ICANN

Moderator: Gisella Gruber-White
August 8, 2013
10:00 am CT

Coordinator: Today's call is being recorded. If you have any objections, you may

disconnect at this time.

Thank you. You may begin.

Benedetta Rossi: Thank you very much. Good morning, good afternoon, good evening. This is

the BC members call taking place on the 8th of August 2013.

On the call today we have Jimson Olufuye, Stephane Van Gelder, Mark

Sloan, Elisa Cooper, Anjali Hansen, John Berard, Steve Delbianco, Angie

Graves, Barbara Wanner, Marilyn Cade, Aparna Sridhar. We have apologies

from Zahid Jamil and Ayeha Hassan.

I would like to remind all participants to please state your names before

speaking for transcription purposes.

Thank you very much and over to you Elisa.

Elisa Cooper: Thanks Benedetta.

So there's been really a flurry of activity in the last couple of weeks in terms of reports being released by ICANN and opportunities for us to comment as well as some comment periods that have recently closed or are about to close especially regarding the expert working group.

So in today's session I hope we can actually spend a fair amount of time with Steve and going through a policy update. But I thought we might start off with just a bit of a recap of the Durban meeting for those that were not able to attend. And then Marilyn will have a quick update from the commercial stakeholders group if there's anything going on there.

And then we'll hear from John in terms of what happened on the recent GNSO council meeting and then a bit from Chris Chaplow who I'm very happy to say has very, very graciously offered to stay on until the next election for the officers which will be in February. So very, very much appreciated from Chris Chaplow. I know that's not what at all he had intended but it's really just really very thankful for that.

And then if there are any other things that we would like to talk about let's get them on the agenda. Are there any other things that people would like to add to the agenda? Okay.

Chris Chaplow: Chris Chaplow joining.

Elisa Cooper: Hi Chris. Well you missed my many thanks to you so thank you again. I let the members know about your very gracious offer to stay on as the finance chair until the next election. So I think everybody's very, very appreciative of that.

So let's start out, let's talk a little bit about the meeting in Durban especially for those who were not in attendance. I'll just tell you from my perspective one of the things that we spent a fair amount of time in our BC meeting was going over some changes to the charter.

And this is still on the top of my list of things to do but we've had so many open public comment periods and other things going, we just haven't had time to focus on putting a draft together and beginning to circulate that. But that's still on the top of my list of things to do.

Are there any others who would like to kind of share their thoughts or what they took away from the meeting with the rest of the members? And I had also sent out kind of an update of exactly what we did at the meeting. So for those that are interested in like knowing like who we met with and what we discussed, contact me separately and I can resend that to you. But it would be great to hear from others.

Ron?

Ron Andruff: Thank you Chair. I wanted to say that with all of the meetings that we've had over these last - since the beginning of ICANN to watch the growth and the dynamic that's happening within the ICANN community, for any of the members that do not attend the meetings, it's really, really worthwhile to try to get to one.

Because the work that you see in our chairs kind of a collection of all of the things that happened, recaps of all the meetings and so forth, that doesn't really do any justice to the amount of work that actually happens there and the amount of collegial effort that goes into all of this. And I just want to say that the level of professionalism and the work that's going on within the ICANN

community right now is astounding and really a pleasure to witness and be part of.

So I just wanted to make that comment and thank you to everyone who continues to make all this good work. And for those who have not yet come to meetings or have not had the opportunity, I highly recommend that you do. Thank you.

Elisa Cooper: Thanks Ron. Stephane?

Stephane Van Gelder: Thanks Elisa. Hi everyone. Just thanks for the opportunity to comment on what was a very interesting Durban for me being new to the BC. And I just want to say I was very, very impressed with the level of professionalism that I've seen from this group and especially seeing the work that the ExCom members are doing.

I'm very, very impressed with the amount of information that is sent to members, the way that that information is prepared, the way we are as a group always ready to respond to ICANN public comment periods, et cetera. Having experience with other groups, I can tell you what I've seen now the BC it's definitely a force to be reckoned with and I'm very happy to be part of this group. Thanks.

Elisa Cooper: Thanks Stephane. Steve?

Steve Delbianco: Yes I just want to make an observation. The first is that the business constituency continues to build an alliance with the At Large Advisory Committee or ALAC I think and their purpose to represent At Large Internet users in a global sense and they're not part of GNSO, they're a very powerful AC.

At the Durban meeting we worked closely to put a magnifying glass on concerns about security, stability and resiliency and we invited two BC members to attend a ALAC panel on protecting the public interest in the new gTLD program. So that's a relationship and an alliance that we should continue to leverage over time.

And I would also mention that the SSAC, that's the Security Stability Advisory Committee, seems to be coming out its shell a little bit and recognizing that just because they issue a report it doesn't mean that ICANN staff listens to what they want. So they're learning to lean on people like the BC, the ALAC and even GAC to get ICANN to pay attention to SSR concerns that the SSAC has been talking about for two years. Thank you.

Elisa Cooper: Thanks Steve. Any other thoughts or comments on the Durban meeting or questions from those who did not attend about what happened at the Durban meeting?

