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Jean Francois Baril: So welcome and a special thank you to everyone from the NCSG from Seoul about the next generation restoration directory services. A special thank you to Robin for this initiative and opportunity to hear directly from the NCSGWT about what we have published so far. In fact, your input is very valuable. There's a big machine in the background. Trying to make it go—

Robin Gross: It is not my fault. That's not the calculator.

Jean Francois Baril: It is not the calculator. Maybe people can put themselves on mute. Yes. Good. So I think it's in fact very, very good that we have this floor because I want to say that we couldn't hear directly from you guys at this time. At the time, I would like to be very sorry (inaudible) on not being able to meet in person some of you when we were in Durban conference. So I think now we can fix it.

Now before turning the microphone back to Robin on the feedback from the report, and then to everyone on the questions on the report, and probably we finish by next step and how we see that we are going to move forward, I'd like here to make a few opening remarks. I'm sure you are well aware this initial report that we have published on June—on July 8<sup>th</sup>. We had a conversation on Monday, the 15<sup>th</sup> when we were in Durban. I think I've seen some of you when you were on this seminar, on the list.

Also, in addition to what we have done on this direct recent appearance, then we have continued to publish our progress on our EWG work on the wiki including, I believe, a quite useful list of Who Is intake that we have noticed on the most frequently asked questions. And in addition, I guess, some of you have already used it. We have this special input address at [input-q-ewg@icann.com](mailto:input-q-ewg@icann.com).

So overall, I think most of you have followed that very intent work that (inaudible) very committed and I would say (inaudible) EWG has (inaudible). On the EWG, maybe I should add one more time this very crucial note. (Inaudible) entitled to say that but very, very typical. Also very, very diverse—probably as diverse as it can be. And at the same time very impressive on the way it worked together besides the very emergent intellect that each of the members of this group has from their background. So very impressive on how rapidly everyone has been able to convert to this solution—or not the solution but the recommendation of what we have already initially published so far in our report.

Next point I would like also to mention is one ultimate goal is to propose recommendations which are in the best interest of the overall Internet community. And that's a very important element to consider for everyone. So what we try to is, of course, we try to prioritize (inaudible) one specific angle of the community so everyone has to understand that this input (inaudible) of putting a square into a circle or vice versa. I think

it's quite difficult, so everyone has to understand that perfect solution would never exist for everyone but at least it's the best compromise that we can find.

The next point I would like also to make here is—somewhere. Hello? Ultimately, the community later on should see very (inaudible) possible to share. In fact that also should feel accountable. So this notion of accountability is quite important for us. And as such, the first element and the respect of that integrity is a must.

There is someone speaking on the (inaudible) phone somewhere. Can you put (inaudible)? Thank you. Another strong belief is that (inaudible) situation is so between (inaudible) broken but the status quo which has basically been accepted so far cannot be accepted any more. We altogether have to find a solution in the best interests of privacy, accuracy, and access to be better. I'm trying to be in competition with someone. It's a bit difficult. Please put your line on mute.

So from what I said, you can definitely measure this is a very, very challenging mission from everyone on this EWG to help to budget some recommendations and to propose that to the Board, and then for later on, hopefully, having some traction for some policy implementation. But I very much strongly believe that, based on the very encouraging words that we have received so far, everyone wants to be part of the solution and I'm sure that together (inaudible) what this (inaudible) up to now, impossible, hopefully we will make it possible altogether.

So in order to respect our deadline for presenting to the ICANN Board, our final report, hopefully, later on in October, we have after Durban boosted a lot of our resources and have very intense work on the issues and question marks that the community have addressed to us. And also a lot of these issues were already recognized by the group, by the EWG, but this was also—it reinforced and the boosting of what we are now attacking.

So just to mention a few of those, I would say that one point which has been highlighted by many people and I'm sure you guys will not forget to mention this one on how to find some alternative models compared to the one that we have proposed which is the (inaudible) which is kind of centralized by the base, so we are also working on that alternative model with a balance on the pro and the con.

We are working also on the future role of different stakeholders. Cost has been mentioned many times also by many people, and we are working on this one and also the impact of the cost for different parts of the value chain. It's also of use that the cross-jurisdictionary issues between different countries is something that we need to continue to work on. Ratification is one, accreditation and (inaudible) is another, better (inaudible) is definitely one, (inaudible) validation process and (inaudible) is one how to make sure accountability is understood correctly.

