

- Kim von Arx: Kim von Arx, lawyer from Canada.
- Lutz Donnerhacke: Lutz Donnerhacke from an NGO in Germany for At-Large.
- Wilfried Woeber: Wilfried Woeber from Vienna University, and on the At-Risk Council of ICANN.
- Bill Smith: Bill Smith, PayPal, technology evangelist.
- Olivier Iteanu: Olivier Iteanu, a lawyer from France.
- Lynn Goodendorf: Lynn Goodendorf, and I'm an independent consultant in data privacy and security.
- Sharon Lemon: Sharon Lemon, Deputy Director, Serious Organized Crime agency responsible for cybercrime.
- Emily Taylor: Welcome, everybody. I think that the first thing that I'd like to do is just to highlight a couple of changes to the agenda, and ask everybody whether they have any items of any other business that they would like added to the agenda.

So the first thing to say, I think this has been discussed quite a lot on the list so it shouldn't come as a surprise, is that we're very lucky to have Larry Strickling and Fiona Alexander from the US government joining us by phone. That will take place at 2:30 today after lunch. I think that will probably come in the middle of

our discussions about applicable laws, consumer trust and so on. We'll just make it work.

The second thing is that although we adopted it on the list we just didn't reflect it in the agenda, but we're also going to be discussing, I think it was James York's suggestion that we also discuss under Item 3 "producers of data." And I suggest that that goes at the end, after applicable laws if that's okay with everybody else.

Is there anything else that needs to go on the agenda that we've forgotten about? Okay. Thank you. I'll take that as a no.

We are going to be here for two days, and as I said earlier I would really like to give a very warm thanks to Sharon and Shona and Belinda for all of the work that they've done in getting us here, hosting this meeting, wiring it all up – so very, very much appreciated and I think that will get us off to a great start as a team.

Now before we actually knew what we had in front of us we all agreed on our first call that we would finish this task by the 30th of November this year, which I think probably even in my case sounded sufficiently in the future, never to arrive, but now seems quite worryingly close. So I think that's probably a date that we all need to keep at the front of our minds as we prepare this task over the next two days.

And from my personal point of view, what I'd like to come out of this two days with is an agreed scope of work or if we can't agree on it, at least know the areas where we're disagreeing. Questions on the definition – I'd like to work through this substantive part today and highlight areas which seem to be agreed and areas where we're disagreeing, so that we've got a basis to go out for public comment very soon after this meeting on the substantive definitions.

A work plan and outreach plan – if we can come out of these two days with that agreed, we're going to really set ourselves up for success. We'll know what we have to do by when and we'll all feel I think a lot more comforted by that. And I think, on the softer side, getting to know each other face-to-face, working together as a team and a better understanding of the issues, I think the second day we're going to hear from different stakeholders about how they perceive the issues; and if we can leave this room with a more rounded appreciation of how different people perceive the different issues bundled up within WHOIS and bundled up within our scope of work then I think again we will be setting ourselves up for success.

So I think that's all that I wanted to say. Does anybody have any questions or comments at this stage? Lutz?

Lutz Donnerhacke:

Just the formal one. We started preparing this meeting saying that we are finishing next day at 2:00 pm, so I make my travel

arrangements accordingly. Just try to mention that we have to keep on the schedule in order to finish our work.

Emily Taylor:

Yes. Any other comments? I think that's well made, Lutz. We will certainly- I see my job, and Kathy's going to be supporting on this, is keeping us to time. So apologies in advance if we cut people off. I think that in my view, if we can just touch each item on the agenda, even if it's not as deeply as we would want to, I think that's preferable to getting stuck on something. So just be aware of that in your interventions.

I also really would encourage people, though, particularly those who perhaps are quieter, to take the mic and to let us have your thoughts. This has got to be a team process and not just driven by one or two people. So yeah, thank you, Lutz.

I had sort of thought that once we get to tomorrow afternoon, some people will start to drift away to catch flights – that's inevitable. We'll try and get as much of the substantive work done before lunchtime tomorrow as we possibly can, and of course it will be possible for anybody who has to leave early to catch up on what was discussed through the transcripts and through the public documents.

Okay, so what we're now going to move on to is the first substantive point on the agenda, which is the scope of work. And

I'm going to ask Kathy to lead this discussion as she chaired the discussions in Cartagena. Thank you.

Kathy Kleiman:

Thank you, Emily, and I wanted to add to the thanks for organizing, in addition to Sharon and her team, to Allison Olaf who did a fantastic job, who prepared these documents for us and put them together, and helped in immeasurable ways as well. So thank you for all the work that everyone has done to make sure that we could come here today. And also I wanted to say how fun last night was, so looking forward to another fun evening tonight.

Now we move on to the scope of work, and just a quick report from Cartagena that there were unfortunately only four of us there in person – that would be Bill, James, Wilfried and myself. Poor Michael was stuck in Europe, I believe with the ice storm, as were many, many people trying to get to that meeting, but we did- And then on the phone was Sharon, Lynn, Susan, and who else was on the phone? There was a fourth person. I thought there was, maybe three.

And what we did is we divided up into two groups – the groups in person and on the phone – and had two different brainstorming discussions of what is our scope of work? Looking at the Affirmation, what do we see as the scope of work or the questions arising from the scope of work? And then we came back together and had big sheets which were written up by Alice in some of our informal notes that were posted on the Wiki, and amazingly

enough we seemed to have the same sorts of questions, which I found absolutely fascinating. That was one of the purposes of the exercise – to see if we were in completely different places as to what we wanted to do, or whether we were in a similar place.

And the answer was we were in a very similar place – we have similar questions. So you have it in front of you, the Draft Scope of the WHOIS Review Team, where I took those notes and put them up under our work in progress. And let me read through this. This is material as it was put together from our notes, so anyone who was participating, please provide input; and also everyone who's reading it now and looking at it, please provide input.

I put it up, Emily edited it, so here it is. And I'm just going to read some of it because we really need to look at it and think about it. "The WHOIS Review Team has been constituted under the Affirmation of Commitments..." The rest of that paragraph is description.

"Under paragraph 9.3.1 of the Affirmation of Commitments, ICANN commits to organizing a review of WHOIS policy and its implementation to assess the extent to which WHOIS policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust. Accordingly, the scope of the WHOIS Review Team is to assess the extent to which existing WHOIS policy and its implementation is effective, meets

the legitimate needs of law enforcement, and promotes consumer trust.

“The WRT will identify and document ICANN’s existing WHOIS policy. The WRT will identify and document ICANN’s implementation of the WHOIS policy. It will define and identify law enforcement and the term ‘legitimate needs of law enforcement.’ It will define consumer trust and analyze what factors promote consumer trust in the context of the WHOIS. It will identify the areas of any in which the interests above may be in conflict with each other. It will assess applicable laws and analyze issues, possibly including contractual obligations versus national law obligations, the contracts of ICANN/registries/registrar/registrants versus national law obligations, differing global laws and ICANN’s obligations under them.

“It will review the extent to which ICANN’s existing WHOIS policy and its implementation are effective in meeting the legitimate needs of law enforcement and promotes consumer trust. This assessment will include an evidence-based approach and seek to identify good practice in other areas of the domain space as a benchmarking tool. “

And this is something that was now added by Emily: “The assessment will keep in mind overarching principles set out in the Affirmation of Commitments in relation to ICANN’s policy, i.e.,

that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent (paragraph 3A); promote competition, consumer trust, and consumer choice in the DNS marketplace (end paragraph 3C); and that the outcomes of ICANN’s private coordinating process shall reflect the public interest and not just the interests of a particular set of stakeholders.

“These principles set the context for the reviews, of which our WHOIS Review Team is one, performed under the Affirmation of Commitments. Finally, the WRT will undertake an analysis and determination of ICANN’s performance against the AOC requirement that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing and administrative contact information; and what impacts such requirements have on the legitimate needs of law enforcement and promoting consumer trust.”

And so I submit this to the group for discussion and perhaps for acceptance.

Emily Taylor:

I’ve got Lutz. Would anybody else like to take the floor? Lutz, Bill, Olivier.

Lutz Donnerhacke:

Thank you for preparing such a document. It’s a good piece of work but it starts for me far too concrete. It doesn’t- My problem

is that I do not understand what WHOIS is for – what it's used for, what this WHOIS data itself. I see the first difference between my view and the prepared paper in the paragraph about DNS. For me, WHOIS data is everything; collecting personal data from the end customer for obtaining internet resources – hierarchically organized internet resources.

If you take it in this way, saying we have a hierarchical system for putting out internet resources and therefore we are collecting data from the end customer, from the people who are really possessing the resource in the end – then we have to ask what we need about these interconnections? We have a hierarchy; we can go down the hierarchy if we have a need to know who is currently owning the resource. Why we should collect data by passing the hierarchy and why we should publish it more importantly, in (inaudible).

We can take this as a starting point, shortly discussing what we are talking about, before we are starting talking about who can access data that we don't know what it is. Before we are starting about if we can trust the data we can get, then we might come into the legal problems that we are not allowed to collect this data either. Thank you.

Kathy Kleiman:

Rather than going around can we respond to each? I think, Bill, are you addressing Lutz's question or can we- Okay. You raise a very good point, which is what is this data and why is it here? In some ways, and this is just for discussion purposes, let's go

around. In some ways it seems to me the Affirmation of Commitments has given us some of that answer by telling us what this data is that is being expected under the Affirmation of Commitments; maybe not why it's being collected.

Do we have the Affirmation of Commitments in front of us? Is that one of our documents? Could you pass that to Lutz? And to everyone it is on the ICANN website as well. I'd love to hear what other people think of this as a starting point going back to what is WHOIS data and its history, and what's being collected and why it's being collected as a starting point.

Emily Taylor: James, Lynn, Bill and Kim I think want to come in here.

Kathy Kleiman: And we're keeping the original queue as well for the discussion.

Emily Taylor: Yeah, so we're just discussing Lutz at the moment.

James Bladel: Just to be brief, the WHOIS data as I see it is defined in the Registrar Accreditation Agreement, the RAA, where it actually details the different fields under our obligations that we are required not only to collect but to display. Whether or not that's appropriate or open to debate I think is one of the topics that we'll examine, but that is what- That's how we defined WHOIS.

And I would say that that's also where we limit the definition of WHOIS, because we collect quite a bit of other data about our

customers that may not be relevant to ICANN – for example, their credit card number – that we would not release or display or publish in those contexts. So that’s how we would define WHOIS as a maintainer of that system.

Lynn Goodendorf:

My thought is, is that the questions you raise, Lutz, are covered in the scope of work, because I believe that as I listen to you I think you’re raising the points of the purpose of collecting the data and why it should be published; and as we look at the privacy laws we will need to consider those. I don’t think we’ll be able to answer those questions here this morning, but as it pertains to the scope of work, I feel comfortable that we are going to have to examine those questions.

Bill Smith:

Sure. So I’m thinking of Lutz’s comments, also James’ – I also believe that we know or should know what data is part of WHOIS. There is an existing policy. It’s not up to us to define it. It’s called the RAA; that’s where this information resides currently. And it is not up to us, we are not and have not been asked to determine whether it is appropriate to collect that information, whether we should be collecting different information or not. We have simply been asked to assess the extent to which WHOIS policy and its implementation is effective, meets the legitimate needs of law enforcement, and promotes consumer trust.

And the AOC goes on, and this is the scope I had suggested as a result of this document being posted, and I said I believe we are

becoming far too concrete; I believe that's a word that Lutz used. And I am very concerned that this document is making an effort to state specifically what we can and as a consequence, then, cannot discuss. And I believe that is a mistake for this group. I believe we should go back to a much simpler version of the scope of work. I sent a response out on January 4th. To my knowledge there's been one reply from James and there's been no other discussion of it. At some point I would like to have discussion of that. Thank you.

Kim von Arx: Very short. ICANN is not GNSO. We also have the ASO and they also have WHOIS data, so okay.

Olivier Iteanu: Okay, I just had the exact same comments as, and now I forgot your name – Lynn. And I actually am very comfortable with the scope as it is written right now, and I do think it does address Lutz's comments to a large extent. So I have to just echo Lynn's comments that I'm very comfortable with the scope as it is at the moment.

Kathy Kleiman: I'm comfortable with the scope of work as well, and Bill, I think it is a response, in fact, to the discussion of should it be very narrow or should the wording be very tight and limited, or should it be a little broader? And I think that's so that we can have- I like this because it's a discussion we're having now instead of later in terms of defining the scope. If we only make it three bullet points – assessing whether the WHOIS is effective, addresses the legitimate

needs of law enforcement and promotes consumer trust – I think- Oh, okay. Then I think we’re going to have the discussion later that we’re having now, which is as a group what are our specific questions under the scope of work because those questions define it.

Just as a pre-screening I talked to Fiona Alexander just to help prepare the time for Larry Strickling who’ll be joining us at 2:30 today, and said “One of the things we’re wrestling with is definitions. Can you tell us – are these defined?” and she said “No, we purposefully left some of these open.” And so we’ll be able to inquire further if we’d like with Larry Strickling. It is for us to find some of the definitions of these broad terms, and I think that is very much our scope of work.

Also I think we’re having a discussion here about whether we’re limited to just looking at ICANN’s policy. And let me note there’s an ambiguity: what’s written into the registrar contract on WHOIS data is different than what’s written into the registry contract. Registrar and registry contracts are different, not substantially but there’s different data. We’re going to have to delve into this, and if we want to pick as a starting point the registrar contract – because that’s actually the database information that is shown – that’s a very good idea. At least we’ve picked one point.