Marilyn Cade: Elisa it's Marilyn. I wasn't able to raise my hand. I'd just like to make a quick comment.

Elisa Cooper: Sure of course.

Marilyn Cade: We were able to work out an arrangement for the first time to hold a working session on a Sunday afternoon with the CSG. And I'll just say this now; I was going to save it till later but I think it's relevant to the overall feedback. That allowed us to not rush through the working session with the CSG on Tuesday. So I just wanted to mention that as something that I did think was a major improvement and helped a great deal in our efforts to have robust, thorough conversations ahead of time with the CSG on issues.

Elisa Cooper: Okay thanks Marilyn. Anyone else?

All right so why don't we kind of dive into what's going on in terms of policy and also talk about some of these recent reports that have just been released. I think that makes a lot of sense to spend a fair amount of time on that because there are probably documents that we're going to need to prepare comments and it probably makes sense to kind of check and see where we are with our expert working group comments and so forth.

So let me turn it over to Steve at this point.

Steve Delbianco: All right thanks Elisa. Everyone I resurrected the policy calendar e-mail that I usually send around and I hope that you received that by e-mail yesterday. And attached to it was the first item that I wanted to discuss. There are nine open public comments right now and I think we'll see another one today, and the first one is on the expert working group on the next generation directory services. And that's what we're now calling the new Whois.

We have a BC member Susan Kawaguchi at Facebook who's on that expert working group. And it's an example of a top-down group created by ICANN's CEO but it's a group that seems to be making significant progress and it might even be that progress that led the CEO to launch five new top-down strategy groups at the Durban meeting.

But these comments are closing on August 12 and it's not a traditional comment period that has both a comment and a reply. Instead it's just an initial comment period. And the comments are going to the expert working group and not necessarily to ICANN's board or staff.

And I only say that because I want you to realize that if we can't come to full agreement on what we want our comments to be, I am confident if it takes us an extra few days we could still have the comments bear on their results.

So the attachment to the e-mail I sent yesterday has the latest draft. And let me commend all the different BC members who stepped up and commented specifically on that draft. It was (Lara Covington) who worked with Susan and Elisa and J. Scott on the initial draft. (Lara)'s on vacation so we have to thank her in absentia.

But as far as I can see there are three issues in that draft and I wanted to see if we could tackle those three issues first before we go after different elements of the draft.

So the first is let's take a look at the draft and see if we're comfortable with (Marie Patoulo)'s language which was an attempt to express the concerns that PayPal raised and Bill Smith raised about security, stability and resiliency on a fully centralized Whois. So if everyone can turn to that let's see if we can get through this quickly.

Are there any comments on the new compromised language at the bottom of Page 2 on the centralized RDS?

J. Scott Evans: Steve this is J. Scott. You said you sent this out yesterday? I mean I couldn't find it.

Steve Delbianco: Did everyone else get it? Sorry, did anyone else fail to get it? I will re-forward it to you J. Scott right now.

J. Scott Evans: Okay thanks.

Bill Smith: Steve this is Bill Smith. We're happy to accept (Marie)'s language but with some reservations. If this is the will of the group then we will go along with it and we may submit comments separately.

But to try and give you a better understanding with the group, a better understanding of our concerns, basically any proposal for a centralized Internet service requires or demands special attention by us as a group and not just as business advocates but as people who care about the Internet.

The second thing any aggregation of data for ease of analysis for one purpose facilitates its use for other purposes. And we've seen the world's reaction to such systems.

Thirdly, individual vetting is an extremely expensive and time-consuming process if done properly, and if it isn't done properly there's no reason to do it.

Next, global ICANN policy, and I mean global policies, truly international scale for vetting and gating access will invite intergovernmental action especially if law enforcement is included in this. So that's something I think that if not the business constituency, ICANN needs to consider or the community needs to consider.

Steve Delbianco: Bill could you explain what you mean by intergovernmental action on the centralized vetting?

Bill Smith: Sure. The ITU or others will come in say no, no, no ICANN cannot develop a policy of global scale. That, okay, that type of policy for law enforcement professionals is a remit of the UN and others not a U.S.-based corporation.

And finally -- well this is the last point -- we are unaware of any similar system that operates at the scale of the proposal and just believe this is going to be an extremely expensive walk into uncharted territory.

We do commend Susan and all the others on the EWG for the work that they've done. The output of this group is in fact a step forward. But we caution basically throwing away a system that while has lots of problems has in fact functioned especially if we're replacing it with one that we believe will require considerable time and money both by those who operate it but also by those who have to use it.

And again we know of no such system that exists and are quite concerned that even if one did exist and could be made to function that it would be very expensive and complex.

Steve Delbianco: So Bill thank you. So you've expressed that you are willing to accept the compromised paragraph that's at the bottom of Page 2 which raises these concerns but not in a very specific way. You said that you had some reservations which you've just explained and you also said that PayPal will be submitting its own comments to the EWG.

Bill Smith: I said we may.

Steve Delbianco: You may, you may I'm sorry. You may.