One thing which is probably very foreign for this group is we are working very diligently in terms of (inaudible) to understand on how to work on the secure protected credential for maximum protection. So little things around privacy/(inaudible) is important. Then we are working on storage, escrow, login requirement and so forth. So I think ICANN staff has already published a lot of these elements. I think you have seen also the initial report. If you think that we need to go through this one once again, I'm sure someone from the EWG will be very much willing to do that. But I don't know if that's the best use of our time. I would rather use this precious time to really listen and hear from guys on how you had read this report, which are your concerns, which part is good for you, which part you think we need to enforce, which part you think we need to go deeper, and so forth.

So with that, probably, I will turn back the microphone to Robin.

- Robin Gross: Great. Thank you very much and thanks for that introduction and information. I guess we should maybe get a queue going—started with people who are interested in providing feedback or asking questions. I see Wendy's got her hand up. And then was there anyone else that wanted to get in the queue after that. Kathy? Were you in the queue?
- Kathy Kleiman: Of course.
- Robin Gross: Yes, I thought so. Anyone else want to jump in the queue at this point or you can jump in later? Just raise your hand or should out your name or something.
- Okay, well then let me turn it over to Wendy. Go ahead, Wendy.
- Wendy Seltzer: Thanks, so several considerations and I'll start with one around privacy. And that's why you chose the defaults of no privacy and then required people to jump through hoops to demonstrate that they required heightened protection before they got that. The typical default in cases of free expression is that everyone is presumed to be entitled to free expression, and only if they're demonstrated to be bad actors are those protections taken away from them. And I would suggest the same is appropriate for privacy which is often a necessary protection to engage in free expression online. So that everyone should start out in the category of getting the secure protected credentials, and only if someone demonstrates a need for their identity as opposed to a need to stop some activity from the domain name that can be done without identity, would they lose those privacy protections.
- Jean Francois Baril: So anyone from EWG is willing to answer to this one to Wendy?
- Stephanie Perrin: It's Stephanie. Can you hear me?
- Robin Gross: Yes.
- Stephanie Perrin: I have a backhoe operating in my front yard so I've kept it on mute. Let me know if the background noise gets to you. I think, in principal, as a personal opinion, I'd agree with Wendy. The problem is pragmatically, can you afford to give anonymous credentials to every single individual who registers a domain name on the Internet? This is untried procedure. I'm not aware of anonymous credentials being used in ordinary commerce to start with. So we first have to find out how difficult it's going to be and how it will work. It does impose, of course, the problem of identifying who qualifies. But I think it's not clear in the report because we did not go into the gory details, but this doesn't mean that you can't have your normal proxy services and refuse to have your identity in the system through proxy services. What a secure credentials option does is prevent the actual registrar from knowing who you are. So that in the case of being harassed by whoever it is that's after you, they can't give up your identity, whereas, of course, in a normal proxy register, theoretically they could. Right? So I mean this is a heck of a step forward from what we've got now. And with all the things we're proposing, I don't think the concept of universal access to secure anonymous credentials just is feasible.
- Jean Francois Baril: I see Steve raising his hand. Is it to also to add the comments that Stephanie was saying?
- Steve Crocker: Yes, it is. Thank you very much. So the other thing that comes to mind with respect to which way one makes the default decisions is usability. If we make decision that we're going to protect the anonymity—protect the identity of everybody by default, we're making a value judgment which is exactly, Wendy, what you're suggesting we do. But the other value judgments involved have to do with how usable the system is. I don't know what the actual answer is likely to be but I can easily imagine that the vast majority of people are going to feel that what they want is a system that is straight forward, clean, easy to use, and if their system has got extra protection of identity but it imposes a general cost on everybody—and I'm talking about just the cost of the implementation but the cost of the usability cost—then they feel that we've gone too far in protecting them.

