ICANN

Moderator: Maryam Bakoshi
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Coordinator: Excuse me speakers, the recordings have started.

Stephanie Perrin: Very good, Stephanie Perrin for the record. Please don't hesitate. I'll try to
keep an eye on the chat. But if you have a question as we go along it's
probably better to raise it if you - if there's something that is not clear. We
have a lot of materials to cover. I'm going to try to keep my remarks down to
15 minutes or so so that we have time for questions and to discuss the issues
but that may not happen and they go on. I've asked Farzi to keep me honest.

So basically I'm going to go through the basics of the general data protection
regulations as it applies to ICANN. I'll give you a brief summary of the Whois
directly and new registration data services and the issues that ICANN has
basically been debating for 20 years, the privacy issues and registrant data
collection use and disclosure as we see it in the NCSG and as we have seen it
over the years.

I'm only going to focus on two real problems in the arguments. Those of you
who are on the RDS Working Group will know that we've been fighting about
just about everything for the last gosh, year and a half. And I'm going to focus

on the purpose of collection and on consent because these are kind of the panaceas that those who want Whois to remain the way it is have brought forward as solutions to data protection regulation. And I'm going to go over the key issues that I flagged and that we put together as a group in the Article 29 letter which is out for comment.

Now as Farzi said the ICANN has released its new proposed model on the 28th of February so we have to do some edits to the Article 29 letter and discuss actually things that are in the model as well so there will be some quick edits to that today. I hope to get it out later this afternoon. So on to the next slide the basics of GDPR. What you see down on that slide is a link to the European Commission's page on GDPR. You'll note that the law's in many languages so we have many languages represented on the call. You can probably read it in your own language but it's a great big long document.

There is a summary of it on this page and you might find that helpful. Basically the European Union has been working towards harmonized approach to basic human rights and data protection since 1998 well since 1991 when they tabled the first draft of the previous directive 9546 on data protection. There was a five year fight over that document. It passed in 1995 as the numbering implies and quite frankly there's very little that is different from a data protection perspective as it relates to ICANN between the provisions in the 9546 in the directive and the regulation.

The differences are that this is a step forward in enforcement. The - there has always been the argument that the data protection commissioners in Europe were no better at enforcing data protections than the companies were in the United States without data protection law. This regulation not only harmonizes because it's a regulation not a directive, it provides more enforcement powers to the data protection board and most importantly it - and

that could be bullet number three, there are potential fines of 4% of the revenue outcome. Now that has seized the attention of the registrars and registries and of ICANN because the registrars and registries are bound by the impact to do things that their lawyers tell them are not in compliance with data protection law.

The mechanisms to comply with data protection law that have arisen over the years don't actually work and I don't want to go down a big rabbit hole on that subject but the Whois conflicts with law procedure has been up for revision for the past few years. We're having another working group that starts in the fall to come up with a trigger that works. This is the only procedure that amounts to a data protection policy at ICANN and it's - I would argue does not work.

Now the Article 29 working party of data commissioners is a group that was established under the directive. And you have to remember that at the time the directive came out it was not clear at all that Europe would continue to grow and become centralized in the union the way it has been. So this was an innovative way of getting the data protection commissioners in each country in Europe to work together on a working party according to the directive and basically harmonize their views because there was not really a good way for the commission to enforce that harmonization in a directive. It's different in a regulation. And I promised I wouldn't get into the details of drafting but if anybody's curious please don't hesitate to contact me. Anyway this new authority becomes the data protection board on May 25. Then the GDPR comes into effect. It'll be interesting to see how they manage.

The principles of GDPR are similar to the 9546, almost identical. Data minimization is a key. We do not collect or process more data than you need for your purpose. Purpose is narrow. It is decided prior to processing and it is

limited to the core activities of the organization. The proportionality principle which is a basic principle in law, it is not a provision in the directive or the regulation, the proportionality principle governs all details about the processing action.

So you may have an authority for instance say contract or consent to process data but then you have to apply the proportionality to it well to limit the extent to which you are making use of that authority to processing to actually manage data. And the concept of data controller, co-controller data processor is flushed out in the regulations a little more openly than it was under the directives. It is important to note that there is a requirement under the GDPR to figure out how your different entities works together. Now it's probably worth a minute or two here to go into the concept of a data controller.

When I first arrived at ICANN in 2013 I was surprised to find that registrars thought they were data controllers, not processors and nobody seemed to really accept that ICANN was a data controller. The difference between a controller and a processor is the term are used in the EU law. The controller is the one who sets the policy who actually controls how data is collected, used and disclosed. And I would argue that ICANN does that through its contract because themselves and the contracted parties because those provisions are stipulated out. And it is certainly not as if the registrars and registries have insisted on the extensive data processing that goes on.