So keep in mind that we have the time if you want to specifically suggest changes to that paragraph at the bottom of Page 2, you don't have to do it now, you could do it over e-mail in the next couple of days, but I would say that that compromise is necessarily the consensus of the group yet. It's too soon to draw that conclusion because you've made some compelling points.

A lot of us though look at this relative to the current distributed system both Whois, where each and every vendor runs it differently. So a lot of us are attracted to the standardization one achieves with a centralized system, and I think you're citing the voice of caution that there are vulnerabilities associated with being centralized.

It's not as if you're saying don't go centralized but we ought to be aware of these risks and take extra steps to mitigate them. So I appreciate that perspective.

Bill Smith: I'll point out a concern that we have and that would be around the recommendation that there be a single centralized point of vetting and gated access for law enforcement and security professionals, right. It makes it easy on the one hand. Conceptually it's easy. And I've heard other than PayPal no one objects to this.

Steve Delbianco: May I recommend that everybody look at the middle of Page 3 where the paragraph that Bill is speaking of is contained. Go ahead Bill.

Bill Smith: Okay. So we suggest that this makes about as much sense as suggesting that for those who require protection for privacy reasons for whatever reasons they may be whether it's free speech, domestic abuse, there's lots of reasons put out there why we need privacy and proxy services.

We believe the proposal for centralized vetting and gated access for law enforcement and security professionals makes about as much sense as centralizing the vetting of individuals who demand or require privacy. You can imagine how people would react to such a proposal. Right? A single point

that any authoritarian regime wanted to go to, right, to gain access to personally identifiable information on all of the dissidents.

We know that people would, one, this would be a highly valued target and almost impossible to harden and the people would object to it. But when we do the same thing, make the same proposal for law enforcement and security professional that's perfectly acceptable. And believe me these security professionals, some of them in the work that they do are in fact putting their physical person at risk.

Steve Delbianco: Got it. Keep in mind that dissidents who want to protect their identity where the registration contains privacy and proxy that wouldn't be interfered with for most of them. So you're right, it's centralized but it may not be very informative if it's just a privacy or proxy.

I see in the queue Stephane and J. Scott and then... I'm sorry.

Marilyn Cade: And Marilyn, sorry.

Steve Delbianco: And Marilyn. Okay go ahead Stephane.

Stephane Van Gelder: Thanks Steve. Yes I think what Bill's just said and what you just summarized are good points that perhaps we can try and feed into the document or the compromise solution by adding some language that would suggest that the new model could not be simply introduced as a direct replacement or swap of the current Whois model but rather phased in and that would be a recommendation perhaps from the EWG.

I mean, Susan can probably speak to this. I don't know if the - I can't remember if the EWG has got to the implementation phase of the proposed

model that they've put in the report. But perhaps it would be useful for us just speaking to Bill's and don't replace something that currently works with something that's not tested. Perhaps we could suggest that that be phased in gradually and not be part of the implementation model. Thanks.

Steve Delbianco: All right. Thank you Stephane, appreciate it. J. Scott?

J. Scott Evans: Yes this is J. Scott. I completely disagree with everything Bill said and I completely disagree with what we just heard from Stephane.

The reality is that the business community and the IP community have been fighting for this for 14 years. So to now say this is something that we don't want because nobody else does it is completely inconsistent with 14 years of advocacy that the business community and the IP community has worked very hard to do.

In fact I would ask Bill to check with our FBI and government representatives because it's my understanding this is something they've been fighting for as well. So they don't need him to advocate.

I am highly offended that we would advocate in our paper a position that goes totally against what we've been advocating so hard for in the last years. I am not going to agree to any kind of consensus that gives ICANN some way to scuttle this effort and that's exactly what this type of language does.

Now I'm okay with (Marie)'s compromised language because I believe (Marie)'s compromised language just says like with anything we do at ICANN we need to proceed thoughtfully and with caution and we need to consider that everything has certain ramifications and those all need to be considered in the implementation.

But I am not going to be comfortable and not going to agree to anything that criticizes this.

Steve Delbianco: So J. Scott to clarify, you're okay with the blue text on Page 2 and 3 with (Marie)'s name in front of it. Is that correct?

J. Scott Evans: Yes.

Steve Delbianco: Great. Thank you J. Scott. Marilyn Cade?

Marilyn Cade: Thanks. Let me comment on a - first of all J. Scott it is at least 14 years, right?

J. Scott Evans: Yes.

Marilyn Cade: And I want be sympathetic to the expression of some of the concerns that Bill raised but to propose a different rationale for why we need to stay the course and come up with some solutions that are going to meet our needs broadly and the needs of registrants.

And I do think we also have to remember that a highly distributed thin Whois environment is also very, very vulnerable. It has its own form of vulnerabilities just as of course a centralized approach would.

I do think we should support asking for SSAC-supported studies. And notice I used the term SSAC-supported studies because I do think we're going to be better off with some (unintelligible) studies not just the kind of report that the SSAC is able to do. The SSAC has already done a number of reports. So I would support the idea of our thinking about strengthening what we ask for in terms of the studies that validate how to limit the risk.