- Robin Gross: Was there anyone else who wanted—?
- Jean Francois Baril: I can say—I can say, this is Jean Francois. I can in fact we have in mind a lot—a lot of things regarding privacy. So I believe, as Stephanie was saying, this is for us, a (inaudible) for (inaudible) respect for privacy. True privacy needs to (inaudible) to happen.
- Robin Gross: Thanks. Kathy, did you want to get in the queue on this?
- Kathy Kleiman: No. I'll be raising different points so if people wanted to continue to talk about this, this is very important, obviously.
- Robin Gross: Was there anyone else who had a point on this? Or shall we move to Kathy? Okay, Kathy, I guess you have the floor.
- Kathy Kleiman: Okay. I'm going to raise some big picture questions first. First I was interested—a number of interesting concerns when I read the report, and I'll just share—this is Kathy Kleiman. I was on the Who Is review team, along with Susan who, I can't believe stepped up to do this again. And I wanted to thank expert working group. The time you've put in is enormous. The people you've met with, tremendous. I know a lot of thought is going into this. So please take this as questions coming from someone who's now spent a dozen years working in this arena working on Who Is.
- Two big picture things concerned me. And I wanted to raise it because I thought it was interesting. The questions that you asked kind of assume the model that you gave us. And I'm still at the point where I don't—I'm questioning the model. So let me ask, when I saw the centralized database, the first question that came to mind was a question that the ICANN community raised under a different topic in 2010 when the former CEO Rod Beckstrom thought that we should provide a DNS cert operation, that ICANN should get actively involved in computer security and troubleshooting. There are better words for describing it but the idea of actively becoming involved in the cert. And the response to community was that ICANN doesn't do operations. We do a little bit, they're narrowly defined but, in general, ICANN lets the industry do operations and ICANN acts, for lack of a better word, in a quasi-regulatory manner., and works with the operations, credits, reviews, sets standards, reviews compliance but doesn't engage in the operations. And here we're taking a giant step forward as ICANN, by itself or through a third party under contract, engages in this type of operation involving the data of let's start with the 120 million domain name registrants and go from there. That's an enormous operational step. So I just wanted to let you know the community has objected in the past to ICANN doing this. And so I'd love to know what you were thinking about with that.
- The second question I'll put on the table is that I see a major shift that totally worries me with purpose of the Who Is data. When I provided my Who Is data when I registered my domain names ten years ago, fifteen years ago, it was for the purpose of a technical contact. If you had a problem with my domain name, with my website, with my list servers, if there problem, if I was creating a problem in the infrastructure, I could be contacted. Here I see a repurposing of all of this existing data for an array of purposes that have nothing to do with technical contact and that technical type of problem. And so again, I'm seeing two major shifts, I think, in the thinking as the EWG presents its report and I'm concerned and I'd love to know your thoughts on these because both in the past have raised a lot of questions and effectively been rejected.
- Jean Francois Baril: Steve, you want to reply to this one, to Kathy?
- Steve: Yes, at the risk of trying to respond on behalf of the entire EWG, I think you've asked two very, very important and large questions. I have strong views on each of them, so let me label that these are not necessarily coordinated views of the entire EWG. And I'm

speaking for myself. On the first one, I think there's quite a legitimate question there about the centralization of the data and the role of ICANN in the process. I think that—and frankly I think that we have seen a lot of focus on that to the distraction of the other side of what the EWG has done which is the identification of the very substantial number of use cases and the issues associated with that which actually goes to the heart of your second question which I'll get to in a second.

We might helpfully separate the functionality versus the implementation in discussions going forward and reconsider or, perhaps, more deeply consider what that form of implementation might look like. Does it have to be centralized or can it be confederated in some fashion? Who has primary control of the data and what are the responsibilities, et cetera. So the bottom line there is that I share some of your concern about that question.

On the other hand which is back to your second question, the issue that you're raising is in fact exactly the reason why this whole venture was started. The fact of the matter is that Who Is data is in fact used for a wide variety of purposes, and those purposes, as you point out, are much wider and more varied than the original formulation of Who Is which goes back not only 10 years, but really 40 years. And it's become unwieldy and not entirely fit for the purpose. One of the problems that we had with the affirmation of commitments is that it baked in, in the designation of the Who Is review to be done, the same basic assumptions that had been there all the time. We knew at the time in 2009 when the affirmation of commitments was being negotiated that it was not quite appropriate. I don't want to rehash all the history but that led to the Board last year, I guess, is that when it was? Yes. Less than a year ago, making a decision to launch this effort which would take a fresh look at the Who Is and, in fact, carefully avoided using the word Who Is in structuring this effort.

It is simply a fact that many, many different parties are looking at the Who Is information for many different purposes. And rather than simply say well, that's not what it's for. We're not going to pay any attention to that, we went entirely the other way and said okay, let's take a fresh look and say if that's what people want to use it for, let's see what all those issues are. What data is needed? Who needs it? What controls ought there be, et cetera, et cetera? And bring that to the surface and then see what sort of design might make sense with respect to all of that. So it's a leaning in rather than trying to adhere to what has clearly become quite outdated and too simple a picture of the way the world used to be.