But I think what we’re hearing here and Lutz, tell me if I’m wrong, Kim, others that have come – is that there are some broader

questions here and it has to do with the nature of the data and the national laws that might govern some of that because we are talking about personal data. We're talking about names, addresses, phone numbers, email. And so I think that many of us read into 9.3.1 that these are questions we should be looking at, and hence that's important to the scope of work as well. So let's just put it all on the table, that this is very much a decision of what questions we'll be looking at. Thank you.

Peter Nettlefold:

Thanks. Kathy just touched on one of my important questions, or points I guess is- I'm not sure if it needs to be reflected in this scope of work document but there seems to be a bit of an ambiguity or a question about what the idea of WHOIS policy in the terms of reference means.

If we're talking about what policy means in an ICANN sense, I assume WHOIS policy is largely what has been recommended by the supporting organizations and accepted by the Board. And in the case of WHOIS studies, key documents are the RAA and other so whether we're going to count that as WHOIS policy as such. I'm not sure, just thought I'd throw it out there.

And another thing that we may need to be aware of, I'm not sure if this has been previously discussed but there are a number of activities going on within the GNSO on WHOIS. At the moment there are a number of studies going on, and they're sort of actively looking at things of relevance to this review. I know that the

timeframes for those look like some of them at least won't be finished once this review is done, and so how are we going to coordinate with those activities?

Bill Smith:

Okay. So I've heard a number of members indicate that they feel that the draft scope is acceptable to them. I can state very clearly and plainly that it is not acceptable to me. So if we proceed to say "this is our scope" I believe it needs considerable discussion, okay? Again on WHOIS policy, I will say it is not up to us to define it. We may need to look into documents to see where it is. If there isn't a document that clearly says "WHOIS Policy" then it may be up to us attempt to, either through discussions with ICANN staff or others determine what the defining documents are.

And we say we are doing an evidence-based approach? I would submit then that we need evidence of what is the policy, and that will be in documents, not in people's minds. Similarly if we're doing an evidence-based approach on everything then I would like to see evidence for each statement in the draft scope of work that indicates where in the AOC, okay, the language that is being proposed for this document, where there is evidence of it from the AOC.

Wilfried Woeber:

A couple of observations of a different point of view and the same point of view. Coming back to Bill's comment here, my feeling is that we are pretty close in our view on the content of the scope of work document. I think where one of the basic disagreements is

where Bill expects this document to be rubberstamped and signed in blood today, and from that point onwards to not have a chance to adapt it as we go along.

My personal understanding would be that this is our current view. This is documenting what this group today or maybe tomorrow thinks what road ahead of us we'll look for in the next couple of weeks. So I would like to ask Bill whether he can go along with this version or a very similar one under the headline or under the footnote that this is a document that will probably be revisited in due time during the life of this Review Team, because I'm pretty sure that we will identify a couple of things we don't know about right now and we have to adapt maybe the scope of work, either by cutting it down and trimming it to what is achievable; or maybe modifying it in one way or another or to extend it.

So I would like to ask Bill whether this interpretation regarding the status of the document would ease his mind.

Emily Taylor: Olivier, I know you've been waiting for a while, and then Sarmad, do you want to come in?

Olivier Iteanu: Okay, so I have a short observation of what Bill said, and one question – the third one, is that about my question? Yeah?

Emily Taylor: Yes.

Olivier Iteanu: Do we go ahead with the questions? I mean-

Emily Taylor: Just say what- We'll figure it out.

Olivier Iteanu: Okay. So I'm a little bit surprised by what Bill said because we are the WHOIS Review Team. So if we can't review the WHOIS policy what will be our discussion, you know? So I think we have to discuss about the WHOIS policy, so that's my first point.

And what is the statute of these documents? Is it an internet document just for us? I mean it's just for the two days' meeting?

Kathy Kleiman: This is for our nine months of work. That's a draft. As Wilfried said, it could set out our work for the next few weeks or set out our work for the duration, but beginning to craft where we want to go so we can begin to focus attention.

Olivier Iteanu: Okay.

Kathy Kleiman: And it becomes public. It's already up in the Wiki and the public, at least the draft that we're looking at is up on the public part of the Wiki.

Olivier Iteanu: Okay. And my question, which is out of this discussion, which is a very short question, maybe a naïve question – ICANN, it's names and numbers. So what about the IP address and the WHOIS?

Lynn Goodendorf:

Yes, my thinking is similar to Wilfried's, that I remember on one of our conference calls, Bill, that you had expressed the same concern about what could go wrong if our scope of work is too narrowly drafted. And I thought we had come to an agreement or a consensus as a group that the scope of work was, as Wilfried said, not cast in concrete; and that as our work progresses, if we identify issues that seem to be relevant and needed, that we would have some flexibility in the scope of work. So that's how I was looking at the scope of work, as having some flexibility.

And then just on your point about the policy, the WHOIS policy and the contractual obligations, I did take note in the draft that it says we'll identify and document. It doesn't say we'll define the policy. And I think this is what you're saying, Bill, in that looking for evidence, that's how I understand those words – is to identify and document means that we'll look for what is currently formally stated as the WHOIS policy, not that we ourselves would create or define it.

Emily Taylor:

Sarmad and James, and then I'm going to just put out a call for anybody who hasn't spoken and feels strongly about this to take the floor. And then perhaps (crosstalk). Absolutely. So why don't we do this. We have Sarmad, James, and- Sorry, thank you, Cory. So my proposal is we hear from Sarmad and James. I would encourage anybody who hasn't taken the floor and wishes to speak to do so now.

Then I'd like to give Bill the opportunity to respond to a lot of the questions that have been raised, and then I'm going to try and pull things together. Okay?

Sarmad Hussain:

Okay, thank you. So the way I see it, for us to go through the next two days we really do need a reference document. So this is a good document to start with. However, there is obviously not agreement on whether this is entirely the complete document, so is it possible for us to take this document as a reference for discussion for these two days; and then come back and look at this document and close the scope of work maybe towards the end of the face-to-face meeting, rather than doing it right now?

James Bladel:

Hi, just a couple of quick points and then a question for Bill, so I think it'll segue very nicely into your closing statements here. So the first question is, and I think it's going back either to Kim or to Wilfried of what is WHOIS policy? I think this is Peter's question as well. You know, from a very oriented and concrete perspective, WHOIS policy is what's in our contract and what we signed the agreements onto, and what ICANN Compliance and my very friendly colleague Stacy here will hit me over the head with if I color outside the lines. To me that is WHOIS policy, full stop.

There are numerous studies and other efforts going on. Those are meant I think to inform future policy development but they're not fully baked yet. The second point, just I did respond to your concerns on the mailing list in January regarding the scope. My

concern was, I felt that there was a discussion brewing about a review of the evolution of WHOIS and how we kind of arrived at this point. I felt that that was really outside the remit of this group.

We are meant to be a measuring stick held up to ICANN without making qualified judgments about the merits of its WHOIS policy – just essentially weighing in on is ICANN as an organization doing what it claims it's doing and identifying gaps. But finally, just the end of the question then to Bill is that I think what I'm hearing is that this is a more adaptive living document, the scope, and it's not something necessarily that's going to be our handcuffs for the next twelve months or nine months or whatever.

So is there something in here, rather than saying “Do you accept that?” I think we're hearing lots of disagreement on that. I guess my question is, is there anything on here that you feel we absolutely should not proceed with its inclusion? Is there a single point or two that you really feel is a full stop to our progress? Thanks.

Bill Smith:

I'm trying to go somewhat in order. Wilfried asked if I could accept the document more or less as is with the understanding that we could modify it as time goes on. Perhaps is my answer. But, and this is a big “but,” then in my opinion we don't have a scoping document because then everything must be allowed in scope in my opinion.

There are many things that in such a document are missing. We have identified- We're going to identify policy, we're going to define this, we're going to define that. My experience is when scopes of this type are adopted they then can be used later in a procedural manner, point of order, which takes precedence over discussion to say "That's not in scope." And then we can have a discussion about the scope and we'll decide no, it is in scope or it isn't in scope.

So all we're going to do is delay. In either case we will be delaying.

Kathy Kleiman:

Can I just- If we added the following language at the end would that make you happy on this point? And it does reflect, I'm looking at the notes that we took in Cartagena. If we said "Scope should not be viewed as restrictive but permit any relevant discussion," would that satisfy that issues of not closing it?

Bill Smith:

No, no. In my mail I stated that I see the scope becoming ever more specific as opposed to – and I quoted from the notes that were taken – "open ended and concise." For me, this is not a concise document. What is concise is the language from the AOC which I attempted to modify and I've put out several times as our scope. And I believe it is open ended if we allow it to be and I'm concerned that this document is becoming far too specific.

Lynn made a comment that she does not believe we are going to be creating policy. I would suggest that the language that we have chosen then is at least in my opinion suspect. I would strike “and document WHOIS policy.” We will identify it but to document means typically and from my experience that we will write something. It’s not up to us to write something. We can point to it and say “That is the policy,” or “That is the policy as we understand it.” And we may say it needs to be clearer or all sorts of other things, but if we are going to document something that typically involves writing.

So I do not believe that is within our scope. It is not within our scope to produce a document that says “This is the policy.” Our job is to assess effectiveness. It’s very clear. So those are my answers. If there are other questions I’m happy to listen to them, but I just see this becoming- This is not what I believed we agreed to in the Cartagena informal meeting.

Emily Taylor:

Thank you, Bill. Okay.

Lynn Goodendorf:

I have a suggestion, Bill. Could we consider renaming this document, instead of a scope to call it a roadmap and have a roadmap for our work? Because I think what we’re all wanting is some kind of structure or some kind of way forward on how we’re going to set about our work, and I would be happy with naming it “roadmap.” And I appreciate what you said about “document” because that had a different meaning to me. I don’t think of

documenting as writing; I think of documenting as collecting information and organizing it, and I think of it as looking for evidence.

So I think that was a helpful discussion because you have a different understanding of that. But anyway, my proposal is to call this a roadmap rather than a scope.

Emily Taylor:

Thank you very much, and thank you, everybody, for a very in-depth discussion and robust discussion. Okay, Kim? Does anybody else want to come in? Susan, Michael. Thank you.

Kim von Arx:

Just quickly in response to Lynn's suggestion, I actually disagree that we should proceed by calling this document anything but the scope. I do believe that in order for us to move ahead and to not be diverted along the way and be distracted- And actually I do agree with Bill on that point, that we have to nail it down, where we're going, because I honestly don't want to waste months and months and then suddenly six months down the road we're just suddenly deciding "Eh, we don't like it or at least part of it," and then we just suddenly we move into another direction.

So I do think we have to nail it down now in order for us to actually effectively get to wherever we want to go, whatever that might be. But I don't think we should just- And it's definitely no attack on you, Lynn, and I do think it was actually a very valid suggestion, but I just believe that for us to really be effective and

expedient, because we do have, our plan is to actually have it all done this year. And if we don't actually nail it down this time around then I think ten years down the road we're still going to be at it.

Emily Taylor: Thank you. Susan?

Susan Kawaguchi: So I agree with Bill that we should leave the scope of work to the very, basically what came out of ICANN's documents. And so I would propose that we go ahead and agree that this is the scope of work: "...it's effective, meets the legitimate needs of law enforcement and promotes consumer trust." Leave that as the scope of work but maybe using Lynn's definition of roadmap.

All of the questions that we've come up with and the statements are things that we need to focus on and are extremely important. I think that people have brought up good ideas, but those don't necessarily need to be in that scope but maybe we can use that as a roadmap that is not the official scope. So maybe we can agree to use all of this information but call it two different things.

Michael Yakushev: Thank you. I usually hate to discuss procedural issues when I'm not from the very beginning in the process, so I would like to accept what has been proposed as a document for discussion. But of course I do agree with Bill that certain wording of the scope is a little bit wider than the initial idea itself.

And of course I won't like to change the name of the document just to make everyone happy because it will not solve the problem in substance. And I like the idea somewhat that let's accept this document as a scope for our two days' meeting and let's return to this at the end of our meeting tomorrow afternoon, just to check whether it's acceptable or not for the nine months, yes? Just not to stop the work now but go further and go into the agenda, and after that let's check whether it's good or not. Thank you.

Emily Taylor:

We have Sharon wanting to comment. Anybody else? Lutz, and then I'm going to say something.

Sharon Lemon:

I haven't got much value to add in terms of what else is going on in WHOIS, I'm fairly new to this, but for me this two days is our opportunity to get a solid foundation for our work and I wouldn't want to dilute anything we do around the scope so that there's any ambiguity when we leave as to whether that's what we're doing or we're not doing. So I think we've got to really take some time to agree this is what we're doing, and then hopefully when we go away from this we can work in our subgroups to progress this work.

Because my concern is, if this is still wooly by the time we leave then it's going to be another flood of emails floating around and in three months' time we're going to be no nearer to knowing what our scope of work is. So I would do anything to just get that, so

everyone- And we're never going to get total agreement of it but we can have a consensus.

Lutz Donnerhacke:

As the one who started this discussion, let me make a proposal. You're right. We need a scope, we need a document, a real document we all agree on in order to make our work. We have a lot of things to do and we will not finish our work in time over the year if we do not agree on what we are doing here.

My concern is about that we are talking about things which are not really existently overt, imaginary things. That's my personal fear here so I'd like to come back to the evidence point. I asked two months ago if we should make a questionnaire of "What is WHOIS?" and "Who is using it for which purpose?" I do understand in the meantime that it's not a purpose of our group here to make this study, and because I am personally interested in this point I'd like to offer to make it myself outside this group here and to get the evidence for my personal feeling and do not hinder the discussion here anymore. Thank you very much.

Emily Taylor:

Thank you very much, everybody, for you contributions to this. There's lots of different themes that have come out in our discussions, and I think that it does reflect the importance of actually going through this pain. I mean I don't know if any of you have had building work done but there's this concept of giving the builder an easy afternoon and going "Yeah, it's fine," and then you have to live with this thing.