A data processor on the other hand was originally conceived as a company that you hire to do data processing. But in the complex world of data flow that we now inhabit a data processor can be an entity such as in the case of ICANN the escrow provider. That's a classic data processor. They have no real interest in the data themselves. They provide a secure storage for service

and ICANN is a party to that contract with them. And the registrars and registries are obliged to use them.

Okay I'll pause for breath here. Anybody any questions so far? No?

Farzaneh Badii: Stephanie just I have a question. So the importance of this issue that you raised about this concept of data controller or co-controller is that ICANN under the GDPR is a data controller or a co-controller right? It does qualify that.

Stephanie Perrin: Yes now for instance a registrar or a reseller that works under the sponsorship of a registrar might have a very intense relationship with an entity. They may arrange for the registration of their domain name and then they may provide Web site management services, security services. None of those are within the remit of ICANN.

The pieces for ICANN are the requirements that they insist on in the contract with the registrar. And then the actual processing that ICANN has its hands in is limited. They have it in the escrow. They have it in terms of audit, investigation -- that kind of thing. But they don't control the data.

Now the - a registrar let's pick on Michele Neylon for instance since he's so visible, Blacknight does all kinds of things. You know, they do Web management. That's where the money is. So lots of the registrars actually have quite a bit of data about their customers. They are controllers with respect to their customer data. They are processors with respect to their relationship over the data that is released in the Whois. I hope that's clear.

And why is it important, because with 4% fines you need to apportion liability. There's an important provision under the GDPR that you have to

notify of a data breach within 72 hours. It's extremely important that all of these entities that are touching personal data figure out where their liability begins and ends. And companies are usually pretty good about figuring out why their liability - where their liability begins and ends. So it's an important point. And those of us who are advising companies about how to prepare for GDPR are looking under rocks to find these relationships so that we're sure that everybody is well-protected. I hope that's clear.

Okay Whois is a service that provides data on who is registered a domain name, what register they're using, what name servers they're on. ICANN inherited the service when it was established in 1998 and we have to remember that that was the beginning of the commercialization of the Internet.

So when Whois was developed back in the 70s it really pertained to academics and US government entities and a few European entities who were engaged in the building of the Internet. Those details in order that you could contact them and get the system to work they were not generally personal data. They were institutional. As soon as he started opening up the domain name system basically after the coming of the World Wide Web to everybody that data of someone who registered a domain name because more personal.

I'm not going to go over the long struggle of the argument over Whois. I just want perhaps the newer members to be aware that the NCUC and its - and the NCSG way, way back in 2000 were fighting for data protection over the Whois. And having just written a dissertation on this I can bore you with hours so don't hesitate to contact me if you're curious.

Farzaneh Badii: Sorry Stephanie I think we have some time to go over the - some - if you could mention the importance of some of the groups that mention on this slide and the long struggle but just, you know, briefly. And the other thing that I

wanted to emphasize Whois service actually contains very sensitive and sometimes personal information and which has been and Stephanie's going to mention this but which has been used in the past because it is public. And so it contains name and telephone number, physical address of the registrants.

And the importance of protecting this data is that we - it has been used to for abusive purposes. And it's not always about - it has not been always used about for law enforcement and (legal defense) purposes. And a lot of the registrants are even not - they are not even informed that their information will be public. And sometimes when we tell the registrant they are surprised that their information goes up. And somewhere on the Internet that can be accessed by anyone. Thank you Stephanie, go ahead.

Stephanie Perrin: Okay so the first committee was formed in 2000. The International Working Group on Data Protection and Telecommunications is a group of data commissioners from around the world who assembled back in 1983 to coordinate their responses on the impact of technology on data protection. So that group since - or published an opinion on Whois back 2000. There was a concern generally when the Internet became more commonly used in government and in institutions that directories were all migrating to the Internet so it attracted their intention as an important directory that was migrating, didn't know it was already on the Internet frankly.

Then the first task force was assembled in 2001 to 2003, the second in 2003 to 2004. And always privacy was an issue that we could not achieve consensus on. And I will argue that basically that whenever we could not achieve consensus it was batted down the road.

Now the one thing that we did achieve a super majority vote on -- and most of you who were in Abu Dhabi made the call Milton Mueller raising this, Milton

has documented this by the way all in his book Ruling the Root if you're curious about the early days. In 2006 the GNSO Council had voted on a narrow definition of the purpose (unintelligible) is. Already the Intellectual Property folks and the law enforcement folks, the GAC, representative of the GAC wanted a broader definition of the purpose of the Whois. And remember here we're only talk about the purpose of the directly.

