concern to recognize that there's been a group of people in the ICANN community that have been discontented for a long time.

And I think we need to satisfy their concern and we won't satisfy it if we ignore the questions. We need to wrestle it to the ground. And so what I'm - my ambition is to help us do that in an expedient

way so it's not belabored and we don't take a year but that at least we come to a comfortable conclusion so that we can put that to rest, and that it doesn't continue to fester and brew and make people unhappy or cause people some degree of anxiety that perhaps ICANN is violating laws somewhere.  I think we've got to put that to rest.


James Bladel:          Hopefully this is very quick but like others have stated, I'm probably at 25% now so I apologize for that.  This is more of a question for the legal minds here at the table, especially those who know every single privacy law in every possible jurisdiction.  I'm looking at you or for you.   I'm going to go ahead and go out on a limb.  Because I'm not a lawyer I can go ahead and take a swing and say I don't know what the privacy laws are in every jurisdiction in the world.

But I have yet to hear of a jurisdiction that gives you the right to a domain name, ok.  I don't know that there is a jurisdiction that says you are entitled to the right to a domain name.  So the question then becomes, in my mind: Is the act of registering a domain name, which is stated very clearly makes you a part of the public record, does this entire issue somewhat take a back seat to the fact that someone voluntarily chose, decided, used their discretion to enter the public record by registering a domain name?

I don't know if that's even a legitimate question.  I'm just putting it out there that it would be different if we were going around and

following people with cameras and writing down license plate numbers and looking up their addresses. But they're coming to us. They're coming to us for a service they're choosing to purchase. But anyway, I think that, I forget who said it, but I think you know trying to solve this is folly.

I think we've talked about it: "boil the ocean", one of my favorite visual metaphors. Really what I think we need to look at in this area is not an answer but a process. Does ICANN have a process in place where someone can say: "Hey, I'm from this island that you've never heard of and we have a brand new privacy law?

And I think that because I'm a registrant, registrar, registry, CCTLD, contract & party consultant, UDRP provider or somebody that put ink to paper with ICANN, I think that my contract is now invalidated by my new law. How do we work this out?" I think what we want to see from ICANN is that they have a process to receive those claims, investigate those claims and resolve them. That's it.

Emily Taylor:      Okay. I've got my list, which is quite long. Michael, I had you as wanting to come in? Yeah. After Kim, oh no! I'm sorry! That's my fault. I'm coming to you next then because I said. And then Omar, you wanted to come in too, didn't you? Yes. Right. Where we've got to at the moment is a sort of general resistance to "boiling the ocean" and listing out every single law even if that could possibly be done in a useful way. But also a highlighting of,

sorry, this is an issue that we're going to have to wrestle to the ground. I like James' suggestion, even if we don't adopt that exact suggestion, but this is a sort of way of how do we get through.

One suggestion I have here is: does ICANN have a process for handling applicable laws? This gives us a task which is: is there a process? Yes? No? How is it working for everybody and are there recommendations to be made. So I'm going to continue my list which I realized I've missed half the names out of, so I'm going to go to Michael first, then Omar, then Lutz, Kim, Wilfred, Kathy and Olivier. Okay? Thank you.

Michael: I would mostly agree with what Kim suggested from the very beginning. I think the approach is good but also, of course, the situation in this legal sphere is much more complicated and it has a lot of very practical …question is very theoretical. But unfortunately, or fortunately, it has very concrete practical implications and part of them they were mentioned by James.

And I would like to mention that of course not only privacy laws should be somehow analyzed when we're talking about applicable laws because in certain cases there could be a full set of different laws that governments would be happy to apply while talking about whose policies and the implementation of this policy. And of course there is a, I would say, a political question, political issue that ICANN can define or can somehow just analyze whether a law can be applicable or not and whether certain policy should comply

with this law.

In the same moment we have countries and we have legislations and we have maybe even original agreements that are not fully inline with what internet policies, Whois policies, are widely accepted.  For example, the case of the country, which is very close to Europe, which is Belarus.  It is a country in the center of Europe but unfortunately the legislation which is there is - I mean the legislation is for the use of internet by Belarus citizens and inhabitants.

They're so strict and so illogical, that any policy that we would like to develop, criticize, or analyze, it will contradict the Belarusian law because it's not our recommendations that couldn't be as strict and as strong as Belarusian authorities would like to have.  So this creates certain issues.  Of course I don't take the example of Northern Korea and the like, but the countries like the Belarusian spot of Europe and the same Europeans as ourselves, but within a different legal system.

So I think that apart from applicable laws on the national level, also need to include certain international dimension: the international public law, international private law; in terms of what is there.  Both conventions, like conventions on protection of privacy of personal data but also other documents being developed or will be developed in the future.

So we should be ready and we should somehow evaluate the Whois

policy on this current stage whether it will satisfy the development of international law, comply with the development, or not.   Thank you.

Omar Kaminski:     I believe with should improve this document, this study, by putting together some issues about anonymity.   For example: why some registrants allow the registry to hide the personal data on the Whois?   Maybe we could use some examples from a company called Domain Names.  I was explaining to the other lawyers that here in Brazil, each individual has a citizenship number.

So you need to put that number when registering for that here and each company has its number. It's for the financial issues.  And they should put this number and how to get numbers worldwide. Each country has its own rules, its own numbers, it's own way, how about to use.  You need a unique central authority to finalize.  It's a very complicated issue.

Emily Taylor:     If I could just share an anecdote from the U.K .on this.  You're intervention there just highlights how different the cultures of each country are.  For example, for the last 10 or 15 years here in the U.K. there has been an absolute raging debate about whether to introduce identity cards.  And wherein some countries it's just completely normal for every citizen to have and identity number, in other countries that is an immensely controversial issue.

So it's sort of  a, I think that intervention you made highlights this sort of the task that we have which is not to be, I suppose sociologists would call it "ethnocentric",  that we are looking at a globally applicable policy.  We will all carry our own assumptions to the table and it is a very timely reminder that what we think of as normal is very much defined by our own experience in our own country.

And perhaps we can just sort of just have a kind of  - be sensitized to that.  So, on my list I now have: Lutz, Kim, Wilfred, and Kathy and Oliver.

Lutz Donnerhacke:           The problem we have here is that we have a very old protocol developed by a completely different culture.   And the thing that makes me angry is, somebody takes a document from the 80's and saying was somebody paying for some hosts.  And in order to know who is using these hosts, require the users to put their names in a database and put this information now as a legal ground for collecting and publishing every data of every people on the internet.  Yes.  It's not correct.

I have a problem which such a legal transfer.  So I do not want to discuss history here.  I do not want to discuss how we get this protocol and how we use it, who is using this protocol and which years do we use it, for which purpose do we use it and what happens after the companies come into the internet, what happens after the crime comes into the internet.  These all are changes which

nearly got ignored by the Whois protocols, by the Whois proposals, by the Whois processes, the registration processes.

Now we are in the situation where we have to decide what to do with such old protocols, such old procedures in the current situation in the current countries. So please abstain from "We have done this 20 years ago" or "I have a document here that it is necessary to put this data in order to have this published". It's bullshit. Nobody has to put data in. Nobody has to publish data.

That's my problem here. So, sorry. We have to put the new legal ground here for this whole publication process. That's the reason why we talk about legal problems in different countries. To make a chart, if we have to invent the internet today, we have no chance to do it.

Emily Taylor: Lutz, thank your point about this is an evolving space I'm sure is familiar to Peter from a legislative point of view. I think we have to recognize in making our comments that everybody is contributing their ideas based on their experience and what they think is best for the team. If you don't agree, that's fair enough but nobody is deliberately obstructing this or bringing things up simply to annoy. So let's just take that point that people's interventions are based on good faith. So, Kim, I think?

Kim G. Von Arx: I have four points. One is: bottom line, privacy law has been

recognized by the U.N. as a fundamental right.  So it is actually a very strong right.  Like I said, I'm fading here.

Secondly, laws are, generally speaking, of course evolving.  And they actually respond to, as Peter definitely knows, from a government point of view they evolve as society evolves and changes.  And as moral and societal values change, laws change as well.  Not as quickly as society, but they certainly change and try to adapt to society overall.  And so the point of raising that what Bill raised before is that the Whois information was actually published.

And the reason for it was to well, have it operated - whatever the purposes were in the 70's when it was actually introduced.  Well, so what?  We do have now new morals, new values, new, whatever, principles which actually…and thereby data protection laws, privacy laws were introduced to encompass those particular values.  And for example, when I was at Ciro, we actually did the analysis of what information within the Whois data bases actually required from a purely technical point of view and to be honest, there was zilch.  There was nothing.

None was required from a technical point of view to be published in a public Whois accessible by everybody.  There was just zero reason.  And then thirdly, data collection and that goes in response to James.  Absolutely there is no requirement that a state has imposed on anybody, that everybody is allowed to register a particular domain name.  But at the same time, if you do actually decide to register a domain name, I do believe that you should be

entitled to a certain level of protection from that particular information to be used.

So to take an example: Radio Shack. You go to Radio Shack, you buy a piece of whatever it is, and they ask you for your phone number and your postal code or zip code. At least that's what they did in Canada. And they actually forced you, initially, until privacy laws actually came into effect and said you can't really make that a condition of whatever it is.

And they have to now actually tell you what they need that information for and they can no longer share it with whomever they want, because my guess is everybody around this table, if we give our personal information to somebody, we don't expect them to suddenly not data mind it and do whatever the heck they want with us, with it and spam the hell out of you and send you solicitations and so on and so on.

And we have to also keep in mind that there is a distinction in privacy and data protection. We shouldn't really put those in the same -

Emily Taylor:         Thank you, Kim. Wilfred now, then Kathy, Olivier and then Bill, you wanted to come back in, didn't you.

Wilfried Woeber:     Well this is going to be brief and it's partly overtaken by the flow of

the discussion. Just wanted to react to James' thing about this is a voluntary process that the registrant applies for a domain and within the framework of that application they provide the data. I learned, or we learned, in the resource registry that this is easy to get away with if there is lots of alternative ways and mechanisms to obtain a similar service or a similar product.

The closer you get to some sort of real or perceived monopoly, the harder this line of argument becomes . So if there is sort of, if there is a big crowd of domain trees and registrants and registries that are having that as a pre-condition and there is about the same number of offers to get domain names without being subjected to that requirement, you will probably find.

So if everyone sort of agrees to play along the same rules, the same requirements, and thus in reality creating a sort of monopoly, you become more scrutinized and more regulated and you have to think not twice, but three or four times about the grounds you are making your requirements. Thanks.


Emily Taylor:            Kathy?


Kathy Kleiman:           But that's exactly what we're looking at, isn't it? It is a monopoly system. This is ICANN regulating for all gTLDs. This is a monopoly system. I want to apologize to Kim for that sarcastic remark, by the way because I still agree with so many things that he

saying in pointing out that it's important. And it's interesting from a U.S. perspective to watch the growing data protection and privacy laws around the world as frankly, there's an accusation that the U.S. kind of lags behind on some of these issues.

But I've watched it in the E.U. and Japan and others, Korea, South Korea adopting data protection laws. Let me put on my registry hat because I've been a registry for a year. I was in the Non-Commercial Users Constituency for a decade before that. I'm a thick registry, guys. I have to put this data out to the whole world, globally. And that, as a counsel to my firm, as a policy director of my firm, troubles me greatly.

I think we will look into ICANN and see that there's a policy and I believe that policy means if I'm approached about doing illegal work by law enforcement and data protection commissioners, then I might be able to respond and there's a process. But as an attorney, as someone who is exposed, and exposing this data, I want to be proactive. No I can't comply with every law, everywhere, but if there are general themes and principles of privacy and data protection, I need to be proactive.

I don't want to wait until someone slaps some kind of civil or, God forbid, criminal penalty or action on the public interest registry. And I'm holding a piece of information that you guys don't have and I will share it, of course. It is a letter dated March 12, 2007 from Peter Shar, who I believe was Data Protection Commissioner of Germany, Germany or Berlin. But I believe he was at the time

Chairman of all the Data Protection Commissioners of Europe in this organization.

And he writes, and I will circulate it, but he writes and it's one of the reasons that I know I am on notice as a registry and I've been very concerned about this since February when I joined PIR. He says "the Article 29 Working Party sees in the current situation, actual conflicts between current Whois practice and EU data protection and privacy laws.

Not just potential" and I'm putting that emphasis in because put it in, "not just potential conflicts as the title of the proposed procedure on ICANN's website states" because this was a proceeding, "as a matter of fact, registrars operating in the EU states under the current ICANN registrar accreditation agreement face a present and unresolved conflict between EU data protection legislation and several international rules on one hand and current Whois practice on the other hand.". And so I will send this out to you.

And we didn't just hear from Peter, we heard from data protection commissioners in Italy and Canada, the commissioners or their very, very senior staff, and France along the lines of the last 6 years in ICANN saying "Be careful. We're putting up a warning flag that you're in some kind of violation that we see".

Emily Taylor:              Thank you, Kate. I've got Olivier, Bill, Lutz, Lynn, Sharon. And then I'm going to start to bring it to a close.

Olivier Iteanu:    Professor Lawrence Lessig of Harvard University published a couple of years ago a book entitled *Code is Law*. Okay. And this is a very big issue but I'm quite sure of two things. First, we can't say we abstain. We can't say code is law because particles code is not democratic nouns, you know? I did not vote for particles. I vote for my privacy law, if I may say. So we have to deal with the problem. And I agree with James. We have to find a process. But the process exists.

The process is a chain of contracts between ICANN, the registries, registrants and the registrars and the registrants. This is a process and we have to find consensus, we represent not all over the world, but the different areas in the west. We have to find a consensus in that and take into account what you say about privacy. But we have to deal with the problem. We can't abstain.

Emily Taylor:    Thank you. It's Bill next, then Lutz, then you, Lynn.

Bill Smith:    I'd like to suggest that we all read the GAC Principles regarding GTLB Whois services dated March 27, 2007. It was put forward to the list this afternoon. In it there are seven major items about what the GAC recognizes Whois data is now used for in support of a number of other legitimate activities including and then it lists seven. Okay? Among those are things like organizations, entities,

protecting customers, etc. Okay? So this…I realize it is an historical document. I apologize for bringing in yet another document that is of some, perhaps, only historical value, but if we are going to create things out of whole cloth I think this is not what we were brought here to do.


Emily Taylor:                 Thank you.


Bill Smith:                    There was something else. Yes


Emily Taylor:                 Lutz, Lynn, Sharon.


Bill Smith:                    Oh, I also Kathy pointed out the letter from Peter Shar. I believe I read that now several months ago. There are other letters from the Article 29 Group itself I believe, and I don't know if the Peter Shar letter actually talks about this, but I know there were comments from other data protection agencies that may be the Article 29 Working Group, basically stating in essence, if ICANN would just state the purpose for which the data is being collected, you would be ok.

And to my knowledge, I haven't seen ICANN or anyone else doing that but it's pretty much "If you tell us why you're going to collect it, then it's okay to collect it" and then people use it.

Emily Taylor:              I think that we can come up to that point last. Let us get thru the list first Lutz, Lynn and then Sharon.

Lutz Donnerhacke:          I did document topic 2, to the mailing list first for the document currently from today from the protection commissioner from the European Union, my recommendation into how to harmonize data protection laws in Europe, what are the problems, long, long list and the main problem on this document is that the politics need to maintain that data is not collected in the first place, the not collecting data is the main point here, not to collect was put on the list, I recommend to document from right.

Did a data protection working group and finish that work last year and they had a final document, it was interesting to read, because, clearly yields misuse. Thank you for the document, it has huge fonts which is easy to read. They didn't say anything else; they said "Yeah, if we have a - make a used case not applicable to local law "Footnote 1, Page 2".

Then we can use it for the following purposes, but the purposes here are historic purposes, so not the current purposes, they are used for these purposes, yes, but it might not be legal to do this in a global way, so that's the point and regarding Peter Shaw, data protection for Germany.

If you heard statements from him, please consider that he is a conservative man, he is well known in the German data protection community, to be a person who enforces law, enforces law excess, it's not protecting but an enabling person, so if you take this as a background context you might get an idea on how data protection is discussed in Germany.

We have a court order from the highest possible court order, saying, if we have no reason to collect data we are not allowed to even record the IP address, of the collection of the IP address to a user and then dial in, is not allowed anymore, since two years ago. So, even if we have an IP address, we are not allowed to collect data on the ICE peers for the law enforcement agency and say who was using this address. Now in that last few hours we would not have the data, we are not allowed to have this data.

Emily Taylor:              Ok, Lynn?

Lynn Goodendorf:     Yes, my role in this team is to be an independent expert, and what I would like to offer to help move this forward, is that, I would like to put together a presentation with some slides to share with the group in an upcoming call. And, I would say, what I would like to share is some of my experience with privacy violations that I have had to do formal responses to data protection authorities in Europe, and I have had to manage one undertaking here in the UK, for a company that was found to have an issue and they had to remediate and I managed that undertaking.

I'd learned a lot from those experiences, because this is where there concerns about been in violation with EU privacy Law. I would offer this, not in the interest of saying this is what the group should do or not do, but just to share those learning's in the hope that it might be helpful.

Emily Taylor:     Lynn, thank you, on behalf of the team thank you for that offer, can I suggest that if we have an embryonic group who are working on applicable laws, that perhaps we should join you into that group, and that, I think that sharing your learnings, what you've learned in the field if you like, the issues that actually arise, I think it would be very useful for us, as we move forward, so we thank you. Sharon you wanted to come in?

Sharon Lemon:     Yes, I was with everyone's expectations of privacy. When we came into this job, icrime was something new, and the law in most countries is about real life crime not crime in the virtual environment, so we have to shoot horn everything we do into existing law and traditional law. And when I get problems at work, you can get a bit intoxicated with the whole technology and all that is doing, I'll bring it all right down to life, real life.

Now if I wanted to take up any space out there, let it be a house or a shop, where I decided this is me, come and look at me, I cannot do that anonymously, I have to give some sort of proof of who I am, company's house if I want to trade, I have to have some sort of substance behind of who I am, that can be found out. If I want to take a house, and of course I've got other levels of privacy that you

can't come out to find out who is living there with the voters register, and I don't know why we think that somebody can entertain a space or be in the virtual environment where they can trade on completely erroneous details where they cannot be traced.

I just think is a concept that is not acceptable and the fact when we have a presentation tomorrow conversation, is just completely dishonest and criminal along the use of the internet stuff, so I think sometimes we can translate real life principles of engagement, trade, responsibility and behavior into the new environment apply those principles.

Unknown: A quick response to Bill's comment about the privacy laws, at least the privacy laws that I am aware of anyway, they do not state generically that you can just basically seek consent of collection that you want, and then that if they just state the reason why you need it, whatever the reason might be that now you are allowed under the law to collect it, for all intent and purpose, I could actually ask you to give me your DNA, your Social Insurance Number, whatever else, in order to pass thru the door, that is not how the privacy law is in Canada and actually in Europe as far as I know.

Are actually enforced or actually written, they do require reasonable and necessary reasons to actually collect certain information, and then secondly to respect to Sharon, I absolutely agree Sharon, that the accuracy of the Whois, is very important for law enforcement purposes, I just want to caution everybody around

the table that we have to definitely make a distinction between data protection privacy versus anonymity.

In Europe particularly for instance is based anonymity by the internet allows everybody to be anonymous, and there has to be some safeguards to put in place absolutely to make sure that at least there are certain accountabilities steps and that is what I stated in this document as well, that we have to make sure that is accountable, privacy allows accountability on both sides, and anonymity there goes baby with the bath water.

Responding to Lutz, some time ago, I heard him to say that the GAC document indicated that in essence that the seven items that I mentioned, where only if they were legitimate, I would like to read the paragraph that's in fact in there "2.1 – The GAC recognizes that the original function of the gTLD that is service is to provide a look up service to internet users. As the internet has evolved Whois data is now used in support of a number of other legitimate activities including.

It does have a footnote, let's point it out, and the footnote does read, if I can find it, it does not appear, subject to international law, it does not say "if these are legitimate activities" it declares that they are legitimate activities, the footnote says, "if it's legal", it's not a question of whether these are legitimate, it states that they are legitimate, and if they are legitimate, and if they are legal in some jurisdiction than they are legitimate. Now, in addition, since Kathy pointed it out in computer sharp letter, I am reading from

that on page 3 on the second paragraph, the Article 39, working party therefore recommends to modify the proposal in such a way that at least the private domain holders that use the domain solely in a non-commercial context.

The name of the domain holder should only be published in the Whois service with the explicitly given consent of the data subject. That sentence, if you read this letter in its entirety and also responding to Lutz, Peter Shaw, is not writing on his own behalf, he is writing on behalf of Article 29 "Working Group."

So it does not matter whether he is conservative or a liberal in my opinion, he is acting in official capacity, and this letter is stating fairly clearly in my opinion, ways forward, to clearly state what the purpose is, and to bring the ICANN policy and to itself into compliance with EU regulations, whether ICANN has done that or not is an open question I believe, but the letter itself does not say, "You can't collect data", it says there are problems with the current mechanism, here are some possible solutions, we've talked to you before, we'll talk to you again.

I want to be clear; I highly respect individuals rights, the data privacy, data protection, anonymity, etc. But for the purposes that this data is collected, it's intended use, we have evidence in this letter, that says "It is ok, to collect this information in certain circumstances" and to use it for certain purposes, just clearly state what it is, and move on, it's not saying is illegal.

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Emily Taylor: Thank you. Kathy, James, Lutz, Denise. Denise, where you coming in on as specific point? Do you want to come in now?

Denise Michel: Just very quickly. Over the last decade and we've given you a historical overview of all the, Whois working ICANN, there's hundreds of letter on an arrange of issues of Whois, I would just let the group know, so you've been provided on one article complain a letter from 2007, and article from a journalist in 2008, I can give you hundreds more with a variety of positions and issues.

So, just keep that in mind as you start working on the big issues, and sort of work down, into how you would like to start serving the enormous amount of positions and letters, and comments that have been filed and we can help give you a sort of balance review of comments, on particular issues, if that is how you want to approach this.

Emily Taylor: Thank you, that is very helpful. Kathy?

Kathy Kleiman: But it is a good letter, there are hundreds of letters, is true. And in another part of the letter there is another option presented called "Operational point of contact", but it is interesting, I won't read it, I won't point this as the discussion of the purpose of the Whois, and stated in the ICANN in the preceding, it was a technical purpose, to contact the responsible party for particular detail the domain name who can resolve, or reliably who can pass data to a party who can resolve issues related to the configuration of the records associated with the domain name, so a technical purpose.