On the issue of the list of law enforcement experts, my understanding from discussions with the FBI and Interpol and other parties from law enforcement not just in the U.S. and Europe but from other countries that have come together at the ICANN meetings is they are looking for sort of an enhanced 24x7 list similar to the list that the Department of Justice maintains today. And so maybe we could explore that and understand it a little bit better.

I think Bill was raising a concern about the more additional categories of security experts who might end up on such a list but their company may not be willing to have them put their personal contact details on it but there may be other issues that Bill identified. And maybe we could come up with a clarification of what the categories are because if you're a law enforcement person you're probably being asked to put some kind of official access details in there as opposed to your personal details.

But I do think we do need to continue to support the idea of a rationalized centralization and aggregation of this data and we're not going to get vetted data if we distribute it widely around the world in either the registries or the registrars.

The final point I would make, and I think David Fares is on the phone, but I think there is - we need to be a little careful about thinking that we can distinguish between that a noncommercial site may actually be a private citizen or may be a state site. Some sites mask themselves as noncommercial for nefarious purposes so maybe we need to modify our language about asking for a bright line test and just saying that criteria - maybe we should say the criteria that can be verified should be established.

Steve Delbianco: All right thank you Marilyn. That turns to the second question with respect to this draft which is how do we address this distinction between commercial and noncommercial. And this is contained in the draft at the bottom of Page 4 and the top of Page 5.

So given that we want to conclude this drafting very soon it's best for folks to take a look at the language that's in the draft, the one I circulated last night, and make specific comments about that language. Because in it I do think we accept the fact that there are distinctions in most regimes between commercial entities since they are usually required to be reachable for purposes of fraud and other law enforcement so if a commercial purpose site has special responsibilities in nearly legal regime.

I see Stephane in the queue but I do want to try to wrap this up. I don't know - Elisa tell me what's the hard stop at the end of the policy discussion on this call.

Elisa Cooper: Well since we don't have any other business to cover, I think we can continue and I do want to make this like in future calls the core of what we're discussing these policy issues. So I would like us to continue.

Bill Smith: Steve this is Bill. I'd like to raise my hand.

Steve Delbianco: Okay.

David Fares: And Dave Fares too.

Steve Delbianco: And again we have three questions on the table with respect to this draft. Let's go five more minutes on this draft and then turn to the rest of the policy items.

The three questions on the table were the paragraphs on the compromise with respect to SSR concerns. And from what I've heard there's nobody who's objecting outright to (Marie)'s paragraphs and I'm glad about that. We should discuss this commercial entity distinction and whether or not the final paragraph (Marie) suggested for inviting the country code TLDs to consider a centralized Whois is something else to consider.

So I'll take a queue. Let's try to get comments in five more minutes. I have Stephane and Bill Smith so far.

David Fares: David Fares.

Steve Delbianco: David Fares welcome. So Stephane, Bill Smith and David Fares.

Stephane Van Gelder: Thanks Steve. Very quickly just a point of clarification on what J. Scott said earlier. I just want to make sure I guess I understand his comments and I'll do so by asking J. Scott a question.

Would you be comfortable with the idea of my suggestion was just that we add language saying that this would be phased in and not just simply replaced one day, you know, you just switch off the Whois and switch this on but we phase it in which seems to me to be a pretty common sense thing to suggest anyway. And it's certainly not suggesting that we don't like this model, quite the contrary. So I just wanted to be clear if Yahoo and J. Scott would be comfortable with that idea. Thanks.

Steve Delbianco: Go ahead J. Scott.

J. Scott Evans: This is J. Scott. I am not comfortable with putting in anything that gives ICANN an excuse to slow this down. We don't need to tell them how to do

this. Anybody that knows how to run systems knows that you don't just flip a switch. And even if we tell them if they're going to do it wrong, they're going to do it wrong no matter what we say.

So I just don't want to give them any language where they can say well even the business community thinks that we need to drag this out another, you know. I mean, I remember Marilyn having these discussions in Montevideo, Uruguay in 2001 and we are still stuck. So I don't want to give them anything to continue this inertia. So no I do not feel comfortable with that.

Steve Delbianco: J. Scott you are comfortable with the language that's in the document?

J. Scott Evans: I am.

Steve Delbianco: That's great. Thank you, appreciate that. I think it's Bill Smith and then David Fares.

Bill Smith: Okay so we respect Yahoo's right to express the strength of its opinion. I find it surprising however that Yahoo seems to fail to understand the issues that we've presented. At least that's my interpretation.

To (Stephan)'s comment we do not support a phasing in of this approach. The concept as presented is seriously flawed okay?

And I offer - I will not say them. I offer three and five letters okay? And I hope everybody can understand the three and five letters that I'm talking about that have been in the news lately as an example of why this is such a bad idea.

Finally PayPal does not support arbitrary proposals to solve long term problems. And we view this proposal as I've said before deeply flawed and as a colleague of mine expressed we think it is madness to go forward with it.

We feel very strongly about it but I hear very strong opinions on the other side in essence that regardless of what the proposal is we must accept it because we can't slow this down.

We believe there are other ways and especially in light of current events we believe that the community, the business community and ICANN need to consider them. Thank you.