Be clear in your minds that there's a difference between the purpose of the directly and the data processing surrounding the directory and the purpose of the processing of all registrant data because the processing of all registrant data includes also the escrow, the data retention or access to (his own files), how the system actually works, the provision of data to the registry, the Thick versus Thin Whois issue. So it's a bigger enchilada as it were. I'm sorry I'm using enchilada and the metaphor appears to be pizza and calzones so anyway.

These task forces carried on and did research. They looked at improving accuracy because of course the folks that were fighting abuse wanted more accurate data and people were registering as Mickey Mouse and giving their address as whoever they felt like stealing an address from. So this wasn't working from their perspective.

Now it's important to note that given the basic failure to respect data protection law during these early years privacy proxy services emerged and registrars were offering to put their own data into the Whois for their customers to avoid having their names, address and phone number put in the Whois. So that became embedded fairly early and the government advisory committee among others were fairly critical accusing the privacy proxy services of masking criminals. And it may be that there were criminals that finally did some research on that and found that actually they weren't. So

there's plenty of legitimate actors. Oh dear. There's plenty of legitimate actors who want to have their data protected.

So anyway the Whois Review Team was struck in 2010 to 2012. We now have a new Whois Review Team. I'm a member. I can't say I've been really working very hard because there is so much going on with the GDPR that we're extremely preoccupied. It's very hard to make progress on this at the moment.

I arrived at ICANN being invited to come to the Experts Working Group as a privacy expert in 2013. I had participated with ICANN back in 2005 when I was the Director of Research at the Canadian Privacy Commissioner's Office and in fact that was after having drafted the Canadian (Seros) for privacy policy so I was fairly familiar with the issues.

I would say to all of those of you are struggling to understand these issues I was still extremely overwhelmed when I got onto the Experts Working Group at the complexity of these systems, the need to master all of the details of how this (unintelligible). Some of the folks that are of the RDS Review - the RDS Working Group at the moment just claim I don't understand how the Internet works. So, you know, don't be abashed if you're finding this is a lot to master. It is.

So anyway the Experts Working Group was a unique entity in that it was not a - while there were people drawn from ICANN stakeholder groups it was not the same kind of consensus working group that we have in a regular PDP. The consultation mechanisms were not as robust. We went from an early draft that was presented in Buenos Aires to a complete draft that really didn't have a consultation period at the end of it. We reported to the board.

So I have threatened to write in annotated version of that document. There's a lot of good work in it but there was a lot of compromise made including by your loan privacy advocate here and I think it needs to be thoroughly unpacked as opposed to taking it as a gospel about how do we devise the RDS. Anyway the current RDS Working Group that I see several members of our on the call that started in 2015 and we have no clue what it's going to end. It's feeling like forever.

In the middle of all of this back in 2011 there was a transition to Thick registries. And possibly a word on that. You tell me when I'm getting too much into detail here Farzi but the difference between thick and thin registries most of the registries numerically are thick meaning that the registrar transfers a lot of registrant data to them.

The initial ones operated by Verisign remembering that the whole reason for ICANN in the beginning was to move this out of ICANN American government control and make it more competitive and allow other entries into the system. So at that point .com and .org and some of the registries operated by VeriSign in the United States or Network Solutions as it was previously known had the bulk of the world registration. So they were forced to have only thin data. Now it is believed that there is enough competition that we could move to thick data. And I will get into the difference between thick and thin but the - I would say as a data protection person that there was insufficient input from data protection authorities and experts in that whole transition to thick registries working group. And I don't mean to criticize folks but, you know, it takes a lot to figure out all of the implications of these things.

Farzaneh Badii: So Stephanie just to add to the Thick, Thin Whois I was not involved but I have heard that NCSG was against this thin to thick transition but it was a

battle that we did not win. And they went ahead with this. And the problem that when you transfer this data to the - first of all there's a lot of data that they gather and then the transfer of this data from the registrar to registry creates privacy issues and data protection issues. Go ahead Stephanie. And maybe we can speed it up and go to the data protection issues soon. So we have only 15 minutes and we want to have a discussion before ICANN staff join us. And I think some of them have joined us already.

Stephanie Perrin: Okay that's fine. I'll just skip over the last elements. The 2013 registrar's accreditation agreement is the latest one of the registers accreditation agreements. There are four of them. There are increasing demands for data accuracy and data elements in the registrar's accreditation agreement. This particular one attracted the attention of the data protection commissioners notably the Article 29 working group, working party which is that group of data commissioners who are soon to become the board mostly over data retention. They were quite upset about that and about the failure of the Whois conflicts with law to actually work. So you will find correspondence on the ICANN correspondence page relating to this particular argument.