So as Mr. Shaw says on behalf the working party that, if it's a technical purpose you are publishing to much data. There's too much out there, so I leave the letter to you, with a different act, but with an action plan, do we want to look it up as a question? As a matter of ICANN policy, what is the purpose of the data?

Why is it been published, maybe the GAC principle provided insight, but maybe other thing provide insight as well, and look at that purpose as it seems to be very important in a number of data protection laws, and as an action plan, look at some kind of general principles emerging and compare them against the purpose and against policies ICANN has in place for making sure that the use of the data complies with the purpose of the data. Is that a reasonable way forward?

Emily Taylor:          I've got James, Lutz. Susan, do you want to come in?

Susan Kawaguchi:     I think that to define the purpose of the use of the date at this point, I think is just over reaching and beyond the scope of what we are working on here. And I think we are over thinking this, so I do think we should be focusing on applicable laws in general, but there's two sides to that story every time, so we need to take it as very general and then move on, because otherwise we are going to be here, once again forever.

James Bladel:          So I think that I am really going to mess things up, by agreeing with everyone, I want to emphasize or highlight something that Kim said, the difference between anonymity and privacy and using

Sharon's analogy. Someone knows, who owns that building right there, by I may not have the right to know that, and I think that both statements can be fair, they are not mutually exclusive.

I think that going back into these historical reasons of why we have these, and I am going to put another note on this list this GAC document is almost ready to enter school now, is four years old, we need to get somebody to get a look at that and make sure that is still operative, and finally I think that Bill has a point, defining why we are going to use, what the technical information reasons of Whois, I think that is 20 years gone, having to justify that.

When the internet was a couple of university guys conducting research and Whois was a sheet of paper in someone's desk, maybe, we are talking a multi-billion if not trillion dollar economic engine right now. We can demonstrate its critical infrastructure in many countries and a critical part of their communications economy and commerce.

So, yes, I think that is a legitimate need to be able to match individuals to space on that system, so it's true it wasn't always required to collect this information, nobody wanted this information, it wasn't of importance but that has changed, so I think I am about agreeing with everyone.

Emily Taylor:          I've got Lutz and Olivier, anybody else wanted to come in, Peter do you want to come in? and Kim, alright, I want to move on, at quarter to and pass, and I wouldn't mind a quick break before that,

and I think other people around the room probably appreciate that too, so can we just make really sharp interventions now, and I wanted to make some proposals about what to do next and then have a break.

I am happy to point about the law been all said, that we are on different points of this area, and I think, I will not add anything more, I am in the opposite side of the law been against the GAC, the GAC been the law, I think we can do it on the coffee break or much better on the. I am finished here; I am not going to break on this subject anymore.

Olivier Iteanu:     As a European and lawyer dedicated to and specially privacy, I agree with Bill, is not illegal to collect personal data from individuals, because there are differences from individuals and organizations as long as you got the consent of the individual, you got it thru the contractor registration, but the problem is that the individual should have the option to be published or not, that is the problem.

And for example nominate for the UK  to give the option, this is the problem, so they keep on their registrar's, they keep the data, the accurate data, but they don't display it, so it's not anonymity, it's anonymity to us, but not to the registrar.

Lutz Donnerhacke:     That is actually exactly the same point I wanted to make, that we have to make sure that we really draw a distinction of opinion of what they collect and there is obviously the collection, there's the

use, and there's disclosure, so we have to make sure that you can collect much more than that you are necessarily allowed to disclose.

Peter Dengate Thrush: I just want to make a brief point. But that I just might of make it a bit broader, I just want to make a response to Lutz last comment about law been from the GAC, let me just clarify this, there's no law been from the GAC, I think when I drew the GAC principles to people's attention, I just said, you might want to at some stage, because the GAC is giving some thought to them, I certainly don't want to push them in any way, and I wanted to strongly refute that the GAC law is been for something.

One thing I should say, I am happy to consult with the GAC on with a few  emails going around while we've been talking, if people want me to take the lead on that, I'll be happy to do that, there's probably other ways to do that as well, the Chair, or talk to the Chair, what have you, but certainly no law been from the GAC and if other people from the GAC were here, is likely to be very different views within the GAC as there are on this table now.

Anyone who followed the GAC's estimates back in Brussels about the of the registrar connotation agreement which go with some of the discussions we had here, would know there where a wide range of views to similar things with people with the European countries had the same consent we've been talking about here today, about the protection privacy, anonymity, there were a full range of views, so I just wanted to say that. Certainly have a look at the principles

that are interesting, there is no law been going on, just wanted to make that pretty clear.

Unknown:

Thank you very much, Peter, that leads very nicely into what I was going to say next, which is to ask you, to really go to the GAC and perhaps this would be a suitable theme for our conversation where, I am jumping the gun, because we've got an outreach plan, which we haven't discussed. On the assumption that we do speak to the GAC, in the San Francisco meeting, perhaps some pre-prep that would be useful by the GAC members, would be to review their letter of 2007 and to ask them whether they have any changes or updates to make to it.

That would seem be a practical thing, I just wanted to draw together some of the themes that we've been discussing over the last hour or so, and I think it is quite interesting to reflect that the conversation which began with a few interventions saying there is nothing really to discuss here has been to my mind one of the most lively and interactive sessions of the day.

Although we all agree that there are an awful lot of applicable laws in the whole world, actually what we've been discussing with reference to Whois, is privacy, whether we narrowly define it in terms of European data protection law or in a broader sense of the human right of an individual to some measure of privacy which will of course differ from jurisdiction to jurisdiction, that's where we are going.

And this comes again back to the balance of the number of people have mentioned between disclosure on the one hand and that is part of the plausible clause of registration and on the other hand, the individual has some expectation of privacy in certain context. In one of themes that was drawn out by a number of people, Sharon you mentioned this, Kim, is the distinction between the individual in their private capacity and the person who is trading, whether that person is a legal entity, a company or an individual, that you have different expectations.

And I think we would probably all know the head of that, that we are a private individual in our own home, we expect a different measure of personal privacy to what we expect if we were out there and trading. So these are themes I think, that we can explore what we highlighted as relevant, is, yes, there are lots of applicable laws and they apply, we can sit here and try to make laws, this is your point Olivier, we can make our recommendations, but ultimately none of us, and not even I can, is going to override national law.

Sorry, if we thought that, we can all go home, that's not going to happen. So what themes are useful for us to explore more time hearing, the whole concept of privacy is a key concept here, and the concept also, James, this is your point about, is part of the consent, what are the purposes of collecting this data, what are people actually agreeing to when they sign up for a domain name, these are I think another area where it merits further exploration.

So, those are what I've taken out of it, I think again we've got some people that have already been working on this, I don't know whether this is a sub-group in itself, these are questions actually. I would like to have a break now, I think and move on to the outreach, but, brief question.

Wilfried Woeber:    I am just wondering, as we decided to get in touch with the GAC to question them, about sort of the current point of view, I wondering whether we shouldn't try to pose the same question to the DOC, do you still see this requirement and if yes, please give us the reason.

Emily Taylor:    The DOC as a GAC member I think would probably be able to participate in any GAC process. Probably yes, but my point here is that they might be a more recent view of the GAC as a group, but, at the same time there is the commitment, the information of commitment between the ICANN and US government. So, the point of view of the US government represented by the DOC might be slightly different than what the current community thinking in the global GAC is, it might be the same, I simply don't know.

I am just wondering, whether it would make sense whether to ask on that level and on that plane, the GAC as a body and at the same time to ask the DOC, sort of as a contractual party. If I could, on the call I heard very clearly both from Larry and Fiona, that the US government position is timely accurate public access, they believe that, it's stated in the AOC and it is the official US government

position, I could be wrong, but that is what I heard from each of them.

And I heard that with this applicable law issue, they deliberately put it on this plate. Who volunteered or were volunteers to deal with this subject, Lynn is very kindly stepped up and said that you would like to share some of your knowledge with the group, Michael did I see you volunteering, that's great. So now we have four people working on this issue, and I think to try to and make your task easier perhaps you can deal with it, rather than an extensive paper.

But to highlight some of what you feel are the relevant issues in applicable laws, bearing in mind our discussions, the issues of privacy, the issues about the supremacy of national jurisdiction as you know in the right context. The interplay between the global policy and national laws, and also the role of the individual, the expectations of the individual, does that make sense? Ok, let's have a quick - everybody, just as a housekeeping thing, before we move on, we've got a table booked at 7 o'clock.

I am aware that we have people from all sorts of time zones here and I just want to ask do you want to have it, if it's possible to move it, do you want to have it earlier or later, do you want to go back and have a break, or do you just want to finish here, and then go straight on? All right, thank you so much, everybody for just your participation and the level of energy, particularly I know that a lot of you just arrived from very, very different time zones.

So thank you, and trying to make this next bit as quick and painless as possible, alright? My first question is, can we have just a rough idea of who has managed to pre-read the outreach plan and the propose schedule. Have people had a chance to look at it in advance in the meeting and think about it.

Would people like the opportunity to review overnight and come back with thoughts? What we can do, is just walk you thru the main highlights, so, I am going to ask Kathy to introduce the documents, and I would like you all to review them over night and then perhaps before we start at 10 in the morning we could have a quick session with any comments, okay?

Kathy Kleiman:            Looking first at the one called "Who's reviewed team meetings for 2011, in person and by phone", so the landscape one has no color on them. The outreach plan, the more interesting part, is the bottom part, but let me just start with the outreach plan, I think a lot of this is agreed upon, but let me just review it quickly, that our calls, will have open calls to all in real time as this call is open.

Recorded calls will make them accessible from the website. We'll archive email and make it accessible from the website. We will publish the minute meetings from calls, and more lengthy reports from face to face meetings, we'll publish questions, working definitions in our work plan to review by the community.

Something we talked about extensively today. Now here's one that will hold a written comment period, with our questions and work in progress, sometime in February and leading into the mid-March ICANN meeting, so this might be a good time to publish some of the draft definitions, draft survey questions, things like that, put them out to the community, give them a chance to respond in both written comments.

And we are going to be there in person and hopefully meeting with lots, and lots of these groups so, give them kind of a written material from us, so that they can think about it and respond while we are there, so, that's one dead line, then meet with the community in the ICANN meeting in San Francisco. Number eight is one of that probably needs more definition, more frame work, proactive outreach to relevance to state holders, external to ICANN networks and rights to ICANN constituency is to elicit comments.

Then coming up to another opportunity to share our work, thru the comment process, so number nine, is continue outreach and sharing of materials in word, which is really another open comment period, leading into the June, ICANN meeting in the, then more openness have email addresses, archived comment list for input and information from the community, something the accountability and transparency review team did, was that they had specific email addresses for specific comment periods.

But they also just had an email address for the whole duration of their time for anyone who wants to make comments to us, anything

that straight, you can let us know, you can submitted, it was open the whole period. Publisher draft report for reviewing comment by the community in October and meet with the community and boards, discuss the draft recommendations at the November ICANN meeting, not yet set for somewhere in Africa.

And that's a mid-November meeting which allows us to than put those comments in, revise recommendations maybe as the accountability and transparency review team did and two weeks later, November 30$^{th}$ publish the final product, before the holiday season in December.

Unknown:                    One thing I did notice, in this, and it looks quite good, I haven't seen her mention the response to those who commented about the disposition of their comment, is something that certainly the last ICANN meeting I heard significant complaints about, is that people submit comments and then you never know what happened to them, and certainly in sub-standard organizations there is even, if there's a three word response, ignored, deemed it was inappropriate something like that, it just says, we actually read it and here's what we decided to do.

Emily Taylor:                Anyone else, James? Wilfred?

James Bladel:               I don't want to be cruel or torturous here, but based on this schedule and based on what we heard today, from the wishful thinking this is going to be a lot faster than the ATRT, which

optimistically it could, but let us just be practical as well, we might consider an additional.

Either, it doesn't have to be face to face, it could be more kind of a marathon teleconference, if you will, where we schedule a side of day, at some point in the September time frame.

Wilfried Woeber: We actually proposed that James, on the blue chart, right in the bottom, a face to face meeting, we haven't gotten there yet, we are talking kind of a drafting type of meeting.

James Bladel: Thank you, and if it goes anything like the one in Boston, just to let you know, I am on vacation that day. I'll be sick.

Emily Taylor: Any other comments? Sharon

Sharon Lemon: Oh sorry I just wanted to support James there I think that just that, I know this the last meeting my first and last meeting, there are going to send a new person until we met last night, to know each other this morning this was a little vague little bit and torturous, the conference calls not knowing who was saying which, without coming from so, a face to face meeting we can put it, I think is worth seven conference calls, does people knows what their work plan is they got to produce - I just support that in regard to the Austrish plan and the Item 5 the meaning of the word review.

Do we actually invite comments? On, because review from my non lady speaker situation, is inviting a reaction, do we want to do that because is just a question of review is it active or is it just for passive consumption, it's also for the, so then this is related to the other item regarding the e-mail list for reading comments and the meeting comments and that sort of things, yeah, ok.

Wilfried Woeber: And this is some of the pieces of advice from the accountability of transparency review team was, James kept me from wrong were lots and lots of confrontation - and the last ones is under schedule, and the last one is just under scheduling that of the I'm not convince that we can manage within in two weeks, after de ICANN meeting if there is substantially input, that we can actually come up with final brush up printed or whatever, the final report, just feeling uneasy.

James Bladel: So on comments I have used successfully different mail lists I'm wondering if we can use something a little bit more modern or whether we should use the Wiki so that everyone can see the comments that others are making and that spirit of openness and transparency, in addition we could give people the option to send a mail list in which case they might not be made public, I think that's.

As an example for I'll say to PayPal to make comments and they need to get them approved, where if I by send them in privately and I know they might not be publish that way, I may be able to

make comments personally from PayPal address, but it is something for us to consider.

Lynn Goodendorf: Can I just comment on that from my experience of running policy developments in the local level here and I'm not sure what the process is I cannot walk, the dumb this is, I would expect us to have a reasonable level of freedom over I would expect consultation responses people able to send us to be public to be published.

And personally I like your idea of using the Wiki or using some of sort, you know more transparent than the e-mail list and my question to the ICANN people, who actually run this processes is would break anything could that be controversial.

Wilfried Woeber: When ICANN staff and the community structure in ICANN run a comment process it's done publicly not privately the Accountability and Transparency Review Team and independent review team decided to do both private and public e-mail list, it's up to you.

James Bladel: Just a couple of observations first of all using the Wiki makes it more accessible in a particular point of time, but the Wiki is easy to edit post-effect so we lose the trail unless someone resorts to the history of a particular page, and the thing that is easier to manage in our archives mailing list it's because it cannot be removed, just an observation nothing against using the Wiki; the second thing is just from my personal style of working everything that gets

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submitted to the mailing list ends up in my mail box and I see it so is a push technology if it's a comment from the Wiki I have to stop by and collect the information, can be done there is the alerting mechanisms.

So I mean is manageable just the observation depending of what working styles are. It's just very quickly, oh just that I think e-mail once - also archives are much better than Wiki were we have to track all the versions. Just a quick response to the previous I agree with that, but actually I comment for my own purposes.

I'm just a visual person and right now I'm just very tired and I might not really understand. Can we put this in a project plan timeline so that I can see how much time actually? Oh there is. I would like to see it again, show it if possible, because then I'll understand how much time we actually have for certain task because right now I'm just looking just at the first part.

They're certain expectations for the march meeting in San Francisco and we all have full time jobs and then actually they are few who live and breathe ICANN in a daily basis and I do this on my spare time and so I, there is quite a bit of time requirements that well, bottom line there is only 24 hrs in a day, you have to sleep sometime.

Wilfried Woeber:     I think this is part of, certainly my thinking and my, somewhat surprise at the assumption from the Department of Commerce that

we pretty much that we have been entrusted on the summer, is to reflect we is I' as it may be some of us do all the things as well.

And is it something that we come as volunteers and that part the reason why we have put the project plan together as it is. Can I think I would like to try and do it again and be able to do it until I get home? Can I offer to do that and just share it with the team? Meanwhile at some point before tomorrow morning if you can have and try to look at the reading - make much getting dwelling into the details, now I thing that we can read and come back with comments tomorrow that we can handle.

Kathy Kleiman:     I just was going to share some of the comments and reviews that can percolate overnight especially for those who haven't live and breathe ICANN like some of us have, just a little about the flow and how we might fit into it. It looks like enormous time commitment and that wasn't quite the vision, I mean enormous time commitment within the ICANN meetings.

Let me just walk thru the bottom of this, of meeting for 2011 sheets, is call the face to face meeting of the Whois, yet again just a proposal, obviously our first meeting here in London with everyone here which understands what an incredible leadership we're sharing. At San Francisco envisioning that we have a full day meeting on Sunday just before the ICANN meeting officially starts, ICANN meeting always officially stars on a Monday, and the idea that we would have a quiet day the day before it's a day when a lot of meetings take place, because it's not completing with

anything else, except unfortunately for Peter with the GAC and this was drafted before Peter could join us. So that open issue, that's out there, and then.

That's the vision, well let me throw out there. Do we want a full day meeting? To sit, to plan, to review written comments, to plan for our meetings with the constituencies, to see our progress, to really have another version of today. At regular intervals. Then the proposal is for Sunday meeting and again in deference to Peter and his thoughts.

The next idea is that Monday thru Wednesday have outreach meetings to the rest of the ICANN community, Monday is a little harder because that's the official welcome, Tuesday is the Constituency days that's when the GNSO meets, the Registry meets, the Intellectual Property meets, every one meets, it's a good time to meet different groups the CCNSO, the Country Codes, those the NSO meets on Tuesdays. So that's kind of a great outreach day.

We will also be ask to have public forums where we meet the community for an hour, we've gone to the community now the community can come to us with whatever we put out there, with whatever their thoughts it's an open mic, we present but we also listen. So that is normally on Wednesdays when that opportunity is available. And what Emily and I thought and I threw it out to discussion is, not everybody has to be on every meeting, that whatever day we pick for the full day meeting would be great if

everybody was there. The outreach meetings, maybe one person from each working team could be there, something, not everyone is expected to be the entire week of ICANN meetings. But that's thrown out there form of format.

Unknown:                    Supporting what Kathy said obviously, another idea might be to, for the outreach meeting for those to who are representing or been nominating by varies Constituencies it might be an ideal opportunities to come back, do those outreach meetings as well so your Constituencies can see you active and at work, that's an idea.

So Kim want to come in, anybody else want to come in, just quickly, since we know there is going to be a conflict with the GAC and I don't know how to resolve this anyway, but I do think that Peter is very essential member of the team so we should try to, and I understand that there is another meeting on Sunday as well. Usually there is a meeting or general assemblies of -

Kathy Kleiman:              Is it possible to look at the schedule and find another time for a full day meeting or even a good four hours slog, anywhere else in the schedule or do we want to come in on Friday or Saturday before the meeting

Emily Taylor:               Or we want to do our Outreach and then meet, during the end tail of the meeting, the board meeting type of time?

Unknown:                    I was actually going to suggest, to have even a meeting the first day, to have a meeting toward the end of the meeting, towards the

end of the ICANN meeting, so that we can clear so we can collate the feedback from the different groups I think that would be a useful exercise before we go off.

Unknown: Because we all have multiple jobs, we always get into, conflict on ICANN meeting, so I propose to stay on the full Sunday meeting, and to manage any other case privately the organization, to know interesting here, and I think that they have, the responsibility to manage, that we can meet each other.

Emily Taylor: We're suggesting that we go out to, at the ICANN meeting we can meet with GAC, GNSO, CCNSO, ASO, ESAC and Public Consultation Summit. That was an unintentional omission on our part and I do apologize. Broadly comfortable with the approach? Just nod your heads. Can I ask you to come back? Can I ask to you to study the schedule overnight? And come back with any brief comments first thing tomorrow before we kick off for ICANN but please I think that way we use our time best to get together. Okay. Thank you. Peter?

Peter Dengate Thrush: I guess it would be covered tomorrow, but just a plea if there is a thought of having a meeting after like later in the session on to have the Friday and if can make that decision relatively quickly because - but I have to plan my travel quite always in advance so I'm going to be staying longer I need to get approval and all that stuff. Thanks.

| Emily Taylor: | Actually I hope that this, assuming that we can agree the schedule and outreach plan in these two days then I hope ease the pressure on people diaries as you can actually pencil in those dates, and know what's going to happen. |
|---|---|
| Unknown: | So to me it may appear that the outreach to the Constituencies is more or less set by ICANN schedule so that's Monday to Wednesday, the only thing that we really need to talk about is, or attempt to resolve is we will meet before we meet after and it so when? |
| Emily Taylor: | Probably I will need only to that, we need probably, I think Kathy and I are expecting to cover all of them, somehow and it will be nice to have at least one volunteer to cover each of those meetings you don't have to, let's be easy on ourselves let's not all attempt to cover everything. |
| Unknown: | ICANN is one of my primarily responsibilities so I will be at the meeting I believe for the entire time. So I will be happy to unless something comes that where I have to have another meeting I will expect to attend all them. |
| Emily Taylor: | I will just like to close the meeting for today. Thank you very much for your active participations thru the day and concentration which has been fantastic. We will resume at 9 o'clock tomorrow morning and so have a good evening. |

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| Unknown: | Just to housekeeping make sure to take a large pass because you'll need it to get out of the building and hand it to the reception. And tomorrow morning Peter and Sean will pick you up, again at 8:30 right into the building. |
|---|---|
| Kathy Kleiman: | Sharon can you tell people where the restaurant is? We are going to meet at 6:45 to walk to the restaurant together but it's very close to the Hilton. |
| Sharon Lemon: | Come out the Hilton; turn right, that's right isn't it? It's on the corner. |
| Sarmad Hussain: | I actually just said a short comment about the face to face meeting in San Francisco. And I was actually going to suggest that instead of having a full day beforehand I'm assuming we would have done all our preparations coming into the meeting. It's probably better to have half day before and half a day we've had consultations with the different communities so that we can at least consolidate before we go off. |
| Emily Taylor: | Thank you very much Sarmad that's a very practical suggestion. The one issue that I'd like to explore is whether people will be around for the entire time because I know that some people as part of their job will be staying all throughout the ICANN meeting others in the team would only be coming to the ICANN meeting for the purposes of this team. I'd just like to hear from any of those people about Sarmad's suggestion which just to recap is that we |

spend a half day on the Sunday.  I expect that would be small groups, just recapping, please,

Unknown:                    Actually if you take it to that other extreme it's probably better to meet for a day afterwards and not meet before so we can actually [inaudible04:35:09] that's an ultimate possibility.

Emily Taylor:              I was thinking, sorry Kim.

Kim:                         I agree with the full day actually afterwards but I do think it might be worthwhile for an hour or two to meet prior to, even if it's just for dinner.  We can just meet for dinner and then informally chat about our strategy.