Kathy Kleiman: Steve, may I— thank you so much. Both your comments and background are very helpful. Can I raise a question in response to the second point on the purposes of Who Is?

Steve Crocker: Sure.

Kathy Kleiman: It seems like there might have been another way to lean or out, and I wanted to present another model. Because as I look through the list of every type of purpose, many types of purpose that people want the data for—the Who Is data— and basically people want it for lots and lots of things. There are other models where systems have gone the other way and withdrawn access to the data. So when you look at chat room identities in the United States, Internet service providers used to give them away fairly easily. Someone would come in and say hey, that person said something. They're an insider, the price of my stock dropped, they said something negative about my company. I want to know who's behind that chat room identity. The Internet service providers gave this away very easily, and then they got sued for it.

And now it's gone the opposite way. Even if you've got very good grounds for wanting to know who said something negative against you, whether you think it's personal and it's defamation, or whether it's against your company and you think it might have

something to do with insider trading, you have to go through a much higher standard process in the United States. You go through—you have to have a case pending, and you have to prove to a judge or a magistrate that you have a non-trivial complaint against the person and that there are legal grounds. That there's a cause of action that is actually legitimate, and non-frivolous, and all of this has to be proven before the Internet service provider is called upon to release the identity.

Steve Crocker: So then it's just metadata.

Kathy Kleiman: I'm sorry?

Steve Crocker: This is just metadata. That's a joke.

Kathy Kleiman: Oh. Okay. So there are—and so I thought that's a way—a different system leaned out and looked the other way and said we need to provide more protection, not less, and provable purposes, not multiple purposes.

Rod Rasmussen: I'd have countered her, Steve.

Steve Crocker: Yes, I don't.

Rod Rasmussen: That's confused—you actually identified a purpose there with that, Kathy.

Kathy Kleiman: Who's speaking, please?

Rod Rasmussen: I'm sorry, this is Rod Rasmussen. So what you've done very carefully there is done one of the things we did in the group which identifies a purpose. And so the purpose was to, for example, in that case was for somebody to be able to lodge a complaint. The implementation under the old, if you will, paradigm that you were discussing was everybody just gives that information away. The new paradigm is that you have to go through a process. That's exactly what we've proposed here is the purpose has not changed in that people want to be able to file a complaint or what you and have something done. However, the process has changed so a system has been created in order to make that process work better. There's a confusion in process with—and access in how things work with the purpose for what people are trying to get done. So what we've started with is the purpose is that people want to accomplish, and then try to build a system around that would offer things like protecting due process, privacy, access where it's appropriate, and then limit access where it's not appropriate. So I think we actually have done what you're talking about there, it just may not have appeared that way on your particular (inaudible).

Kathy Kleiman: Rod, I don't think so because every purpose is on the list. Every purpose I can imagine is on the list whether legitimate or not.

Rod Rasmussen: Well okay, and I don't think this commenting on various purposes, but within the example you just gave there, you didn't argue with the purpose that the complainants wanted to do what you've said was the process didn't work for them to accomplish their purpose, and other people accomplished their purposes. So what we try to do is say what are all these things—some of them in fact we even labeled some of the things as undesirable purposes like gathering Who Is information for mounting spam campaigns which is a purpose that people have, it's something that people do today, and we're to try to come up with a way to make that not happen. So I would suggest comments around purposes that you would think shouldn't be allowed by the system versus—and then on purposes that we do talk about where you think there are not enough controls or process in place to protect various other interests, to comment on those and how those might be strengthened. Does that make sense?