Steve DelBianco: Thank you Bill. And again I sense a strong majority of BC members want the SSAC study risk mitigation measures to the centralized access and the centralized vetting.

So I - that is not an attempt to slow down nor do I think it will actually slow things down much because J. Scott as you know it will take years before ICANN to pull together all the machinery in contracting to do a centralized ARDS.

And I would ask SSAC to come back with studies, risk mitigation studies in the order of months not years.

So if we start them right away with a comment like what we're anticipating then I don't think it contributes to the delay. But it should identify the risk that Bill is concerned about and ideally then ICANN would take steps to mitigate some of those risks.

You can't mitigate them all I understand that. But I don't sense that asking for studies is going to create delays. David Fares?

Bill Smith: Hang on Steve. On that if our objective which it appears to be is to move this forward quickly it's counterproductive to request additional studies.

Steve DelBianco: I don't think that our objective is to just move it quickly. We want to do it safely and we want to do it as soon as we can. So I again I'm happy to take a show of hands of who would support the language in there.

And the language in this draft asks for further study of the risks. It doesn't throw out the studies. It doesn't ignore the risk in the interest of expedient in the interest of doing it fast.

But I don't think you would characterize the BC as trying to ram this through because that's not what the draft says.

All right Bill, David Fares.

David Fares: Great thanks. I was going to move on to the commercial versus noncommercial...

Steve DelBianco: Yes please do.

David Fares: ...(unintelligible) issue.

First I apologize to everybody for posting so late. I had a bit of a challenge of posting as our email addresses have changed and it wasn't part of the BC private list so apologies for that.

But as Marilyn mentioned and I'm sure many of you have seen I did post before this call today an email raising concerns regarding the distinction between using the distinction between commercial and noncommercial as the basis to determine whether or not information should be made available or whether people should be able to utilize a proxy service.

As I mentioned in my email some sites may not have a commercial intent in that they do not seek ads in gaining revenue via ads and they do not engage in e-commerce.

However they may provide content that actually competes with commercial enterprises and therefore has a commercial impact.

And we don't think that people should be able to hide behind what we would constitute to be illegal activity by using a proxy service and disguising who is the actual operator of or the registrant of the site.

Steve DelBianco: David the - I'm confused now. This exploration of commercial noncommercial would suggest that anyone with commercial purpose not be allowed to use privacy proxy, in other words not be allowed to hide.

And...

David Fares: Yes.

Steve DelBianco: ...the only ones who could use privacy proxy would be those who do not accept payments...

David Fares: No the way you define commercial were people who were sites that either earn revenues by - I can't remember the exact wording. I don't have it in front of me but it was either e-commerce or advertising.

A site may do neither of those but still the site might constitute a commercial impact for another company.

Steve DelBianco: So just so I'm clear you're suggesting that privacy ought to even be more restrictive and that you would even raise the bar beyond which - beyond just sites that accept payments and show ads?

David Fares: Well as I mentioned in my email I actually think what, you know, the easier way to handle this might be to address it in the reveal function - well I don't know if it's functionality but the reveal process for our proxy service.

So that if there's a justifiable claim that a site is engaged in illegal activity that would have a commercial impact on another commercial enterprise that you might - that you could get the data from the proxy service.

Steve DelBianco: Got it. Got it, so it's a combination of setting the bar between those who can and cannot use privacy proxy plus number two strong relay review rules for the privacy proxy service provider?

David Fares: Right.

Steve DelBianco: And that ironically the - there's already an existing process underway to define the accreditation of privacy proxy providers and the rules they have to use right? That's in parallel to this. It's not even part of the EWG at this point.

David Fares: Right, understood.

Steve DelBianco: Right so David what I would invite is if you take the draft that is circulated last night and take a look at that section. I do think it's appropriate to discuss it as a two-step, that wherever we draw the line between commercial and non you still want to have strong relay and reveal rules for when that has to be done.

And we may not be able to make a strong recommendations, at least raise it as a two-step process. I think that's...

David Fares: Okay I will take a look at the current draft. I apologize, I was out in meetings most of the day until the call so I wasn't able to...

Steve DelBianco: And David you - thank you David. And your second comment with respect to whether we have offended others with the notion of authoritative regimes I would invite you to look then at the bottom of two and three because that language now doesn't contain that kind of rhetoric...

David Fares: Okay.

Steve DelBianco: ...where we use compromise rhetoric. I think it does address your concern.

David Fares: I will look at that too. And I will post to the list and apologies for not having had the time to review it in advance of the call.

Steve DelBianco: Not at all, not at all, a lot of moving parts here. Some of this was just updated yesterday so no problem. No problem.

All right I see (Aparna) and then J. Scott and then we're going to terminate the EWG discussion. Go ahead (Aparna).

Aparna Sridhar: I just I had a little bit of a question about sort of the right line if there is one that David's characterization of what's commercial and what's not.

Is - and I think I guess my question is I think the term commercial effect is can be quite broad. So for example let's say I write a blog on politics and I am a somewhat inflammatory person and I create somebody like say I destabilize a government, that's obviously going to have economic effects in the country that is destabilized right?