And a lot of what I'm hearing around the table is on the one hand everyone is frustrated. We want to get on and get on with the substantive work, but to echo points made by quite a few people if we don't actually all agree what work we're doing we're just actually delaying the pain. So let's try to nail this.

I think that it's right to keep in mind "Is this still relevant? Can we review it?" but please let's not do that because we can't agree something around this table and we want to just put it off. I think it's sensible once we've started to get on with this process around a scope that we're reasonably comfortable with, to then come back in I don't know, three, four months' time and go "Actually, now that we know a bit more is this still helping us or is there something that we want to change?" But let's not do that just in order to have an easy afternoon.

Okay, so I think we may not get 100% agreement from absolutely everybody, so we all need to listen and respect the different views. We're not all going to individually get exactly what we want from this, but we do need something that we can live with. Okay.

Now, I think it's uncontroversial to say we are instructed to do this by the Affirmation of Commitments, and so if we actually quote- So I'm taking the first three paragraphs and the bullet points as non-controversial. If anybody's got a problem with that please shout. Okay?

I think that there was a very good point raised about what documenting means, and I realized that I have a different understanding to others as well. I did not see it as slavishly writing out what already exists because that's just a waste of everybody's time. However, my personal view, and I think this might come a little bit towards the points that Lutz opened with which were very good thoughts, is we're also here as a service to the community. And personally I find it quite difficult to understand what is the WHOIS policy, because I don't find it very useful to be pointed to 300 URL's and be told "There you go, get on with it."

So I think it's not the same as documenting, it's not the same as just identifying it because that's like "It's there." I think we can do a useful service which is somewhere in between, and that is just identifying it and summarizing it so that a casual observer, a newcomer to the process can actually use this as a resource and say "Oh, now I know what the WHOIS policy is. It's written down in half a side of A-4 and if I'm interested I can read further from the source documents themselves." So that's a proposal that I hope brings in this slight difficulty.

I'm also conscious that I feel a little bit personally responsible for throwing open the debate where people had nearly agreed by adding the wider references to the AOC. And Bill, I think you sparked on that so, which the paragraph is "The assessment will keep in mind the overarching principles..." If anyone has a

problem with that paragraph, I actually put it in to try to address this point of not wanting to narrow us down too far. But if anyone has a problem with that paragraph I'm very happy to, as the person who created it, to propose to strike it out.

So I think we're agreed to here, which is progress, but it is actually just writing out what's in the AOC. What I'd like to do is actually spend the time on the scope and get something that will guide our discussions, not just for the two days but for the coming months. It's worth the pain now. We're not all going to agree on everything; we need to accept that. Okay.

So my proposal is let's spend a bit of time now, painful though it is, but let's try to reach agreement on this. So can I have some positive proposals from people about what will bridge the divide between what people are agreeing and disagreeing on? I have Lutz, James, Kathy? Okay, let's go, and Bill.

Lutz Donnerhacke:

I'd like to extend this paragraph to all the organizations, all the WHOIS collecting data organizations within ICANN. It's the Address Supporting Organization, the GNSO, and the ccNSO. Despite that we do not have written contracts in every case for the ccTLDs, they are the most important collecting data parties here. So we should consider them.

Too, we have to bring them up even if we do not have a legal instrument to realize it, so I'd like to extend this here to all three

organizations and name all three organizations here: ASO, GNSO, and ccNSO.

James Bladel:

So a proposal for a new verb in this, to replace the word “document” which I think a lot of folks are looking at differently and coming away with diverging opinions of what it means. One idea would be to identify it and to inventory existing WHOIS policy, because I think that implies a little bit more of an objective standoff approach that just collects all of the existing WHOIS policy and then lists it, maybe with an introductory summary but keeping that to a minimum. So I would propose the verb “inventory” as opposed to “document.” I’m hoping that gets everyone past the diverging interpretations of “document.”

Wilfried Woeber:

Yeah, I’d like to react to Lutz’s proposal to further extend the scope of work, and I definitely recognize the effect that the situation and the framework and the problems are pretty much similar in the resource registry area where we also have a risk infrastructure. But in keeping with the original mindset I’d suggest that we do not formally include that at the moment in the scope of work, whatever it’s going to look like at the end.

From my point of view this is an environment where we can actually compare things in the DNS world against the resource world, where I am definitely prepared and available to give the data, what is done and how it’s done in the resource registry world. But from my point of view it’s something which is under the

category of nice-to-have if there is enough time and enough resources to do it, and it will also be more into the direction of “Look, folks, it’s not our job to have an opinion on this one – it’s only our job to point out there are differences. And if anyone in the community wants to have these differences removed then please resort to the proper policy development mechanisms within ICANN.”

Because on a more general basis, I think this Review Team has to keep in its mind that we are not there to suggest or to make policy at all. It’s our mandate to document in the sense of inventorying things, to point out where we identify flaws, where we identify inconsistencies; but how the community wants to deal with these is definitely not our job to propose even. Maybe to limit ourselves to this is what the effects are, this is what maybe our personal opinions are, but then to go back to the Supporting Organizations or whatever it is in place to have this modified, progressed, developed. Thank you.

Emily Taylor:

I just have a question for you, Wilfried, in what you’re saying. And I notice actually we haven’t covered it in the scope. Are you suggesting that this team does not make any recommendations or that it does?

Wilfried Woeber:

My feeling is that this team should make statements, should describe observations, points to the real world out there. My feeling is that it is not our job to propose changes to policy. I

guess we can do that, but if we ever do that we have to add in flashing red letters “This is just a suggestion. This is not something to be taken as a shortcut maybe by the Board of Directors, to bypass the established policy development processes.”

Kathy Kleiman:

So combining what Lutz has recommended and what Wilfried has said, let me see if I captured something. Looking at the second to last paragraph on the first page, it says “This assessment will include an evidence-based approach and seek to identify good practice in other areas of the domain name space as a benchmarking tool.” How about if we use the address space and the ccTLD space as examples?

So “...including addresses and ccTLDs in consultation with the ASO and the ccNSO among other organizations”? And that way we are binding it to evidence, we are using some models and some of the expertise within this room, and these are very, very valid models. In some cases they’ve addressed some of the very issues that we may be looking at. So let me propose that.

The other question I wanted to throw out is IDNs. We haven’t talked about it. To what extent do we want to look? Even within the gTLDs, the IDN WHOIS policy is in formation. Do we want to include that in our scope? So just throw that out there as a question.

Emily Taylor: Okay. James and Phil, you wanted to come in? Lynn? Olivier, did you? Yep.

James Bladel: So I just wanted to respond with a sincere inquiry because I don't know: do we consider – and I'm going to be as generic as possible. Do we consider the data collection and publication systems of the ccNSO and the address space to be a WHOIS system?

Kathy Kleiman: Yes.

James Bladel: Okay. So and it follows the same protocol and everything else. Thank you, because I was not aware.

Wilfried Woeber: May I just react to that one briefly? Protocol is again open for interpretation. It tries to satisfy the same expectations, the same needs, whatever they are. It uses very similar or identical mechanisms. It does not use the DNS-specific protocol requirements like EPP and that sort of thing, but other than that it's a comparable set of information that is collected. It's done for a pretty similar purpose. It's done for pretty much the same time, looking back in history; even longer than for DNS. And it is used and consumed by communities which do overlap considerably.

James Bladel: Okay, thank you, because I wasn't clear if you actually referred to it as a WHOIS system. So then my follow-up question, which may be not so simple, is given you mentioned there was no legal instrument or contract that was used to enforce that data

collection? Okay, so that's not correct? So I misheard Lutz's statement I think earlier, but certainly for ccNSOs, ccTLDs, their WHOIS systems are essentially- They could be through their own policy development process for something like Nominet or Cira, or they could be at the whim of the operator of the ccTLD that "Today we've decided that we're going to start collecting names of first-born children as part of the WHOIS data set," and you simply have to comply with that.

So I guess my question is while they're probably good for comparative analysis, I think that because they're outside of ICANN's ability, some of them are outside ICANN's ability to influence or control should ICANN be held up to that measuring stick? Because what we're talking about, and in one way getting back to your last question about recommendations; I think what we're talking about is preparing a gap analysis. We want to identify gaps and we want to say "Look, ICANN – you say you're going to do X, you're actually doing Y, here's the delta. You need to close that gap. How you close that and how you go about developing policy to bridge that is a separate task."

So I think we need to be careful about making sure that what comparisons we're doing are relevant comparisons and applicable comparisons that translate over well. So I'll just leave it at that. Thanks.

Emily Taylor:

I've got Bill, Lynn, Olivier?

Bill Smith: Alright, so I would suggest that we delete paragraph 3.

Lynn Goodendorf: What’s paragraph 3?

Bill Smith: “Accordingly, the scope...” It’s repetitious. Excuse me?

Emily Taylor: Deleting?

Bill Smith: Yes, it needs to be deleted. It’s a repeat of paragraph 2 almost verbatim. And also paragraph 10, which is repetitive as well.

Lynn Goodendorf: What’s paragraph 10?

Bill Smith: “It will review the extent to which ICANN is using the WHOIS policy in its implementations are effective in meeting the legitimate needs of law enforcement and promotes consumer trust.” That’s repetitive. This is repetitive language. That’s why I was arguing for concise language, right?

Kathy Kleiman: Right, so let’s come back... Can we replace paragraph 2 with paragraph 3? So maybe delete paragraph-

Emily Taylor: Yeah, what if we say-

Bill Smith: I was suggesting removing the text that I proposed because that seems to be the going theme. So I’d like to remove paragraph 3.

Emily Taylor: Point taken. Can I just- Because your text actually suggests what we're going to do rather than saying what is the basis of what we're doing, can we just say delete paragraph 2 but say "In accordance with paragraph 9.3.1 of the AOC, the scope of the WHOIS Team is to assess..." and then the bullet points? So that we've got the hook of the AOC without repeating what it says, because we know it, and then I think we can keep paragraph 10 because we've deleted it above. But it's just phrased in a term of what we will do rather than stating that ICANN will do it.

Bill Smith: I'm fine with that. The other statements are not scoping, however, in my view. They are statements of what we will do. It's not a scope; it says "We will do the following." That's very different from scope.

Emily Taylor: Sure. Sorry to jump into the queue, but this is a point raised by Susan earlier, which is that these are useful roadmaps for us and that maybe- Unless I've got it wrong nobody thinks we shouldn't do the stuff that we've written down, right? That's correct. Everyone agrees that we should do that but it's not scope and it's also not an exhaustive list, so we can say "A non-exhaustive list of the factors we will take into account or the actions we will take are..."

Bill Smith: Just quickly on that, I don't object to any of the things here. Where I may object at times though is to the amount of time that

we expect we will spend on some of these things. So we can do an exhaustive- To James point, we can do an exhaustive study on the history of WHOIS going back to 1977, which is where we would need to start roughly, to find out what the history of the WHOIS is and why it is there. And that would take quite a long time actually, and I've actually done some Google searches.

There's not a lot of information that really talks about the real history of it, and we would have to then go talk to people to find out what was actually intended at each step of the way as the RFCs themselves were changed and superseded, and then we started with ICANN around 1990 and how that has evolved to the current policy. So that alone could take us nine months.

Emily Taylor:

Okay, noted. I've got Lynn and then Olivier.

Olivier Iteanu:

I had a positive proposal, but if Bill is happy with that then to me that's okay. My proposal was to change the title so that's very simple. But if you are happy with the deletion of the two paragraphs and if the rest of the document is okay... My fear, my concern I just want to say to Bill, I'm not against Bill of course but my concern was I don't want to be limited to two days' discussions and for the rest of the time of the Review Team by anything. So that was my fear, my concern. But if Bill is happy with these changes that's okay for me, that's fine for me.

Lynn Goodendorf: Yes, since one of the things we wanted to do is develop our plan of work, perhaps to follow on to Susan's suggestion and your comments we could take the information in this draft and take the items out that aren't scoping and use that to begin our plan of work.

And I just wanted to add one other thought, is that we've talked a lot about policy but I've also, in thinking about my own expectations about what we're going to accomplish and what our output would look at, I've looked at this word "effective" and the implementation. And so I'm thinking that hypothetically, if we feel that there are problems with the implementation and that it's not effective then that's what I would expect us to have in our report.

And maybe this is what James is saying is a gap analysis, that if we see that "Here's what's in the contract and here's what's happening in reality, and here's the gap," then that's something that I think we're obligated to put into our report, that type of thing.

Emily Taylor: I've actually lost my list now. Kathy, did you want to come in and Lutz? Peter, did you-?

Kathy Kleiman: A comment on WHOIS history and then a note about the edits, or how we might maybe finally complete the document. I don't think we should just dismiss WHOIS history. I don't think we can. I think we're going to be looked to almost for a definitive WHOIS

history. I'm not talking about comprehensive, I'm not talking about an oral history, I'm not talking about a museum archive. But if we don't tell people what the history of the WHOIS is, why this data is being collected, what we found- And we're the ones who are going through the WHOIS policy of ICANN, established since 1998, and ICANN has also looked at some of the history of the technical creation before that.

But if we don't look at it who will? If we don't give a summary of how we got to this point who will? I almost think it's kind of critical for going forward, again, not museum-quality archives but a basic history even while the founders, some of the creators of the original WHOIS are still with us – it might be worth talking to them.

Okay, so a final proposal on this Lynn, if I might suggest kind of combining... Take the paragraphs, as I understand it the first paragraph, the second paragraph has now been deleted; the third paragraph with the bullet points, and then skipping all the way down to "This assessment will include an evidence-based approach..." which we've now expanded to use as examples addressing.