Emily Taylor:              Any comments, Peter and Olivier.

Peter Dengate Thrush:     Obviously because the Sunday sort of clashes with the GAC session that sounds pretty good to me.  As in terms of GAC timetables Wednesday is usually a pretty key day.  That's the day we do communiqué drafting and so on to the extent that if we had a day afterward I would plead for Thursday at the earliest but otherwise it sounds good to me.

Olivier Iteanu:      [Inaudible04:36:05] no later than Monday, so I would prefer Sunday.

Emily Taylor:        Anybody else want to make a comment, Kathy?

Kathy Kleiman:       I want to ask a few questions of people who represent different groups as to what kind of thinking broadly what days we would be meeting. With the GNSO that's going to be Tuesday, with the CCNSO that's Tuesday. With the GAC and with ALAC in particular what are our days we'd be thinking of that outreach as we do this kind of big picture planning.

Peter Dengate Thrush:  I think Tuesday is okay.

Unknown:             I can't really speak for the GAC because we haven't talked about our scheduling of meetings but generally speaking there are meetings on Saturday, Sunday and then Tuesday. Wednesday afternoon is traditionally communiqué drafting and that is sort of essentially our only close session. It could fit in Wednesday morning but Tuesday would be the easy day or a day on the weekend if everyone is around.

Kathy:               So what we're talking about maybe with we move towards the latter day, and now we have to ask Olaf and Alice about this because we are about to conflict with the SSR Team is we're talking about coming in at least by Monday night, anyone who

wants to be there for the festivities on Monday. Monday night, Tuesday, lots and lots of meetings. Wednesday is traditionally a day for community outreach where we have a session with the public and listen. And then Thursday might be our all day session. How is that in terms of a timeframe? That would be fairly consolidated timeframe from our perspective as close as we could get it. But also I know this may double book Alice and Olaf and Denise. So if you want to comment on that.

Olaf:

Okay well as it stands the SSR has not taken a firm decision but it's either Thursday or Friday in our case it would be ideal that it wouldn't occur in the very same day. If you decided it will then we will have to find some way of cloning ourselves but I guess that's - we will have to sort that down. So but that is the current state of affairs. Alice we don't have a firm decision from their side either. Okay.

Emily Taylor:

Thank you Olaf, I have Denise and Lutz you wanted to come in too.

Denise:

Yes just to follow up on that. For those of you who are not familiar with ICANN meetings expect that most of the groups and individuals will be double or triple booked. There is really no chance of scheduling something that is not conflicting with something else. That's just the nature of the beast. I would suggest rather than thinking about staff resources that you find the time that is best for, if it's an outreach, your audience and we will

on the staff end figure out how to provide you with the support that you need.

Also one of the things the Security and Stability and Review Team is doing and the previous ATRT did in some cases that I think worked well is they issued specific requests and solicited input on in a structured way on specific issues and encouraged people to think about specific items rather than simply holding an outreach meeting and asking people to show and share their general thoughts.

What we find at these ICANN meetings is if you provide some background and some pointed questions to help people think and in terms that will be productive to your work that the outreach sessions go a lot better, so just for that.

Emily Taylor:                That's very helpful Denise.  And indeed part of our discussions yesterday we were thinking about actually asking specific questions of the GAC and I agree with you that if we actually go out in advance and give people time to prepare and think about their responses we're all going to get a lot more out of the sessions. Kathy and then Lutz.

Kathy:                        And in fact before the current plan and I know Kim mentioned that it's a very aggressive plan is to issue information for public comment.  This is what we're thinking now, what do you think? And so that we might have written comments by the time we get to ICANN but hopefully we will have oral comments as well.  So in

addition to specific questions for groups we will have that body of material that comes out before the ICANN meeting.

Emily Taylor:          Lutz thank you for waiting.

Lutz:          For the [inaudible] work I don't think it's a good idea to put a full meeting on the end of an ICANN meeting because we are going to prepare something and we want to present it.  [Inaudible] meeting if we do it afterwards it would be useless.

Emily Taylor:          Yes I can see that there is no easy answer here.  There is no particular.

Lutz:          So what's the problem with the Sunday?  We always have a conflict on every day?

Emily Taylor:          I think that what I heard from the group was yes certainly for Peter it's a conflict.  I take your point that everybody has conflicts.  I think it was you or somebody else said yesterday, this is part of the work of ICANN.

And another point which I did think is quite interesting that Sarmad raised is that we're going to get some feedback during those outreach sessions and certainly from a different experience in the internet governance forum, the outreach meetings, the open consultation meetings tend to be held the day before the advisory group meetings.  And you seem to reflect on what people have told you.

I don't think there is going to be an easy or perfect solution. I'm tempted to propose that we just stick with the original plan which is to have our meeting on the Sunday, sorry Peter and then do the outreach. I guess that those of us who are around for a little longer can meet informally or formally later on in the week if that's the way we see it going. But I think I'm also quite keen to limit the time that we're demanding of group members who are either self employed or not traveling out to ICANN for any other reason.

And for that reason I would rather not schedule a meeting on the Sunday and a meeting on the Thursday because I thinks demanding a bit too much commitment. We're going to be asking a lot of this team in the next few months. And I think my proposal is taking account of what Sarmad suggested which I think was a good suggestion, I don't think it's going to be an easy option to do.

So I propose that we stay with a one day meeting on the Sunday and then we do our outreach. As we said yesterday that is not all of us trooping around to every single meeting but maybe one or two volunteers for each of those sessions to support Kathy or myself or both of us. So we're not turning up [inaudible] handed but we are at least showing that we're all involved. Okay shall we take comments on this paper here which is - I see it doesn't actually have a title, maybe it does. It's the Action Plan.

I'm not sure how many of you had the opportunity to review it overnight? A large omission is that we intend to consult with the

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At-Large community as well at each ICANN meeting. And that's my mistake, Lutz?

Lutz:                        The plan is straightforward. There is really nothing to make it better or worse. Only one point you have missed ALAC and I'm pretty sure you've missed a lot of other organizations there.

Emily Taylor:                Thanks yes as I said I think that the idea is to use the ICANN meeting to the full. That was simply an omission. Just to take you through the highlights, what we're proposing is a call every forte night, every two weeks, which I think would be more of monitoring the work that is continuing intersessionally. And we're also proposing a two day meeting in September.

James you mentioned this yesterday. Kathy and I felt that would be essential to really get the heavy lifting done on the report and then use the ICANN meetings primarily for outreach but also as face to face. Any reactions to that would be welcome.

Peter Dengate Thrush:       If that is acceptable to the team and I do encourage it, the Boston meeting for the ATRT while it was a very stressful, I think it was very important. And I don't see how we would've made it on time without that meeting. We should start thinking now about which region or continent we want to gather on, whether that's in the US or somewhere else.

| Kathy Kleiman: | Two details about that that are emerging, one is that from - there were two weeks that were open, September 12 and September 19. And September 12 has been taken because it's an ICANN Board meeting, so we've been asked for all sorts of resource purposes to put it in the week of September 19 so that helps us zero in on a week. |
|---|---|
| | And also Marina Del Ray has been suggested as a location. It is of course ICANN's main office. It is closer to peter than some of the other locations. He came the farthest distance to this meeting. And it is an area that ICANN can work with us easily in and I hear it's a great hotel or a good hotel. Anybody from ICANN wants - |
| Peter Dengate Thrush: | Which one that Marina Inn place they had us? |
| Emily Taylor: | Sharon did you want to come in - okay let's focus people. |
| Sharon Lemon: | I've got no problem at all with the work plan it seems doable but like most of us I have to plan months and months in advance but I also have on call responsibilities so if we could get the conference calls in and the dates in and fix those in cement as early as possible that would be really good for me. Apologies but I won't be making the San Francisco trip but I will be to the others because they're already in the diary now. |
| Emily Taylor: | Great, that's good to know. Does anybody else want to come in then? |

Lynn Goodendorf:    Yeah for the September meeting, for me personally, I like the idea of California, but from the standpoint of cost and our travel budget is there a part of the world that is more economical. I mean I haven't counted up where everybody lives, but it is more expensive to come to the US for this particular time or does that matter?

Unknown:    Normally how we handle community group meetings at ICANN is we are given time date parameters and then the operations staff looks at where everyone's based and the meeting needs and gives the group a couple of options so normally based on cost and time efficiencies, that's how we choose locations for meetings, so you've identified the week, I would suggest you let Alice work with our meeting staff to identify the most cost efficient options and they will come back to you with one or two if they have it and you can consider that.

Emily Taylor:    I propose that to the group, that taking Lynn's point about the costs of these meetings that we ask Alice to come back after liaising with your people and give us some options. The dates are, is the week of the 19th of September, and we're looking for a two-day spot. Any other comments on the … Shall we try and nail the day for our calls every two weeks now? All right, Bill you wanted to come in and Wilfried, no?

| Wilfried Woeber: | I just wanted to double-check, is this week beginning with September 19<sup>th</sup> is this a decision or is this at least a reasonably fixed enough to put it into my schedule? |
|---|---|

Wilfried Woeber:    I just wanted to double-check, is this week beginning with September 19th is this a decision or is this at least a reasonably fixed enough to put it into my schedule?

Emily Taylor:    Yes, please put it into your schedule.  Alice it would be really helpful if you could come back with an answer for our next call and then we can.  So if you block out the week for now and then we will firm up both the days and the location for everybody.

Wilfried Woeber:    My apologies, I guess for many of us it is easier to right now block two or three weeks and release two of them or one of them, rather than not having a sort of forecast and then being required to move things around that have accumulated.

Kathy Kleiman:    The week before is an ICANN meeting, the week after the Jewish High Holidays.

Emily Taylor:    I think October might give us a problem meeting our deadline that we've given ourselves. We'll work with that we'll come back if there's any problems.

Kathy Kleiman:    Unless people want to use their August holidays?

Emily Taylor:    Can we just - when we were having regular calls I think we were

doing Wednesdays or Thursdays, I can't actually remember, Wednesdays I think it was, I think that fixing a day every fortnight, the same day, let's talk about time slots after we've done the day. That will help people with their diaries so how do Wednesdays work?  Not good.

Kathy Kleiman:        For Thursdays.  How are Thursdays for people?

James Bladel:         I was just going to point out Tuesdays and Thursdays are very busy GNSO days.  For anyone that's involved in any of the PDPs.  I think right now there are four on Tuesday and Thursday.  So if Wednesdays don't work then I guess I would put back to the group Mondays or Friday is also good.

Wilfried Woeber:      Just a piece of input, the Thursdays European time, afternoon is the regulators counsel phone conferences so this doesn't rule out the Thursday, but we would to make sure that there is a buffer space in between.

Emily Taylor:         Mondays?  Bill?  Let's do five minutes or so on time slots.  On the broad themes of same one every fortnight or rotate?  And thank you Bill for doing the work on what time zones suit.  Does anybody want to make any comments?

| Peter Dengate Thrush: | Just preliminary, I had a bit of a discussion with Bill yesterday looking at the options because said seem to be one of the outliers. I thought about it a little bit last night and I make a plea for rotating.  I think one of the extreme ends for me every fortnight will be psychologically damaging.  That's just a personal plea. |
|---|---|
| Emily Taylor: | I know that the ATRT also rotated their calls for the same reasons that they had people all over the globe.  I think that's a reasonable request so unless people object to that does anyone … Sharon. |
| Sharon Lemon: | I've got no objects at all, of course it's got to be the best for everyone, but if it's going to be a Monday I think it should be in the evening because Monday morning I just could not allow two hours on a Monday morning for a conference call, my mind would be elsewhere on what's happened and what we've got to clear up after the weekend.  So I would plea for Monday if we're going to have it, evening and perhaps if we need to change the time the following week, the Friday in the morning.  That's just a personal thing. |
| Emily Taylor: | Bill? |
| Bill Smith: | So, morning and evening, I understand why people would want to do that, unfortunately given a nineteen hour spread it doesn't mean anything to any single person because morning for you may be |

midnight for someone else. That's the problem we face. To do times that may be better for some individuals means others will be severely disadvantaged, two, three o'clock in the morning.

What I did was to make a chart and apologies for it being on the same piece of paper, two sides, you can't really read it straight across, but in essence, what it is all the time zones and then the green bars are where we are individually located and then the yellow columns are what I think are "best" for some version of best, definition of best, slots where the fewest number of people are severely disadvantaged.

What I tried to do was I will not start a call after midnight or before 5:00 a.m. for anyone. And there, I think, are the only columns that actually fit those criteria. Given where we are, we're actually fortunate, somewhat fortunate, with our geographical distribution, it could be worse.

Emily Taylor:        I take the point about Mondays and I don't think you're alone in that, but Monday morning is difficult.

Bill Smith:          And then Fridays actually have the same problem for people who are going to be meeting at midnight.

Emily Taylor:              Sorry James, I cut across you.

James Bladel:              Just as Bill mentioned it could be much worse and I would say that the ATRT team was much worse.  We had more people in Australia and we had also had China as well, so you know, the rotating meetings there is just no way around it.  We're going to have the Monday nights, we had the calls Sunday nights, we had calls on Saturday mornings, it's just, it's part of the remit, what we signed on for, and we're going to have to bite the bullet and recognize that everyone's going to take a turn in a painful time.

Emily Taylor:              Bill?

Bill Smith:                Well there are other options and that is to do more stuff as smaller teams and to attempt to organize the teams more geographically, so that we have a … basically there are a set of time zones who are clustered around Europe and another set kind of clustered in US, Australia is the outlier, but there are times that would work for Australia, in either Europe or the US – North America.  So that is another if we were to choose to not meet as an entire group all the time.

Kathy Kleiman:            Even if the times are changing I like the idea of picking a day that we know is the day we designate on this.  Hate to do it.  Let me revisit Wednesday.  I'm one of the people who has difficulties on

Wednesday.  Is that a better day than Mondays and should we give it a shot?

Lynn Goodendorf:     I have conflicts on Wednesdays.

Emily Taylor:       Can I suggest that we try Wednesdays and review at our next face-to-face meeting.  If it's not working for people that's … so Alice could we do Wednesdays and can you work out a rotation that's not too cruel.  Thank you.  Let's take, any more comments on the outreach plan which is the other document, sorry before we move on, can we adopt this work plan?  Bill?

Bill Smith:         One thing I see missing and I believe I sent that note to the list and that's outreach outside the ICANN community.  If we only seek input at ICANN meetings we are very insular and there are many, I believe, many interested parties who use Whois that do not attend ICANN meetings, and never will.

Emily Taylor:       Bill, can I just share some of our thinking on that because I completely share your point of view on that.  I think that, bearing in mind, James might want to come in on this, bearing in mind the experience of the ATRT, that actually moving the group around the globe and saying, "hello people, come and join with us" doesn't really work, that to do outreach outside of the straight ICANN community I have two suggestions. One is that we proactively

identify stakeholders.

This is going to flow out of a lot of the work that we have agreed to undertake now. Identify stakeholders who we should be hearing from. Write them and invite them to participate, but also to use our own extensive personal and professional networks outside of the ICANN community for this purpose.

I think that by that proactive outreach, and I'm sure many of us have experience in planning outreach and doing consultations, that really I think that it's more effective to that sort of personal outreach, or doing a planned … either identifying stakeholders and writing to them, than physically moving yourself around the globe because you can only really be in one place. Any comments on that would be appreciated. Olivier? James?

James Bladel: I think your characterization of what the ATRT did is accurate as well as I think specifically inviting, targeting folks and inviting them to the ICANN meeting to participate. Additionally I would suggest that those types of outreach or solicitations for input on specific issues or topics be held in conjunction with the public comment periods and using the same facilities that the public uses to submit comments.

One it keeps everything together and doesn't create kind of a

scavenger hunt for all the different areas where we are receiving input and two it doesn't foster this impression or perception at least that there is different tiers of input that someone who has participated in ICANN and has a very strong view on Whois versus someone who hasn't, are not being treated separately or differently.  That also helps I think, ensure that there are not distinctions of insiders versus outsiders.

Bill Smith:          But that's a fact.  There are people who attend ICANN and have very strong opinions about Whois and there are people who do not and probably never will attend ICANN who use Whois.  If we ignore input from them, or require that they attend an ICANN meeting, in order to provide input on specific questions.

Emily Taylor:          Bill, sorry to interrupt you, I don't think anybody is suggesting that.  Can I be very clear that I'm in complete agreement with you and I think many people are around this table? There is absolutely no way that anybody wants to create an impression that there are ICANN insiders and others who are somehow demanded to attend an ICANN meeting or demanded to adjust their lives in any way.

What I understood James is suggesting is that we combine our outreach in our public comment with specific invitations to stakeholders and I'm also looking to you Bill to highlight people that you think we should be contacting and we go proactively out to those groups and individuals and organizations, raise their

awareness of this and invite them to submit comments. I'm sorry; Peter's been waiting to come in for awhile. So that's what I think is anticipated here.

Peter Dengate Thrush: I think it's a good idea, I agree with James as well. I think if we're going out for public comment periods the useful thing that we could do is to use our networks and refer the people to say, "This is a public comment period." We can perhaps give them some information why it's relevant and then steer them to that and then as James says we get everyone coming through the same door, I guess.

Certainly from my point of view I'll be consulting within my government and I will also as a matter of course be keeping the GAC up to speed, so I'm more than happy to act as the conduit for government input so each GAC representative is used to consulting with their own government so this will just be another one.

I guess, though, the question is, I'm not sure if James or ICANN staff can assist, given that the ATRT is already got some experience in this, is there anything else that we can use aside from using our personal contacts. Did the ATRT do something else in addition?

Emily Taylor: Denise, you'd like to come in on that?

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Denise: So, the public comment forums, online as well as doing directed e-mailing, it's not only to the ICANN organizations and constituencies, but also to your contacts were, giving us time to translate the public comment forums so people can read and respond in multiple languages also is useful.

And I would just remind you we have a decade's worth of input on Whois and so we could also provide you quite a list of organizations and entities that have shown an issue in the Whois issue over the past several years so I think that would probably be a good start for you. At ICANN, given the global interests in our issues, we always use our on-line resources to allow people to share information and provide input so.

Emily Taylor: I've got a suggestion, which is I'm offering and Bill maybe you can help me with this, I'm offering to collate a list, Denise, yes please to have that list of organizations that we should proactively make an outreach to and I would like all of your suggestions. You don't have to go and write War and Peace about this, you can just say I have an extensive network of blah-de-blah and I'd like each one of us to think individually who can we outreach to who would not ordinarily be aware of this.

Let's put together a plan and let's supplement our outreach program

with that list and we can invite ICANN staff to help us with the back office of actually getting the communications out to those people.  I think if we pool our resources in that way I think that responds to the point that you've raised.  Now I'm aware of time, we've slightly over-run, but is everybody happy to adopt the outreach program which is the other document we were discussing last night.

Can we agree we adopt the outreach program?  Yes?  Just nod, yes. Okay adding to that the extra task that I've just volunteered myself and Bill for which is to put together a list with your assistance of people, so please everybody let me have your thoughts about who you can extend this too.  Thank you.

Now I'm going to move on to our agenda for today.  Thank you for your patience.  I'm inviting our speakers from ICANN to give us a review of ICANN compliance and policy on Whois.   Thank you very much.

Unknown:                        Hey Corin, where do I need to plug in?

Emily Taylor:                   Take a break at 11:00 so I'm sure, my hunch is that this team will want a fairly interactive session so if you could aim for about half and half presentation and discussion so we've got until 11:00.

Unknown:    I'll give a very brief overview and then Stacy Burnett will run through key compliance information activities for you and then Liz Gaser will give you an overview of policy history and current activities.  These slides will be posted on line and will be sent to you.  We'll just start running through the information.  It represents a significant amount of additional information, all of which is accessible to you.

Please feel free to stop us during our presentation and ask questions.  We want to be useful and relevant to your needs.  So as most of you should know we've built a Wiki page for the Whois team that provides background information on the range of Whois activities and information available at ICANN.   It gives you a deeper historical context.

The Whois protocol is over 25 years old now, developed by the IETF, ICANNs requirements in Whois for both the registries and registrars and gTLD space are largely unchanged since 1999.  In May of 2009, the Board approved some significant changes to the contract and the new form of the RA applies to all the new registrars and the registrars that are renewing also adopt this form of contract.

Understandably a lot of our discussion this morning will focus on the gTLD space and our contractual relationships with the registrars and registries, of course, as some members of the Whois

team have pointed out. There also is Whois data related responsibilities with ICANNs IANA function and of course registries and country code TLD operators also have Whois data.

ICANN's relationship with the registries through the ASO is in the form of a Memorandum of Understanding and there is accountability frameworks with a number of country code operators, quite a different type of relationship that ICANN has with those organizations. I'm happy to go into further detail if needed, for this group, but today I will be focusing largely on the generic space. Question?

Olivier Iteanu:        What is the meaning of the last A of the acronym RAA?

Unknown:        RAA stands for Registrar Accreditation Agreement. It is actually a contract and there are lots of synonyms thrown in the ICANN world, so stop me any time. There's also a glossary on-line that you might find useful. Another question?

Bill Smith:        Not a question, just wanted to make sure that the group understood that when this first came out, a lot of registrars were in various stages of the term of their existing RAA and the largest ones made a point to adopt this early so I think that market coverage of the new RAA is significant, probably north of 80%,

Unknown:                    Actually in the 90's now.

Bill Smith:                 90% now?

Unknown:                    Right, so it is quite a significant and relatively quick adoption.

Bill Smith:                 There was a concern when this was passed in 2009 that it was going to be 5 years before, you know, as folks migrated over, but I think registrars made a conscious effort to move over as quickly as possible to this new agreement.

Unknown:                    They did.

Olivier Iteanu:            Does this make a difference for the Whois in terms of the previous RAA and the new one?

Unknown:                    It does, and we will be in going into some more detail on that in our presentation.  As I noted, we'll be covering both compliance and policy in our presentation this morning.  ICANNs compliance activity as you can imagine have increased significantly over the last decade, as ICANN has moved from one registrar back when ICANN started over 11 years ago to a quite robust marketplace of registrars today.

The compliance offices from which Stacy Burnett is, is responsible for enforcing ICANN's contracts with the registrars and registries, following ICANN's policies. There's a whole range of activities which I'll review this morning, including audits, investigations of non-compliant claims, developing proposals to address contract issues and providing extensive information to the community and our contractors.

All of the compliance information is on line and links are provided in the Wiki page and also in this presentation. As you've heard over the last day the basic policy issues of concern in Whois include access, accuracy, privacy, obsolescence of the protocol, costs of change, just to highlight a few of the issues that have been the focus of policy work over the last decade.