So I think almost anything can have a commercial or economic effect. So I look forward to reading the language and maybe there will be something to sort of cabin the reach of that term.

I don't want to comment on it without further reading it in that draft but I just raise a concern that it seemed to be a potentially very broad characterization.

Steve DelBianco: (Aparna) this is Steve. I think you're right. And David Fares for that is that it's better to do a hardline rule for who can use privacy proxy but commercial effect can be among the criteria, among the justifications that relay and reveal is required by the privacy proxy provider.

If I show a privacy provider, a proxy provider evidence of actionable harm which is includes commercial effect we are looking for ICANN rules to require the privacy proxy provider to reveal.

So that's what I mean by the second step of the two step. Anxious to see what David comes up with. And David I'm happy to help with that. I've been working on this project for years.

David Fares: That would be fantastic. Thank you.

Steve DelBianco: David - thanks (Aparna), great point (Aparna). And commercial effect is probably not going to be bright line we're suggesting for eligibility of privacy proxy but we'll mention of course affect among the actionable harm elements that often trigger an obligation to reveal.

And I have J. Scott in the queue next.

Bill Smith: And Bill would like to be in as well.

J. Scott Evans: Yes I was going to say that I share (Aparna)'s concerns. And I think we have to be very careful here because I think you're going to fall into a trap with the people who don't want any distinction at all or any ability to do that.

I think I was more encouraged towards the end of David's comment when he said it could be handled in the criterion for when a proxy service needs to turn over the information.

And I think that is definitely where it should be handled. And I like the use of the term illegal. So you need to look at that and make that, you know, to be very careful because this is a slippery slope and we just fall right in the quagmire.

David Fares: This is David. And as I - sorry I jumped the queue. I'll go back in the queue.

Steve DelBianco: No go ahead David.

David Fares: And just to make very clear -- and I think I mentioned this in my comments that I posted -- we support trying to find a system that protects people who are

engaged in political speech because we understand the challenges around that especially when it comes to particular governments who make what we would consider to be political speech in the Western world illegal.

So I'm sensitized to that. I understand the concerns that are raised.

And as Steve and I work in drafting something we will definitely keep that in the back of our minds. But thank you for flagging it and I just wanted to raise that I'm sensitized to it and I hope that I conveyed that in my comments that I posted.

Steve DelBianco: Right. Thank you. And Bill Smith is the last speaker on this topic and then we're going to move on. Go ahead Bill.

Bill Smith: Okay so having been on the Whois Review Team we we're - well I'll rephrase, not speaking for that team. I was very supportive of a bright line between commercial and noncommercial use.

There is support for this in the EU in that if you are doing, if you are engaged in commercial activity on the Web you must make available information about who you are how to contact et cetera, to consumers.

And it was certainly for PayPal this was a very clear and supportable line in terms of if you are this side of the line you must provide information, you may not use privacy proxy services and if you're on the other side you may, not that you will necessarily be granted but you are able to.

I'm encouraged by the discussion about whether, you know, reveal process things would have to happen. But I think, you know, and with (Aparna) and Google's concerns on how broadly this could be interpreted.

You make political speech, that's going to have an economic impact potentially. And that could compel a privacy proxy service to reveal information about a desolate. That doesn't make sense in our opinion.

And I guess I would ask David what's the scale and scope of the problem that he is trying to address? I'm not seeing it as very large but perhaps it is.

And then if it - even if it is of moderate size aren't there other avenues of redress here that if someone is engaged in illegal activity against a commercial entity that entity has other means at its disposal than learning the identity of the individual.

They could go to a hosting provider. They could go to the registry. They can go to any number of places and seek injunctions or other things to take the site down.

So the that's, you know, the impacted party has both the - has the ability and the means to take effective action whereas those who are engaged in free speech or whatever may have less ability to do so. And so we have to - we've got to pay attention to this and say okay where not everyone is necessarily going to be supported 100% in the systems that we come up with.

But do we have systems that are simple, easy-to-use and address the needs of 90% to 95% of the folks and the other folks may have to employ some other mechanism?

So I ask that we consider that. I am also looking forward to the language. Thanks.

Steve DelBianco: Right. And keep in mind that if those who are eligible for privacy proxy take advantage of it and a particular government claims that they are breaking the law, doing something illegal, that government will expect that when it accesses the centralized Whois that it gets a pipeline to the privacy proxy provider, that it will provide evidence of illegal activity to their proxy provider.

And they will fully expect a reveal of the identity. And that is a dilemma. That is a dilemma because a centralized regime will have to respect the laws of I don't know which country.

Today's decentralized regimes mean that well here in the Netherlands you're not going to get access to a relay reveal solely on the basis of free speech concerns.

So the differing regimes today create a patchwork problem but at least they do allow people to selectively register and buy proxy services from regimes they won't reveal.

So we are going to have to come up with - we are going to have to put in language in there recognizing we haven't solved this problem.

Our comments will not solve this problem but at least the BC can responsibly identify a two-step process, eligibility and relay reveal obligations and acknowledge the fact that this may not - this may present issues for dissidents who want to retain anonymity.