So we've skipped the sentences that say "The WRT will identify and inventory ICANN's existing policy..." There's that sentence, one, two, three, four, five, six. Going down to "It will assess applicable laws and analyze issues possibly including contractual

obligations and differing global laws...” – let’s keep that in the same document because I hate creating multiple documents because you can never find them when you need them, and put that under “A non-exhaustive list of what the WRT has committed to reviewing includes...” because I think we have committed to reviewing these and we’ll be talking about them in the next two days.

Emily Taylor:

Lutz, Sarmad, Bill?

Lutz Donnerhacke:

The narrower we are making our scope here the quieter I will be in such great cases, so it’s in all our interests to get a real good document here. My current question on this is what we are doing to put through proposals or document changes? If we are going to propose document changes, recommendations for policies and then we have to limit ourselves to GNSO-related topics, it’s all we can do because it’s all ICANN can do. If we are saying “No, we are not allowed to make concrete policy changes,” then we are making general recommendations and then we are allowed to make recommendations for the GNSO, for the ASO and for the ccNSO.

But we can’t do both. We can’t say “We are only making recommendations for the GNSO and then we may have a look at the others.” If we only make recommendations you should make note of that and consider it yourself, or then we have to include all and keep them equally; or we say are proposing very concrete things then we have to limit them to that area ICANN can do.

Emily Taylor: Sarmad. Okay, Bill?

Bill Smith: I think Kathy, what I was detecting was going through and saying “Okay, here’s the text we’re going to put in this paragraph, okay, and then here’s a roadmap,” or something like that. I just wanted to suggest that we go back to the, and I would suggest we use the language I put in the January 4th email, which is the language I first put out there which is very similar to what’s here but has been pulled apart and thrown in other places.

It’s in the January 4th email so it has “The scope: to assess the extent to which WHOIS policy and its implementation...” then the three bullet points “...is effective, meets the legitimate needs of law enforcement, promotes consumer trust. This assessment will include an analysis and determination of ICANN’s performance against the AOC requirements that ICANN implement measures to retain timely, unrestricted and public access to accurate and complete WHOIS information including registrant, technical, billing, and administrative contact information.”

To address comments that had been made on the list I also added a statement in the January 4th note: “Discussions, deliberations and reporting will be conducted in a manner to facilitate inclusion of issues/concerns of the full range of stakeholders, ensuring that the public interest is well served.” And then follow that with all the other stuff. But it’s up for us to decide. I spent a fair amount of

time wordsmithing that. It doesn't have to go that way; I personally think it reads better but-

Emily Taylor: Thank you, Bill, and also thank you for putting in the time to wordsmith it earlier. I think as a general point, I don't think we should view it as a waste of time or a problem if we spend some meeting time discussing these things and coming back to where we started – that's not a failure. I think if we can end up with a conclusion we're doing well.

Kathy, did you want to come in or shall I just-

Kathy Kleiman: It's hard to finalize without (inaudible).

Emily Taylor: Again, I think we're pretty close. Peter?

Peter Nettlefold: This is just a procedural thing and I'm looking around the room thinking I've already got my answer. But in the GAC room we're talking about text like this, what we often have is a screen and we can edit as a group and we can see what we're talking about. I apologize; I only joined this group last week and I did flick through the email archive. I hadn't seen Bill's wordsmithed text; reading it out loud, it sounded good to me. Is there any chance we can get some text somewhere we can all share and get this sorted out?

Emily Taylor:

Okay, I've got two proposals. I'm going to just make some comments. I suggest that when I finish speaking we have a comfort break, get some coffee, and ask the staffers to stick the text up on the screens. I think we're now close enough, if that's possible. If that's not possible then stop me now.

I think we're now close enough to actually do this without spending the rest of the day on it. There's a couple of points of fact which I think would be useful to just clear up. Wilfried, I think you're quite right. This Review Team is not here to make policy; it is here to review it. And they are two different things. I don't think that that means we can't make recommendations; this comes back to James' gap analysis. If we review and see a gap this huge then we have to say something about it. Equally, if we review and see it's all wonderful then we have to say that, too.

As a point of fact, Lutz, I don't think ICANN has any policy making control over the CC's, but as part of the evidence base, which I'm hearing from lots of people that they want, I personally view the CC's, ASO or whatever as a good resource for us. Other people have, James put it in quite colorful language – some CC registries go through the full works in a policy development process and also do some enforcement, some don't. Is there something out there in that landscape that we can learn from or that we can draw to ICANN's policy making attention?

I think if we see that, great, but equally it should be very clear that we're not saying "Actually, we've had a look at how things are done in this country or that country. We don't like it." That's none of our business. That's my view on that and I hope that will clarify what we're up to. Yes, we are making recommendations; no, we are not making policy.

Yes, we are there to look at what else is out there that we can usefully learn from and this is Kathy's point about if the history of the WHOIS tells us nothing, it teaches us nothing, it's that history teaches us nothing. But I think that we need to look at how we've got there. My personal view is not get bogged down in it, not spend the whole time doing it, but I view this as something that has a slight crossover with the ATRT. If we realize that the policy development process or the structure is as such that it has inevitably led to a problem or a conclusion... I don't know enough about it, actually.

I'm not speaking in like some, I haven't decided this, but if looking at the history, if looking at the structures or the process teaches us something about the effectiveness or otherwise of the policy we should not rule that out in my view, my suggestion. I'd like to propose a coffee break but when we come back can we get these texts up on screen, see how we do, and obviously continue our good discussions? Thank you.

Shall we get back here at 10:45? Is that long enough? 15, 20 minutes.

[break]

Emily Taylor: Thank you. Welcome back. Thanks for getting the text up on the screen, and if you can't read it can you try and get yourself into a space where you can read it? Okay, it's in the Adobe room, good.

Okay, I think we've got both Bill's mail, can we toggle to the text that we also have? Is that possible?

Lutz Donnerhacke: Well I've got two different ones, sorry. I wrote it in two different documents, so it's Bill's proposal and the other proposal. I can shift between the two.

Emily Taylor: Alright, let's get the document that we've all got here and I'll try to reflect what I think we agreed in the last session. So this, the second paragraph...

Lutz Donnerhacke: I just increased the font.

Emily Taylor: Okay.

Lutz Donnerhacke: That one's no good.

Kathy Kleiman: We can read those.

Emily Taylor: I can read it.

Lutz Donnerhacke: Tell those behind or far away...

Emily Taylor: Okay. So can we delete paragraph 2 please?

Lutz Donnerhacke: Meaning here?

Emily Taylor: Yes.

Lutz Donnerhacke: All of it?

Emily Taylor: Yeah. I think we agreed that. Yeah, can you mark it up?

Lutz Donnerhacke: Oh, you want a markup? Review changes, yeah.

Emily Taylor: And then delete the word “accordingly” in the beginning of the next paragraph, and say “In accordance with paragraph 9.3.1 of the AOC...” Okay.

Lutz Donnerhacke: I’m not very quick.

Emily Taylor: This is good. And then I think if you get to, if we scroll down there is a paragraph a bit further down that starts “It will review...” It’s just on the bottom of the screen here.

Lutz Donnerhacke: Okay.

Emily Taylor: And I think we were saying move that up to the end of those bullet points? Did I get that wrong?

Lynn Goodendorf: No, it's repetitive.

Emily Taylor: Is it repetitive? Okay, you're right.

Lynn Goodendorf: I think Bill had suggested deleting that.

Emily Taylor: Agreed, I think that's right.

Lutz Donnerhacke: Okay, gone.

Emily Taylor: Gone?

Kathy Kleiman: Can I add one on the next paragraph? "This assessment will include..."

Emily Taylor: Okay.

Kathy Kleiman: The very end of that, instead of period, comma "including addresses and ccTLDs as examples."

Lutz Donnerhacke: IP addresses or-

Kathy Kleiman: Yes, IP addresses. “...as examples in consultation with...” “...as examples (comma) in consultation with the ASOs, ccNSO and other organizations.”

Emily Taylor: Okay, let’s pause there. Can I ask for comments on the changes that we’ve made please? James?

James Bladel: So in the sentence or clause, I suppose that Kathy has just added, I think that it’s fine. I would like to qualify “examples” and say something to the effect of “applicable examples.” But I’m afraid that that changes the readability and kind of ruins your sentence there, Kathy. What I was thinking would be something like “...including applicable examples” or “relevant examples from address and country code spaces.”

Kathy Kleiman: Could we do a “good and relevant”? Does that solve the problem?

James Bladel: I wanted to have “relevant” as close to “examples” as possible.

Wilfried Woeber: I would suggest then why don’t we just do it by including “IP addresses and ccTLDs (comma) as applicable (comma) in consultation with the ASO and the ccNSO”?

James Bladel: I’m afraid that that says, that’s declaring that they are applicable examples as opposed to qualifying that the examples should be applicable for us to consider them. I think there is a... I don’t want to-

Emily Taylor: Can we just put the word “relevant” or-

James Bladel: Again, if it’s-

Emily Taylor: If it’s just before the word “examples.”

James Bladel: No, I think we have the same problem there. See, because if you read it, it says “as applicable examples,” so it’s declaring that they are applicable examples as opposed to saying if they are applicable we should include them as examples.

Emily Taylor: So what about “including (comma) if applicable, where applicable (comma) examples from IP addresses and ccTLDs...” Is that right?

James Bladel: I think that’s probably- It’s getting close but, and again, I hate to belabor this too much but I really felt that the possible language would be something like “including IP addresses and ccTLD as examples (comma) where applicable (comma) in consultation with the ASOs, ccNSO and other organizations.” So-

Emily Taylor: Comfortable? Good. Can we live with this? Now, the bunch of text in the-

Kathy Kleiman: Sorry, the space, the paragraphs (inaudible) so-

Lutz Donnerhacke: I know, I know. It's a weird formatting. It's a weird formatting, I tried to move it but I don't know how to do it. Sorry, this is not my specialty.

Kathy Kleiman: We appreciate you doing that.

Emily Taylor: Thank you for doing that. Right. Yeah, next page? Okay, so this paragraph here we haven't actually talked about in detail.

Kathy Kleiman: I think we're missing the rest of it for some reason.

Emily Taylor: It's there, it's on the next page. No? Oh no, it's gone.

Lutz Donnerhacke: The Bill part of it.

Kathy Kleiman: No, if you go up we're somehow missing the bottom of that paragraph. This paragraph got kind of...

Emily Taylor: "...promote competition and consumer trust." Okay, it's on your paper.

Kathy Kleiman: The last paragraph on the paper, "...promote competition, consumer trust, consumer choice in the DNS marketplace and the outcome of ICANN..." It's the last paragraph on the paper. It got cut off in the editing.

Emily Taylor: So just by way of context then I think that trying to read across into Bill's proposed text as well, as I read both of these texts they're sort of trying to do the same thing, I think, please correct me if I'm wrong, in that they're trying to extend out our work to encompass concepts that run through the AOC; i.e., things like reflecting the public interest, accountability, transparency, and this sort of phrase about consumer trust, competition, consumer choice in the DNS marketplace.

So please let me have comments. Lutz?

Lutz Donnerhacke: I trust I made a mistake in reading the paragraph on the AOC. And 9.3.1 is a subparagraph of 9.3, and 9.3 is dealing with new gTLDs. Just from my understanding we are dealing with all gTLDs.

Emily Taylor: My understanding is that we've been asked to look at existing policy. James? Sorry, I had Kim first.

Kim von Arx: Go ahead.

James Bladel: I was just responding. I think that I read this to mean that new gTLDs have to be in operation for one year before they're... Am I reading that correctly?

Lynn Goodendorf: Yes.

James Bladel: Okay, thank you.

Kim von Arx: I'm sorry for belaboring, actually, James' edits to the previous paragraph but I have to admit I'm not fully sure I understand actually. Can we just go to... There it is.

Kathy Kleiman: "This assessment will include an evidence-based approach..." paragraph? What changes would you like to see?

Kim von Arx: Maybe I just find it... Obviously to read it's a little wobbly.

[background conversation]

Emily Taylor: Comfortable?

Kim von Arx: Anyway, at least as far as I understand, from an English point of view it does read very oddly and it's- If you come from it I think afresh it's not very clear I find. I would think if somebody doesn't really know about-

Emily Taylor: Okay. Kim or Peter, can you propose a redraft that actually conveys the meaning?

Kim von Arx: I'm still trying to parse it.

Peter Nettlefold: What I'd try to do, I think, is turn it into two sentences because there's just so many commas and sub-clauses I think it's confusing. And maybe a simple way to do that is where it starts

turning red there's a full stop. And then we could say "These could include relevant examples from IP addresses and ccTLDs in consultation..."

Kim von Arx: Yeah, actually I really like that.

Emily Taylor: James, as the "relevant" monitor, can we have your comments?

James Bladel: I think I'm okay with substituting "relevant" for "applicable," that's fine. I would prefer "...examples, where relevant (comma)..." as opposed to "relevant," because I think one is a declaration and one is a qualification.

Emily Taylor: Alright. I'm seeing nods. Lutz?

Lutz Donnerhacke: I still do not understand the last paragraph here, after the right one. Why do we include this, "The assessment will keep in mind overarching principles..."? We have a lot of overarching principles. We can't name them all. But the truth, the special one, 3A, and remove 3C which is more clearly on our scope, which was an (inaudible) document 2. So I propose to remove the whole paragraph there. There is no benefit in it.

Wilfried Woeber: Which one?

[background conversation]

Emily Taylor: Okay. That’s a proposal that echoes a proposal earlier. Are there any bits in that we want to keep? Bill, Kim?

Bill Smith: I would suggest that in deleting that we put a link in to the AOC itself when we first mention it.

Emily Taylor: So can I take that as saying “This assessment will keep in mind overarching principles set out in the AOC (link)”?

Bill Smith: No, the first paragraph that says “The WHOIS has been constituted under the Affirmation of Commitments...” I would make the link come off of “Affirmation of Commitments.” We just link to the document right there that says that’s where we take our charter from.