As we've also noted for you, there has been over 10 years of community efforts to consider changes in the Whois arena, a whole range of task-forces, working groups, a number of workshops and forums and ICANN meetings over the years, several surveys and other research efforts.

Olivier Iteanu: When you say access, do you mean registrars hide the Whois? What do you mean by access?

Unknown:                    Issues such as bulk access to Whois data, and considerations of …
and of course there's the basic issue of privacy and law-
enforcement access. There have been suggestions of tiered access
and Liz will go into more detail of how the sorts of access issues
and options have been considered over the years.

So there have been some significant policy changes over the last
couple of years that are detailed on the information Wiki page and
Liz will highlight for you today. As I've noted we have a
voluminous record of policy discussions and inputs available to
you, yes.

Sharon Lemon:               It was mentioned yesterday, just mentioned again, I didn't
understand it, what's the issue of bulk requirements or bulk access
… what does that mean and why is it an issue?

Unknown:                    Liz I think you have. Liz has a slide and some more detailed
discuss on bulk access and if we can put a pin in that question,
which is a very good one, I want to make sure especially for those
who aren't as familiar with our Whois activities to give them some
context, for this discussion, and Liz will be getting into bulk
access, perhaps more than you want to know, in just a few minutes.

All of our policy activities and historical records are also on line.
I've included a link in this slide and again the information is also

on your Wiki. The affirmation, specifically calls out responsibilities in the Whois area which is indicative of the high priority that the community and the US government and ICANN place on this topic.

Going back to 2006, previous to the signing of the Affirmation of Commitments, ICANN had annual agreements, Memorandum of Understands starting with the US government in 2006. Each joint project agreement they were called Joint Project Agreements, essentially contained the same language and I've included a link here for you. The Affirmation language saw the addition of applicable laws to reflect the changes that had occurred in Whois over the - I think in 2008.

The Affirmation objective in terms of the Whois review includes an assessment to ensure that our policy and implementation is effective and meets the needs of the community. A particularly key challenge and a very valuable deliverable from this group would be helping us to develop the right measures in this assessment and providing us guidance and recommendations on the metrics that we should use in identifying gaps and benchmarking our activities in this area.

Wilfried Woeber: Could we just go back to the last slide? Sorry to interrupt you.

Unknown:                    Easier said than done, which is the last one, this one?


Wilfried Woeber:            No the next one.


Unknown:                    There you go.


Wilfried Woeber:            The first bullet point.  I mean it's not a question; it's just an observation that the language in the OAC is different from the wording which is used on this slide. There is a point to it.  This wording is also in line and compatible with the input we received yesterday from Strickling.  I think this is something to consciously note within the group, that this was input from the US government, this is also sort of an indication that this is ICANN's understanding, what the language in the AOC means, just to keep that in our minds.


Emily Taylor:              Yes, thank you Wilfried, I also just sort of noticed that and I think that's a point well made that we can spend a lot of time defining law-enforcement defining consumer trust, but the signatories of the agreement are thinking of those terms in quite a wide way and quite an encompassing way.


Unknown:                    Yes, and I think the intent of both signatories is in alignment on this issue as well.  Again, I'll turn it over to Stacy Burnett in

Compliance and pull up her slides.

Stacy Burnett: Good morning to everyone and thank you for an opportunity to come here and speak to you about what ICANN is doing to enforce current Whois policy. I think it will be important for you to understand exactly what we are doing to enforce current Whois policy for you to make some assessments as to whether the current Whois policy is effective. This is my agenda for today.

I want to talk to you a little bit about our compliance department and how we've grown over the years, also I want to give you some understanding of what our responsibilities are which is the program overview, I want to share with you what the relevant RAA provisions are concerning Whois and hopefully there will be a lot of discussion about that I would like us to all have a common understanding as to what these provisions mean.

Also I will discuss with you exactly we're doing to enforce the current Whois policy. We're engaged in audits, complaint management, I'll talk about our termination record and how many of our terminations concerned Whois violations. Other work that we're doing to encourage Whois accuracy and Whois access and some of the compliance department's successes and challenges, our department was developed in 2007, it's not like we've had a compliance department since ICANN was created.

It was recently created and by early 2010 we had 7 full-time employees and 3 temporary employees, but like any organization changes occur and we had some departures so we now have 5 permanent employees and I made a mistake last night, I was chatting with a few people and I said we only 4 permanent employees, I neglected to count myself, I believe I'm still employed at ICANN as far as I know.

We have 5 full-time employees and we're engaged in interviews to fill some of our open positions, in fact I received a request to interview someone today and I had to tell our human resources folks that I would be in London during that time. We are making significant efforts to fill our open positions and we are undergoing an operational assessment to see how we can manage our work better.

How we can do things more efficiently and also so that we can be prepared for the launch of new gTLDs we'll need additional staff to manage all the compliance issues that we anticipate will come along with these new registry operators operating in the marketplace. I'm using someone else's computer today so if I'm slow to the draw getting this presentation please understand my lack of understanding how to work Denise's computer. These are our responsibilities.

We manage relationships with almost a thousand contracted parties. Our ICANN accredited registrars and our registry operators. We enforce ICANN's contracts and policies and that's with all these parties that I just mentioned the registrars and registries. That's not a small task even though the registrars all agree to the same contract, trying to ensure that they are all complying with all of those terms is challenging.

We conduct contract audits, we investigate claims of non-compliance and we do our best to communicate our plans goals and accomplishments. However, there's more work that can be done in that area, we admit it, but we have to make some decisions about priorities, when you are short-staffed and that's what we are right now. In addition we are responsible for developing equitable processes for addressing contract non-compliance.

As you might imagine, with almost a thousand ICANN registrars, if we don't have document processes for addressing contract non-compliance different parties might claim, well you treated us differently, just because GoDaddy is one of your bigger registrars, you're treating this little registrar bad. We get complaints like that all the time and that's why it's so important before we begin to use a provision in the RAA we have to make sure we have a process that our legal time has reviewed and one that we believe could withstand a legal challenge if one were brought.

| Unknown: | Could you mention the range in size, like people size, of the registrars that we deal with? |
|---|---|
| Stacy Burnett: | We have registrars that manage a million plus domain names, and then we have registrars that manage one or two domain names. We are in contact with registrar operators that are basically a one person show. They do everything, and then we have operators that have thousands of people on staff and significant resources to manage their processes and their business. |
| | ICANN, I believe, fairly assesses our applications who apply to become ICANN accredited registrars. You don't have to have millions of dollars in the bank and 20 years of experience managing domain names to become an ICANN accredited registrar. We do have some basic requirements but I believe we have a process established that will allow anyone with reasonable credentials to become and ICANN accredited registrar. |
| Emily Taylor: | Stacy, sorry to stop you. I've got James and Wilfried wanting to come in with questions? |
| James Bladel: | I just wanted to address what Stacy had said and this may also help with your question Kathy, it's not necessarily, there's a huge variety in size, scope, location and capabilities of registrars and I'll be the first to tell you that we're very well aware of that. There's |

also a very wide spectrum of business models. Some registrars for example are retail oriented registrars, looking for individuals.

Some are corporate or intellectual property focused registrars. Some have a wholesale model, some registrars are in fact large domain investors that are managing, that have found that operating a registrar is a cost efficient and economical way to manage a very large portfolio of single registrant domain names. I don't envy compliance when they have to take all these factors into account, or develop an audit plan that neutralizes or levels the playing field in an audit for all of these different factors.

It is a very complex ecosystem; it's a very healthy and competitive market. We're talking competition over pennies on registration. It is very active and I think one of the reasons why we have such a low cost high innovation environment.

Wilfried Woeber: The question is going to show the fact that I'm completely illiterate when it comes to managing DNS space. It relates to the first bullet point. There is the whole DNS tree, there is lots of top level domains, there are lots of people managing that, how do these figures in the first bullet actually map on to the full DNS environment, because 17 registries can definitely not be the full population of organizations managing top level domains.

Thinking about country codes domains and that sort of thing. And the other question is this 970 accredited registrars, are those only registrars that are relevant for the food chain of registries that have a contract with ICANN that is the RAA? I'm confused, I'm sorry for that.

Stacy Burnett:    The only entities authorized to sell domain names are ICANN accredited registrars. However, resellers, through their relationship with an ICANN accredited registrar can also offer domain names, but anything that reseller does, the registrar does is responsible for their actions.

Yesterday there was a question about obtaining Whois information and not being able to get certain information from the reseller. For situations like that, always go to the registrar and say, you are responsible for providing this information. I don't what to have to deal with the reseller.

You don't have to necessarily, because the registrar is responsible for certain things under our contracts. In response to your first question, ICANN's contractual compliance department does not have anything to do with country code operators. That's a whole separate entity. We have I think, commitments with these different country code operators.

| Unknown: | With several country code operators, we have what is called accountability frameworks which are not contracts but more along the lines of memorandums of understanding. Throughout Stacy's presentation this morning, when you see registrars and registries, you can put a G in front of it – it only relates to the generic. I would point out that many of our 907 registrars also provide names in the country code space. |
|---|---|
| Emily Taylor: | Can I just come in on the point of fact there that a lot of the CCTLD registries as you quite rightly say, they operate almost independently operationally and by policy. Denise mentioned metrics that would help them in the future, and one of the things that we might explore is what is out there in the CCTLD land in terms of compliance in terms of policy that might be good for benchmarking. So just let's keep that in mind. Olivier. |
| Olivier Iteanu: | One question, maybe it's out of this court, but the CTTLD they use the same root-server, the same root-servers as the gTLD? But there is no contract between ICANN and the registries. Is it with IAANA? No? |
| Stacy Burnett: | ICANN operates the IAANA function and we can provide you with more sort of historical reference to the regional internet registries and the root-servers and ICANN's relationship with them I'm sure? |

Emily Taylor: Can I make a suggestion? Just to let Stacy continue with her presentation, but let's park that CCTLD issue, there's many people within the community in the CCNSO, for example, who could perhaps I'm sure be delighted to teaching in how they operate. Let's bear that in mind and … thank you Stacy.

Stacy Burnett: This slide gives you information on what our current Whois policies are. They are in these four provisions of the registrar accreditation agreement. The first one concerns public access to the data on registered names. That means anyone in the world who wants Whois information should be able to go on a registrars site and access information about Whois data. It is always accessible, 24 hours a day 7 days a week and it has to be updated at least once daily.

That's our Whois access requirement for all registries; they have to provide port 43 service and internet access. Then we have data escrow provisions which require registrars to submit all of their Whois information, all their Whois data to an escrow agent and that should be submitted on a regular schedule and the purpose of this provision is to ensure that in the event of a registrar failure, ICANN can have that data transferred to another ICANN accredited registrar and hopefully there will be a seamless transition of that data and the registrant is not harmed from the registrars failure. Those are our data escrow requirements.

Then we have Section 3.7.7 which is a Consent to Terms of Registration Agreement. That means that all registrars have to put certain provisions in their registration agreements that tell registrants that they have to provide accurate Whois information.

Lynn Goodendorf:      And that will be disclosed?

Stacy Burnett:      The provisions don't talk about disclosure necessarily but I guess registrants understand that it will be made publicly available. Then Section 3.7.8, Reasonable Steps to Investigate Whois Inaccuracies. This provision requires registrars upon receiving a Whois accuracy claim, to investigate to take reasonable steps to investigate that claim. Note that that provision does not require registrars to investigate or verify Whois information upon registration.

As an example, someone could register a domain name and put in the Whois data the name of the registrant Stacy at address 2455693, which is a fake address, that's not my address, and that information could remain in the Whois data, falsely, it could be false information for three or four years and without any Whois inaccuracy claim being filed concerning that data, it could just remain inaccurate.

I also want to share that the registrar accreditation agreement

contemplated, when it was written the writers of this agreement, envisioned a verification process, because in Section 3.7.8 of the Registrar Accreditation Agreement, I'm not going to read it to you but our Registrar Accreditation Agreement is on line and accessible to anyone 24 hours a day.

It says "Registrars shall abide any specification or policy established according to Section 4, requiring reasonable and commercially practicable verification at the time of registration of contact information associated with the registered name sponsored by the registrar. When this contract was written, verification was contemplated.

We haven't come up with policy to enforce that or to ensure that it happens, but it was contemplated. I think that's an important point. I already reviewed what these provisions say, but -

Emily Taylor: We've got Lynn, Kathy, let's do a list.

Stacy Burnett: Did I say something controversial?

Emily Taylor: Lynn, James, Olivier, Kathy, Salmad.

Lynn Goodendorf: Stacy, I personally have used proxy services being self-employed

and having a small business I have 6 domain names that I've used proxy service and I've been very happy with it. It only costs me three dollars a year for each one in the proxy service. Is proxy service just something at the discretion of the registrar? Are there any rules about proxy service?

Stacy Burnett: So proxy services are available to anyone who wants to use a proxy service and registrars are not required to offer proxy services. Some do, but they are not required … often they set up a separate entity for proxy services for some legal reasons, but you're perfectly free to choose a proxy service. We don't have any requirements in our RAA concerning how proxy services are managed or provided.

However there is one provision in the agreement that requires if someone is attempting, first of all, even when you use a proxy service, that proxy service has to provide accurate contact information in the event someone wants to reach the proxy service provider or you, and if there is a challenge concerning the domain name, that proxy service provider has to either accept the complaint that's come to them or give up the name of the person that they are providing this proxy service for.

Lynn Goodendorf: I don't know if my proxy service is representative but there were terms of service that explained all that, and explained how it would work and that if someone needed to contact me for a legitimate

reason, that they would contract me and that I would need to respond, but the net effect of it is that my contact details are not publicly available on those 6 domains.

Now I have 2 other domains that I did not use proxy service for and so my information is out there in Whois. Those were choices that I made as a registrant, but anyway, thank you for that explanation; I do think that proxy services are relevant to a lot of the concerns about Whois.

Emily Taylor: Lynn thanks for raising that about proxies. I've got 1, 2, 3, 4, 5 people in the list. I'm aware that we've still got Liz to give her presentation, can we keep the questions quite directed and let Stacy do her presentation?

James Bladel: Yes, very quickly can we go back one slide, I wanted to add on to what Lynn was saying, privacy and proxy services are not entered into any contract with ICANN and have no relationship or ICANN compliance. Full stop.

Lynn Goodendorf: So it's just the discretion of the registrar then if they want to offer that.

James Bladel: It is a third-party and it's not under contract with ICANN, it's not

accredited, it's a completely separate function. I would caution us against going into those types of discussion with ICANN compliance because there is nothing to comply with. There are good privacy and proxy services in my opinion, in my judgment there are bad ones, but it's not ICANN's position I think to enforce any agreements, because they have no agreements to enforce with them.

Lynn Goodendorf:     That did answer my question, that it's not covered in the ICANN contract.

James Bladel:     Can you go back one slide? My original point was relative to 3.7.8 and I think that Stacy went through it and it's a very important point and I just wanted to highlight it. It is that ICANN compliance and to a large degree registrars and I think someone said a million registrations under management. That's a fraction of the names we're managing, that we're now approaching 50 million.

We are a reactive posture with regard to an accurate Whois. If it's reported to us we have concrete steps we take. If it is not reported to us then we are not obligated, but it also falls under the reasonable and commercially practical area where, how aggressively we can proactively police those. That is a point of discussion, but I just wanted to say that's an important point that Stacy made that I wanted to highlight.

Both ICANN and registrars are obligated to respond according to a certain procedure when a false Whois is pointed out to them, but they're not necessarily out there in the wild, hacking at the trees, looking for false Whois.

Emily Taylor:               Olivier.

Olivier Iteanu:             You say that the provisions of the RAA do not require the registrars to make control before registration of the accuracy of the data. Can you confirm that on the contrary it is not forbidden for registrars to do so, to make control, I mean...

Stacy Burnett:            It's not forbidden, the registrars attempt to verify Whois data upon registration at any time. They can do that, there's no restriction. However, there's no contract requirement that they do so.

Olivier Iteanu:             Do you know if some are doing that? Do you have figures about that?

Stacy Burnett:            I don't have any figures; I have anecdotal information that was given to me at this meeting as a matter of fact that certain verification processes are attempted at different times. I think James was sharing with me last night, but it's not required so we

don't delve into that, we don't ask questions about it, it is not our business.

Kathy Kleiman:          You said something about the RA A drafters contemplated or envisioned the provisions. We live in a wonderful time where RAA, the drafters weren't 200 years ago, they were a few years ago, who would some of those RAA drafters be if we wanted to talk to them.

Stacy Burnett:          I don't know, but I think I could find out.  The 2009 RAA which was recently adopted maintained that provision so apparently the people who were part of that process still saw that as important.

Salmad Hussain:          Actually, I wanted to refer back to the point where I think it was discussed that registrars are not through this contract obligated to tell the registrar that their information is going to be publically made available.  Has there been any discussion on that and why that's not enforced on a registrar?

Stacy Burnett:          I want to make a correction.  I believe they informed upon registration and I need to find that language, because I don't want you to walk away thinking that registrants don't know that their information will be public.  I believe it is.

**EN**

Emily Taylor:     I think James can help us out here, or maybe Kim.

James Bladel:     I can't speak to whether or not we're required to do this, but I did take a look at our own legal agreement, and registrars typically are adding that in to their terms of service.

Emily Taylor:     Salmad, do you want to continue?  Kim I've got …

Salmad Hussain:   Yes, so the question is, is this part of the compliance or not?

Stacy Burnett:    I think your questions is, does the RAA require that registrars inform registrants that their information is going to be public. That's one question.  I think the second question, separate from that, is what practices the registrars follow and how this issue is addressed in the registrar's agreement with their registrants, which are very separate questions.  But we'll follow up definitely on the RAA, ICANN contract aspect of it.

Emily Taylor:     I'm not sure; I think Salmad was also asking is that an element that was the enforcement team, the compliance team reviews.  Do you look at whether registrars are actually getting that consent?  Is that right?

Salmad Hussain:   Well, they'll only look at it if it is part of the compliance

requirement, right, so I guess my question was this ever discussed in the process when the RAA was being drafted and was it left out for some particular reasons, or is that something which is not discussed before?

Stacy Burnett: It has been discussed in the policy context and Liz will delve into a deeper explanation of the current policy discussions on Whois, but it has come up as an issue in the current policy discussions.

Emily Taylor: I have Bill, Lutz, Kim and Peter, Susan. Stacy can I just say if we don't get through all your slides, it's good to know they will be on line. I think that this opportunity for people actually to pose questions to you is really valuable so, let's go with it. I'm proposing to switch to Liz at half past, is that going to work, timing wise, even if we're a couple of minutes late for our break?

Unknown: Of course, and we can always schedule another round of Q & A's with the Compliance Staff or the Policy Staff as you have more opportunity to learn about this and go through this material in greater depth.

Emily Taylor: So, Bill?

Bill Smith: First, the presentation is great; I think the appropriate sections are

interesting, I think there are some other sections that are also appropriate. In particular, 3.3.4, which in part says, "If the Whois service implemented by registrars does not in a reasonable time provide reasonably robust, reliable, convenient access to accurate and up-to-date data the registrar shall abide by an ICANN specification or policy established as ..." blah, blah, blah and it continues.

So there is a point in Section 3 which is registrars obligations and it mentions accuracy, specifically and that there is action, ICANN can take if it is determined data is inaccurate. Similarly, Section 4.2.6 states areas where policies can be developed and 4.2.6 specifically is Maintenance of and Access to accurate and up-to-date contact information regarding registered names and name servers.

There, and then in the Affirmation of Commitment, it is pretty clear the ICANN, in my opinion certainly, is putting out the message that this data is accurate by this contract. It commits in the AOC to accurate information; if we read the section on our review team it is very clear that it will be accurate.

I know that the opinion of ICANN is that it can't do anything in this regard; I submit that there is language both in the contract and in the Affirmation of Commitment that indicates ICANN will do things to ensure that the data is accurate.

Susan:                          I would like to respond.

Emily Taylor:                   Yes, Susan, please.

Susan:                          You are right Bill. ICANN is committed to doing things, and doing the things that are allowed in the contract to encourage Whois access and Whois accuracy. But my concern is do we have sufficient mechanisms to ensure accuracy. Without some type of verification process, I submit to you it's virtually impossible.

Again my example from yesterday, if I don't provide proof as to who I am, when I go to a hotel, they're not going to let me in because there's no reason to believe that I am who purport to be without some type of verification. It's true, that's why people ask for identification all the time and accuracy we know is important.

However, getting there, I think there's some disagreement as to how we get there, and I believe that you believe that if the current contract allows for it right now, we can do things to make it happen and I am going to share with you through this presentation, we are taking steps to enforce the current terms, however, I don't know that that gets us to the accuracy level that the community is expecting.

Emily Taylor:          I have Lutz next, and then Kim, Peter, Susan, James, I think you wanted to come in; I've got Wilfried and Salmad.  I think realistically we'll have to either continue the conversation and rethink our schedule or we'll have to leave it there.

Unknown:               If we could do short specific questions right now, and let Stacy go through the rest of her presentation, because I know there's other elements of the contract that you'll want to hear about and activities of compliance that are relevant to some of your questions and then we can circle back to the broader debate as your schedule allows.

Lutz Donnerhacke:      Yes, I do understand the current proposals to change the registrar accreditation agreement are going in the direction that we have proxy services for the owner and [inaudible] of contacts and we have a public Whois service for the technical components of such domains.  I'm not sure if I catch the majority of all your proposals but are you aware of becoming proxy servers for a part of the Whois information to be mandatory or at least strongly recommended and only keep the technical part in public?

Susan:                 So changes to the contract are on the policy side of things, there are active discussions about how and whether the RAA should be changed further so Liz is going to cover that.  If we can defer

answering you question until Liz has a chance to go through her presentation.

Emily Taylor:        Kim, you wanted to come in?

Kim G. Von Arx:      Just quickly doing a response to Lynn and Salmad's question about the requirement to actually disclose to the registrant that the information needs to be public.  I don't think the RAA actually specifically states it but indirectly it does seem to suggest it by just referencing to another section, but it doesn't state it specifically in the RAA.  Secondly, actually in response to Bill's point about compliance and the powers of ICANN actually to enforce accuracy of Whois.

I can just share, basically agree with Stacy that it is exceptionally difficult having gone through one of those processes, myself when I was at TURA.  It is exceptionally difficult to overcome, well in essence it is on line authentication and if you don't have the person right face to face it is very, very difficult.  Just look at on line elections, how difficult they are actually in being implemented.