So the Whois data delivery requirements are spelled out in the registers accreditation agreement. So are the requirements in terms of retention and escrow and also a provision that folks have not really paid much attention to the data must be available for bulk processing by third party service providers. That is a requirement which is, you know, it means once the data is out of the corral it's gone as it were because value added service providers who are it must be said performing a vital role for law enforcement and cybercrime enforcement agents but they scrape up all the data and repackage it with additional data and sell services. And good luck getting in your data out of that particular service if indeed you have not understood the implications of a public Whois and put your data in there.

So let's go over the data protection issues. So I think I've already said the ICANN is the controller and sets the requirements. So they become the data processor. The purpose of collection use and disclosure is not agreed except for a provisional agreement reached in 2006.

Now many stakeholders are pointing to the provisions in the ICANN bylaws that point out that ICANN is there to ensure the stability of the Internet, stability and security of the Internet. That's not a purpose of collection use and disclosures too broad. It does inform us about the remit of ICANN. Individuals are not necessarily informed of their rights under data protection law. The current RAA has a fleeting reference but no details on how you are obliged to tell your registrant of their rights under data protection law. Bulk access to data is required. I went over that and the value-added services have proliferated.

Registrars in jurisdictions with data protection laws are required to seek the waiver of these requirements and that includes there's waivers for data retention if that's illegal in your jurisdiction and there are waivers for enforcement of data protection law. But they have to prove they have an enforceable order which when I was on that Conflicts with Law Group and repeated until I was blue in the face that that is not how data protection law works in most jurisdictions.

You have to remember that there are over 120 national data protection laws now, not just the European Union with its 28 states. So, you know, in Canada you have to go to federal court to get an enforceable order. And when I say you I mean the Data Protection Commissioner has to because they don't have binding power. That doesn't mean that this is, you know, so what mechanism would you use in Canada to get out of the problem of breaking data protection

law? You have to go to federal court and receive a fine and damages before you can get out of complying with ICANN's contract? This is kind of ridiculous.

At any rate pardon my voice. I've still got flu I'm afraid. Accuracy requirements are for the purpose of law enforcement. Registrars are forced to verify data and suspend domains where the contact is in question. I would note here that while it is a requirement of data protection law that data be accurate that is governed by the proportionality principal and in other laws different provisions say as accurate as is necessary bearing in mind the interests of the individual that is concerned. In other words you don't have the right to get their latest address phone number for your own marketing purposes every month just to fulfill an accuracy requirement. It has to be depending on the needs.

Data elements include the name, address phone, fax (unintelligible) said. Data retention elements they're exhaustive. I urge you to read that RAA. They include metadata, financial information, IP address and all email traffic. That is a very remarkable set of data retention requirements.

So under proposed solutions I'm just picking the two that we're fighting about in the RDS most these days. When I say the RDS I'm in the RDS PDP, the working group. The purpose of the RDS data collection use and disclosure or process they must match the narrow ICANN remit. And again there is a problem in language here. You'll see the last bullet. ICANN in my five year experience here has always discussed the purpose of personal data processing in terms of all of the use cases that have arisen over the last 20 years of violating data protection law.

So in other words there's all these useful things that your personal data is being used for including domain tools and all of the value-added services and nobody is willing to give up those use cases. But that's not the purpose for providing personal information to your registrar. The purpose is to register a domain name. That is the narrow remit of ICANN, managing the domain name system not all criminal activity on the Internet.

So there is a great risk that ICANN is going to become a one-stop repository of personal data that would otherwise be circumscribed under national law by the actors that usually like to get this data. And that's a huge topic we could spend an hour on so I'll try to skip ahead here.

The other so basically actors are trying to broaden the purpose to include all of these use cases. Under solutions consent, that was one of the reasons I issued a dissent to the Experts Working Group final report because basically some of the members -- I'm under Chatham House rules on that particular committee -- came in at the last minute and said, "Okay but we have to be able to consent to collection and exposure of personal information. That's a mandatory thing."

This is how the United States has grown up to be the biggest personal information economy in the world but they've never legislated and the approach to data protection has been notice and choice. You give somebody a notice, this is what we're doing with your data and agree. And after that there are no rights.

So that I certainly regarded that as the camel's nose sneaking out of the tent there. Once you give people the ability to consent you also have to give them the ability to withdraw. You have to give them clear information about what is involved, the subsequent uses including all of that value-added processing of their data and how withdrawal would be done. I would argue that it's

meaningless in this context because good luck getting it from value-added services around the world.

Farzaneh Badii: Stephanie sorry to interrupt you. Ayden has his hand up and he has a question.

Stephanie Perrin: Okay shoot.

Farzaneh Badii: Ayden go ahead.

Ayden Ferdeline: Thanks Farzaneh and thanks Stephanie. I don't mean to interrupt so if you do want to continue your slides first I'm happy to wait towards the end.