Emily Taylor: Alright, okay. I have another question. Bearing in mind the Affirmation of Commitments and our scope, we are going to basically take out the bullet points from the middle of this document and put them into a roadmap. What’s missing? Is there anything missing that the AOC is asking us to do or to bear in mind in our work that we need to include in this scope?

We don’t need to- Very well made point, Lutz. We don’t need to exhaustively set out the whole thing, otherwise it’s just copying the document. But are there any concepts or relevant terms that are missing that we should include?

Okay, Kim, did I cut you off? Were you waiting to come in before? So Kim, Peter, Wilfried, Bill. No? You're just existing, okay. Kim, Wilfried, Bill.

Kim von Arx:

Actually I disagree with removing the last paragraph from this particular document, because I do think it's very important because it is going to be based on an overarching- So I agree actually with your initial drafting of it and I think the intent of it, to make sure we don't forget and we're definitely committed to actually keeping in mind those overarching principles which really are set out in the AOC, etc., etc. And so I actually strongly disagree with taking it out. I hope I said "disagree," right?

Emily Taylor:

Yeah, you did. I've understood that Lutz wants the paragraph out, you'd like the paragraph in. If we changed "i.e." to something like "non-exhaustive examples which include" or something, or just "including," would that satisfy you both? This word here, or something like "including that," in other words it doesn't limit it?

Okay. Wilfried next and then you, Bill, I see that Bill's desperate to come in. Wilfried, will you give up your place to Bill?

Wilfried Woeber:

So is this a change for including?

Emily Taylor:

I'm suggesting it.

Wilfried Woeber:

Okay.

Bill Smith: So I think, other than the specific paragraph 9.3.1 that talks about this Review Team, pulling specific language out of the AOC is I think unnecessary. I would suggest that we could put in something quite simple. If Kim's issue is around public interest, saying that the discussions, the deliberations, everything that we do will be done to include the concerns of everyone, ensuring that the public interest is well served; it covers that and says yeah, it's from the AOC. We have referenced that and we want to ensure that the public interest is served.

But pulling specific pieces out, I think we then are going to need to go and say "Okay, now what else is in there that we should pull in?"

Emily Taylor: Fair point. Wilfried and then Kim.

Wilfried Woeber: Yeah, just wanted to react to your question whether we should include other stuff in this document. My feeling is that it is premature to ask this question right now because we might learn about additional aspects and the input of Mr. Strickling.

Emily Taylor: Nice. Kim?

Kim von Arx: Just in response to Bill's comment, well I disagree again. I do believe that in any kind of policy review – and we are doing a policy review. I think that's among other things our purpose. It is

important to understand the principles upon which, and not just the very limited principles that are set out in section 9.3.1, but the overarching purpose of a particular document in order to understand the intent of why and how it actually came about.

So if you look at actual various policy analysis documents in general from government and from various other organizations, they don't just take one particular section and focus on that, and don't look at anything outside the four corners of that particular section. They look at the entire intent. So that's why you look actually, for example and among other things, at House of Commons in order to understand why certain, for example, laws or policy statements were made.

So if we just suddenly remain within a vacuum, I think the purpose and the effectiveness of our overall review is going to be absolutely obsolete.

Emily Taylor:

Can I make a suggestion just to cut in here? Can I hear from people who haven't spoken? If you're not speaking is it because you have lost the will to live or you are generally in agreement, or what? How should I take your silence? If you're really unhappy speak up. If you feel that people who are generally taking the floor are actually speaking for you, that's great, but can we just get that cleared up? Can I hear from someone who's not- Thank you.

Sarmad Hussain: So I think this should be kept in but it should not be limited to this, so we may eventually be able to add something to this. So I like the earlier example in which it says “including this” but it may actually eventually be expanded as well. So something like that.

Emily Taylor: Yeah, anyone else who hasn’t said anything yet? Sharon?

Sharon Lemon: Yeah, I’m still very much with it. I’m new to it so I don’t really get the nuances of all of the wordsmithing. I know it’s important to some of you and I’ll go with it because I understood the first document and I understand this document. So I can live with it.

Emily Taylor: Okay. Bill?

Bill Smith: I’m happy to leave that in. I would suggest though that we add “...maintain the capacity and ability to coordinate the internet DNS at the overall level and to work for the maintenance of a single interoperable internet.” And there are probably other things if I read the AOC that I will want placed in the document as well.

Emily Taylor: Okay.

Bill Smith: Okay? And there may be many of them. That’s my concern, because that to me is an extremely important principle that no one has talked about yet.

Emily Taylor: I think there are many important principles. I'd like to just try to tease out the issues that Kim raised here. Now how we express it is one thing. What I think you're saying, Kim, is let's give ourselves some context of the principles that we around this table think are important in guiding our review. So we can do it by referring back to the AOC, and that has some benefits because that is the document that gives us the right to life as a Review Team. Alternatively we can come up with some concepts ourselves which are our guiding principles that will set the context.

Okay. Who, anyone who has- Okay, it goes Sarmad, Bill, Kathy, Kim? Michael, did you want to come in or you're just moving?

Sarmad Hussain: Okay, so one more thing I'd like to point out is that since these are overarching principles they should come towards the beginning of the document, not towards the end..

Bill Smith: Okay, so again I submit that from paragraph 8A, "ICANN's commitment to maintain the capacity and ability to coordinate the internet DNS at the overall level and to work for maintenance of a single interoperable internet" is in my opinion perhaps the most important principle from the AOC. It is the operation and maintenance of a single internet.

I understand public interests; I support that well as an important principle, but a single internet and the operation and maintenance

of it. If we're going to include other things, things like that need to be in there.

Emily Taylor: Okay. Any objections to that? Then it seems fairly-

Sarmad Hussain: Yeah, I would actually second that because that has a significant implication on our work since there are multiple instances of WHOIS data which are independent of each other. So we would then need to look at that.

Emily Taylor: And perhaps then, I don't know but there may be some implications with IDN WHOIS as well. I don't know whether that's- But clearly there are, I'm getting we want to include public interest as an overarching principle, we want to include the "maintaining the capacity and ability to coordinate the internet DNS at the overall level and work for the maintenance of a single interoperable internet." We could try to abbreviate that or we could just say it as it is. I've got Kathy, Kim, and then James.

Kathy Kleiman: Kim?

Kim von Arx: Actually, I just wanted to say that I'm in agreement with Bill's addition, and I don't- Yeah, let's leave it at that.

Emily Taylor: Thank you. James?

James Bladel:

Okay, so earlier you were asking folks to characterize what their silence indicated, and whether they were agreeing with it coming in and out. I at the time felt that it was fine staying in there. I've since come around to Bill's way of thinking, or at least his original way of thinking, that if we pry open this door a little now we have to open it all the way. And there's a principle in the AOC that I think is particularly relevant to WHOIS, that "It recognizes the importance of global internet users to be able to use the internet in their local languages and character sets, and endorses the introduction of internationalized ccTLDs, etc."

I think that now that we're including some of these other things we would be remiss in not mentioning that do we have the ability to measure how well ICANN is doing in making that principle available to non-ASCII character sets within the context of WHOIS? Now, that's a big question and it's not currently, or maybe not very elaborately spelled out in our scope. But I think once we let the nose of the camel into the tent we have to let the whole animal in.

Emily Taylor:

James, I recognize what you're saying and I think it's valuable to bring it up now rather than in six months' time when we're halfway through our work and we go "Oh, hang on – what about multilingualism and all of this?" This is an extremely important point. It isn't adequately reflected in the current draft and I think if we seem to be reasonably comfortable with the idea of reflecting back to the AOC, pricking out from it guiding principles for our

work – I’ve got three so far, which is the public interest; interoperability, stability and the single internet, I’m abbreviating it as; and then the local languages and character sets.

Kathy, did you have something? So do we have any other, or anyone want to pitch in for including others?

James Bladel:

So just for the sake of readability, and I think this is getting back to Bill’s original point; it might be more efficient to say “In accordance with the principles outlined in the Affirmation of Commitments (sections 1 through...)” I don’t know how far down it goes – 11. Actually, 1 through 8, cause 9 prescribes the review teams and I think 1 is just introductory. So 2 through 8, and we could leave it at that.

And I think then that leaves, without having to exhaustively enumerate all the principles we find in there we can just reference it and move on.

Emily Taylor:

I know it’s painful, and I think there’s a lot of people in this room who spend their working lives trying to read policy documents, legislation and text. I believe we can all agree that readability is a nice-to-have but it doesn’t seem to be reflected in every single thing that we have to read.

To take it to an extreme, we can enumerate every single principle in the AOC and practically copy it out – that’s not going to help

anyone. We can refer to the AOC in general – I don't think that's going to help us sort of tiebreak any disagreements we have down the line about what we should and shouldn't be considering. Cause if we end up going "Well, it's in the AOC," are we going to be any the wiser?

So can we just try to stay with this process for a little longer? If it doesn't work we'll scrap it. I've got Kathy, Lynn, Sarmad, Bill. Oh sorry, Susan, have you been waiting to come in for a little while?

Susan Kawaguchi: No, I just stepped up. I'm on the end.

Emily Taylor: Okay, okay.

Kathy Kleiman: Suggestion, maybe a silly one, that this is somewhat of a new area we're going into. It's not one we've given as much thought to. We certainly didn't brainstorm it in Cartagena. It was up on the scope, on the work on progress. But as much as I hate creating other documents, do we want to create another document, a short document on guiding principles so that we're not doing this right now? Can we finalize the scope of work without finalizing these principles, especially given that many of us don't have a copy of the Affirmation of Commitments in front of us right now? And I'm stealing Emily's.

Emily Taylor: Thank you. Lynn?

Lynn Goodendorf: Yeah, I like Bill's proposal because the Affirmation of Commitments is actually a pretty short document. I mean it's a little over two pages, and so I really don't think it's useful to try and go through and pick out principles. I like Bill's proposal again, of just referencing the entire AOC.

Emily Taylor: Sarmad?

Sarmad Hussain: It's normally good to have documents which are complete in themselves in at least some way, rather than just only referring to other documents. So in that context, even though the text could say that "For details refer to AOC numbers 2 through 8," I think there is still value in summarizing some of the main guiding principles in the context of WHOIS, which we will be considering, which we are doing. So I actually want to see some of this text maybe as a separate document if you want to take it out, offline, but eventually a paragraph, two paragraphs leading to the scope of work I think would be a good idea.

Emily Taylor: Thank you. Bill?

Bill Smith: Sure. I actually think we're going to have to pull stuff from each of the paragraphs that James mentioned if we do that, which is why I am in favor of just referencing the document and we know that those are the principles that we're operating under. This is the internet; on the web you reference documents a lot. I agree with

Sarmad that yeah, having a single document is in the best of all possible worlds the way to do it; the web is not necessarily the best in my opinion. We could go through it and do it but I did not come here expecting to have to go through and pull all the principles from the AOC out that we thought were important.

Emily Taylor: I think this is a point well made. Can we hear from Susan?

Susan Kawaguchi: So I agree, too, that we should just reference in the scope of work. And then maybe, I think it would be valuable to discuss it but we need to get beyond the scope and deciding on the scope of work so we can move on to your plan of work, a roadmap or whatever we decide to call it. But if we continue to add things to the scope of work we may be here forever.

Emily Taylor: Okay, my proposal is as follows- Sorry, Lutz?

Lutz Donnerhacke: I would just like to add we move it simply for a reference, then at the moment it looks like in order to break difficult situations here the order is wrong, simply wrong because we had another order, we had another principle first in our section 9.3.1 that makes our 3C as the most prominent decision rule because it's explicitly named in 3C. So I would propose that we remove it completely and simply leave in for reference. It looks not very good if we have a scope of our own work in as much as text "and that we should consider additionally," is the same amount of text. As long as it tells but it doesn't look good.

Emily Taylor: Okay, just listening to the comments around the table and bearing in mind the other agenda items that we're hoping to cover this morning, can I suggest as follows: that in paragraph 2 of the draft scope we say "In accordance with the principles set out in the Affirmation of Commitments, and in particular paragraph 9.3.1..." and then we carry on, yeah? That after the third bullet point, "promotes consumer trust," we put a heading "Roadmap" or "A non-exhaustive list of actions may include the following..." Yeah?

We keep in the paragraph, oh sorry. It helps to look at the screen too, doesn't it? No that's fine, okay. Alright. Yeah, that's lovely. Okay. We just put in a heading before "The WRT will identify and document," which is called roadmap. Can we just do this, Bill, and then I'd like to throw it open for comments. Yeah, I note that you'd like the floor.

Yeah, "Roadmap" is our new heading. That's a word.

Wilfried Woeber: Oh, a roadmap, yes.

Emily Taylor: "The WHOIS Review Team's actions may include the following..." Is that getting-

Lynn Goodendorf: I liked your phrase "non-exhaustive list."

Emily Taylor: Okay, “A non-exhaustive list of actions the Review Team intends to take includes...”

Wilfried Woeber: The Review Team will...

Emily Taylor: “A non-exhaustive...”

Wilfried Woeber: Okay, “A non-exhaustive list,” we added that.

[background conversation]

Emily Taylor: “...of actions the Review Team intends to take include...”
Alrighty. Then we’re all comfortable with this. Bill?

Bill Smith: No, I am not comfortable with that because that includes the paragraph taken from 9.3.1 of the AOC, “An analysis-“

Emily Taylor: We’re not keeping that, we’re deleting it. We have deleted it.

Bill Smith: No we have not. I’m not agreeing.

Emily Taylor: Oh sorry. Sorry, you’re talking about which paragraph?

Bill Smith: I’m talking about the very final paragraph in this document.

Emily Taylor: We haven’t gotten there yet. When we get there you can disagree.
Let’s go back up, sorry.