Emily Taylor:        Can I just intervene on scheduling.  I think this is a really useful discuss and it is obviously sparking our interest, we need to have this interaction with Stacy, and thank you very much for being open to it.  I'm proposing that we carry on until 11:00, see where

we're at, then we have our speakers from Sharon's team go on with them after a short break, at 11:15 and then Liz has very kindly said that she would be happy to resume after lunch with the presentation because I think we've made very good progress on other agenda items.

The other agenda items we wanted to cover this afternoon, I hope should be reasonably quick. I think that this is a good opportunity for us to do fact-finding so unless there are objections that's what I'm proposing, that we're on to that. Next on my list is Peter, then I have Susan, James and Salmad and Wilfried, wasn't it?

Peter Dengate Thrush: I agree, this is a really useful. The first question I hope will be really quick. Do I understand that there is actually a clause in the existing RAA that says that registrants must comply with policies on accuracy that was talked about that it was contemplated by the drafters? Is there something actually in the RAA as it stands, is there a clause or was it left out? I wasn't clear on that.

Stacy Burnett: The clause that I have read you, 3.7.8 is in the RAA

Peter Dengate Thrush: 3.7.8.

Stacy Burnett: Correct.

James Bladel:              3.3.4.


Peter Dengate Thrush:      3.3.4. Excellent, thank you, I'm happy to look at that after, I just wanted to...


Stacy Burnett:             I just want to clarify what 3.3.4 says. 3.3.4 talks about the possibility, if there is a new consensus policy developed that it can be implemented. So a registrar shall abide by any ICANN specification or policy established as a consensus policy according to section 4 that requires registrars to cooperatively implement a distributed capability.


Moving on, if the Whois service implemented by registrars does not in a reasonable time provide reasonably robust, reliable and convenient access to accurate and up-to-date data, the registrar shall abide by an ICANN specification or policy established as a consensus policy according to section 4. That is not ICANN acting independently to enforce accuracy.


That is the ICANN community developing a consensus policy according to Section 4 on accuracy which has not happened.


Peter Dengate Thrush:      Okay that answers my question. I was just wondering if it was

something in the agreement or it was contemplated and left out. My other question I guess follows up to Bill and also Kim because I'm just learning about all these clauses in the RAA. It would seem that there is some reference to registrars having accurate information; I understand that that's extremely difficult for … in some cases, but in some cases it would seem that the information is patently inaccurate.

I note that one of the things that the GAC-principles talk about is deliberately inaccurate information. So if there are fields which are left deliberately blank, or XXXXX or the information is patently inaccurate, it would seem to me that's that something that a bit simpler than checking whether Bill Smith is actually [inaudible] doing some driver's licensing, we've information that's patently inaccurate, is that something, I mean I haven't really experienced … but is this something that could usefully be looked at?

Stacy Burnett:          Peter, without an obligation in the RAA for registrar to check that, upon registration that information can sit and be patently inaccurate for years. My point is that there is nothing that requires registrars to check that upon registration.

Peter Dengate Thrush:   I think I understand that but if registrars have a requirement to make sure that Whois information is accurate and ICANN is doing compliance activities, could ICANN be doing some sort of audit to

see if there is patently inaccurate information and then going back to the registrar.  Just a question?


Susan:                      If it's contained in the contract then ICANN would have responsibility for monitoring the compliance with that contractual obligation.  It's currently under consideration, I think and has been at times whether contractual validation, whether validation should be incorporated explicitly in the contract.  That's a question under discussion in the GNO.  I'll send you the link as the latest round of discussions relating to the RAA began within the GNSO in 2009.


                            ICANN staff provided information and suggestions about various mechanisms that should be considered by the community for improving the RAA.  Validation is one of the issues that's addressed in that letter.  It's on the Wiki, but I'll send you a link so you have them and Liz is going to touch on that in her presentation as well.  It's actively under discussion.


Emily Taylor:               Did you want to come back on that Peter?


Peter Dengate Thrush:       I won't take up everyone's time, maybe at another time, but I think I was trying touch on a different issue that there may be something existing that ICANN can do rather than the registrars, like auditing for deliberately inaccurate information and then rather than the registrar validating up front, but it seems to me definition, but we

can talk about it later.

Emily Taylor:        Thank you, Susan's next on my list.

Susan:               Thank you, Susan; this is a rare opportunity to ask these questions. Back to the 3.7.8 Since ICANN is relying on the reports of inaccuracy, what does a brand owner or an individual do when those reports are ignored by a registrar, which is frequent?

Stacy Burnett:       When a report is ignored by a registrar, I would like for you to contact our department.

Susan:               In what way, because I mean I could send you hundreds of reports, if I have the time to do all of that. It's a frequent occurrence. GoDaddy, I have a direct main line into GoDaddy, there's no problems there, but I frequently have registrars that: a) do not respond, there is no information on line that they will respond to and they're obvious, they're very frank about that, they are not going to get back.

And in some cases, it's wow, I've registered ten new domain names in Facebook's name with Mark Zukerberg's e-mail address attached. You know these are obviously false. I'm the only one that registers domains for the company, so in those cases when it is

so obvious.

Stacy Burnett:     So let me share with you, I don't know if you all would like me to skip to this part of my presentation because I don't know how much time I have left.

Emily Taylor:     Stacy, you've got another half an hour so please, just relax, this may feel like an inquisition, but what you're experiencing is that people really want to know this information it's not in any way -

Stacy Burnett:     So what I want to do, and I'll come back to this but I do want to go to the part of my presentation where I talk about the Whois data problem report system, which is the system that ICANN introduced in 2002 to assist registrars with their obligation to investigate Whois inaccuracies and to encourage Whois accuracy period.  So I'm going to go to that part of my presentation very fast.

Again, this system was developed and it's the way that the public can inform a registrar that there is a Whois inaccuracy, concerning Whois data.  This chart tells you how many Whois inaccuracy reports we've received through this system over the years.  I do want to share with you from 2004 to 2008 the system accepted duplicate reports.

Triplicate reports about the same domain name, and so in my review of the data in most of the years from 2004 to 2008 almost half of the reports received were duplicate reports, so you can almost slash those numbers in half because the system accepted duplicate reports. We made some enhancements to the system in 2009 and so the numbers in 2009 represent unique domain names. Duplicate reports are no longer accepted.

This system in the past, we've studied who filed these Whois inaccuracy claims and we seem to have come up with a pattern. There have been about 10 reports that report almost 90% of these Whois inaccuracy claims. This current system allows a person or an entity, and we call that person or entity reporting the Whois inaccuracy, we refer to them as the reporter. The reporter can file a Whois inaccuracy claim and that claim is received by our system and sent to the registrar with a note from ICANN saying a report concerning an inaccuracy was received by our system concerning this domain name. You are required to investigate.

The registrar is under an obligation in the contract to investigate that Whois inaccuracy claim and about 45 days after filing this Whois inaccuracy claim, the reporter receives a note from ICANN, what happened concerning your Whois inaccuracy claim. Was the domain name canceled, was the Whois inaccuracy updated, or was there no change at all. About half of the reporters that received that message from ICANN respond back and let us know what

happened.  Another half didn't respond at all.

What we found was, we weren't getting enough data concerning what's happening with these Whois inaccuracy claims.  The system operated in that way from 2004 to 2010. We've recently made a change to the system and we're going to introduce them to the registrar stakeholders very soon because we've made a change to the system so that once a Whois inaccuracy claim is filed, it is sent to the registrar.

And in 15 days we're sending a message to the registrar concerning every Whois inaccuracy claim that is filed, and the message says what did you do in response to this Whois inaccuracy claim, did you verify the information, was the domain name suspended, was the contract information updated or do you need more time to investigate.  That way, I'm able to share with you and any audience in the world what's happened with every single Whois inaccuracy claim and that forces the registrar to either act on it or be in compliance or be on our list of people we're watching because if we don't receive a response to that, we're assuming the registrar did nothing and we're going to start sending out automatic compliance notices.

The good thing about sending out a compliance notice, is it sets the registrar up to receive a breach notice from us, because our process requires that we attempt to work out compliance issues informally

at first and that means usually we send the registrar and e-mail concerning any non-compliance issue. If they don't respond to the e-mail we'll try to call them sometimes, but as long as we make some type of information attempt to resolve a non-compliance issue and the registrar doesn't respond, we are in a position to send them a breach notice after that.

So I believe our new system will: 1) give us an opportunity to provide better statistics to the community about how Whois inaccuracy claims are being handled and in addition it forces the registrar to do something about these Whois inaccuracy claims. They are not going to be able to easily ignore them anymore, because we'll have a list of who is not responding to us and those parties will begin receiving compliance notices from us.

So that's our, I don't what to call it a resolution, but that's what we're trying to do to improve the process for addressing Whois inaccuracy claims and making the registrar respond to those claims.

Susan:              A quick question on the inaccuracy. What do you view as inaccurate? I mean, if there is one element of the registration information? Say the telephone number is 111-111-1111, but everything else is inaccurate but everything else accurate. Is that ….

Stacy Burnett:          That's inaccurate data, if one …


Susan:                 So you would accept that as an inaccurate report.


Stacy Burnett:          That would be accepted through our system as an inaccurate report.  Because, if you look at Section 3.3, these are the data elements for Whois and if any of these elements are not accurate it's considered inaccurate Whois data.


Susan:                 My goal is to be one of those top ten reporters, which would be interesting to know who those top ten are.


Emily Taylor:          Stacy, how are you doing on collecting questions, because I still have my list of James, Salmad, Wilfried and Bill who are wanting to come in.  Guys are you happy to let Stacy continue, or are you burning to ask a question now or have you forgotten your question?  James?


James Bladel:          I'm probably getting closer to forgetting the question because there are so many along the way.  I think, let's go like a stack, in reverse order.  I think that we'd be happy to help you as you said you have a direct line to GoDaddy.  There is Whois problem reporting system, we do take it very seriously, and we have a team that

monitors those responses.

I will, however, point out that system is abused, Okay , that's abused by people who, you know, I tried to by this name and someone wouldn't sell it to me, or I think it should be my name and so I'm going to report that. ICANN, to their credit doesn't make any judgments, they pass those directly on to the registrars, so it is an exercise on our side to sift through the valid problem reports from the others, so I hope you become a top ten reporter and bump out some of the noise in the system and fill it with valid data.

Emily Taylor: Can I as the group, as Stacy's giving us this presentation and it's sparking so many questions, one of the things that occurs to me is that this is a very complex food chain and a key element in it is the registrar. You pointed out that there are many registrar business models and I think that just as we are doing our fact-finding from the ICANN compliance team, pose a question to the group, we don't need to respond now.

I think it would be useful to hear from registrars in those different business models about how they view their obligations, how they respond to complaints and how they interact with the compliance team. An ICANN meeting might well be a good opportunity to do that.

| James Bladel: | If I could suggest that would be an excellent use of time with the registrars at the upcoming ICANN meetings because they will, many of the business models, not all, but many of the business models will be represented there and I would be willing as well to put together slides for our next face-to-face and discuss our role in that, but of course that's going to be from the narrow perspective of the world's largest registrar. |
|---|---|

To Bill's point, I think it's already been pointed that those provisions that he cited are for future, they're hooks for future policy development, they're not existing operations. I did want to make more of a philosophical point from the perspective of a contracted party, and I'll say registrar just so that Kathy doesn't feel like she's being roped into this position as well.

I see a very clear distinction between my friends over here on the right hand side of the table, between Liz and Stacy, there is an invisible line between them, policy development and policy enforcement. I would just say in our questioning and in our fact-finding and going through Stacy's slides, let's be very cognizant, at least from my perspective, that we do not blur that line, that the people enforcing policy are not the people making recommendations on how policy should be made and vice versa.

They can inform one another, I mean obviously they can't occur in a vacuum, but we don't want, I think from my perspective, and I'm

not speaking for Kathy here, but as a signatory to a contract, an ICANN contract, I think that those functions are currently very well distinguished within the ICANN organization and I think that they should remain so. Thanks.

Emily Taylor: Salmad do you want to come in now or do you want to wait for Stacy to continue?

Salmad Hussain: In one of the previous slides I think there was an impression which was given that registrars are not obligated to correct information, but they are obligated to act upon a report which notifies on incorrect information.

Ready 3.7.8 it present a very different picture actually, and I'm actually going to read through 3.7.8 which says: *"Registrars shall abide by any specification of policy that is established according to Section 4, requiring reasonable and commercially practicable: a) verification at the time of registration of contact information, associated with the registered name and b) periodically verification of such information and only after that it actually comes to a registrar shall upon notification by any person of an inaccuracy in contact information."*

So what I gather from this is that actually verification is perhaps encouraged by this contract and also re-verification periodic re-

verification is registrars responsibility to do that and it's something which is perhaps not audited at this time, but that doesn't mean that it's not part of the contract.

Stacy Burnett:          May I respond.  Professor this contemplates future policy.  It says registrars shall abide by any specifications or polices established according to Section 4 requiring these things.  These policies have not been established yet.  This is telling you what the drafters of the agreement were considering, but were not requirements.

Susan:          Stacy, can you talk a little bit, and I know this is Liz's area, but a little bit about the GSNO process.  Just very quickly, what it would take to implement that.

Stacy Burnett:          I want to let Liz respond to that.

Emily Taylor:          Let's deal with that this afternoon.

Susan:          Does that make sense, does that answer make sense.

Salmad Hussain:          I will actually have to read through this now and I will have to come back to you.  I must read through this whole …

Stacy Burnett: Our interpretation of that language is that concerns any future policies, adopted concerning this registrars would be obligated to them, but that is not a current obligation in Section 3.7.8.

Emily Taylor: I've got Wilfried; I've got Bill, Kim, Olivier?

Wilfried Woeber: Well this is something overtaken by events, because we having the discussion about the substance already. My suggestion would have been to continue with the presentation and to do just questions regarding the fact-finding mission here and sort of do the interpretation afterwards, but as we are doing the interpretation and trying to align the ways we are reading the language it is overtaken by events.

Stacy Burnett: Should I keep going.

Emily Taylor: I feel that people are burning to come in on this and I do want to give our speaker the courtesy of letting her finish her slides, so can we do that and hold on to our questions now.

Susan: Some of the questions might be answered if she completes her presentation.

Kim G. Von Arx: I just wanted to suggest around the table that we just stop doing

contract analysis; I mean I don't think that's the purpose of this entire presentation. We are just trying right now to find basically the operational and practical aspect. Let's not just review now every single section of the RAA. We might as well then invite the general council of ICANN to do it. I don't think Stacy and Liz and Denise are right now, they are put in a fairly difficult situation.

Denise:    Stacy will continue and finish her presentation; we'll take a running list of questions. If we don't get to them this afternoon, we certainly will provide answers in writing, so I would really encourage you, and I'll come back after your London meeting is over with a long list of questions that I have, allow you to add to it, agree as a team to what questions you have initially, and we can continue to answer questions in writing as your process continues over the next year.

Emily Taylor:    I think that's a very helpful and practical suggestion so hold your questions, make a note of them, send them to Denise and her team on the list and let's let Stacy continue.

Stacy Burnett:    I'm excited by all of your interest in what we're doing. So, what are we doing to enforce our current policies concerning Whois? The contractual compliance department conducts audits, we investigate complaints and we escalate cases of proceed to non-compliance.

I want to give you some examples of what we're doing to further all of these things that I've listed here. In terms of audits, since 2007 the contractual compliance department has engaged in 15 registrar audits and 5 of them concern Whois related provisions of our contract. This is just the list of some of the past Whois related audits.

We conducted a registrar Whois data access audit and that's when we tested registrars Port 43 services and we have a tool, an electronic tool, where we test their Port 43 services on a daily basis, so we are constantly finding certain registrars that don't have an operational Port 43 service and pursuant to our process, we send them an information notice because sometimes registrars have technical issues and they're not even aware that their Port 43 service is down, or maybe their website is not working.

So we'll send them an information notice, consistent with our process and given them an opportunity to cure, and it doesn't become a public matter, it's just, we informed you, you took care of it, it's over. In those instances where we've given multiple informal notices and registrars have not done anything to comply we've had to send breach notices.

Also, we've conducted regular registrar Whois data reminder

policy, in the past it was called just survey, because there was no requirement in the RAA prior to the adoption of the 2009 RAA that allowed us to conduct audits officially. So it was called a Whois data reminder policy survey, and this survey was sent to registrars to assess whether they were complying with this Whois data reminder policy that ICANN adopted which requires registrars on an annual basis to send a note to each and every registrant asking them to review their Whois data and verify that it's either correct or make appropriate changes.

Also they are required to remind the registrar that they are required to provide accurate Whois information. We would ask, we send out this survey document saying, did you send this notice to all of your registrants. What did the notice say, give us a copy of it so that we can see if it has all of the appropriate questions and complies with the policy. What we found by sending out that policy in years prior to 2009 when we were calling it a survey, we had about 86% response rate.

It was 84, 85, 86, and then once we called it an audit, meaning all registrars were required to let us know what they did to comply with this policy, we had I think 98% response rate and registrars let us know what they are doing to comply with this particular policy. These are some of our Whois related audits that gives you the percentage, 33% of the audits we've conducted thus far concern Whois provisions.

These are some of the upcoming Whois related audits that we are planning as I share with you, we have this Whois access audit, where we are testing whether registrars Port 43 services are available, and then we're going to audit Section 3.77 compliance to determine if registrars are including the appropriate provisions in their registration agreements that tell registrars that they have to provide accurate Whois information and update it when necessary. So we'll be checking that in 2011.

I've already talked about the Whois data problem report system. So this is a summary of how many registrar terminations we've had since 2003. The next slide gives you some information about how many of those were related to Whois violations.

Wilfried Woeber: Sorry, termination means that you're revoked the accreditation but that does not mean that they do not continue to provide the service is that correct?

Stacy Burnett: It means that they are no long accredited and they cannot provide domain name management services to the public. Not unless they operate as a reseller under someone else's accreditation.

Wilfried Woeber: What prevents them from continuing without the accreditation? Is this a technical provision or just a contract?

Stacy Burnett:     The registry operator cuts off the contract with them as well, if they don't have an ICANN accredited rating.


Wilfried Woeber:     There is a chain of …


Stacy Burnett:     Correct.  This is a summary, and as you can see, we started this compliance program in 2007. In 2007 there was already community uproar about you need to terminate some of these registrars, you need to do more.  At that point we needed to set up processes. 2007 wasn't a big year where we came out and we were terminating registrars left and right. That didn't happen and I think we took appropriate time to set up processes in addition that year we had a huge registrar failure, this registrar named RegisterFly and they were managing in excess of a million domain names.


So that consumed all the compliance department employees' time and our legal department and the whole organization was engrossed in managing that process.  Just to give you some statistics, in 2010, 4 of the terminations that we had concerned Whois violations, in 2009, 10 of the terminations referenced Whois violations and in 2008 we didn't have any terminations that referenced Whois violations and then in 2007, 1 termination referenced Whois violations.

Twenty-six percent of our terminations had something to do with Whois violations. All of that occurred in the last three years. Other Whois related work. We've published a Whois data accuracy study that informed the public about the percentage of Whois inaccuracy that we believe exists. We published a privacy proxy services study that informed the public concerning an estimate of how many domain names are registered privacy or proxy services in the top 5 gTLDs.

We provide Whois data accuracy information on ICANN's website in response to e-mail and telephone inquiries about Whois. We get members of the public, registrants wanting more information about: what are my obligations, what do I do, and so we make this information available on our website and we respond to those type of enquiringly. We provide information to registrars to encourage Whois compliance, via our regular newsletters, advisors and through outreach events.

I think that James and other registrar representatives who have attended some of the regional gatherings, they've heard from me and other compliance representatives about various compliance issues to assist registrars at understanding their obligations, so that they don't find themselves in compliance trouble with ICANN. We want our registrars to comply and we try to provide information to assist them in understanding their obligations. Not just about Whois but about all of the contract provisions.

Other efforts, we continue to enforce the contract provisions that we have right now. We contribute to discussions regarding Whois policy proposals; we contributed to policy development for the RAA amendments that took place in the 2009 RAA. We make assessments regarding our future resource needs so that we can do a better job at enforcing our contracts.

Some of our successes, as I stated in some of the previous slides, 26% of our terminations concerned Whois violations, 33% of our audits concern Whois provisions. We've recently developed this 24 hour monitoring of registrars Port 43 access tools to make sure they're providing access to Whois data to the public. We believe our registrar terminations have served as a deterrent for bad behavior and, what else.

Some of our challenges, there are community misunderstands regarding ICANN's power and authority. We have contract authority, but there are people out there who believe that we act as a regulatory agency. There are people who believe that ICANN controls Whois data, meaning if there is a problem with the data, I've had people say to me, well, why don't you just give my data to another registrar. I don't want to deal with this registrar. ICANN doesn't control the Whois data. There are just misconceptions in the community.

There are also misconceptions regarding our Whois obligations. I see that at this table, that there are differences of opinion and differences concerning contract interpretation. These are not my opinions that we are enforcing we have had considerable or lots of conversations with our legal counsel, our internal attorneys to make decisions about how we interpret these contracts and we're enforcing our contracts based on the advice of our legal representatives at ICANN.

Community expectations vary greatly regarding what the compliance department should be focusing on. This group believes that Whois is of paramount importance, but there are other groups that beliefs that transfer issues are of paramount importance. There are other groups that believe different provisions are super important. You can't please everybody and we know that.

Another challenge concerns the growth of registrars and registrations versus resources. ICANN doesn't have unlimited resources and so we have to carefully choose how we allocate our funds and our human resources, so that we can focus on what's most important and then communicating our compliance program successes. Prior to this meeting, you may not have known some of the good work we've done. Hopefully you'll walk away thinking we are working hard, because we are.

Communicating to the public, registrants, they don't even know who ICANN is usually, and so it's a challenge getting people to understand exactly what we do and so of the good work we're doing. I appreciate the opportunity to speak with all of you, I welcome to use us as a resource in the future, especially if you have a meeting in the Marina Del Rey area, we would love an opportunity to come back and talk to you and we'll spend two or three hours with you and you can just bombard us with questions.

Unknown:                    And we'll be in San Francisco too.

Stacy Burnett:              Right, we'll be in San Francisco.

Emily Taylor:               Stacy, thank you. Stacy, we all really appreciate the work that you've put in preparing this presentation and you willingness to come here and share your experiences with us. I think we all understand that Liz has kindly agreed to do her presentation in the afternoon.

I've certainly got about 4 or 5 questions of my own of my own arising from that presentation, which I've just made a note of so if we can try and collate those questions and send to the team and thank you for invitation for a renewed discussion I think that would probably be very useful. Thank you and certain sort of opened my eyes to a lot of the work that's going on, thank you.