Stephanie Perrin: No, no go ahead.

Ayden Ferdeline: Thanks. So my question is actually more of a comment but there is a question towards the end. So one of the analogies that I really like is to say that domain names are the street signs of the Internet and they may well guide us to where content could be done via the Web site, a mailing list or other content. And the person that posted the physical street sign never before in history had to autograph that street sign with his or her physical address, his or her phone number, his or her email and so forth. So it's also that position online.

And so one of the goals for the Expert Working Group if I'm not mistaken -- and I could be because I was not a member of the EWG but you were -- was that registrants should be contactable not necessarily reachable. And I think that distinction is really important because being reachable subjects one to potential arrest or harassment for any type of message or content that is posted online whereas the contactable does not necessarily.

And so when we were talking about, you know, sort of the history of where they've gone I was wondering if you might be able to comment on why did the EWG lose this in the end? Why did we go from being contactable to their being this desire for a registrant to be reachable? I hope that makes sense. Thanks.

Stephanie Perrin: Yes. And I think part of the problem with having simply an anonymous email, you know, abuse@digitaldiscretion.ca part of the problem with that is if I'm a crook I'm not going to respond to your email. If I have abusive trademark the trademark enforcement folks need an address to serve papers on. These that you - although the EWG discussions are not public this was debated at some length in the Privacy Proxy Services Accreditation Working Group because, you know, there are certainly valid concerns about the use of proxy services.

If you don't know the real address of the individual you can't serve papers. If the individual is operating through a registrar that is not living up to its commitments they're not helpful. You know, there is a need for them to provide the address for the serving of papers. So I think that's one of the issues and one of the reasons why there has been so much pressure to get the address and the phone number and all of the rest of it because an email can be meaningless. Thanks.

Not moving right along I see comments in the chat that we'd like to hear more about GDPR compliance. I just want to reiterate that compliance with 9546 the data protection issues that is GDPR compliance. Not much has changed in the actual provision. So our recommendation in the draft letter to the Article 29 Working Party which is out for comments right now to the list and which we now have to revise because of course February 28 ICANN released its model that we're going to hear about in a minute and already there are some things that are fairly strongly worded that have been accommodated in the

model. So we need to do an edit. We don't want to confuse the Article 29
Working Party.

We are writing this letter because Goran Marby has encouraged all
stakeholder groups to write to the Article 29, engage with them and discuss
our view. So we figured we better after we saw some of the other messages
they've received because our view is not necessarily shared by those who've
written.

We would like ICANN to embrace the spirit of data protection and to focus on
the risk to registrant, not simply do a de minimus approach to data protection
compliance. We view that the matter is ICANN should not be running a data
repository for third-party actors and law enforcement is not a legitimate
purpose of processing data. Let me be clear here a civil society supports law
enforcement. We don't want our members harassed, we do not want our
members' data stolen, we don't want our members subject to persecution, we
don't want any of the things the law enforcement claims must be prevented by
an open Whois.

However ICANN does not gather registrant data for the purposes of law
enforcement. It's not a law enforcement agency. And this is a subtle
distinction that is not particularly well understood certainly not on the RDS
Working Group or we've tried but it's not really working. I'd encourage you
to read when it is released the recent opinion of the International Working
Group on Data Protection and Telecommunications. They deal with this issue.

Yes of course law enforcement should get access to data that is gathered for
another purpose but you don't gather data to serve law enforcement. Think
about banking, think about your telephone company. There is not additional

data gathered to serve law enforcement but that's what has been happening at ICANN in our view.

We have always fought for the freedom of expression. And this of course is not a right that is covered in data protection law. Entities such as religious groups, press agencies, newspapers, Journal -- you name it -- women's groups that are often subject to harassment are not entitled to protection under data protection law except in so far as their staff, their employees or individuals representing them in a Whois entry might be eligible for protection under data protection law. So that gives you a problem where if a religious group that is going to be persecuted has to reveal their name, address and phone number then they are at risk. So we have fought to protect that. We've fought to protect free expression. And we argue the basically a name is not a Web site it is not necessarily clear when someone thinks of a wonderful name and decides to grab it that they're going to use it for commercial purposes and it's going to be, you know, it would be a legal person or indeed a natural person. So this is a problem for the registrars in actually getting good input on this point, accurate input.

We make a point in our letter that cybercrime fighting it's a legitimate reason to disclose but it needs to be on an accredited basis. And what do I mean by accreditation? There are standards already out there to accredit entities to for instance issue certifications for Web site. That's the kind of accreditation. What are your professional standards? How do you manage personal data or commercial data? What are the security implications and what security protocols are you following? All of those can be spelled out in a professional standard. And that is a lot better than just allowing people to self-accredit and say I'm a paralegal, I work for a law firm I need access to this data or I'm a cybercrime fighter, I work in my basement, I'm saving the world, let me access to this data. Okay Farzaneh you have your hand up.