[background conversation]

Emily Taylor: Yes, yeah?

Bill Smith: My point is that this is why the language is so important. “A non-exhaustive list of actions that the WRT intends to take includes...” hang on, please. By listing the final paragraph under that statement it means we may not do it because it’s just an intention; it’s not something we are required to do.

Kathy Kleiman: We just haven’t gotten there yet.

Emily Taylor: Bill, yeah, let’s just try and keep our interventions and interactions civil and calm if we can. I know that we all care about the subject matter deeply, but this will not help at all our progress. Okay? We’re going to go through this in order, we will get to the final paragraph when we get to it and we will move it.

Bill Smith: Okay, if we’re doing that in order we’re now changing, dramatically changing by introduction of language, and we didn’t ask if we agreed on the language. So no, I do not agree to “A non-exhaustive list of actions the WRT intends to take includes...”

Emily Taylor: Okay, I’ve got Lutz. Susan, do you want to go?

Lutz Donnerhacke: Whoever edited the last paragraph, for me it seems to be a copy and paste from the AOC line 9.3.1. So we do not lose it because

we already referred to it in the scope of our work in the very first place. We do not need the work inside the whole paragraph here. I'm happy with removing it because it's already stated, and we might point out that this is a special point here but then we have to move it to another place, yes.

Susan Kawaguchi: So I'm confused. So is it possible we could just focus on the scope of work, go back up to that? I mean I can't manipulate this document. And are we close to agreeing to that scope of work right there?

Emily Taylor: Kathy?

Kathy Kleiman: I'm sorry, Susan, I think our scope of work, since we're dividing it up, depends a lot on what we define as the roadmap. I think they're intertwined. So I like the direction Emily's going, taking us through the edits that we've got so far and then looking at it. So going through the document, what I'd like to do is go back to that line "Roadmap: a non-exhaustive list of actions the WRT intends to take includes..." and the next two lines I believe that we replace the word "document" with "inventory."

Emily Taylor: Yeah, that goes back to an earlier discussion.

Susan Kawaguchi: But if we decide that the roadmap is part of the scope of work then we're going to be here a couple of days just deciding the roadmap. I think if we decide on the scope of work and it's broad enough to

include other things on the roadmap that none of us thought about at this moment, and we keep adding to roadmap as we work through this important issue then we have a working document. But I cannot agree that the roadmap is part of the scope.

Emily Taylor: I recognize the worry. I think that we are reasonably okay with the first few paragraphs leading to the end of the bullet points. Anyone object? Okay. Now have I missed any bits? Is there any bit of the rest of the document that ought to be in the scope of work? Speak now.

Lynn Goodendorf: Bill's out.

Emily Taylor: Bill's out of the room?

Susan Kawaguchi: The problem is, too, it's a little hard- Can we just take the scope of work, accept the changes and then see it as-

Emily Taylor: Can I suggest that we try not to do it all right now, that we come back to this before the end of the meeting? I would like to get somewhere where we all think "Well good, we agreed that," and then review an amended draft tomorrow would be my proposal. I take your point about the roadmap, Susan, and as the person who came up with the idea which was you-

Susan Kawaguchi: Actually, I think it was Lynn.

Emily Taylor: Oh, was it Lynn? Oh, I beg your pardon.

Lynn Goodendorf: I think I started us on it.

Emily Taylor: Right. We all seemed relatively comfortable with all of the actions as long as it wasn't the only thing that we were going to be doing. So I'm not sure that you're right, that we'll get stuck forever on this. I could be over-optimistic. Can we see where we are now? I think let's wait for Bill to come back in but I think we're relatively there?

Lynn Goodendorf: Yeah, it seems to me that maybe the point where we have some differences is the idea of making this all one documents or two separate documents, and the objections I've heard are that in our non-exhaustive list or our roadmap, that that should just be a different document so that it doesn't appear to be a part of the scope. And I think it may just be the circumstances of how we're working on these edits, that Olof's got it all on one page but that doesn't necessarily mean it has to be one document.

Kathy Kleiman: Though I truly believe that we need the scope defined and agreed upon before we can really work up the roadmap. So-

Emily Taylor: Okay, there's several tasks that are falling out of this, so my proposal to the team is that we adopt the first whatever it is, three paragraphs up there as our scope. Yes, that we clean it up and see it before the end of this meeting and we all have the opportunity to

provide any last edits, but basically we're comfortable with this as the scope.

There are two actions that I think are falling out of this: some sort of statement of guiding principles, which I propose to target for our next call; and the roadmap, let's look at the document. Olof has suggested calling it scope and roadmap. Let's look at it with both of these headings in the same document. If we are not happy let's split them out. And then that would give us the chance to park this now, to say yes, we have agreed our scope. We're going to be working more on guiding principles; we're going to be reviewing the roadmap. Objections? Kim?

Kim von Arx:

Well I really don't want to belabor the point, but actually I disagree with Susan to some extent, and the reason for that is I honestly don't believe we can all, at least I cannot agree to a scope if I don't actually understand the overarching principles. Because how can you agree to something if you don't understand to get there, and what actually the overarching principles are that are going to guide basically your scope, for that matter, because your scope is guided by overarching principles and vice versa?

Kathy Kleiman:

Based on the work in Cartagena and based on our agenda for the next two days, I think the items under the roadmap are critical for us to agree with today. There may be more but I'd like to see us agree to that today as part of this document. Call it examples, call it roadmap, but I think it belongs in our scope of work because it's

exactly what we're doing for the next two days and it's what we've planned the agenda around. It is what comes directly out of Cartagena and it was up on our works in progress for many weeks, and so just paging down-

And it doesn't include the final paragraph. I have no objection to deletion of the final paragraph, Olof, but since no one has disagreed to the items that again have been up for so long and have guided our whole preparation of the agenda, going down a little bit more, Olof; I would like to ask that we accept these today as part of this document.

Emily Taylor:

Reactions to Kathy's proposal? So Kathy's proposal is based on the fact that this document has been up for comment for many months and has not provoked a huge amount of chat on the list, that doesn't mean we're not in disagreement but can we adopt these items here up on the screen starting with "defining law enforcement" down to "global laws and obligations"? All in favor? Point of order?

James Bladel:

Yes, how are we making this decision?

Emily Taylor:

I just wanted to see, I wanted to gain the feeling of the room for these particular spots.

James Bladel:

Okay.

Emily Taylor: Straw poll or comment?

[background conversation]

Emily Taylor: So straw poll-wise, does anybody object? Susan?

Susan Kawaguchi: I object. I think, unless I'm confused I object to- I have no objections to any of these lined out here, but I do object to them being in the scope of work.

Emily Taylor: Responses? Bill? Okay. Would you feel more comfortable, both of you, and would the rest of the team feel more comfortable to take these out into a separate document called Roadmap?

Bill Smith: I don't believe we need to make a separate document.

Emily Taylor: Oh sorry, a separate heading, yes.

Bill Smith: A separate heading.

Emily Taylor: Okay, so I think that we're all, I think that was actually what was intended to be there, so a few lines of the scope ending with the bullet point called "consumer trust"; a heading called "Roadmap." Okay, and then we delete the last paragraph; as Lutz pointed out it is simply taking text already in the AOC which we have already said we are going to be bearing in mind. And-

Kathy Kleiman: Should we go ahead and put that (inaudible)?

Emily Taylor: Yes, please. Bill, do you care to comment?

Bill Smith: Sure. Since we are taking things out that are already in the AOC, the bulleted list needs to be removed. Yes.

Emily Taylor: From our scope?

Bill Smith: Yes, yes. That is text from 9.3.1.

Emily Taylor: Well actually in that case we don't need a scope at all; we can just say-

Bill Smith: That would be my point, okay? If we're removing the last paragraph, which is an essential component of my opinion of our scope, and we're doing it because it is merely from the AOC then the bulleted list also needs to be removed.

Emily Taylor: Sorry, I'm getting befuddled now. Do we want a scope?

Susan Kawaguchi: I disagree with you.

Emily Taylor: Do we want a scope? Sorry.

Bill Smith: I'm happy to add the last, retain the last paragraph. No, no, I want the last paragraph in but I've been told it should be removed and

the reason. Therefore the other thing needs to be removed. So I'm going to go ahead and disagree and say I don't really see the harm in having the bulleted list there. I understand it's duplicative but I think it's good to have.

Emily Taylor:

Peter?

Peter Nettlefold:

Yes, I agree. There seems to be a lot of sort of broad things being discussed here, so the way that we now have it, the scope is effectively a restating of what's in the AOC. And getting down to the next level of complexity, the next breakout is going to be this roadmap, which I think is a useful thing to do so that we don't just step straight from the AOC into an open-ended debate.

In terms of what things we reference if anything from the AOC in our scope, to the extent we decide we want to scope, I think those three bullet points are definitely useful because that's what we're going to do. I think the statement which we're talking about removing, which is the last paragraph, is a declarative statement in the AOC stating what policy includes. It's not something that we necessarily, I mean we are reviewing three things about the policy and its implementation. I think it's really useful to note that. The statement at the end which says "The policy will include..." and I don't think we need that. I mean that's just my point of view

Bill Smith:

I see Peter's point. My point is that the accurate information, which is a requirement – it's an AOC requirement taken from 9.3.1

– that the information be accurate is within scope. And I believe that it is essential that we state that, that accuracy is in fact within scope.

Emily Taylor:

Can I just say- Kathy, can I- Taking the point earlier, Peter's point, this is a declarative statement really; it's not really an action point. Do we move it up then? Was this the point that you were making earlier, Bill, that this comes into scope rather than roadmap?

Peter Nettlefold:

I'm not sure I care one way or the other, but I think it's obviously within scope. We're reviewing the policies. Part of the policy is that WHOIS data is accurate. I'm not for a second by saying we not put it in say that it's out of scope. I think that's one of the key things that we need to look at here, like there is a WHOIS policy and the data should be accurate. What's the point of having a policy if it's ignored? And that's the reason we have policy and implementation. I just think it's manifestly obvious that that's part of it, to me.

Emily Taylor:

Alright. To try and bring this discussion to a close, because I'm aware that we have many other agenda items to cover, can I ask Olof and Alice to work on a clean draft of the scope which includes this last paragraph? So move the last paragraph up to just under the bullet points if that's clear, and I know what I think I mean so I can help you there. Then include a sub heading called "Roadmap" including the non-exhaustive list of actions.

Let's put in an AOB for tomorrow to review that draft and sign it off. So I think we're relatively agreed. Any objections? Thank you.

Let's move on to the next agenda item. Just bearing in mind timing, we're thinking about lunch at 12:30. Can I suggest that we move that to 12:45 and spend an hour now on the first item of three, which is law enforcement? And I'm not sure whether you all picked it up, but the people who volunteered to cover the various points on the agenda are asked to just give the team a very brief overview of their work, particularly as some of the papers came in late on the web and not everybody will have been able to read them in detail.

So if I ask somebody from each subgroup to give the team an overview of their work, and then we can open it up for questions and answers. Okay? Kim?

Kathy Kleiman:

This subgroup was Kim, Sharon, and Wilfried.

Emily Taylor:

Oh sorry, just to be clear, before you set off what I think we want out of these discussions today is a list of proposals or questions that we can then go out for public comment on, okay? So we're making our first stab at these. This is law enforcement, what we think are the legitimate interests. We don't need to come to a

conclusion on this; we just need to identify areas of agreement and disagreement in my view.

Peter Nettlefold: I'm not sure I've got a list of the paper that was circulated on this one. Did I just miss it or-

Wilfried Woeber: No, there was no paper.

Sharon Lemon: We only met for the first time last evening, so there's no paper.

Emily Taylor: Take it away, please.

Kim von Arx: Okay. Just to follow up on Peter's comment, yeah, we didn't actually circulate anything in writing. We just actually had a chance to meet yesterday, with Wilfried and Sharon and I. And it's going to be very quick, because basically the understanding that we have, that we came out of our meeting with, is that we think law enforcement should be interpreted relatively broadly and it should not be just police. There are various other bodies which regulate, implement and enforce, basically regulatory frameworks that may include antitrust, competition, revenue, fisheries/agriculture and whatever else enforcement agencies out there.

And I actually related that among our team of three. When I did the Cira WHOIS policy review, we had actually a lengthy discussion on what actually would be law enforcement, and

initially it was just police, RCMP and regional police and whatever else. And then we did actually a survey, questionnaires, a public consultation, and we got a lot of feedback actually from various other regulatory organizations; and particularly, actually from Canada Revenue Agency and from the Competition Bureau, which told us they're actually using the WHOIS information even more often than the police in order to investigate tax fraud and competition issues, etc., etc.

So that actually then opened our minds, and so we suddenly realized oh, law enforcement is actually much, much broader than we initially thought. It's not just the police, which walks along the street and tries to convict criminals. So Sharon and Wilfried and I, we were of the opinion that yeah, we should really try to keep it broad because, and keep it as broad as possible by stating that it is actually any kind of government organization which is actually authorized by law to implement, enforce, and maintain a regulatory framework within a state.

And with respect to our approach as to how we actually determine how they use the WHOIS, Sharon kindly offered that she would be more than happy to help us to actually contact various law enforcement agencies across the world to enquire on what their use and need is for the WHOIS. That's it.

Emily Taylor:

Thank you, yeah?

Sharon Lemon: Yes, thank you, Kim. What we were thinking was that around the table there's a lot of experience and useful networks, so if we were to come up with some sort of questionnaire to try to establish what the legitimate interests are in the use of the WHOIS by the various law enforcement agencies... I mean I've got a very effective international network of effectively police officers, but whether we could use the contacts of people in this room to put out that questionnaire and then to put it right back through us three as a sort of working group to try and come up with some assessment of the current situation.