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|---|---|
| Stacy Burnett: | Thanks all of you. |
| Emily Taylor: | Okay, coffee break, 15 minutes and then our next speakers. |
| Emily Taylor: | Okay everybody, I've got a few housekeeping announcements. First of all I'd like to welcome some observers, Mark Carvell from the UK government, and his column Adam … |
| Male1: | Adam [phonetic] ELMONDI |
| Emily Taylor: | The office of fair trading looks after consumer protection aspects and competition at the level of consumer and they've asked to join us this morning. We're just about to have a presentation by Andy Old and Gary [phonetic] KIBBY from Sharon's department and Sharon has asked me to, we have a rule of process that we've adopted that people can invoke Chatham House if they want to, we are currently streaming this. |

I've talked to the presenters, some aspects of their presentation are commercially sensitive or relate to security issues and for that reason they would prefer to have, or they request to have the stream cut off to give this presentation in confidence and then what I've done is asked them if they can then review their slide deck

afterwards and make available for the web site anything that is possible for, as much as is possible to share widely.  So that is the basis of this presentation.

If we're uncomfortable with that, say so now, because I think that Sharon and her team would need to review that.  Okay, everyone comfortable.  Oh yes, and the other thing, photos, Sharon's photographer is just going to take a couple of photos of our meeting so try to look normal.

Sharon Lemon:          These aren't for any other reason, they'll circulate among ourselves, just for the memory if you like and to make our conference room look professional.  Cause we've got speakers and everything.

Emily Taylor:           I've asked her to do her presentation, but before we do that, Kathy and I have been doing some resuscitation on our agenda during the lunch break to see what we can possibly hope to achieve for the rest of the day because I'm aware that people are going, some people are going to have to start leaving to catch planes.  In order of priority, the scope and road map of the Whois review team has been printed out and distributed.

This is the same version as Olaf sent to the list yesterday.  I hope that following our discussions that we will all feel comfortable to sign that off, that was one of our objectives for this meeting.  Have

a look at it and let's discuss it after Liz is done her presentation.

The other thing that we want to do prior to the end of today is to make some more small groups. I think we'll discuss it, but the proposal is that we have a small group looking at, call it contract review, in other words looking at the registrar accreditation agreement, looking at the registry accreditation agreement and outlining what are the obligations with relationship to Whois.

There's an important piece of work here, there is another piece of work relating to compliance. How is that enforced in practice, which we've heard about this morning. That's another thing we're hoping to do this afternoon. There was a request from some of the people to spent time in the small groups before we leave today and I propose that if we have time we let that happen and report back about 4:00.

So we'll see what time we have left before that. Olaf, just has a quick housekeeping announcement while we're all nearly still here, about expenses. So I think we'll all want to listen to that.

Olaf:                                  Right actually two, first of all, quite important for all of you, a practical matter, when the time comes when you say like Mrs. Thatcher I want my money back, then I sent you two weeks ago a couple of forms, expense reimbursement forms and the bank detail

form and I will resend those, because I suppose they are far down in your inbox by now, they should still be there but for good measure, so just send those filled out together with the copies of the actual receipts in one package to Constituency Travel and I repeat that in an e-mail as well.

The second matter is we've just had breaking news from the ICANN meeting staff, declaring that Okay , we have a number of deadlines for the meeting in San Francisco and the first one coming up is the 4th of February.  So bear with us and we will perhaps push you a little to have all the sessions identified before that time. Otherwise we get all kinds of trouble and bad treatment and all that.  So that's all for me, thanks.

Emily Taylor:    Thanks very much Olaf and I think Kathy and I can commit on behalf of the team to come back to you before that deadline with an outline.  I think we're relatively comfortable with the action plan so we'll come back to you on that.  Liz, thank you for patience, we're looking forward to your presentation.

Liz Gaser:    Thank you everyone, Liz Gaser here, I'm actually going to cover two areas today, an overview of Whois policy changes over the years and an overview of current Whois policy related work. Because I'm attorney I just can't resist beginning with a disclaimer, and that is as everyone has - there's been an awful lot of policy activity on Whois over the years and I've done my best to pick and

choose the things that I think are most important to convey to you, but we don't have the time to review everything.

So if it looks like I've missed anything that any of you think is really important or haven't provided enough detail or background or information, please stop me because I recognize that there just isn't the time to cover everything and that we're all beginning from different places. I also want to say that while I've been handling Whois, since I've been at ICANN, I began at ICANN in 2007 so the Whois work for pre-dated me and some of my expertise is simply just learning what the history was along with everyone else.

So I may unintentionally give short shrift to some of the history which is just a factor of my not being part of it for those many, many years. So with that caveat, I'm going to proceed and I'm going to start with some of what I think are the key policy changes that have actually been made to Whois over the years, and I believe that there's five that I'm gonna cover here. The first of five is this prohibition on bulk access to Whois for marketing purposes.

Those of you who are experts in the Registrar Accreditation Agreement know that there is a bulk access provision, and a requirement for bulk access. But limitation was placed on that, effective in November 2004, that prohibits bulk access for marketing for solicitation. So that's the first significant change. A second policy change is the new annual data reminder policy, and I

apologize if this isn't formatted so wonderfully.

I think what we're seeing is a little bit of a Mac. Looked really good on my PC, so I apologize for that. A new annual data reminder policy that was designed to improve Whois accuracy, which was effective also in 2004. I can see that we've got a little problem here.

Unknown:              I can pause and change the background, because the color is not showing up

Liz Gaser:           No, but it is also skipping, like, 3. Yeah, it would take me just a sec to pull up the presentation. So, if everyone could just bear with me a sec...

Emily Taylor:        While we're doing that, can I encourage you to just review these scope and road map while Liz is getting her computer set up. Won't comment on it now, but just make sure that everybody's considered it. Okay, back on track.

Liz Gaser:           Let's see how this looks. Okay, looking better already. This new data reminder policy that was effective October 2003, there is also, effective in 2004, a restored names accuracy policy, that applies when names have been deleted because false contact data was submitted, or because there was no response to any inquiries, which was also intended to improve Whois accuracy, that was effective in November 2004.

There were several policy development reports during the period of 2005 to 2007, that define the purpose of the registered name holder, the technical administrative contacts, in the context of Whois and the purpose for which the data is collected. Now, I'd like to make a comment about these reports: These reports were working group products that did not result in changes to consensus policy.

So, the definitions I think may be useful, and... Oops, I was supposed to... How is my presentation? You all can answer that later. And I thought I turned off my jabber. I never do that. But anyway, I apologize for that. So I wanted to just make reference to these reports because I think there are definitions and such that may be useful to you, but please don't rely on them as firm consensus policy.

And then, the fifth area that I think is quite important for this group as it directly pertains to this concept of applicable laws is the ICANN procedure for handling Whois conflicts with privacy law, to be used in cases where gTLD registries and registrars are prevented by local laws from complying with ICANN contract terms regarding personal data and Whois. This was actually a long procedure in coming.

It was something that the community and the GAC identified as an issue quite some time before it was actually made effective. So, I think that gives you some idea too, of how long these procedures

can take to put into place. But it was made effective in January 2008. Actually, I'd like to make one other caveat before I continue, that this presentation is very GNSO-centric, generic names-centric. That's really my background and it's where most of the policy work in Whois has been done.

But I'll candidly just warn you that I'm not as familiar with what might have gone on in the CCNSO, or in other SOs or ACs. Just moving on from that, that sort of concludes my section on policy changes to Whois.

And before I start talking about current activity, I just want to stress that when you look at the history of Whois, if you have the patience to do so on the ICANN site, and look at all the reports and activities that have gone on, these are significant policy changes. But when compared to the massive amount of dialogue on all kinds of issues related to Whois, it's just a small microcosm of the overall debate that has occurred.

So, these are significant policy changes, I think they are important for you to note. But they in no way complete the whole picture of the intense dialogue that's occurred over the years, and a lot of fact-finding and surveys, and communiques and other activities that may not directly be reflected in these policy changes.

So now I'm going to talk about current Whois policy work and once again I'm really talking about policy work in the GNSO. Before I go into detail on any of these, I want to just make clear

that we have a concept in ICANN and in the GNSO called a 'policy development process'. It is a term of art that means something very specific under the ICANN by-laws. And the ICANN by-laws for GNSO are defined in annex. A of these by-laws.

There is no policy development process on Whois going on right now, and there hasn't been since October 2007, a little bit before then. So, while there's an enormous amount of policy work on Whois that I'll describe, lots of tangible discussion, work on these studies that we've been asked to do, and working groups that are looking very closely into Whois, they are not policy development processes, which means that they aren't directly going to result in a consensus policy change, as that is defined in the ICANN by-laws.

Here are, just in a nutshell, the areas I'm going to talk about. The GNSO has commissioned some studies of Whois, the GNSO asked us to write a report on the Whois service requirements and I'll tell you more about that.

There is currently a working group that is a joint working group between the GNSO and the Security and Stability Advisory Committee, another acronym, the SSAC: standing for Security and Stability Advisory Committee, on internationalized registration data, which simply means non-ASCII, non-Latin character registration data and what to do about that increasingly common phenomena.

There are, as you heard, quite a bit from Gary, and his colleagues earlier today, proposed RAA amendments to the Registration Accreditation Agreement that directly affect Whois, but again not part of a technical policy development process. And then there are Whois-related issues that have arisen in working groups that are focused on other topics, but where they think Whois is relevant to those topics.

And two of those are the inter-registrar transfer policy and registration abuse. I actually don't plan to go into the work of those two groups, because the Whois work is somewhat tangential to the direct work that they're doing. But I did just want to mention that Whois has been a topic in those groups as well.

So I'm going to start with the Whois studies, and simply tell you, as you know already, that Whois policy has been debated for many years. The GNSO council was quite aware that there are these many interests with valid viewpoints and has struggled for many years about how to harmonize those viewpoints.

And in the fall of 2007, October of 2007, the GNSO initiated a request to staff to look into further studies of Whois that would be basically from a fact-finding perspective, provide a factual basis for further policy making on Whois and I essentially have been working on those studies ever since. We've not actually initiated any studies and I'll talk about that too.

And the council identified some study areas, asked us to look at those, and to determine the cost and feasibility of doing each of those studies, and I'm going to give you a little update on what each of the study areas are, and what's been done on each.  But just a precursor to that, we tried to be very comprehensive in soliciting views from the community following this edict in 2007; about studies the community felt should be done.

So in 2008 for example, we basically initiated a public comment period, inviting requests for studies of Whois. We got about 25 requests from the community, and we got also, during this time, a letter from the Governmental Advisory Committee dated April 16, 2008 that identified 15 areas of study that the GAC very much wanted to have done.

And through a very complex and laborious and painstaking process, we went through all of those recommendations, tried to synthesize them, find overlaps where there were some, determine what were kind-of in-scope and which weren't, and came up with a proposal. And when I say we now, this was not staff, this was the council itself, let me make that very clear.

The council came up with some specific areas of study that they then asked staff to look at the costs and feasibility of doing each one of those.  It boiled down to four broad study areas. These roughly 40 suggestions from the GAC and from the community, we boiled them down and basically put them into 4 buckets. With

some exceptions, because there were a few study areas that the council rejected, that it did not want to pursue.

But of the areas that the council wanted to pursue, something around 9 to 10 areas, and again there were some combinations even there, we went forward with these 4 areas. So, the first one is called 'Whois Misuse'. The goal was to assess whether public Whois significantly increases harmful acts, and also separately the impact of anti-harvesting measures.

This is the only study area that the council has agreed to pursue right now. And I am in the process, I'll go into some detail about what the study's gonna do, it's actually two different studies. We've selected a vendor, I'm not free to release the name of that vendor yet just because we haven't finalized the contract with that vendor and there's always the possibility that there could be a problem.

So it is my intention as soon as we finalize that contract, to announce that independent research firm. And they will proceed with that study hopefully in the next month or so. There are actually two sub-studies included in this. The first is Number 1 there: To survey registrants, registrars, etc. about past acts of misuse. Among these communities, people who believe that their public information in Whois was misused and resulted in some problem, whatever it might be.

So, that is, what we would call a descriptive study of these anecdotal occurrences. The second is to a measure a variety of

acts aimed at Whois using published and non-published test addresses. So this is an experimental type of research study that would also be conducted in this vein. And there's just some detail here that is probably too detailed for this group.

We got 3 responses, we provided this analysis with the cost and the feasibility to the council, there are links there where you can see the detail of the RFP we drafted, what our analysis was, what our recommendation was, and I'm happy to answer more information but I think there's a lot of detail here and I'm gonna talk about the other studies too. So, I just wanted to let you know that. Kathy.

Kathy Kleiman: A factual question, which is, when are you expecting the answers back from the survey? Is it within any kind of time-frame we might be able to use it?

Liz Gaser: This will be at least a year to complete. And the others haven't even been decided on yet. So, unlikely. The second area has to do with Whois registrant information - determining how registrants identify themselves in Whois and to what extent are domains registered by business or used for commercial purposes, are either not clearly identified as such in Whois, and related to the use of privacy and proxy registration services.

Again, we did receive 5 responses from staff. We've done an analysis and given it to the council, it's public, and we're just awaiting a council decision on whether to pursue this study or not. There is also the third area of study, which is: To compare a broad

sample of privacy and proxy registered domains associated with alleged harmful acts; To assess how often bad actors try to obscure their identity in Whois; How this rate of abuse compares to overall use of proxy and privacy services.

And I apologize for that abbreviation, but that does stand for Proxy and Privacy Services. We do have a distinction in ICANN about when we use the proxy service and when we use the term privacy service. A privacy service typically has the name of the registrant in Whois, we have the actual registrant, but the contact information is generally obscured and the privacy services' contact information is there in its place.

As distinct from a proxy service, where the proxy is actually the registered name holder and they license the use of the name to a third party, and it's the proxy's contact information that's present in Whois. That is a distinction we make but we do kind of mump them together for the purposes of these studies.

Again, the council has not decided whether to proceed with this study or not. And then, the fourth area of this just gives you some information about that particular study. I'm gonna actually skip this slide because I think it gets into too much detail for this presentation. This is again a lot of detail on that particular study, because there was a lot of interest in some of the details from the council so I spent a little extra time on that.

And lastly, there is a study having to do with when you have a proxy or privacy service in use. There is occasion to need to figure out who the underlying registrant is, what happens to those requests. In the ICANN terminology, we tend to refer to those in shorthand as Relay Requests and ?eveal RequestsSo, a little bit of shorthand about the terminology.

This one is the most recent in the sense that we just posted the RFP in 2010. Responses were due on the 30th of November and I'm still working on the analysis of that study to provide to the council. I have a feeling that, it's just my personal opinion, that the council may be waiting for my analysis of this study before deciding on the other studies besides that first one on misuse.

So if you're wondering what the statuses of the council's decision-making are on these other studies, I believe that's the probably the case and I hope to be providing that analysis to the council within the next month. Sharon, you had a question.

Sharon Lemon: Just a quick question, the council that have decided on the first review, does that show that their priority is actually over the Whois data being exploited, rather than not being accurate? Because if you could read that one and if I'm right, the emphasis there is, our people who are registering get attacked, sort of, with a small 'a' by different means as a result of putting their data there, rather than, what we're concerned, if it's about the spurious data. Is that a priority for the group?

Liz Gaser:   I hate to speak for the council, so I'm just going to tell you what I think, my personal opinion is. But I think really because accuracy studies were underway already, I don't think the results of that accurate study from north, from University of Chicago, was actually completed at that time. But I think part of the perception of the council was that, accuracy studies were already underway, and to focus on areas that were not already being studied.

And I should also mention that funding has been put aside, considerable funding of over US $400,000 for studies, depending on which studies the council opts to do. So this is chart which of course you cannot read, but it might be useful as backup information that just tries to summarize the studies at a glance.

So if you're kind of overwhelmed with the terminology  like 'reuse', 'misuse' and 'reuse abuse', and we distinguish between these terms for the purposes of these studies, hopefully this will be a helpful chart for you to see exactly what the status is.  And I believe there's a little extra information here, for example about the costs. The costs ironically have been, rather similar to the estimated costs for each of the studies.

About US $150,000 and roughly a year to complete, with the responses that we've gotten so far. So, it's interesting, to me anyway, that the costs just turned out to be similar to the estimates. But, this is really just intended to be kind of a status report at the studies at a glance.  And, I'll tell you that an enormous amount of

staff work is going into these studies. I know it seems like quite a long time and I particularly am quite sensitive to that.

But we've really worked very hard. If you look at the RFPs for example that we drafted, it was extremely important for us to make sure that these were testable hypotheses, that the answers we got back were coherently spent a lot time (on) with the community. Sharing drafts of the RFPs before releasing them with technical people and with researchers who really understand how to craft and empirical studies which is certainly of my area of expertise; to make sure that we were really proposing something feasible, and that the responses that we got back could actually compared to say, apples to apples.

So, please read these RFPs if you're curious about the level of detail or sophistication that went into this. And then I'm happy to talk to any of you further about the details of these. I want to briefly touch on an interesting study that was also requested by the GNSO council in 2009. It was a Whois service requirement inventory. They essentially requested that staff organize all of the current requirements for Whois.

Those are the requirements that Stacy mentioned in initial part of her presentation. Plus, all of the possible future policy proposals that essentially have ever been conceived of, and asked us to inventory those requirements not as policy requirements, but what the underlying technical requirements would be to support possible future policy changes in the future.

So again we were asked for the inventory not to just include known deficiencies in the current servers, but also possible requirements that might be needed (and these are technical requirements) to support various policy initiatives that have been suggested in the past. We were also asked to consult with the other supporting organizations and advisory committees of ICANN and we produced in July 2010.

This compilation, this is some examples of what the compilation actually includes. These again, are not policy requirements, they've just the technical foundation that would be required to support policy proposals that have been discussed. The council has (let me just stop there) actually not discussed this report, yet, Even though it was completed at the end of July 2010.

So, I think there is an action item, still on the council's list as far as next steps on what to do with this report. There is also as I mentioned, this joint SSAC-GNSO working group on internationalized registration data. This was a group that was convened by the board in Sydney. They asked the group to, well essentially, they were concerned about this issue of the fact that contact information in Whois could reflect text in all kinds of scripts.

The goal was to study the feasibility and suitability of introducing submission and display specifications to deal with this concern about Whois contact data being written in different scripts that may

not be readable to the universal community. This work is still underway. The group has been discussing four possible models. They've not endorsed any particular model, and they are now seeking comment I think, through March on these different models for the submission and display of Whois contact information.

Again, this is a complicated technical report and I don't want to go into a lot of detail today. Also, I may not be the best person to provide the technical detail on the differences in these proposals. But this is an ongoing effort because I think it's fairly clear that this internationalization concern is quite right widespread.

Are any of you on that working group, by the way? No, okay. And I think it's probably very useful for all of you to know that this work is underway and that different models are being proposed. If you do have comments or you're talking to others in your communities, you may want to urge them to take a look at these different models and to think about public comments, which again, are welcome until, I forget what date in March. But I'd be happy to get that exact date for you. Sure.

Lutz Donnerhacke:     Is this a follow-on activity, or is this directly related to the meeting in Cartagena about the Whois development?

Liz Gaser:             So this actually pre-dates the Cartagena conversation entirely. It was 2009, thank you. So in June of 2009, the board asked the community essentially, to convene this group, and the group is just looking at the internationalization issue. Obviously, there could be

other issues that the community also wants to consider. But I will in just a minute, also talk about the meeting that you attended in Cartagena because I suspect there are certain interesting questions in there too. Bill?

Bill Smith: Yeah so, who was talking to IETF about this?

Liz Gaser: That's one of the questions that this group was asked to consider. The role of ICANN vs the IETF, at what point their recommendation would go to the IETF, or be proposed to the IETF, it wasn't defined in the board request and it's not specified in any subsequent work.

Bill Smith: I'm confused because the protocol is a technical specification. I understand the desire and I strongly support internationalization of the registration data, etc, but the delivery and display of it is a protocol issue, and is properly done at the IETF. So, I'm both confused and concerned. I don't know why ICANN would be doing technical work, number 1. And 2, I'm concerned that it is doing it because it complicates things.

Olivier Iteanu: So, I have a question for the group. My question is, do we have to take it into accounts, in our work, for these initiatives which are in progress? Question, okay thank you.

Emily Taylor: James, do you have a comment on that?

Kathy Kleiman:     Yeah, I asked Rod Beckstrom very, very nicely to stop all the Whois work in place so that we could review what existed. But it was kind of a joke, because there is so much going on in Whois. This is going to be a question that we ask ourselves. It's nice to know what's going on but it's going to be a question we ask ourselves as, how do we study the system in motion? I don't know.

James Bladel:      Sorry I'm losing but, excellent point. I think that we have to take this into account as this forms a backdrop for any deficiencies that we might find, or make any findings or recommendations. But, I don't know anything that's in this part of the section that could be considered a Whois obligation for anybody. because it's not fully baked yet.

I agree with Bill that this part of it is something that registrars struggle with. ASCII Whois doesn't define any characters outside the Latin alphabet. Web-based Whois, we want to serve our customers. They want other languages, so every registrar's going off and inventing their own standards to try and please their customers which we can't have. This should probably go to IETF, and ICANN's role is just to reference the RFC that they come back with and say, 'do that'.

But anyway, I agree with Olivier and Kathy that, we need to put a boundary on what it is that we're going to look at, and some of these things definitely fall outside that boundary.

Emily Taylor: I've got Sarmad, Olivier did you want to come in? No. Omar you want to come in on this. So Sarmad.

Sarmad Hussain: Just a question, you've not basically referred to the ccPDP and the new gTLD processes. Are those processes also going to have any impact on Whois at all, or not?

Denise Michel: For those who may not know, ICANN is in the process of finalizing a proposal to implement a policy that directed ICANN to introduce new generic top level domains. The implementation of new gTLDs will simply require registrars and registries involved in new gTLDs to involve the same rules that are currently applied to.

And part of that process of finalizing the implementation is finalizing elements such as treatment of IDN gTLDs, so that effort is ongoing. And that's separate from the introduction of IDN ccTLDs, that are internationalized country code top-level domains.

The CNNSO (Country Code Name Supporting Organization) is in the process of conducting a long term policy development process to set a global policy for the mass introduction of internationalized top level country code names. And that process is ongoing and they may well consider Whois issues in that context. Does that answer your questions?