One thing to remember is that a dissident doesn't have to get a domain name. They don't have to be a registrant to offer dissident speech.

Dissidents can use other people's platforms that don't require them to register a domain name and even use the Whois system at all.

All right so I'm going to move on to the rest of the items on the list. There are nine total public comments out and this is only one of them.

The other nine are listed on the screen in front of you. And I have particular interest in that we look at the proposal and mitigate name collusions risk from the new gTLD delegations. This is number seven on the list.

And that would in my opinion be the one where I want to recruit BC volunteers to help draft those comments.

Since it's BC members the general business community that is most likely to be impacted by internal name collusions and internal name certificates.

Having said that I'm willing to take a queue on levels of interest on any of the other eight comments are listed on the screen in front of you. And I'll be happy to coordinate and assist if anybody wants to work on those. I'll take a queue.

Marilyn Cade: Steve it's Marilyn.

Steve DelBianco: Marilyn and then Elisa. Go ahead Marilyn?

Marilyn Cade: I have a question and then a comment. I - because I do think that six has in the past been of high interest to the BC and we may even have members who are very expert in that topic so I just wanted to ask that question.

And then I also had a question about eight. I haven't had a chance to look at eight but the rights protection mechanism requirements were very much the focus of our strawman.

So I wanted to flag those two and ask questions about them and then I do - I am interested in the name collusions issue but I'll just go back on mute...

Steve DelBianco: Yes.

Marilyn Cade: ...and see...

Steve DelBianco: Yes great. Thanks Marilyn. And that UDRP item Number 6 is all the way to the point of what is a relatively noncontroversial recommendation under PDP to the board?

John Berard is on the line. I know you talked about it on August 1 Council call that - is that initiate - is that recommendation in exactly the shape the BC wanted John?

John Berard: (Unintelligible) Steve I was distracted and I apologize. (Unintelligible) a second and then I can answer.

Steve DelBianco: Good thank you. Just take - yes take a minute to jump ahead and then you can come back to that later on. Marilyn thanks for volunteering to help with the name collusions.

And we can quickly take a look at those RPM comments that I believe it's about the mechanics of implementation more than the policies we were successfully able to get through the strawman.

Elisa Cooper and then Ron Andruff.

Elisa Cooper: What I would say if John says that we're happy with the locking of the UDRP we should just write a quick comment on that to be supportive of it.

In terms of seven the name collusions report and the recommendations I think we should submit comments on that as well as the mechanics related to the rights protection mechanism.

And I have some resources. I can help draft comments on seven and eight.

Steve DelBianco: Fantastic Elisa. Thank you very much.

Elisa Cooper: And probably maybe we can hear from Ron then probably we need to get a quick update from Marilyn if there's anything else on the CSP she wants to talk about.

And we need to hear a quick update from John what's going on at council of them from Chris Chaplow on anything that we need to know in terms of finance.

Steve DelBianco: Okay. I have Ron Andruff in the queue and then I was going to wrap up briefly because J. Scott, before you turn over to them J. Scott was working on a geographic indicator debate.

So J. Scott after Ron Andruff speaks can you give us just a minute on the current status of your drafting and what that's all about. Go ahead Ron Andruff.

Ron Andruff: Thank you Steve. I just wanted to flag the, what I find something to - I find this proposal to mitigate name collusions risks popping up so quickly when we've got this - all of these studies coming out now that have said very clearly IAB IETF, the PAVE report, also (Lieman Chapin)'s (inter aisle). All of these things are saying that the name collusions are a very, very serious issue.

And I'm just finding it very strange that all of a sudden we've got this proposal to mitigate name collusions risks when the risks are so intense and so significant. It just seems to me that it's being driven a little too fast.

And I was confused and concerned. And I have to also apologize I have been out of the mix for the last week so I'm a little bit behind the ball on this one. But it just seems that this has come up very, very quickly. Is not a normal situation and perhaps you can clarify it for me Steve if I'm...

Steve DelBianco: Yes.

Ron Andruff: ...off base on this or not?

Steve DelBianco: Yes you're not off-base. There's two things to look at. You can very quickly read ICANN's proposal and that there indefinitely stopping home and corp, 20% of incalculable risks will be parked for a little bit and the others will proceed.

So in fact their recommendations were very quickly done and they were in response to the (inter aisle) report. Okay so it all comes together. And I know it comes together quickly.

Having said that VeriSign just released a significant and more detailed analysis going back several years of other strings that will cause internal name

certificates and name collusions as well so that probably affects that 20% in the middle.

So Ron please do read the recommendation report. If you still feel as if these are ships that have passed in the night let us all know but I think it all kind of fits together.

Man: Steve...

Elisa Cooper: Can I just jump in here? So we'll have another meeting before the initial comments are really due.

So at our next weekly meeting we can spend a lot more time discussing the contents of those reports and our comments.

Steve DelBianco: Fantastic Elisa. And then so really quickly J. Scott can you talk about your geographic indicator and then Phil Corwin some of the work on standardizing contracts for URS providers. J. Scott?