Emily Taylor: Just to clarify, Sharon, Kim, are you offering to sort of hold the pen and develop the questionnaire questions, and sort of motivate the whole thing and then offer it out to all of us for our own networks? Is that how you-

Sharon Lemon: Yeah, I realize we've all got our discreet bits of work, so we're all happy to, if it all comes back through our small working group the value I could add is the law enforcement part of it. And I know the other members of the team likely have got the technical skills and the history of the WHOIS. But if anyone particularly around the room is thinking "Oh, I'm good at questionnaires, I know exactly what you need to be asking," then all help will be gratefully received.

Wilfried Woeber: Yeah, just to add a little bit of background. From the European perspective, we recognize the fact that it's not in all geographic

regions and sort of no longer a clear cut distinction between entities trying to enforce law, whatever it is, and being formally easily recognizable as police or criminal investigation. In the real internet which is out there these days, there are lots of organizations, lots of groups, lots of activities which are mandated to make sure that the law is observed with regard to operation of the internet, and this is in some countries organizations which are operating under the mandate of a government but not being the government entity in the first place.

One of the best examples are national regulators. There is for example the situation in Finland with [Ficora] which is also mandated by government to implement law which applies to operations of ISPs and which also is the national incident response team, or national CERT. So one of the ideas we had yesterday in the evening was to use our contacts and our experience and our background to collect typical configurations of how law enforcement is implemented in various countries; but at the same time, asking people around the table from other regions across the world – and I'm looking in your direction, Sarmad – sort of how to help us with collecting information on how the situation is in other areas.

We probably have good links and good channels of input from Brazil and from South or Latin America, I hope. I'm looking more into the direction of Asia, because as we also discussed yesterday – and just cut me off if I'm talking too long and it's out of scope.

There is also the interesting situation on the internet that trying to make the users of the internet obey the law has two pretty fundamentally different aspects. One of them is actually doing criminal investigations, trying to find out who the perpetrator was and maybe take them to court. But this is only affecting, from my point of view, a very minor percentage of all the misuse of the internet, because the other big area of trying to keep the internet clean is actually focusing on the goal of making the misuse stop as soon as possible and as efficient as possible. But there is only little incentive to follow up and sort of put someone through court.

And from my personal perspective, this sort of blurs the border between traditional law enforcement and other organizations which are doing law enforcement these days on the internet. I mean the internet is not run by the police. That's my view on the whole thing, so thank you.

Emily Taylor:

Thank you very much to the team for this work, and throwing open the issues in this way which I find very interesting. If I understood your proposed approach it's basically to say we're not going to jump straight to a definition. We're going to use an evidence-based approach and develop some questions which will- What? Okay, which will help to inform us, and ask members of the team to use their networks.

I'm sure people are wanting to come and comment. Okay, Bill, Lynn, Lutz, James. Anybody else? Olivier, Peter, Kathy.

Bill Smith:

So I would just like to encourage the team, following up on Wilfried's comment, if this is the appropriate place to look sort of beyond traditional law enforcement at other organizations that are either assisting law enforcement or are doing in essence some of the work that you might expect a law enforcement group to be doing, and they aren't doing because they either don't have the resources, don't have the training, whatever. And if this is the appropriate place to bring that in, fine, if not then I think it needs to be done somewhere else.

Emily Taylor:

Point well made. I think sort of the insight that I got from the team's work is that law enforcement, it's one of those terms where we think we all understand it but actually, and particularly when you have questions of resources and the nature of the internet, it's not clear cut.

So the point you're raising, Bill, is properly handled under this item. It might also be part and parcel of consumer trust, but let's not let it go.

Bill Smith:

As a sort of follow-up, as an example, if Company A is doing some investigation for whatever reason, they've learned something during that investigation and they see that oh, Company B is also impacted – we tend to get together but there's information we can't

share because of our separate privacy things. But there's other information we can share to help do an investigation using information that's available to us, but I mean basically respecting privacy. And these are difficult investigations. They're non-trivial, they require extreme amounts of expertise at times, and also that we be cautious about protecting PII.

Lynn Goodendorf:

Yeah, I really agree with the subgroup's recommendation to take a broad interpretation to start out on this, and along with Bill's comment. In the United States I've kept in mind the Federal Trade Commission and the Bureau of Consumer Affairs, which I think we now have a new agency, a Consumer Protection Agency, and they are tasked with enforcing commercial law and commercial regulations. And this is where, for those of you who don't live in the United States, this is the recourse that US citizens take if they have a privacy complaint or if they feel that a company, on their internet site, has violated some kind of US law, whether it be a privacy matter or something else.

So that's just to say that I would like to reinforce that broad interpretation so that we can include that type of law enforcement as well.

Emily Taylor:

I've got Lutz and then James.

Lutz Donnerhacke:

We are talking about law enforcement, and law enforcement is not only one direction – it's an otherwise round. So if we did not have

WHOIS data on the internet, a lot of data access by law enforcement agencies would not be legal in the first place. They are not allowed to access such private data from persons in order to fight an eBay crime, because it's a low-level crime and so low-level that the rights, the personal rights of the people on the internet are much higher than following the crime they are currently insisting on.

We had the same discussion in the Mexican meeting last year? I don't know.

Lynn Goodendorf: The cybercrime.

Lutz Donnerhacke: And Baird, there was somebody from the law enforcement, from a government one and said "We do not need your services at all for really, really strong crime because we can go down the hereditary. We can ask who is the registry, we can ask the registrar because we do not have a problem with this. But if we have WHOIS data it's much cheaper and much easier for us to use this data despite it might not be correct, and that's why we are using it for first step and then we go down the hereditary again in order to identify the data."

So if we are going to law enforcement then we have from several points of view to ask the question is it permitted to give the data to the law enforcement agency, or other law enforcement-related

agencies, in order to do something which is not allowed by local law if the data was not in public? Thank you.

Emily Taylor: Okay, James... Olivier, you wanted to come in? Sorry. James then Olivier.

James Bladel: So just in case we were hopeful that we were all marching down the same street together, let me go ahead and throw a monkey wrench into the gears and say I would encourage the group with an open mind to consider the benefits of a very narrow definition of law enforcement; and by that I mean I think the key phrase that you had, Kim, when you were giving the overview “authorized by law” or statute or fiat of the president for life, or whatever’s applicable in that particular territory.

I have some concerns. One is that if we expand the definition we have to remember that this is the internet. We’re getting into areas where we have industry groups, we have self-appointed enforcement groups or vigilante groups as well that could claim under this broad definition that they also deserve this same equal footing. I think that the broader we make the definition of law enforcement the more challenging it becomes to identify what is a legitimate need. If everyone can call themselves law enforcement then suddenly the legitimacy of their needs diverge and it becomes very difficult to pin those down.

I would say that there are some unintended consequences of keeping that open. We run the risk of not only good industry groups, like some of the ones that have been described here – I think earlier Bill had mentioned – but there are negative industry groups that are considered perhaps overreaching industry groups. There are industry groups that are not authorized by any kind of statute although they claim they are. There are political parties that might want to suppress opposing views. There are religious authorities in some countries that may want to purify the internet of content that they believe is counter to them.

So I think we need to be very, very careful of what we consider to be law enforcement. And you know, I think I agree with you, Lutz, if I'm following you correctly, that there's also a tradeoff between access to data and resources that aid in the investigation of a crime versus something that helps build an evidentiary case for a crime. And the way this was explained to me was that if certain groups by claiming that they are in legitimate need of law enforcement, might find that if they were granted some sort of privileged access to this data might find that that could be used against them when attempting to actually prosecute a case.

Now this is something that I had a hard time getting my mind around, and it could be specific to the US in a constitutional manner, but I think it goes to what Lutz is saying here; as we broaden or start to look into a liberal definition of law enforcement, or even a narrow one, we run the risk that- We don't

want to default to “law enforcement gets the keys to the kingdom” because in some cases that may be the opposite of what the law of that area requires.

So once again I just want to urge the group to consider the consequences of a broad definition could be certainly unintended but could also run away from us very quickly. Thanks.

Emily Taylor: Thank you. Olivier?

Olivier Iteanu: Yeah, thank you. To me, and I think from the WHOIS point of view, law enforcement means mainly identification. Tell me if I’m wrong but that means identification first and mainly. So the documents, the registries’ privacy and law from the European point of view, personal data because we speak about that, and privacy are not exactly the same concepts. So that’s my first comment.

And the second one, I think that we have to think about Australia and countries like Brazil, Canada, that have to (inaudible) suit to the Iranian blogger, the Chinese blogger; and for that reason I think that the paragraph about anonymity is I think a bit severe. I think that anonymity, we have to consider certain anonymity from this perspective of the Iranian blogger on Chinese data. So that’s my two comments.

Emily Taylor: Peter, and then Sarmad? Kathy, Peter first.

Peter Nettlefold:

Okay. I should apologize, I had to think on the fly. After James' comment I was going to be in the lucky position of just getting to agree with everyone but I think James is right and raises some really good points. And I think some of the things we might need to keep in mind here while we're talking about the legitimate needs of law enforcement is what falls into the other category of "promotes consumer trust," because depending on- I agree with some of the earlier comments that we wouldn't want something that's important to fall between the cracks of those two definitions.

So depending on how broad or narrow we make our definition of law enforcement, I think I take James' point that we may need to be careful here because we've got a sub-clause to that or a related clause which is legitimate interests. On the other hand, we've got "promotes consumer trust" and an awful lot might fall in that basket.

So from my point of view, I think so long as something that's important doesn't fall between those two cracks I guess I'm a bit more relaxed about how we define it. So the example that comes to my mind is a CERT, for example. Some CERTs operate under national laws and are part of the government, and some private sector CERTs or even a national CERT might not operate under specific laws. I'm not sure whether they enforce laws in all cases.

To use Australia as an example, we used to have the national CERT was part of a university; it was sort of a private sector

arrangement. It's since been brought more explicitly within the government. I haven't had the time to consult within the government specifically on whether that's changed their legal framework, but I think we could all probably agree that CERTs and so on are pretty important users.

So they may well fall under "promotes consumer trust" – it could be a security/stability thing rather than a national law thing. But I just wanted to throw that sort of tension between the two clauses we're dealing with here.

Emily Taylor:

Alright. I'm seeing lots of nods around the table on that. As I understand it, we've got the potential to define law enforcement very, very broadly, but then there is "Where do you stop?" And on the other hand, we say we've got to keep our work trackable; on the other hand we don't want to miss important issues. So if we find out that we happily define our terms and are missing out on a huge section of legitimate activity we need to revisit. So Lutz and then Bill.

Lutz Donnerhacke:

I want to come back to the anonymity point. Several countries require that you have anonymous or CERT-anonymous access to the internet, but access to the internet is not part of our discussion here, despite, sorry Wilfried, despite IPv6. We can talk on the break.

So please keep in mind that WHOIS data is solely required for hierarchical distributed addresses or resources on the internet. It is not required to have access to the internet. So we do not need to have a few of anonymity or certainty for having an own domain, having an own address space. That's not our point here – we can drop it, this position. But on the other hand we really need to make very sharp lines in saying what is law enforcement and what is law enforcement allowed to do on which case?

It's not enough to say it is a law enforcement agency. They are allowed to do something, for instance, classical argument: they are allowed to do anything on (inaudible) when they are used for instruments than for an eBay crime. And that's not a position that I have to purport at any time.

Bill Smith:

Sure. I can support James' proposal that we have a narrow definition, provided that – and Peter I think touched on this – that access to the information that's publicly available remains; that that's recognized as an important thing for security, stability, resiliency, etc. There are things like distributed denial of service attacks. They happen very frequently and they can be extremely debilitating to those who are impacted.

WHOIS is the way that those that are impacted can attempt to take care of things beyond all of the things we have to do in terms of filtering stuff on the inbound, all the technical things that we can do. But if you want to try and get it taken care of at some point

that's where you have to go. And the information, if we're talking about history, that's available in WHOIS, one of the reasons that it's there is around security and stability and resiliency of the internet, because if you go back to 1977 when this stuff first started to come out, the reason it was there was to be able to contact system administrators, etc., for rogue systems that were on the internet. And that remains the case.

Emily Taylor:

Kim, Olivier wanted to come in. Kathy, you want to come in. Anyone else for the queue? No?

Kim von Arx:

I just wanted to actually agree with James. I absolutely agree, but I mean I do- The reason why I mention it is broad because law enforcement, generally speaking, the first thing that pops in your mind is just police. And so I just wanted to make sure anyway that it is more broadly interpreted, and that it does actually involve in essence any kind of regulatory authority which is empowered by law – and I do certainly specify that – which is authorized by law to actually enforce any kind of regulatory framework.

In response to actually Peter's point with the CERT agencies, and there are some which fall under government authority and some which don't, I just want to caution the group that if we now suddenly determine that certain purposes of organizations are valuable versus others, then we're making a judgment call and we're suddenly now imposing certain moral and societal morays

and rules upon everybody which we as a group certainly believe is actually the standard – which is not necessarily true.

So for example, at Cira when we did the policy review we were thinking about providing certain special access to law enforcement for certain particular crimes which we thought might be heinous, such as pedophiles, for example, sexual crimes, whatever else. But we very quickly moved away from that because it just means that we're now suddenly imposing certain judgment calls of what we believe are actually heinous crimes and what for most people are. But we didn't want to now suddenly now impose them on everybody and say in essence "Law enforcement includes now any kind of organizations which do enforce any kind of regulatory frameworks."

So all I want, my point just in respect to Peter is just that if we go beyond the interpretation of "authorized by law" and actually "enforced by law," then we're moving into a direction where we have to make moral judgment calls.

Emily Taylor:

Thank you. I've got Olivier, Kathy wants to come in, and I think that's it.