- Kathy Kleiman: It does. But shock number three, after centralized database and the vast amount of purposes, was a huge amount of data that you're proposing. When I first heard of centralized database, I assumed that it was going to be a much more streamlined data set, limited to almost the contactability that both the Who Is review team embraced, and the community supported and was incorporated into the registrar accreditation agreement. The standard of contactability. But no, there were the existing fields and even more. So I mean, just a huge sense of exposure, Rod, looking at what is being created here and what might be available. There's a huge amount of abuse potential here. Often.
- Susan Kawaguchi: This is Susan Kawaguchi. Kathy, if I might chime in.
- Kathy Kleiman: Sure.
- Susan Kawaguchi: One thing that we have kept in mind the whole time and I think cannot sway away from is the Internet user's right to know who they're doing business with. And that may not pertain to an individual who's just using their domain name for a website or some other purpose that is not commercial but, as an Internet user, we have a responsibility to make sure they know who they're doing business with. And that's a concept that, throughout the whole world, when you walk into the local village, then you should know who you're giving your money to and who you're buying products from. At least in the US, usually there's a business license on the wall. And so I think it's a real strong balance between protecting that Internet user's individual, and in what are the responsibility of that commercial entity on the Internet.
- Kathy Kleiman: Susan, may I?
- Susan Kawaguchi: Go right ahead.
- Kathy Kleiman: Whenever you've finished, sorry.
- Susan Kawaguchi: Well, the only thing I was going to say is that if we were 40 years ago, 20 years ago, or even 15, I think the Internet was a little brighter—brighter and happier place than it is now. And so I just do not think that someone distributing malware or taking my money and giving me a product, that I want to know that I'm buying something from Amazon and/or never on the Internet. Or Stephanie's (inaudible) and so I think there's a real balance between an individual right to privacy, and then a commercial entity's responsibility mandated all over the world. I mean, that's—
- Kathy Kleiman: Susan, may I?
- Susan Kawauchi: Sure.
- Kathy Kleiman: Okay. I think we're confused— what we're doing is sharing a discussion that, of course, has been taking place for 12 years. And it's an important discussion but we need to update everyone with the nuances. And that—as we discussed a lot in the Who Is review team, commercial and commercial and commercial can be different. So really, the type of commercial people really care about is those companies engaged in marketing to end users. Those selling directly to consumers or customers which turns out to be a small fraction, A, of all the domain name registrants, and a very small fraction of even all commercial registrants.
- So that when—I often serve as an expert attorney for other law firms. And when they hire me, they rarely know my address. And there's no obligation of disclosure. But most business-to-business transactions are by contract. And what you disclose and who disclosed it and how much data goes with it is all by contract. So the small subset of commercial that is actually to end users, to consumers, turns out to be, A, small, and B, is this ICANN's mandate? Is ICANN now the business certification entity of those few businesses that are actually engaged like Amazon and selling to consumers? Or is this a

matter for national law? Whereas, I believe it's Germany and other countries in Europe that say, hey, if you're selling to an end user, you must put your physical location on that home page, along with contact information so that if the person has a problem, they can contact you. This has been mandated by law, it seems very appropriate to do so. But it's not the domain name, it's the use of that domain name in a website.

And again, is this ICANN's job now? I think we're stepping. Let me just say that malware and botnets to me fall into a different category because that's a problem with the infrastructure that's detectable, as Rod has taught me, detectable through mechanisms other than the content itself. So here we're talking strictly about commercial.

And let me share how you can go down the wrong path with this, because we did it with the United States a decade ago where trying to define the line between commercial and non-commercial led to absolutely insane results where suddenly a professor links to his book or her book on Amazon. and that's a link to a commercial site. And even though the book is itself non-commercial speech, suddenly that link made the professor's website with his resume and his student's work commercial. Not everything linking to commercial is commercial. And not everything gathering money like KickStart and other things, a lot of this is non-commercial. Does ICANN really want to get into the business of certifying who should be saying what involving their content? I think we've overstepped our bounds of scope here.

Unidentified Participant: I would disagree. And this is not an EWG rule but I would agree with putting a link—if the professor is selling his book and linking to—either promoting it, linking to it on Amazon, there's some commercial use there. That is not at EWG rule—view.

Kathy Kleiman: I hope not.

Jean Francois Baril: Excuse me. On the call. May I suggest that we come back to the queuing system so that Wendy and Stephanie—I'm not sure we can solve all the difficult issues on the phone. So I think we are mainly hear to listen to your main concern and articulate if you have some already some (inaudible) for answering. But otherwise I think we would need to defer this discussion to another moment. So Wendy.

Wendy Seltzer: Thanks. I want to give a brief pointer to concerns about validation but since I've spent lots of other time discussing those, I won't raise them here but we'll put them into written comments.

The other more general concern, though, following this discussion is about the scope creep as we make Who Is into something that offers everything to everyone or new directory services. It can be tempting to think, well, if there's a use case, then it's not an unlawful or harmful use case, we should provide for it. But we do have to consider that the costs and the externalities that that imposes on the general public who has to fund that both through monetary funds and through the costs of building up the infrastructure that's able to support those uses, and through their privacy costs of those, whose information is now used for ancillary purposes that they didn't expect.