J. Scott Evans: Just real quick. I would Steve like to work on a name collusion issue with you.

Secondly with regard to the geographic indication I'll have something by mid-next week that I - and it's just going to be basically a proposal for bigger work.

And it'll set out the rationale for what I've been talking about in writing and have said verbally so everybody will have something to ruminate over.

And then those people who wish then to participate can decide to participate and we can have a discussion.

And then we can all come up with, see if we can come up with some sort of consensus position that we can then provide to the larger group.

This is merely going to be a brief one pager to sort of see who gauge interest and to see if people are willing to move forward.

Steve DelBianco: Thanks J. Scott. I appreciate that. Earlier Sarah Deutsch and...

J. Scott Evans: Yes.

Steve DelBianco: ...(Stephan) had volunteered to help with that drafting.

J. Scott Evans: And I'm going to make sure that they're on board with the one-page draft before I circulate it to the wider group.

Steve DelBianco: Thanks. And this is not part of the public comment folks. This is an initiative we're taking in response to the GAC advice on geographical indicators and TLDs.

And again ICANN has not posted GAC advice for public comment so there's no place for us to log this in. It would just be a letter we would send into ICANN if we can come to agreement within the BC.

Phil Corwin can you tell us a little bit about your initiative on centralized contracts for URS? I'm not hearing Phil. We might have lost him.

Phil has been in touch with (Amamaru) to talk about...

Phil Corwin: I'm on.

Steve DelBianco: Okay go ahead.

Phil Corwin: I put it on mute and then I forget to take it off. We're talking about - we're now talking about Number 8 here rights protection mechanism which just came out in the last 48 hours I believe. I haven't really focused...

Steve DelBianco: This is a different industry. Why don't you explain?

Phil Corwin: Right yes, I had raised by email with the group and I'm going to prepare a short draft letter for review by BC members this weekend.

On the very day - on the day after the Durban meeting ended ICANN put out a UDRP study of which there was no notice that this is being prepared.

There was no board involvement as far as I know and there was no public announcement and it was very hard to even know they had done it.

And the thrust of this, this is a staff document saying that no type of agreement with UDRP providers is justified. In fact it would give us less flexibility in making sure they're doing a good job.

Now that's contrary to establish the long-standing BC position that we just reiterated in regard to the Arab Center for Dispute Resolution.

At your suggestion Steve I checked with (Mahmoud) to make sure that their position that they had no problem with a standard agreement and would abide by any that was established in the future.

And the other concern is here is that if and when there's ever a PDP on the UDRP which wouldn't be till 18 months after the first TLD is delegated so it wouldn't be till - that this is an issue that should be on the table for the community and not dictated by staff.

So I'm going to work on a draft, short draft letter raising some of these issues to get some responses from ICANN.

That's the thrust of it and if anyone has questions be happy to answer them but it might be better to wait for that draft to circulate.

Steve DelBianco: Yes. Thanks a lot. I mean I'm really gratified that so many people are diving in and getting engaged and being passionate about policy here in the BC. It's a pleasure to work with all of you. Thank you, thank you Elisa.

Elisa Cooper: Yes. So we are almost out of time but I did want to get an update from John Berard in terms of important activities at the council level.

So John if you can get it done in two minutes that would be awesome?

John Berard: Sure. The special counsel meeting on the (unintelligible) to cast a single vote for the motion on the creation of an implementation review team on the locking - on locking of the domain name.

It was a fairly tactical initiative delayed only because of the timing of its initial offering. There wasn't really any opposition to it and so it's passed. The next meeting is in early September.

One thing that I think is important for the BC to - and its members to pay attention to is the call for members of the policy implementation working group.

This is the group that will advise the GNSO on the proper balance between policy and implementation.

I think the trademark clearinghouse saga is evidence that this is probably a working group on which the BC should have significant participation.

And I would encourage those who can if you have the time and the will and the interest to sign on the call for members went out in mid-July.

Elisa Cooper: Yes. I think J. Scott has volunteered for that working group.

J. Scott Evans: Yes I have. And I have received my acknowledgment. I'm on a list and I pinged Jeff who's the liaison and asking when we were getting started.

And he said we were going to start right up. I'll ping him again. I have not heard back.

Steve DelBianco: All right Jeff Newman has said that he'd be - he's willing to serve as a lead to get the thing organized but he does not want to be the chair.

J. Scott Evans: Right. I volunteer, I'm chairing.

Steve DelBianco: All right so it's also possible that somebody from the BC. So others of us should be - could be I hope will join J. Scott on that. Don't want to (unintelligible) on Jay's Scott's shoulders broad as they might less I think this

is going to be an ongoing and important discussion group for what ails ICANN.

J. Scott Evans: I would agree.

Steve DelBianco: No that's it.

Elisa Cooper: All right thanks so much John. And, you know, many thanks to Steve for an excellent discussion today focused on the policy issues which I think is where we need to spend our time.

I want to thank everyone for participating today. My apologies to Marilyn and to Chris, we did not get to your section. So if there are particular items that you would like to relay to the members I would ask you to please send those on the list.

So thank you so much to everyone. We'll talk to you next time and have a great day. Thanks.

END