Farzaneh Badii: Yes thank you Stephanie. We are - we need to move on to our - to the second segment of this Webinar and I can see that Theresa is already here. I'm not sure if John has been able to join us. But so in the second segment thank you very much but I don't know if you finished. We have the - there's another slide on Slide 14 but I - let me just say how we are going to proceed. What we are going to do is that - I'm sorry.

What we're going to do is we are going to talk about the latest ICANN compliance model with GDPR. We are going to as you know on 28th February date issue the latest compliance model and then we are going to discuss it with ICANN staff and in this Webinar and we are going to - we can ask questions, we can comment we can raise our concern. Stephanie if you want to go through because I'm not sure if John is here to brief us on the ICANN model process. I'm not…

Stephanie Perrin: Okay let me just say very briefly I'll go over the points that I haven't spoken about. We are seeing here that ICANN really needs a comprehensive privacy policy that covers ICANN's activity as a data controller. This could be then formed into a set of binding corporate rules. This is certainly the line of arguments I took in the EWG. It was a nonstarter but we need a privacy policy, you know. Other global corporations have privacy policies. Why not ICANN?

So this is kind of a piecemeal approach. And we understand that there's pressure on right now to comply with GDPR by May 25. That privacy policy should have been done years ago and it will take a while but we need to think towards that.

Registrant data beyond Whois needs to be in that privacy policy which I'll talk about data retention and escrow. Transport dataflow issues are life in ICANN. We need to figure out when reasonably the data should be maintained at the registrant's home base. And Thick Whois of course causes a problem there.

Access to zone files is an issue that is discussed in the Eco Workbook. And I urge folks who understand this to help me understand it because it looks like there's an end run around not having access to Whois by simply registering and getting a access to the zone file. So that's pretty well all I have to say. And if we're still waiting for our guest to arrive I'd be happy to answer any questions. Thanks.

Farzaneh Badii: Thanks Stephanie. I am not really sure I can see Theresa here. I'm not really sure if John has made it and if he has not then we can just go over the latest ICANN compliance model for GDPR. I don't really have…

((Crosstalk))

Woman: Sorry to interrupt you. Theresa is on the call so if you want to turn it over to her?

Theresa Swinehart: Great.

Farzaneh Badii: Okay yes Theresa please go ahead.

Theresa Swinehart: Sure, thank you. Thank you everybody for having us on the call. We also have the opportunity to have Akram Atallah on the call and John Jeffrey will be joining shortly as well so thank you very much.

I guess maybe I don't know exactly what you've discussed at this stage yet so maybe what I can do is just provide an overview of what we have posted earlier this week and then we can talk a little bit about what the model - what's in our model encompasses that's been put out there and some of the next steps around that. Would that be helpful around the context of this?

Farzaneh Badii: Yes that would - yes that would be great.

Theresa Swinehart: Okay.

Farzaneh Badii: Thank you very much.

Theresa Swinehart: Okay fantastic. So on the 28th February as you know from the blog that also Goran has posted we posted two documents. One is a high-level summary of the proposed interim model which also includes the - a proposed accreditation program with regards to the access, continued access to the full Thick Whois data in a tiered model overall.

The summary document maps to sort of the matrix which showed how the different input from the community was incorporated. It also identifies where there's still some elements where there is not alignment within the community around certain issues and which really warrant some further committee discussion on those specific topics. And then the summary document goes into more detail around what the proposed interim model encompasses and what it reflects and where there was consensus or agreement among many of the community discussions and what we reflected in that document there.

So that is more specifically to the interim model and we can look at talking to that in more detail also when John is able to join. We've also captured at the Attachment 2 in the document an accreditation program for continued access

to full Whois data, that is as one goes into the process of then how to allow for access in the two-tiered system. What a possible approach would be for an accreditation program to allow for the continued access to this and how to provide a mechanism whereby both law-enforcement and other governmental authorities recognized by governments could have access and also of course private third parties abiding by a proposed sort of codes of conduct that would be developed in consultation with the Governmental Advisory Committee in order to ensure that those entities that do need access through various mechanisms do I have that put forward.

So those documents are out there. We would really welcome feedback and input on those as we go both into the ICANN meeting and of course prior to the ICANN meeting as we try to solidify and reach agreement within the community on many of the different elements. And, you know, the part that's important is where there is the recognition of competing community views around certain elements of the proposed interim model whether the community itself can come together around some of those areas of differences. So that's what we've put out on earlier this week. It's referred to as a calzone model. We started out with a pizza and are sort of solidifying a little bit more so hence the name. And that's where we are at this point in the process. So maybe I can answer any questions around that and then once we have John joining we can also delve a little bit deeper around some of the discussion.