So into the use case table I would add additional considerations—additional miscreant uses or clearly include those who abuse the look-up and the dispute processes to get speakers kicked offline or to make it more difficult for individuals to express themselves, reverse domain name hijacking, and others who might use the lookup simply to identify somebody who had been speaking anonymously rather than for the purpose of filing any sort of legal complaint.

And then the general costs that build up for people of having to supply information, validate information, and the costs to ICANN of maintaining such a system with all of the agency costs that come in as we now have, for either building it internally or contracting with third parties. Those parties gain vested interest in having their role in the system



continue. All of that makes for a much heavier weighted, harder to change in the future system), but, I think, goes again some of the flexibilities that we've enjoyed of the Internet.

Jean Francois Baril: Thank you, Wendy. I think we have taken good note of your additional use case and for, as I said in my opening remark, the cost (inaudible) is a big concern also that we are doing the best (inaudible) consideration. Now Stephanie, you are on the line next.

Stephanie Perrin: Yes, and this—my comment dates back to the discussion of the permissible uses and the use cases, and it's really a follow-up to what Rod was saying. I think, as I read the report, and this is a personal opinion, I think that it kind of reads as if we've taken a snapshot of all the existing uses of a wide open, if inaccurate, Who Is database and said right, here are all the uses. How can we make them all happen?

And what is necessary of course, is the policy process of hang on a minute, if we were appropriately—and I'm speaking as a privacy advocate. You're not necessarily a member of the EWG. If we were applying privacy law in a harmonized manner across all of ICANN's different jurisdictions, would we still be doing all of this? And I think it's a question. What happens whenever you bring in privacy law after economic players have been using data is everybody wants everything grandfathered, and there's a long and sometimes painful process of reeling it back much as Kathy described with the chat room stuff. And this has happened wholesale on the Internet. So we did discuss this in the EWG way back in Los Angeles. I don't think it's clear enough in our report that that's a policy discussion. I mean, we can say yes, we can facilitate this in the following ways, and yes we can put more accountability into it in the following ways, but then ultimately, at the end of the day, if you're keeping data for the purposes of I pick on law enforcement because it's the easiest one—that's your purpose and you have to state it specifically and you have to make sure that it fits in a public policy context. That's just all I wanted to stay.

Jean Francois Baril: Thank you. Anyone else in the queue?

Robin Gross: Well, I had a question. This is Robin. I was wondering what kind of reaction or response did the EWG have to the June 6<sup>th</sup> letter from the article 29 working party. So what kind of a response to that letter, and also wondering what kind of outreach has been done by the group to incorporate views of data, privacy commissioners, and data protection commissioners into the deliberations. Thanks.

Jean Francois Baril (Inaudible), I see your hand still up on the Adobe. Do you want to answer or?

Unidentified Participant: Sorry, my dog was barking. Did you want me to answer that, Jean Francois?

Jean Francois Baril: Right. On the article 29.

Unidentified Participant: Yes. Basically, that article 29 letter was not related to the EWG report. It was related to the registrar's agreement, the registrar's accreditation agreement. As I understand it. I mean, Steve should really answer that. This, I think—the letter's addressed to him. But it basically speaks to a broader privacy policy issue, namely, what are we mandating in terms of data retention and data collection in the registrar's agreement kind of stuff that, in my view, would be dealt with in a more broad privacy policy? Does that help?

Robin Gross: Well, sort of. It's just—I mean, I realize that the letter was addressed to the other agreement, but the point, the larger point is that ICANN policies should make an effort to conform to the law. And so even though the letter is about this other particular agreement, I think the bigger picture, the broader point is that the policy—ICANN's policies in general don't conform to the law, and I see your point and I think you make a really valid point when you say that ICANN needs to kick this up a notch and come up with a broader privacy policy that then this working group can feed into and use as a

guide for how it handles privacy issues. So I mean, I guess it doesn't really answer the point but I see the point you're making.

And so then my other question has to do with what outreach and engagement has the group done with data, privacy— data protection commissioners and privacy officers to try to incorporate those views and those considerations into these deliberations.