Sarmad Hussain: The question was, are these two processes considering or looking at Whois?

| Denise Michel: | They could. I'm not aware of that. So, the IDN ccTLD process is in relatively early stages and I'm not aware, although I will check and get back to you, whether they have explicitly discussed Whois in that context. So that is the answer to the ccTLD question. The answer to the new gTLD question is, Whois has been part of a large package of issues that affect registrars and registries that will be involved in new gTLDs. |
|---|---|
| | It's certainly been discussed, it's one of the issues that is still being discussed, and I suspect will be discussed in a meeting that the board is holding with the GAC in February, and some of the outstanding issues related to IDN new gTLDs. So, that's an ongoing issue as well and if you wanna add that to your list of questions and requests for information from staff, we can follow up more detailed information on that. |
| Liz Gaser: | If I could just add though, one thing they did decide already in the plan for the new gTLD implementation is to require thick Whois for all generic top-level domains. To require thick Whois, so if you recall Kathy's definition yesterday, that's one definite requirement that's already been set for Whois that differs from the current environment. |
| Emily Taylor: | Omar, you wanted to come in? Later, okay. |
| Liz Gaser: | So now I'm going to talk a little bit about these pending amendments to the Registrar Accreditation Agreement. You've heard quite a bit about this from the law enforcement colleagues |

earlier today and others have mentioned this, too. In 2009, when the RAA was changed which, as Stacy says, was the first time in quite a long time at ICANN, there was an agreement that was reached at the same time.

This was in the Mexico City ICANN meeting, that the community would consider additional changes, amendments to the RAA, because many in the community were very concerned that the changes that were made in 2009 did not go far enough. And so, a joint working group between the ALAC (the At-Large Advisory Committee) and the GNSO was established to discuss additional amendments to the RAA.

The working group looked at many things in addition to Whois that looked at all of the RAA. But if you look at the final report and I have provided a link in the presentation, you will see many issues related to Whois. So you might be puzzled by the fact that we keep talking about the RAA amendments and the reason that we are, is because there are so many proposals in that report in total that deal with Whois.

And just leading up to this, this group was chartered in 2009 to identify potential amendments to the RAA. This group developed a list of high and medium priority amendments that I'll show in just a second. And I did want to mention also that ICANN COO at the time weighed in from the standpoint of ICANN's compliance.

Because we are a party to the Registrar Accreditation Agreement, we have to comply with that and we have to enforce that contract as Stacy's presentation detailed. From a compliance perspective, we identified some gaps that made it more difficult for ICANN to enforce the contract than we would like.

And some of those issues were enumerated by the COO. So the COO memo noted aspects of the RAA that were hard to enforce, or where there were some gaps between community expectations and what we view the provisions, to say. This is a list and there are three slides here on proposed amendments to the RAA that this group identified. The first two pages…

Kathy Kleiman:       Liz, quick bit of information, because whenever I see amendments I think of something incorporated already. These are all proposed…

Liz Gaser:           Proposed amendments, thank you Kathy. These are proposed amendments, all of them. And again, there are three pages of amendments that I've listed here. The first two were ranked as high priority, the last page was a medium priority.

And I just want to note in addition to the input that ICANN provided, during the process that this working group developed these amendments there were a series of open discussions and communiques submitted by others including law enforcement and these were referenced in the earlier presentation today. So, this is actually a very well choreographed presentation, unintentionally,

in that they're really identifying the same things that Gary and Andy identified earlier today.

And that process that they used in Brussels and previously to identify areas that law enforcement is concerned about, is this is same process where their input among others' were included in this report.

Emily Taylor:          Sorry to interrupt you, James wanted to come in and make a…

James Bladel:          Just a quick observation and maybe a little bit additional background for folks here. The RAA amendments you're going to see registrars, individually or as a group, opposing a lot of these. That's not just saying we don't think that these things are good ideas. We're mainly having issues with the process, that a certain contract is not necessarily a policy document.

We have a policy development process and some registrars on a lot of these issues feel like, we had policy development processes on these things, they didn't come out the way certain parties wanted so they've tried to do it end-around and get something into the contract that failed to reach consensus policy.

So, I just kind of want to set the stage here, that if you see something like 'Hey James, why are registrars opposing this really good idea?' and the answer is that they're not opposed to the idea, they're opposed to the process that's being used to get the idea.

Bill Smith:                So then, where is ICANN's Whois policy defined?

Denise Michel:             Consensus policy on Whois is created by the GNSO and sent to the board for approval on the... And the implementation of that policy takes places in the Registrar Accreditation Agreement which is a contract that's negotiated between ICANN and the registrars(and registries)

Bill Smith:                But what I'm hearing is that registrars will object to modification of the contract, even though that there are good things in it, and that the contract at the same time, is the place the policy is defined.

Emily Taylor:              That's where this is implemented.

James Bladel:              The contract says, in a nutshell or in other words, 'you sign this, you abide by consensus policies that are developed by this system'. So those policies that have been developed, or will be developed in the future, are enforced. We have a contract that we said, we would abide by.

                           However, going and then writing directly into the contract, and I understand that you're gonna say that they're Section 3, but do you understand the distinction between the contract says that we've agreed to consensus policy, we have a consensus policy development process. Some of these issues fail, and they're now coming in through an amendment.

Bill Smith:  James, I absolutely understand that. My question, and I think it's sort of an essential question for this group is, where is ICANN's Whois policy? I want to see a document, what document do I look at, to learn what ICANN's current Whois policy is? Where is it written down?

Liz Gaser:  The RAA and the registry agreements.

Emily Taylor:  As I understand Bill's question, and the discussions, we're saying 'there is a policy, the instrument where that policy is implemented is the Registrar Accreditation Agreement' and Bill's saying 'okay so that's the implementation, so where is the policy recorded?'

Denise Michel:  And so we can give you this, the board resolutions approving the consensus that guides the implementation in the contract language.

Liz Gaser:  But I think Whois predated ICANN and predated any concept of consensus policy so there is a place we can direct you to for the underlying initial policy, and the reason why I spent so much time in the beginning on the policy changes was to point you to at least the places where consensus policy changes were made, that where those changes existed.

Denise Michel:  So before ICANN existed, John Pustell had a, what in effect was a Whois arrangement with network solutions and before there was a GNSO, ICANN had arrangements to take over a coordination of that Whois as it related to gTLDs. And we can give you more

detail on that historic nature, so there were responsibilities that were grandfathered in, for which you...

Emily Taylor: Okay there's a flurry of excitement around the table. So, I have a list is which is currently: Michael, and then Olivier, Peter, Kathy, Wilfried and then Bill. Oh sorry, Omar. Omar, you've been waiting for a while, do you want take the mic for now? Why don't you go after Michael…

Michael Yakushev: There should be a lawyer educated in the British University, because rolling over that, Britain is a constitutional monarchy, but there is no written constitution here as a document. So, it's impossible to find a book which is the UK constitution. Am I right ?

Emily Taylor: Absolutely right, yes.

Michael Yakushev: But no one would object that it's a constitutional country where everything's based on certain policies and laws which in other country would be called constitutional laws. From what I've heard from the discussion it means that the policy does exist, but it is not documented.

It is implemented in a very concrete bilateral document, and the idea is that by now, we have now a documented version of this policy and the initial draft of the scope of our work, it was the obligation of our group to document this policy.

So, then the question remains: Should we somehow do this task, or we should take the situation as it is now as is, and we should base our estimations on the text or the bilateral document rather than a policy, well not a document but the policy reflection, policy understanding, something like that, which should somehow be discussed and agreed upon as well.

Emily Taylor: Michael, can I just come in on that? My understanding is that the document may not be all documented in one place, in a single document called 'Whois Policy'. And actually I think that's same as British Constitution but, not quite the same as the British Constitution because a lot of the aspects of the constitution are in this country, I don't think, documented very well, or at all. So the one task, if we're thinking about our public service in this group, might be to collate and document that in one place that's easy for people to access. Is that a fair understanding?

Denise Michel: It's up to the team to decide what they want to do... I wouldn't say that the.. As I said, Whois relating to gTLDs was grandfathered in when ICANN was created, and then built upon through board resolutions that are a matter of the public record. That might be the most, it's the same way to say that.

Michael Yakushev: Excuse me the idea which I wanted to emphasize is as follows: If such a document be created by ourselves, it will be a reviewed policy by itself, because it will be a documented version of something which is new, which is updated and which reflects our vision on how this document should look like.

So after that, it will be a fair complete, or then, the task is accomplished. And we prepare a document which is a reviewed version of something which was not properly documented before. It's one of the variants, I do not insist on that, but I think this is one of the understandings on how it can be done.

Denise Michel: I don't to mean to believe at this point, I would not say that it's properly documented. We would welcome the team's opinion and recommendations in terms of public access and understandability, those types of things. I think the Whois policy is very carefully documented within ICANN and I'll provide you with information on that and we would welcome input you have on making it more as in-sync and understandable and attainable and…

Emily Taylor: I am going to go to Omar now and then I got Olivier, Peter, Kathy, Wilfreid, Bill..

Omar Kaminski: I have a doubt, who has the ownership of Whois database?

Bill Smith: The answer is, which Whois database? Which one? There are several, I think, is the answer. There is no singular centralized database. If it is a thick DTLD like Kathy's registry, it would be maintained at the registry level. If it is a thin registry then it is maintained at the register level and distributed across all ICANN credited registrars that participate in that TLD. And if it's a country code, all bets are off.

James Bladel:                   I will hesitate to say that any party will step forward and claim ownership of the state.

Emily Taylor:                   Wilfried would like to come in on that point?

Wilfried Woeber:                We had the same question on the table for the resource registry and our approach was to clearly define the roles that are involved in collecting the data and maintaining the database. And the model is that the individual subjects, some of the registrants in DNS lingo, they are the owner of the data and the registry is the data controller in EU data protection thingy.

So, there is a copyright on the collection of the data, and there is an AUP regarding the collection of the data. But sort of, the owner of the data, the responsible party, is the individual registrant. That was our approach.

Emily Taylor:                   Omar, you want to come back in?  Omar, can I share something that is in the public information, which is that .uk had a similar experience of the data being harvested via Whois alternated queries, and on two occasions, spam look-alike invoices were sent out to UK registrants and the registry took action.

One was in Australia and actually got a judgment for copyright infringement of the Whois database, and on another occasion contributed as witnesses in a criminal prosecution, in a similar thing in the UK. So, from the perspective of the country code,

speaking from the perspective at that time, the country code registry was the owner of that Whois database.

But as we have seen from our discussion , I'm sure that the answer to that question will vary according to the circumstances. So, I'm sorry, I've gone away from the list. We've got Olivier and then Peter.

Olivier Iteanu:    In compliments of Bill's comments about where is the Whois policy? The Whois policy is in the contract. My question is, which body has a right to amend, to modify the Whois policy. And tell me if I am wrong, the only body is, the board of ICANN, even if the registrars don't accept the modification. I'm right on.

Denise Michel:    But for generic top level domains, the GNSO creates the consensus policy and it's approved by the board.

Peter Dengate Thrush:    One thing I was gonna say, probably already sort of been said but as sort of I guess initially, I think you follow me on from Bill's question about, where is Whois policy, and it got me thinking that this is not a unique situation in ICANN. But may be something we could ask the CCNS all about. I know they're a little, sort of working group at looking at delegation, re-delegation and retirement of ccTLDs, and one of the initial questions was where is the policy, what is the policy, and is it being followed?

I may be wrongly characterizing that, but I think ultimately they found that there was limited policy and in facts the policy

documents as they existed were an old RFC, another technical document and GAC principles, and that they were relying on a bunch of precedents set by board decisions, which in some cases followed what was possibly or possibly not, the policy and in another cases did not. And that resulted in a report about recommendations, whether there needed to be a policy development process to basically bring everything together I guess and see if there are any gaps and so on.

But, I think it's not a unique situation in there's other groups within ICANN grappling with similar things to do with the fact that there are precedents before ICANN existed and so on and... So, I just thought I'd addressed that.

Emily Taylor:     I think that similar comments are in the ATRT review if I remember correctly about, that this sort of thing, so... Kathy?

Kathy Kleiman:     My comments will be short cause much of what I was going to say was said by Michael, by Peter, but it goes back to that section on Whois history that we were going to talk about and that seemed so boring a day ago. And I think Whois history may be a little more relevant than we think to kind of put this into context, and put maybe a policy that's meandered and has historical elements together, cause I think policy is present in this case.

Emily Taylor:     Wilfried?

| Wilfried Woeber: | I also would like to come back to the original issue of where is the policy documented. I tend to think that we have the latency understanding, we have the informal policy. And the current RAA is sort of a snapshot that can be used as documenting the policy at the point in time when this document was actually rubber stamped, and I withstand here that we obviously do not have any track record of developing of that policy from that snapshot that point in time onwards by way of the GNSO and by using the policy development process. |
|---|---|
| | Is this a fair statement? Because, we have to get out of this vicious loop to say 'Well, we do have documented policy of the RAA as the implementation and when we ask about the policy, we say well the RAA is actually the document that describes the policy.' This is a vicious circle and, that we have to understand how to deal with that, not to criticize and not to change it but, how to deal with that. |
| Denise Michel: | Right, I understand.. I know that you guys are pressed for time so I would suggest that we take that away as a written question of follow-up with you on providing documentation explaining what currently exists on Whois policy, and... Let Liz finish her presentation? |
| Emily Taylor: | I've got three more people in the list; I'd like to invite Liz to finish her presentation and then we can follow up. |
| Liz Gaser: | I'm happy to do an abbreviated wrap-up because I have four more slides, three are just this overview of what's in the RAA, proposed |

amendments to the RAA, which I've already said main of which deal with Whois and with proxy and privacy services and with this relay and reveal request. So, if you all are comfortable with that, I'll just show them briefly.

This is the first list, this is the second of the high priority proposed changes, and again, all of this presentation will be made available to you. Here are some medium priority elements that were proposed in this report. Now just quickly before I leave this topic, this report is a final report of proposed recommendations but the GNSO still needs to act on the next steps; how will these proposals be discussed in the community, which proposals might be viable for inclusion; those steps are not defined yet.

There have been several proposals for next steps, but there currently has been no action on that yet. There was a resolution or a motion proposed for the last council meeting, it was polled. I don't believe it was on the agenda for the next council meeting so once again, to someone's point, Kathy's, about we're dealing with Whois in real time, this is an example of where the next steps on this report are unclear at this time.

And then, again these are more medium priority, here are the key documents that I think you'll find useful, including, I'd like to just reference these staff notes, the second bullet, staff notes on the implementation of the possible amendments which discusses some of ICANN's compliance related activities and identifies some subjects for the community to consider that might be useful. And

then, there's a staff memo that is included in the final report that talks about options for next steps.

And I urge you to take a look at that just from a process perspective. All of this is in the final report, which I warn you is a 179 pages (whoa). I'd like to very quickly note a workshop that we held in Cartagena, this is the workshop that Wilfried raised. Essentially, there is a web-based implementation of Whois, that two RIRs have done, using a restful XML-based approach.

It's two different implementations but this is something relatively new. There had been a proposed, and this is really thinking about the technical evolution is Whois. This is not intended to be a policy comment. We wanted to bring to the attention of the community that there was a potential option to create a web-based protocol. Previously, a Chris working group came up with what's called the Iris proposed protocol that the IETF established.

That is, an internet registry based protocol, but this protocol has not been likely adopted. The purpose of the workshop, and I can guide you to the meeting report on this workshop which you'll find under the Cartagena schedule, was really to make the community aware of this restful approach to Whois from a technical perspective, and to encourage discussion about restful as an additional option because it also provides some technical capability to address the internationalization concern that's been so widely discussed.

So, it's just that, it was just an informational workshop to convey the information that we had discovered to the community and leave to the community next steps, and but to at least share our findings. So, I wanted to provide you with a note on that workshop and I can provide you with more information. So that really concludes my presentation.

If time permits, I'm happy to take questions but thank you very much for your attention and I'm happy to help in any way.

Emily Taylor: Liz, thank you very much, and there's such an enormous amount of material, that it's really helpful to have a summary and have some pointers of key documents. And I've got three people who've been patiently waiting to ask their questions, and that's Bill, Kim and Olivier. Would you like to come in and ask Liz now, these questions?

Bill Smith: Sure. So if the RAA and the registr.. Well we'll just leave at the RAA at this point. If the RAA is not Whois policy, then I submit that there are pieces of that policy in the RAA. There are also pieces of that policy in the AOC, and there may be other documents that document the policy. So I would ask that someone go off and prepare and pull pieces of these documents together than to say 'This is actually the policy' because otherwise we don't know what we're revealing.

Emily Taylor: Bill, sorry to jump in, Denise, but I think that's one of our tasks actually. And when we resumed after lunch, I said that I'd be

asking for volunteers for two small groups relating to these presentations this morning. One is going to do that fact-finding, and present to the rest of the group the Whois policy, and that might be as documented in the RAA, or whatever you discover. And the other group is going to be looking at compliance.

Bill Smith:

I don't understand how we can go define what the policy is, and then reveal it ourselves. That does not make sense from a typical review process.

Denise Michel:

Yeah, so I said earlier, staff will provide you with the ICANN Whois policy and indicate where it's documented and I think that in my view, would be an appropriate starting point for your work.

Bill Smith:

Okay so I will point out from the AOC. Section 931 which is the defining paragraph for our work: 'Such existing policy requires that ICANN implement'

Emily Taylor:

Bill, I'm sorry to interrupt you, we are familiar with that paragraph of the AOC, I don't think that we're going to serve much of a purpose reading…

Bill Smith:

So, point of order, are you as Chair, denying my right to speak?

Emily Taylor:

No, I'm asking you to have some courtesy for the people in this room, Bill, who are all waiting for you to finish reading out a section of the AOC. So I'm not denying your right to speak, if you want to do that, you go right ahead.

Bill Smith:            I want to, thank you. So, .. 'Implement measures to maintain timely, unrestricted and public access to accurate, with emphasis, and complete Whois information'.I see two documents in front of me and I'm told, in AOC which says 'Existing policy requires this' and in another document where we're being told the RAA, we are being told it does not require it. Which, is the defining document. They both can't be right.

Denise Michel:         I think I understand your question and from a staff perspective, I'll take that away and provide you with a confirmation in writing that I understand your question, and then I'll provide with the staff answer. Will that meet your needs? Right I understand, I got it.

Emily Taylor:          I want to go to Kim.

Kim von Arx:           Actually I just have a clarification question, and I don't even know if we have time and if it's even the right word for, I was just wondering why has Iris not been actually adopted and what the major difference is between a restful and Iris? I'm familiar with Iris, I've read what you sent around for a restful, but I'm not a techie so I was just surprised that Iris actually has. And all that Verisign actually want, I might add, a test bed for Iris and then...I don't know where that went.

Denise Michel:         I saw you looking at James for that, did you want a registrar response, or a staff response, or…

James Bladel:    My response is I have no idea. I wish that there had been more progress, I've no idea why…

Bill Smith:    I can tell you why... It's because it's the internet and no one prescribes what will be used as a protocol to people who've chosen not to implement that.

Kathy Kleiman:    If I could, first of all I believe there have been some implementations. I think .de implemented Iris. What I understand from my technical people is that Iris requires both an enormous amount of hardware and software adoption and for a broad community to kind of leap at once to make it ubiquitous. Whereas restful as a web-based XML standard A has an open source technology that's been matured, and B as much lower economic barriers to adoption. But that said, there will still need to be a particular spec written for a restful Whois, so it's not without barriers.

Emily Taylor:    Thank you. Olivier. No? Anything else? Wilfried?

Wilfried Woeber:    I do know about at least one implementation because I was involved and that was the implementation for the RIPE, for RIPE database for the registry database, for resource database. One of the... Iris, exactly yeah. We had an Iris server actually, delivering the Whois data in the format of Iris.

One of the major reasons which actually worked against wider adoption was, that it is a pretty complicated protocol, and it also

provides the mechanisms to implement different levels and different methods to subset of the registry data. And as such, it is only a toolbox, it does not solve the problem to define who should get access to which subset of the data.

As it turned out, there was no interest in this community, that's not the DNS community, that's the IP Resource Community, there was no interest in separating different consumer classes into different buckets or different parts. Nobody was interested in doing the work to configure it properly, to actually get an advantage by deploying Iris over the regular for the free Whois, so it just died.

And after I think one or two years, I would have to go back in history how long we had it up. After one or two years the Ripe NCC and the community decided we don't want to spend money on something which nobody's using. Thank you.

Emily Taylor:          Olivier just wanted to come in now.

Olivier Iteanu:        Yeah, I think that, everybody feels that sort of now, so we have a big problem with reference table. So probably we have to, with this on the agenda, to come back to the Dutch. The two parties of the AOC Dutch and the ICANN. I mean probably the Chair, dunno. Just, on this agenda we have to take into account these initiatives, what is the Whois policy, that's something to do with the scope, with our scope.

Emily Taylor: Okay, I think I'm going to propose we have a tea break. And let's come back, we're going to need to revisit the scope document. I think today is being a very useful fact-finding part of our mission. And I was just having a chat in break with Denise about we're going to manage the questions for the ICANN staff because there's clearly, there's the ones that were documented prior to the meeting and also I'm sure that there are a lot more questions arising after the presentations. So, what Denise has offered to do is to send us a list of what the ICANN staff have understood has our questions.

Denise Michel: Just key questions. There won't be Yes, and to add to, the unanswered questions or other things that have arisen during this week.

Emily Taylor: And we're all encouraged to add to that and I think why don't we aid to sign it off at the next call, and get ICANN staff working on it for us? We know that they've got a lot on their plate to prepare for the next ICANN meeting so if we can just ease the tasks. Now, there's several things that we want to try and do before the end of today and I think that we all promised ourselves we would have another look at the scope before the end of this meeting.

Now just to recap, we had I think a very productive session in our first session of the meeting in the morning, going through this document in some detail, and amending some of the wording, introducing the concept of a road-map where we agreed to a non-exhaustive list of action items and cutting out some of the text which was felt to be duplicate, or just a restatement.

So, I've asked you all to take a look at this, this is the one that all of sent to the group. What I'd like to do is to take any comments or amendments, and if we can, sign it off. Thank you, I've got Peter. Does anybody else want to come in with comments on that? Okay Peter…

Peter Dengate Thrush:    Okay I'll try to be quick, and this is more of a by-way of a comment, than anything else. So, does this group last night reflecting on the discussion that we had around applicable laws, and first of all I'll apologize I was very void-headed yesterday afternoon so I think I missed a couple of subtleties in the beginning of the debate.

One I thing I hadn't appreciated was that people had seen applicable laws as the sole mocker in the language of the AOC for the privacy laws. I think I missed that to start with so, that may have colored some of my initial comments. But now that I think that I understand that, that we're using that sentence and the applicable laws as the bases for where we're going to go out for community comment on the privacy aspects.

If I've understood that correctly, then my comment is that in the Skype we referenced two sentences from the AOC, we've got the one without three little clauses which I think is what initially confused me, I thought those three clauses, everything was somehow going to be massaged into that. I wasn't sure was

applicable was going to add. But if we've going to use applicable laws to pick up the privacy aspect, it's not referenced in our Skype.