Farzaneh Badii: Thank you very much Theresa for this brief background. I just asked (Maria) to also put the latest model, interim model in Adobe. And so if you have any question on the model from the (unintelligible) you are welcome to ask. Just to mention that Akram Atallah had also joined us just and so we will have John Jeffrey and Akram and Theresa if you have any questions or if you want

to comment to them. If you have - do - if the (parts) still have any questions or any question on the model or I am going to put forward a question.

Theresa Swinehart: Sure. And I understand that John has also been able to join now as well. So thank you.

((Crosstalk))

John Jeffrey: (Unintelligible) late.

Farzaneh Badii: Oh and (David) is here too. So some of the - so just to brief our members on the latest interim model we can see that still (unintelligible) they are keeping the Thick Whois in the model. The data is not minimized as much as it should be and GAC has been given in my opinion too much power to come up with a code of conduct of and their (unintelligible) iteration process. So these are some of the concerns that when I was looking at the model and discussing it with others we had. And so I just wanted to know how is this model going to evolve? Are you going to just implement it as it is or are we going to talk about our concerns in Puerto Rico and then afterwards our concerns will be taken into consideration and then you come up with another model based on that or is this kind of final?

Theresa Swinehart: So I think as we also shared in the blog that the input right now is really important with regards to this latest iteration that was point out there in that we really want to continue this conversation around this including of course there will be opportunities for conversations at the ICANN 61 meeting. But any feedback that could be provided earlier is of course very welcome. And that's why these opportunities to have discussions are of course also important in addition to more specific feedback through the Web site email address that's also available.

((Crosstalk))

Farzaneh Badii: And then I have another - go ahead.

John Jeffrey: I would just add, you know, to answer the question very directly it's not final. So we're still soliciting input and we're still hoping to evolve it to even a better community aligned model. Now that said we've gone a long way towards trying to align it to the law and we're going to put it in front of the regulatory authorities as soon as possible and we're going to try to move it forward because there's a great deal of pressure relating to the implementation of it in terms of timing for the May deadline before sanctions would go into place - options for sanction.

Farzaneh Badii: Okay thank you. So Ayden is saying in chat when is the model final? We are two months away from enforcement of GDPR beginning. And to add to that there is a lot of emphasis on coming up with a layered approach tiered access to Whois but we - it's kind of - it looks like that it might not be feasible to come up with a layered access before the law goes into effect.

If that is not - if it is not possible to come up with a model that is layered access also but also the community likes it what would ICANN do? Are you going to still stick with a layered model and implement it or are we going to have a - like a stricter approach without the layered model until the community comes up with a solution?

John Jeffrey: I can take that if you'd like and Akram or Theresa can come in behind if that's okay. I think that the approach we're still taking is that there would be a layered model as soon as possible. So even though we're only a few months away we believe that there are - there is the ability to implement aspects of it

including the layered model and we're continuing to push for that. If there is some difficulty in doing that then we would be asking the BPAs what would happen and we would be going through a very careful process to assure that we're not putting ICANN and thousands of contracted parties at risk against the law so still very much driving towards a layered model to be started that as soon as possible.

Farzaneh Badii: Okay and so are there any questions from the participants now or - I'm not - I don't want to be the only one who has questions so go ahead because I have five questions here I want to ask. So if you don't put your hands up keep me talking. Oh Stephanie go ahead.

Stephanie Perrin: Thanks very much, Stephanie Perrin for the record. I don't want to be the only one asking questions either so please speak up. I'm pretty skeptical about the Government's Advisory Committee coming up with an accreditation model that is robust in the next month. The GAC would have trouble even authenticating or rather crediting its own law agencies I suspect. I mean some countries obviously are well organized, others less so. But those of us who were at the jurisdiction meeting here in Ottawa this week were privy to some of the very difficult problems that we face in accrediting access because you have to understand when we talk about accrediting in a tiered access system we as the NCSG we're not talking all about you get past the door and then anybody in your organization has full access to everything in the system.

Access has to be on a limited basis. And the data protection commissioners have made that pretty clear. So some agencies might have access to everything but not every single agency. And the implementation of a single point of contact model such as the British have the UK has for its our IPA that takes a while and it requires some tech behind it. So that only deals with the law enforcement side.

There are other entities such as law firms who are fighting abuse. Who is going to do that? I can't imagine strained law enforcement agencies being willing to take that job on. So that's my question. Thanks.