Unidentified Participant: Okay, here's maybe just a quick comment. The one, sort of, perennial theme that comes in the interface with the data protection commissioners is they're looking for precision about what the purpose—or when they write about the Who Is, what's the purpose of the Who Is database? When they write about the registrar's accreditation agreement it's what the purpose of the registrar's collection of data? And it speaks to the fact that all data protection law stems from legitimate purpose. You have to have a purpose. People like dos and (inaudible). So that's kind of a consistent theme and I guess it's the one that we've been talking about this morning with respect to the new steps forward.

In terms of outreach, I believe that's in Bonnie and Steve's hands waiting for probably a response to go out to that letter.

Jean Francois Baril: Steve, do you want to comment from ICANN?

Steve Crocker: The answer to your question is no, I don't really want to comment but I'll offer up something. The statement that we're not in conformance with the law, I think, is not yet settled. Some questions raised about what the status of that article 29 letter is. I don't have an opinion. I think we obviously cannot just simply ignore that letter, but I also think it does not, on its own, represent anything definitive.

As Denise has commented in the chat room here, jurisdictional legal research is also being done for the expert working group. I think the idea of asking privacy commissioners and other experts for information sounds like a very good idea. And some of that is in progress and perhaps more needs to be done.

And sort of, from a balance point of view, that's not the only set of follow-up questions as we talked about at the beginning of the call—issues about what are risks of aggregating a centralized database and the question of how do you structure this? Should it be done directly under ICANN's auspices or should it be done in some other fashion? All are legitimate questions that I think need to be pursued. They come very naturally out of the rather substantial amount of work that this group has done on generating ideas and putting a basic framework in place in order to have something to react to. And I think, at least in my mind, form sort of the logical next phase of our approach—now I'm speaking just personally here. No decisions have been made. There is no—and I haven't made any socialization of this but, speaking for myself, I always envisioned that this was going to be a quite strategic effort and not leading to an instantaneous decision. We wanted to get all the issues on the table and then we wanted to go pursue them and then we wanted to make the right decisions. And that's not a fast process. So I'm actually looking forward to the extended discussion that is being suggested here. And I have to repeat one more time, again, speaking for myself.

Jean Francois Baril: Great. We've got Kathy on the queue.

Kathy Kleiman: Thank you, Jean Francois. And for anybody who doesn't know me, please note the passion is about the subject and not about the people who I respect greatly.

Okay two questions, and Jean Francois, let me ask you if I might. One, and I'm going to ask them and then I'm going to explain why I'm so concerned. One is can we reduce the data that's being held in the centralized database? Particularly the physical address scares the bejesus out of me and I'll tell you why. And two, is who on the EWG—and you don't have to answer this directly. It's more rhetorical. But who presented the data to

you about the day-to-day abuse of the Who is data and why people have been driven to proxy privacy? The day-to-day abuse of the Who Is data is actually what brought me into this field 15 years ago when I started seeing the way business-to-business abuse the Who Is data with larger businesses going after the domain names of smaller businesses, home-based businesses, small businesses, entrepreneurs and really threatening them, largely for anti-competitive purposes. Someone had a really cool domain name and big companies would come in and threaten jail and RICO—RICO is conspiracy charges in the United States, and triple damages, and just that ability to find someone at their home base—at the home business that that disparity of power was unlike anything we had ever seen. The vast—a lot of domain name registrants are registering under their home addresses.

And so even worse than the anti-competitive abuse, which was enormous, I answered those emails for years and told big businesses to back away because what they would do wasn't legal, wasn't right, and was scandalous. But even worse than that has been the abuse of the Who Is—the harassment and stalking. It's not just a stream of commerce. This is a stream of communication. The DNS facilitates the best stream of communication ever created and Steve was a part of creating this amazing Internet. So religious minorities, political minorities, individuals engaged in personal and hobby speech. The ability to track this back to people's home and their children will—data is easily accessible creates real problems, and only a small fraction of these will be handled by the credentialing which is an important step but only handled kind of the outer set of cases on this, the really provable kind of religious minority cases.

But it's in fact a day to day issue that anonymity and this is engrained in the first amendment of the United States in Supreme Court cases, the ability to speak without having your home address associated with what you're saying creates much more robust speech. And so to see this physical address not only—I had hoped that you guys would drop it by now. But to see it perpetuated, put up to the top and then any Internet user can access it, and you can validate it, who on the committee has been talking about the day-to-day abuse of the Who Is data?