Emily Taylor:     I see that you're absolutely right about that. One thought I have immediately is that we were talking about the privacy in the context of promoting consumer trust and it may be fair, but I think that that is a good point, it formed a great part of our discussion.

Peter Dengate Thrush:     And I think that's what I initially thought that it was gonna be, I picked up on the consumer trust, and I think that may be from our discussion with the US colleagues where they thought it was going to be.

As I said that colored my initial comments when we started talking about applicable laws, I thought 'Well what does that add if we're going to pitch it all into the three comments, but if we're going to go out to consult the community on the privacy aspects on the applicable laws then it looking a little confusing that we haven't got it in our Skype.

And I think it's probably to do with the fact in the AOC, that the privacy stuff is not explicitly mentioned. So we're trying to figure under which of the other little phrases it fits. I mean, it's clearly one of the important things to look at but just where it fits and how we reference it.'

Emily Taylor:     Peter can I ask you to propose an amendment for us? Sarmad?

Sarmad Hussain:    I missed your first part, are we just talking about the scope or also the road-map?

Emily Taylor:    All of it.

Sarmad Hussain:    Okay, my comments on the road-map part of it, we're doing a significant amount of outreach, with surveys and then eventually call for public proposals and none of that is very well represented in the road-map. And I think some of that activity should probably come here more explicitly.

Emily Taylor:    Would you like to propose a sentence to include in it?

Sarmad Hussain:    Maybe a couple, but I need probably more time for it.

Emily Taylor:    Yes, of course.

Lynn Goodendorf:    I was thinking that on this next to the last paragraph that says that this assessment will include an evidence based approach, that we were gonna move that paragraph to be in the scope section rather than the road-map section. And then, the very last paragraph, I'm not sure, I can't remember all of the discussion but I was thinking that we had decided that that last paragraph was repetitive, and that by referencing the AOC at the beginning that was covered. But I admit that just might recall us not good enough to just say 'absolutely', but I just want to raise that question.

| | |
|---|---|
| Emily Taylor: | Okay, I'm going to ask Kathy if she can... Kathy made copious notes about that and perhaps if I can just ask Alice or all of to see what we decided because like you, I remember discussions on those points. Peter. |
| Peter Dengate Thrush: | I'm struggling with coming up with a solution but, I guess we did certainly talk about not having too many references to various bits and pieces of the AOC. The question about it is, if we have any which ones, at the moment we've got two sentences from the same, from 9.3.1, which are potentially the most relevant. The question that I brought up was whether we need to put the first sentence, to reflect that somehow in there. |
| | I guess an alternative is to simply refer to the AOC, no restate any of the language, and then potentially come up with our own little statement. So I'm thinking, one of the key things that the review team will need to do is balance blah blah blah, or blah in our own words. You know, the needs of law enforcement, promoting consumer trust, privacy, and an indicative list of things that we think might be important. |
| Emily Taylor: | Talking of balance, I think that we're going to be balancing here our wish-to-have-assigned-off documents that we can go 'yep, check, we agreed that and we accomplished that.' But I also do recognize that the issues that people have raised are not just reopening old discussions, but actually are reflecting on what we've learnt in the course of the two days. So I'm really looking for a direction from the group about what you would like to do. Bill. |

Bill Smith:

Sorry, my recollection is similar to Lynn's, I thought the last paragraph would not be there. But I can support the document as is, or with the amendments that people are suggesting.

Emily Taylor:

It seems that the two amendments that Peter and Sarmad suggested are uncontroversial in that we've all recognized that they're part of our discussions. If people feel that we can adopt this subject to those amendments, I think that there would be a lot of merit in that.

Lynn Goodendorf:

I would just like to say that, this paragraph that says 'This assessment will include an evidence based approach', just my thinking is, that belongs in the scope section rather than the road-map. I mean that's just my view.

Emily Taylor:

Lynn, I think that like you and I think Bill and several others, I remember the discussions about that and I remember thinking yes, that's right but I can't remember what I was agreeing to. Again, if anybody feels that moving it up into the scope would be the wrong thing to do, can you please speak now?

Kathy Kleiman:

I do. I don't remember the end of that discussion, it just seems to me it's part of the non-exhaustive list of actions that we're doing for all these tasks, it seems part of that. But in the end I won't object to it, it just seems to me to be part of the list we're already forming. And then the summary of how we've going to get that information.

| Sarmad Hussain: | There was an additional document which was supposed to supplement this, which was guidelines or principles. |
| --- | --- |

| Lynn Goodendorf: | The GAC Principles… |
| --- | --- |

| Sarmad Hussain: | No… |
| --- | --- |

Lynn Goodendorf: The AOC?

| Sarmad Hussain: | No, we said in addition to the scope of work we'll have a separate document which will be our guidelines or the way or, mechanisms we use... No, there was a third one. |
| --- | --- |

| Emily Taylor: | I think that that was brought up and discussed for a while. I don't think that that was adopted by the group. Please, guys from ICANN correct me if the transcript disagrees there, I don't think that that as what we decided. I think we decided as other recollect that we were going to move certain section into a road-map and that's where we got to. Is that, do you remember it differently? |
| --- | --- |

| Lynn Goodendorf: | I think there was the idea of moving that into the work plan, but then we came back to having the road-map as you know… |
| --- | --- |

| Emily Taylor: | I think we're going to... I don't think that...I don't think we're going to - I have a proposal to move up that paragraph into the main scope, which is 'This assessment will include an evidence based approach' at the end of that paragraph. |
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| Sarmad Hussain: | The guiding principles for… |
| Emily Taylor: | It's part of the scope. It's the proposal. Or we can leave it where it is. |
| Lynn Goodendorf: | Yes cause to me the key phrase is 'Will include an evidence based approach' to me that just, again that's my view but, to me that says scope, rather than a to-do. Whereas the other items on our list are to-dos. |
| Emily Taylor: | Any objections? Okay, so we won't. Can I propose then that we adopt this as our document, this scope and road-map, subject to... oh goodness! |
| James Bladel: | I think, oh, Bill's handing me one too, I was gonna say I've got a solution to squeeze in the extra sentence. Yeah, we're good.  Sorry, I'll give both options if it's in the true democratic spirit. So, Bill's one is to add in the dot point list, after we say 'promotes consumer trust, and is enforced according to applicable laws' and the one that I was thinking is that we turn the last paragraph here to have two dot points to it goes 'The WRT will undertake an analysis in determination of ICANN's performance against the AOC requirements that', and then a colon. |
| | First dot point is the 'Accurate complete blah blah blah' and then we scratch out the last part of that paragraph about legitimate needs of law enforcement and consumer trust, cause that's repetitive of the three dot points, and replace them with, 'enforce |

its existing policy relating to Whois subject to applicable laws', so that we pick up the whole of that sentence. Oh Bill looks happy with my one.

Kathy Kleiman:     Can you give us the last word of first bullet point? Is it 'Contact information' or.... Sorry under 'The WRT will undertake an analysis in determination'

James Bladel:     Yep, I'll read it out to you fully if you like, cause I don't seem to be able to get on the internet so I can't  manipulate and send it to people so to be, 'The WRT will undertake an analysis in determination of ICANN's performance against the AOC requirements that', and then the first bullet will be 'ICANN implements'and it will go through to 'And administrative contact information' and then there will be a semicolon and, and then we pick up 'Enforce its existing policy relating to Whois subject to applicable laws'.

Emily Taylor:     Sarmad, did you want to make a suggestion?

Sarmad Hussain:     In that paragraph which we're moving up, is it, or leaving here, if this second last paragraph, again ALAC and some of the other organizations are missed out.

Emily Taylor:     Thank you.

Kathy Kleiman:       ASO, ALAC, the CCNSOSSAC. Okay, but let's put the list in. ALAC, GNSO, ASO, Wilfried? SSAC. Okay somebody should read the final version.

Emily Taylor:        So Sarmad has rightly highlighted that we've missed out some of these support organizations (GAC), some of them. So, this paragraph which starts, this assessment would include and ends... these could include examples regarding IP addresses and ccTLDs, where relevant, in consultation with ALAC, ASO, the CCNSO, GNSO, SSAC, the GAC and other organizations. Uh .. James

James Bladel:        Just a convention. that I think that we should use if our goal is not to leave anyone out, we often say SO and AC's.

Emily Taylor:        Comfortable with that, that sounds great..SOs and ACs.

James Bladel:        So we don't we have... SO and ACs is the... First time I saw it I'm like 'what's a SOAC?', but that is a kind of another one of the alphabet soup things that I think catches all of them.

Kathy Kleiman:       Can we put it in without the acronym, so in consultation with ICANN supporting organizations and advisory committees

Emily Taylor:        What are we on to do about, 'and other organizations', because that could actually include organizations outside the ICANN environment, which was a point made by several people. It is, yes. So we just keep 'and other organizations'. Subject those changes. Yes, please.

| Sarmad Hussain: | So there are two versions; one could possibly be just using the second last paragraph and instead of 'include', have 'undertake'. And also in addition to SO and ACs probably include something like 'and larger community' or something like that. |
|---|---|
| Emily Taylor: | And with those amendments you'd be comfortable that we capture our intention to go wider and to consult, sounds very sensible to me. |
| Lynn Goodendorf: | That's a good point, because that is our intention to outreach to external... and stakeholders. |
| Sarmad Hussain: | Very actively, and that's not being captured in the current version. |
| Emily Taylor: | Is everybody comfortable that they have understood those amendments? No. I think.. the last one is, in the second last paragraph as it currently is, which I remind everybody is moving up into the 'scope', it will now end with where relevant, 'in consultation with ICANN's supporting organizations and advisory committees and other organizations and the larger community'. Yes.. I'm sorry, that's absolutely correct. And that paragraph begins 'this assessment will undertake an evidence based approach'. |
| | So, can we adopt this? Not.. yes, anybody against? I think we should give ourselves a round of applause for that. Thank you...No, no no come on...that's great. Now for the compliance and policy working teams, can I just review where we're at the moment |

in working groups because we might be a little bit fuzzy about this. So far we have agreed the following sub groups: Producers, which I think is James, Susan and Wilfried; Law enforcement: Sharon, Kim, Wilfried and Lutz; Consumer Trust: Sarmad, Peter, Bill, Olivier, Lynn; Applicable Laws: Kim, Omar, Michael and Lynn. Okay, does that sound familiar?

What you have agreed to do is to work on definitions, circulate questions, or develop questions, and on our next call present those to the group. We will then go out for public comment on those. James..

James Bladel:      I like to propose that we rename the working group that is currently labeled 'Producers' to 'Producers and Maintainers'.

Emily Taylor:      Susan, Wilfried, any objections? Okay.. 'Producers and Maintainers'. So that leaves, we need to do some work on the existing policy and also compliance. And my proposal is that we form two groups, small groups, to work on that. Now as I have counted I think Lynn, Kim and Wilfried are already in two such small groups.

And I think it would be asking too much of anyone individual to ask them to do more than two groups. There are two people in this team who have not volunteered for any sub groups, and that's myself and Kathy. So, Kathy which one would you like to do?

| Kathy Kleiman: | Forming two new sub teams; one, perhaps based on the road-map to help draft the identifying inventory ICANN's existing Whois policy; and other to help guide us in the process of identifying and inventorying ICANN's implementation of that policy. Okay, so, that's the proposal. |
|---|---|
| Emily Taylor: | I've got Sharon, then James and then Sarmad. |
| Sharon Lemon: | So I advance with the late reaction to your first bit. Sorry but, did you just sneak in a deadline of the first call we've got have this all done by? |
| Emily Taylor: | Did I? It was an attempted sneak, it was my honest recollection but, if we feel that that's asking too much then... The reason I think it might be achievable is that we've done a lot of work already on those definitions. If we haven't got the questions, so be it. But I do think we should bear it, working back from the ICANN meeting, we should be giving people at least a month to react. And so we should be going out in early to mid February with our call for public comment. Otherwise, we're just not gonna give people enough time. Okay, so should we aim for that? James? |
| James Bladel: | Two quick comments. One is, I would like to volunteer for the task of 'scavenger hunt', whatever we're gonna call it, of collecting all of the existing elements of Whois policy. And I think I have an answer to your other problem, which is that, I believe that as the CCNSO and the other contracted party, guess what, I think that you guys should be on that group. |

The third point is, I would like to strongly encourage or request that Wilfried, he has an exclusive knowledge in the ASO space, and their Whois obligations, and so I would strongly encourage you to maybe drop one of your existing groups and join this new group, because I think that there's gonna be a very large void without your expertise on that group. Thanks.

Emily Taylor:     Thank you very much James, for volunteering. That's really good... I've got Sarmad next, then Wilfried and then Peter.

Sarmad Hussain:     Just a very tiny point, is it possible to enumerate these things, so that we can refer to them, the points in the road-map? So just do 1, 2, 3...

Emily Taylor:     I think that's a very good idea, let's number the paragraphs please, in the scope and road-map. Thank you.

Wilfried Woeber:     I think James' proposal is pretty good and I don't have any objection against (it). Just, to let you know, don't expect too much from my end for the next week because I'm going to be on a training session as a trainer in Frankfurt. There will probably be some time that I can devote to this stuff but, if I'm not able please don't shoot me.

Emily Taylor:     Wilfried, just to look at the membership of the other small groups, I think that the law enforcement group is probably... We've got four people on that, whereas the other one, the 'Maintainers and

Producers' is just three. So, we can take you off 'Law Enforcement' and put you into 'Policy gathering enumeration'... Sorry, 'Identify and inventory existing policy'.

So, that's Wilfried. So on work policy I've got Wilfried, James, you Kathy? So I'm on implementation. Can I have some volunteers for implementation? Peter? Bill? Anybody else? Oh, me. Michael, thank you. So our task is to identify and inventory ICANN's implementation of Whois policy. One of the things that, well we'll talk about that in our small team... I think that's all the decisions that I wanted.

We had a request from the small groups that if time allowed, they could spend some time together and just communicate even just, on how you're gonna organize yourselves or do your tasks. Kathy.

Kathy Kleiman:    Can I make a proposal, Emily? That, it looks like we have until 4:30 for people, is that right? So maybe take about... Here's an idea. One thing Emily and I are going to have to with quickly is, budget.

And so I know it's very brainstorm-y at this point. But if, I propose, the groups meet until, maybe 4:15. And if you have an idea of what types of resources you might need, we've already heard from Sharon's group for example that, a survey and assistance with the survey might be something that might be needed.

So, if you want to come back maybe at 4:15, we come back and for 5 minutes each kind of share where we are, but especially if there are any big items or support that you might be looking at, just a heads-up, it's not final, it's not exhaustive, it's not complete, it's not the end; but a heads-up to us would really help. It's for us to start thinking about it for budgeting purposes.

Emily Taylor:    I've Kim and Peter wanting to come in, anybody else?

Kim von Arx:    Just a procedural question. Since we're splitting up and some of us are in two teams, we can't clone ourselves yet, I'm working on it though...

Peter Dengate Thrush:    Perhaps I could even complicate that more, we may need some sort of level of coordination between teams. Again, just getting up to speed with my discovery that applicable laws was the catch-all for privacy. Whereas, we previously discussed it may fit under 'Consumer Trust', so I think there may need to be a level of coordination between the questions and definitions that we're gonna use for those two groups.

It occurs to me that applicable laws, although these are a useful catchphrase for privacy, it's obviously far broader than that, and will probably also cover some of the laws which are gonna fall under law enforcement, because our law enforcement colleagues operate in a legal framework. So, there's gonna be a degree of crossover between each of the categories.

Lynn Goodendorf:     I'm up with those groups. And then are you too Kathy?..

Emily Taylor:     So one thing that Kathy's just suggested which is very sensible, is that if we just get the 'Maintainer/Producers', 'Law Enforcement', 'Consumer Trust' and 'Applicable Laws' people to have a coordination at this stage, and just looking ahead, I think it's probably gonna be good practice to work in small teams when we can, because it's just much, much easier to coordinate.

But as Peter's highlighted, it could well be that these teams morph and merge as we through our project and we should just be prepared to review the composition and discharge little groups when they've done their job. Because I think that it will start to move forward, and that's just my thought.

Kathy Kleiman:     And hopefully because Emily and I are only on one team, we can play a role in that coordination as well, and a support role. So that's part of the goal, too.

Emily Taylor:     Should we use this room and the coffee area, would that disturb people if we use the coffee area for... Sorry, to recap, sub groups, take a bit of time now, discuss. Kathy actually has this..

Kathy Kleiman:     Yeah sorry I have it in front of me. So Sharon, where, not that you're the Chair or anything, but where would you like the law enforcement group to meet?  Wilfried and Kim.... Sarmad, where would you like the Consumer Trust group? Okay. Kim, where

would you like the Applicable Laws group? Okay, and James, 'Producers and Maintainers of Whois data' ?

James Bladel:    Ah, the Hilton? Or the Marriott Heathrow is fine. Other end of in here, I guess the other end of the table.

Emily Taylor:    We're really looking for any budgetary implications of your work that you can highlight now. Resources that you might need, support you might need, that will help us. Thank you, James?

James Bladel:    Something that might simplify this, it's another proposal. While I differently wanted to draw the distinction between producers and maintainers as separate entities, certainly not opposed to the idea of merging the producers and maintainers group with the consumer trust group, because as far as I understand, the Producers and Maintainers are simply definitional exercises. I'm just putting that on the table as one possibility. No, okay. It's too big.

Emily Taylor:    I realize that it's a mistake to ask a bunch of jet-lagged people to ask to split up into small groups and self-work at 4 o' clock in the afternoon on the second day of the meeting. Which sub group would like the ball rolling and report back in about their findings? James, thank you.

James Bladel:    Producers and Maintainers need no budget support. Maybe ad-hoc access to staff.

Emily Taylor:    Sarmad?

Sarmad Hussain:    So, there would be some, I think, additional cost for the group to have conference calls. Separate from the larger group.

Emily Taylor:    I think what we've done, say for example with our one-to-one calls, is, Alice has set up those conference bridges which can be toll-free. So, I'm sure that if we ask the staff to set up conference bridges for those sub groups, that they'll set you up to be toll-free on the same thing.

Sarmad Hussain:    So that's one. And obviously the survey, which we're going to do. So the survey's going to basically, ask different kinds of users on what the expectations are as far as consumer trust is concerned. And not only survey but eventually some analysis would have to be done on that survey as well.

Emily Taylor:    Can I just ask that, only because I don't know, are there any, in the existing materials and surveys that have been done, are there any similar studies which evolves to uses at large about their expectations, and I suppose their experience?

Lynn Goodendorf:    Not related to ICANN, but there are studies that have been published both by the Ponemon Institute and by Harris, about consumer confidence and trust on the internet. For instance, Ponemon has done surveys on who are the most trusted brands, who are the most trusted industry sectors and why are they trusted, and Harris Paul has done surveys again about elements of

consumer trust online. So, those surveys weren't for our specific purpose, but they might just be useful reference points.

Emily Taylor:        It sounds like they might be, exactly as you say, that they're not going to answer the specific questions. What would be helpful Sarmad, is if your group could elaborate your needs about the expected datas on pull, the expected questions and then that will help Kathy and I going for budget...

Sarmad Hussain:        One of the other things which we discussed was that it may not be possible for us to discuss survey until we actually get the policy document together and sub-elected because it's actually going to be based on that policy document.

Emily Taylor:        But it's very good to have the heads-up at this point, so thank you. Where is our other group? So I've had producers, consumer trust, law enforcement..

Sharon Lemon:        Being in the public sector we never have a budget for anything so I've assumed no money. And I've taken a very simplistic approach to this task, which may be too simplistic. But I think regarding the definition, we've already had a chat about that and we could produce that for discussion on our next call. We can work on the questionnaire.

But we will need resources from the expertise in context around this table, because once we've come out with the definition of law enforcement, we would want engagement from you as to what that

means in your area of life. So, we can use our own network, so unless Kim, anything you want to add? So, no expectations.

Emily Taylor: Thank you. Now can I hear from the applicable laws group? That's whoever your spokesman is?

Kim von Arx: Well I have to admit we didn't talk about budget. I actually just have to echo Sarmad's points, I think those are probably gonna be the main expenses that we're gonna be facing. We just basically need some support from all of our analysts who have set up some telephone conferences. And if anybody else from the team here has some thoughts, with respect to budget in particular, speak up.

Emily Taylor: So, noted. That's really useful at this stage. I think we will keep in touch with Sarmad's group about your expectations if you just give us a bit more of a shape of the sort of study you're anticipating and noted that you think that it will really only take shape once we've got a bit more substance on policy and implementation. So, thank you. I think that's all we needed to do today. I'm looking at Kathy, cause Kathy knows things like these.

Kathy Kleiman: A big item, name tags back please. James, where's...

James Bladel: You have to call housekeeping at the Hilton for that, thank you, and maybe send picking around their dumpster and find them....

Kathy Kleiman: We'll collect those, people who haven't, and then also the ten cards, so that we can reuse these on future occasions. And, I missed the

first part, do we have big budget items from... Okay. And just to throw it out there, should we throw it out there, that there is some thought that if we're winding up collating a lot of data, that a graduate student might be useful, somebody to help us collate and put things together.

Graduate students might be very useful, so just a thought that's out there, that's percolating. And because we are gonna be operating under a big time pressure especially the survey, if you're waiting for the policy, we're gonna be in a real tight window than if we're still looking at November. So, just a lot of interesting things to think about. But great, great sub groups, great meetings, great leadership. I'd like a round of applause both for Sharon and for Emily, for an outstanding job.

James Bladel:          And for Kathy.

Emily Taylor:          I'm going to close the meeting and say, a huge thank you to our host. And thank you to all of you for participating so fully and with such an open spirit. So thank you, I'm looking forward to the next year.

And just to review the things we've actually decided, we have agreed our scope, we've agreed sub-groups and we know what those are, and what they are going to do for the next call, we've agreed an outreach plan, an action plan. We've agreed to hold phone calls every two weeks at rotating times, and we've also

formed sub-groups. Yeah, I've done that. So I think we've done very well.

Kathy Kleiman:          We've had amazing speakers.

Lutz Donnerhacke:       What is the, when and how are we going to get the schedule for the rotating meetings?

Emily Taylor:           I'm going to leave that to Alice to Doodle. I think we agree that it will be a Wednesday.

Lutz Donnerhacke:       On a Wednesday is okay, but I need to know the times.

Emily Taylor:           Yeah.

Lutz Donnerhacke:       Okay. So every second Wednesday, keep it free 24 hours.

Kathy Kleiman:          That's it.

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