Olivier Iteanu:

Yeah, I would like to say that I disagree when we say that WHOIS is the only tool for law enforcement. I just want to remind everybody that the registrars and all the registries collect data, personal data. Then it can decide to display some of them – that is

the WHOIS. And for example, Nominet UK doesn't display all the personal data it collects. So I think that we have to be very careful with that and we have to keep in mind that there are different levels in this organization.

Kathy Kleiman:

So I wanted to thank the law enforcement sub-team on getting us off on such a good foot and a good discussion, and take us a little bit away from the substance into the process. And I am holding if it's okay, I'm holding the whiteboard marker – can I use the whiteboard? Would that be okay? Excellent.

Okay, so here I wanted to just take what I was hearing and what the sub-team presented and see what the next steps are, because one next step- Let me try the red. One next step is to do the survey directly.

Sharon Lemon:

Just to follow that, actually, it's three of us coming up with a definition that the group is happy with. I think Kim put it across very well that it's about law enforcement and regulating. Oh, sorry, sorry. Yeah, I think the first step is for us to come up with, and we haven't had time to do this, a definition of what we think comprises law enforcement that the group's happy with. And I think to reassure James, when we talked about this last week it is broad but it is within the scope of law, a lawful enterprise.

Kathy Kleiman:

And so here's the question. Because the survey does depend on the definition, because who we define as law enforcement becomes

part of the survey, another approach- Let me just put it up here for a second, is that we define the definition... Did I spell that right? Maybe not; it's not going to be a good spelling day, guys. We define the definition and put it out to the public a part of questions that we're submitting. There are going to be various things we put out for public comment along the way, and so one question is do we want to put out a definition to the public as a straw man?

I'm referring to the, I lugged this all the way from the United States, the Accountability and Transparency Review Team report, and one of the areas it had under its research was relative bylaws. So here, if law enforcement is going to be somewhat statutory-based within some kind of supporting documentation or supporting legal mandate, I don't know if we want to do that but that would be part of the definition, and maybe legal support. I'll put a question mark there.

And then the questions – whatever is being asked of law enforcement, the survey will have the definitions and the use of the data and other questions. But a question to the group, to the sub-team is do we want to put, maybe to think about do we want to put this out to the public first and share that “This is what we're going to be surveying – do you have any information or input?”

So kind of an action question is what's our next step? Obviously putting together a draft of the survey but then sending it out, so

either direct send submission, or direct survey; or do we want to go through the outreach step first?

Emily Taylor: Reactions?

James Bladel:; A very quick point that is completely unrelated to that, so I apologize, Kathy. When we said “authorized by law,” you might want to tack onto that “or treaty.” Yeah, so-

Emily Taylor: Bill?

Bill Smith: I have a question on the “authorized by law,” now, because there are organizations that are required because of the nature of their business to report activities that they suspect as money laundering, etc. Are they included as well?

Emily Taylor: I have a question, not as the Chair but just as a question, really, for the definition. In my mind there’s a separation. You’ve got a lot of organizations and businesses who will be authorized by some sort of law to enforce their rights and to use the WHOIS in order to do that, to do these investigations. But the big difference to me between those organizations and what I would term law enforcement is not actually the way those organizations are structured but in whose interest they are doing it.

So a private law, right – so if my intellectual property is being infringed I will be using and relying on the WHOIS for my own

purposes. Now, they might be a lot of collateral public interest purposes there, but actually the main reason I'm doing it is for myself, my organization. I would suggest that the main reason why law enforcement, whoever they are, are doing things is for a public purpose, so there is a public and private purpose that we might want to try to capture in the definition. Quizzical looks around the table.

Sharon Lemon: Are you suggesting then that people who are doing it for their own private company, for IP, is not legitimate, is not as legitimate as law enforcement doing it on behalf of that same company?

Emily Taylor: No, I'm not suggesting that. I think they are both equally legitimate but they're doing it for a different purpose. And I think this comes down to Peter's point, maybe James' point- Sorry, to-

Peter Nettlefold: I was probably just going to resay that point. I think we've got a spectrum here, not really a spectrum but I think what the example you're talking about may fall into the consumer trust side. To the extent that we stop being a law enforcement agency and we start talking about something else that promotes consumer trust like a legitimate business enforcing its IP, making sure it's not being, someone else isn't impersonating them; security, stability and resiliency questions – I think they're probably more easily going to fall into a "promotes consumer trust" heading. That's just my feeling. But as I said before, it'd be nice if we didn't let something important fall between those two cracks.

James Bladel:

That's fine. I agree with you except some jurisdictions I think would not treat that as a civil matter and would call that a crime. And I think that there are treaties as well between jurisdictions, or trade agreements, that have the force of law. So yeah, it's messy.

To Bill's point, I think that you're mentioning if an organization, I think the distinction there is if the organization is enforcing the law or is required to comply with a law in aiding in an investigation. I think that's a distinction, because we are also probably – I don't work closely with our abuse teams but I think that we're also obligated under certain laws to comply with that.

And the reason I wanted to add on "treaties," Kim, is because I started thinking, and some of the EU folks help me with this because I don't get the EU – it's like the metric system and soccer. I mean I'll never get that stuff. But you know, help me get my mind around that when the EU, the European Commission passes some sort of a... I don't know what they call it, a resolution or something- Okay, there we go, that that then in certain countries if they've adopted treaties has the force of law, and in some countries if they've opted out or clicked the box that "I don't want to participate in this treaty" then it doesn't. So I think it gets very, very messy when we define those. Go ahead.

Bill Smith:

Sorry, this'll be quick. I agree – there's the aiding an investigation. In PayPal's case and the case of banks, PayPal is a

money transferring agent as distinct from a bank; banks also have this requirement at least in the US and there are many treaties I believe on this, on money laundering. We are obligated if we suspect money laundering to report it, which in fact could be the start of an investigation.

And at times it may be necessary for us to use WHOIS information in order to make that determination – things like fast flux, domain names going up and down quickly. If that's part of the activity that we believe is money laundering we need to put that information together in order to report it. It's not to assist with an investigation but it actually may start one, and I think that's a distinction.

James Bladel:

But then does PayPal dispatch PayPal employees to go out then and apprehend or take down? I mean I think there's another distinction there – complying with a reporting requirement that's outlined in law versus actually being empowered to enforce. And I think “enforce” was one of the key phrases that came out of the working group.

Emily Taylor:

I've got Olivier and then I'd like to try and get us to agree to next steps.

Olivier Iteanu:

Just very, very briefly since you mentioned the EU measures, and indeed, there are EU measures which have direct effect and don't need to be implemented in national laws. And typically the EU regulations, they have immediate effect as a law within the

member states; and then there are others which call for implementation by the national legislature process to be actually enforceable as law. So it is yeah, there are multiple ways.

Lutz Donnerhacke: Well, I need an image and so I have a quick question to Sharon. I just want to know what she does now with the WHOIS for law enforcement? What are you doing exactly?

Sharon Lemon: We have a whole presentation.

Lutz Donnerhacke: Okay, okay.

Emily Taylor: That'll help us all. Kathy, did you- Okay. I think this is a very useful discussion. I think we're making some quite interesting points here. I want to know how we're going to take this on, what we're going to do, what we agree to do as a result. Kathy's put up some suggestions and a question – do we go straight to a survey? Do we get some responses from public comments first? Who is going to draft the definitions, who is going to draft any questions? What role do the volunteers who now seem to be stuck with this subject take and how much authority do we give that group to just do its own thing?

So what do you want to do? Do you want me to make a proposal and then if you object, as I'm sure you won't be very slow in coming forward to tell me I'm wrong? Can I suggest that we ask

this subgroup to develop their work, a working definition and then give it to us? Wilfried?

Wilfried Woeber:

So not speaking in the name of the subgroup at all, just as an individual here, my feeling is that we have heard a lot of different and very, very interesting points of view with regard to the definition of law enforcement. My feeling is before we are in a position to put together a survey we would be well-advised to collect additional input from the community, like what the community actually believes are components for a definition of law enforcement.

Because what we have contributed at the moment is just our personal background, our personal experience, and that's probably not really covering all the aspects of the internet. But that's just my point of view to start a discussion, not to leapfrog anything.

Emily Taylor:

Thanks for starting the discussion. Does anybody disagree that it would be a good thing to go out now for public comment on a working definition? Kathy?

Kathy Kleiman:

The reason why is I think there is a lot of expertise on this sub-team, so if you create a straw man based on the input here, a straw man of both the definitions and the survey questions; bring it back to the group for discussion which may take place online and in our telephone conversations, then if everyone agrees put it out for public comment – there's something for people to bounce off of.

And again, with Sharon there's some very, very deep expertise in the sub-team and I can envision that we're going to do similar things with consumer trust and applicable laws in other areas.

So if you're willing to take on the mantle of continuing to lead the group because you've done so well so far, I think whatever straw man you put together will give us an excellent basis again for coming back here for more input and then going back out to the rest of the community. And then we do a quick survey because there'll be a limited amount of time to do it.

Emily Taylor:

Thanks. I've got Bill, Wilfried, Lutz, Lynn. Anybody else want to come in now? Kim.

Bill Smith:

So I think Kathy's proposal has merit. I would suggest that we adopt or consider adopting the principle of the internet, which is decentralized, and let the group figure out their best way forward. They are the experts, they've heard what we've had to contribute. If they think doing a definition is a good thing I happen to support that. I would trust them to come up with a good definition, etc., but I think let them figure out the best way that they work together as a small team and move forward.

Emily Taylor:

Thank you. Wilfried, did you want to come in? Oh sorry, you're just waving. Lutz and then Lynn.

Lutz Donnerhacke: I just volunteered to make such a survey and collect questions to bring into the public and get the outreach on the survey questions in order to have in evidence what is currently the use, the use case and the users of WHOIS. So I'd like to volunteer again for this survey.

Emily Taylor: Lutz, can I just ask would you like to do that working with this subgroup?

Lutz Donnerhacke: Of course, otherwise I'd do it alone.

Emily Taylor: I've got Lynn and then Kim.

Lynn Goodendorf: If the question is whether or not we take time for public comment, then you know, I guess the clarification I would ask is that I would not expect us to put something out for public comment that's just this one definition. And so what I was envisioning is that if we formulate several definitions, which I think was our plan, then I think public comment would be useful. But I would not want to ask public comment on just one or two definitions. I think it needs to be enough to take the time to solicit public comment.

Kathy Kleiman: But Lynn, what if there is agreement? There may be more agreement than I thought. Hypothetically, what if there is agreement in the working group on what a definition is of law enforcement? Would there be some merit in putting that out there to the public to see if they agree?

Emily Taylor: I think you're in agreement but not quite talking about the same thing. I think what Lynn's saying is yes, for sure, let's go for public comments on some definitions, let's not limit it to one thing, see where we are at the end of the two days and what we can go to public comment on, yeah?

Lynn Goodendorf: Yes.

Emily Taylor: And so that we're not bothering people with "Here's our 57th request for public comment."

Lynn Goodendorf: Right. I guess the reason I'm trying to clarify it is that I have submitted public comments and so when you're providing feedback as a public comment, you want it not to just be a dozen separate things, to your point, Emily, asking for comment. You want a group of things to analyze. So I'm just saying I don't think that on this one definition it would be enough if we would have to have other material.

Kathy Kleiman: Oh, I think we're going to have tons of material.

Lynn Goodendorf: Yeah, so that's why I say I'm just making that clarification, that I'm assuming that we would have other material to go with this to request public comment, yeah.

objects shout out and then we will re-discuss, but I think what I'm hearing is we trust the subgroup to draft up a working definition and some questions which will be part of our wider request for public comments. Any objections?

We're here for you if you want further input, but I think as part of our- So can we just capture that? We task the subgroup, which is Sharon, Kim, Wilfried and Lutz to draft a definition of law enforcement and to formulate questions for public comment.

Kathy Kleiman: Formulate questions for the survey?

Emily Taylor: For the survey.

Kathy Kleiman: That will go out for public comment.

Emily Taylor: To formulate questions for the survey which will then go out for public comment. Okay. Are you coming in to object to that, Lutz, or is that a different- Do we have any objections? Sarmad?

Sarmad Hussain: Yeah, so I think what we said was a three-step process. So first they draft the questions and definitions, then that's circulated within the group for comments, and then it's agreed and given out to public comments.

Bill Smith: So I am concerned about the amount of time this is going to take now, because we're, I think it's appropriate that the group go off,

do some work, report back and we think about it. But then if we're putting it out for public comment how long is the public comment period?

Emily Taylor:

I think we're partly going to cover this tomorrow with an action plan/outreach plan. Well said – we don't want to end up sort of disappearing into our own processes.

What I would propose is that we work to the next ICANN meeting so we think right, by the next ICANN meeting we would like people to have absorbed and had the time to comment, so that is our deadline and we adapt our processes accordingly. Okay, I'm seeing lots of questions. Can we park the when and how for our discussions tomorrow on the outreach and action plans? But that's a point well made.

So the decision I'm asking us to adopt is amended with Sarmad's extra point, that we task the subgroup to formulate the definition and questions for a survey that will be put out to public comment; that this will be given to the entire group for comment by a certain deadline. Okay? Any objections? Okay, good, adopted. Wilfried?

Wilfried Woeber:

Just a point of clarification: I think I do understand the mandate with regards to the definition and the outreach to get that double checked by the community. I would not have a clear understanding of where the survey aspect is going yet at the

moment, so I will solicit offline or later input like in which direction this survey stuff will go. Thank you.

Emily Taylor:

Okay. Perhaps I can suggest that that's something that you discuss within your subgroup first, see how you go; if you're stuck come back to us.

Wilfried Woeber:

Yeah, I want to thank the organizers here. We had a very good morning here. We had a good internet connection. We already have IPv6 here – that's fine, that's wonderful from ICANN organization. It needs to be mentioned here, and let me say thank you to the technical team here.

[End of Transcript]