Jean Francois:

So I think they are both very, very valid comments and questions. On the first one on the (inaudible) and (inaudible) we need to collect. And, of course, we'd like to collect the strict minimum. We are in the process through the (inaudible) to really make the recommendation of what is absolutely necessary on this one, and we have envisioned the scope from zero visibility, zero (inaudible), why do we need Who Is? What are the next needs for collecting information and data? A lot of data. So this question, this concern is taken care quite (inaudible) and we are working on this one. Unfortunately we didn't reach total consensus on this one so we need to refine, we need to digest, internalize further.

On the civil one which is also very important element on abuse cases and (inaudible) and so forth, yes, that is I mean a different case of abuse. I cannot guarantee that we have envisioned all of the possible abuse states because that's probably infinite. But I think we have (inaudible) this one—I don't know if Rod will probably one of the best case for this one would like to comment on this one but it is something that we are also definitely looking at

Lisa Phifer:

This is Lisa Phifer, if I might just comment. Kathy, I know you're well aware of the Who Is studies that were launched to look at various uses and abuses of Who Is data. And the working group has actually been looking at those study results, both the results that have been published and a little bit of the preliminary results of studies that will be published coming up next month. So we have actually been trying to look at the hard data related to abuse as well as how those registrants really are identifying themselves today and who is, for example, how often privacy services are used, how often proxy services are used by individuals and by sites that involve commercial activity or potentially commercial activity. So we have been trying to look at that data as we discuss what these data elements should be made— stored through the directory service.

And then as a separate question, what of that data that's actually stored and validated, then would be acceptable and to whom, under what circumstances. So I hope that helps a little bit.

Jean Francois: So it maybe—another short comment or short additional question for the same topic because of interest of the time. Now I would like maybe to leave a few minutes to leave that, to present the next steps for EWG and the next report.

Unidentified Participant: Yes, thank you, Jean Francois. So as Jean Francois mentioned in the beginning of the call, we are looking forward to receiving input from the community in its entirety. Our cut-off for submissions of comments is August 12th. Everything that we receive by August 12<sup>th</sup> we will hope to take into consideration during the month of August as we've actually identified a number of issues already, based on comments that we've received and feedback received in Durban that team members are taking a look at and we'll meet again in late August to further our work. And our goal continues to be trying to pull together a final report by Buenos Aires which, of course, is a challenge but that is our goal.

As far as submitting input, there is a website for the—with a questionnaire for key areas that we're specifically looking for input on if you have input that doesn't fall into the areas identified in that questionnaire. Of course, you can submit comments by email as well and we welcome input by either method from all groups.

Kathy Kleiman: Can I ask a question? This is Kathy. The question Robin just raised in the chat room which is when will the EWG be extending the deadline on comments because middle of the summer is not the best time to get the best input? I'm thinking middle of September and you'll get a lot more input.

Jean Francois: We got already a lot of input and we know that few groups would like to extend things. So at the same time, we have to be conscious about the time we need to digest, integrate, and call the final report so if it is a small comment, sure, it can be extended. If it is a big thing, I think it's better if people can still do that and submit as soon as possible. In Durban we said August 12<sup>th</sup>.

Robin Gross: And obviously as the group will continue to pay attention to comments that are provided after that cut-off date. The focus for that cut-off date is anything that you want to make sure we take into account as we're meeting at the end of August. And we will be trying to make further progress on a lot of these key issues at that meeting. So if you have input on these key issues, to the extent that you can get the comments by the 12<sup>th</sup> that just will maximize their effect. But of course we'll continue to process comments that are received after the cut-off date.

Kathy Kleiman: For those groups that are run largely by volunteers, we'll just share that this is a very, very difficult time. And my guess is you're going to be hearing comments trickling in from those in the non-commercial, non-profit world, and privacy communities because, again, the dead of summer is a really rough time. We're already covering for people on vacation. So I understand your deadlines but what you're dealing with is so important that I'm going to urge you to take into account comments whenever you get them because some of the most important ones are unlikely to hit you by the deadline.

Robin Gross: Point well taken and the EWG also is a volunteer group and trying very hard to move the ball forward in a time that's tough for everyone. So we hear you loud and clear.

Kathy Kleiman: Great. Thank you. And thank you for today.

Jean Francois: Well, thank you very much for everyone. I think very much surprising but impressive number of very constructive comments and input. So we are really, really lucky. So thank you so much. With that I believe we are now going to adjourn for the call.

Kathy Kleiman: Thank you so much, Jean Francois, and everybody.

Unidentified Participant: Thank you, everybody.

Unidentified Participant: Bye bye.