John Jeffrey: Yes so I think - this is John again. So we agree it's - we've got some hard tasks in front of us and we have time pressures that are very serious and appreciate your concerns about the timeline. We share some of those. So any ideas you have that would help us get there faster we're certainly listening.

Farzaneh Badii: Okay thank you John and Stephanie. So I do have an idea John how about we just keep it to Model 3 and that would save - I can protect ICANN so would come up with a layered approach that appeal to all the - well all the stakeholder groups that (unintelligible) but can make everyone equally unhappy. So that is - I think that would - that can be a viable approach if you cannot come up with a layered model. And as I say - as I said I see too much emphasis in this proposal on GAC and how GAC is going to come up with accreditation process which worries me.

The other thing that I see in your document is that you (enumerated) the purposes of Whois. And it was - I think it was in the previous document as well. I'm not sure about some of these purposes and I do - and I think the purposes of Whois is something that the community should come up with. Of course it should not be against the law but the community should come up with the purposes.

And what I see in the purpose of enumerating the document some of them I don't think are in line with ICANN mission and I think that we believe that they should be in line with ICANN mission so I just wanted to flag that. I don't - we don't want these purposes enumerated in the document should be

set in stone and be considered as who is purpose in general. In the future I - oh okay and I can see that Ayden has a question. Ayden go ahead.

Ayden Ferdeline: Thanks Farzaneh and I didn't mean to interrupt. I only had a process question. So when I participated on a recent Webinar that was organized by the IPC and the BC they had the (unintelligible) already. And this wasn't always held at least a week before it was made public to the rest of us. So clearly there has been some degree of consultation between icann.org and certain stakeholder groups consultation or negotiations perhaps that have not been transparent. So given we just heard that this model is not yet final I just wanted to say that I would be very concerned if the final model that was developed was one which subsequently emerged without our feedback, without our input rather.

And just wanted to ask after this formal opportunity to provide comment on the interim model that we're seeing today closes can you commit -- and this is a question to either -- Theresa, Akram or John can you commit to not engaging in secretive negotiations where we are not invited to the table? Thank you.

John Jeffrey: Yes so this is John I'll just take it quickly and then maybe somebody else wants to pick it up but, you know, we don't see them as secret - we don't see it as secret negotiations. We've actually offered to communicate with anybody that wanted to talk to us like we're doing here. So I believe most of the conversations that I've been on have been recorded. I don't - we don't stop and say who are you and can we talk to you? We've been open to talking to anybody as a number of people on this call know because they've been involved in various parts of those conversations. So we're happy to talk to anytime and we're asking you for your input. I'd believe you've already provided input at an earlier phase and this is now a new publication and we're

asking for input on that too so I appreciate what you're saying. No intent here to be secretive and I'm sorry if that's the way it's been interpreted.

Ayden Ferdeline: Thanks. I just have a quick follow-up question.

Theresa Swinehart: Sure then I'll weigh in then.

Ayden Ferdeline: Sorry, thank you Theresa. But I think the important part of my question or rather statement was missed that this did actually happen right that you certainly did not come back to the NCSG a week before you made this model public and show it to us. You circulated it to the business constituency. You circulated it to the intellectual property constituency and you asked what did they find wrong with it? We were not notified of that.

John Jeffrey: This not correct. That's not correct. We engaged in a series of meetings with various community members and groups and provided them a verbal discussion of what we were thinking this model would look like. We did not circulate it. The first public…

Ayden Ferdeline: How did they know it? When I was on a Webinar held a full week, maybe ten days before this model we see on the screen went public they had it already?

John Jeffrey: Because they had engaged in conversations with us about what we were talking about. It was not finalized and we continued to evolve it through all of these discussions as we're continuing to evolve it now that it's published. So I appreciate what you're saying but again I don't want to argue the point. I understand your point and we're here, we're listening. We want your input and we also have as everyone's pointed out in the previous questions a very close timeline in order to make sure that we comply with this law.

Farzaneh Badii: Great. Thank you very much John. Thanks Ayden. Your point is taken and we will be at NCSG we will be more active in reaching out to ICANN staff to be briefed on the progress of coming and what various changes can happen that will happen to the model and we will be certainly more active. And as you can see that the staff members have been attending our Webinars so I think they will be cooperative as well. I saw that Theresa's hand was up. Theresa did you want to go ahead?

Theresa Swinehart: Sure. I just wanted to really reinforce, you know, what John was saying. There's been, you know, there's a lot of different community discussions around this. And so part of what we're also do is just trying to hear and get the input and consolidate that input in areas where we see that there's alignment. And of course part of the reason of putting this iteration out which as we noted is not a final iteration is again to get feedback and also really to flag where there is some areas where there are not agreement in order to really allow for an opportunity for the community to try to come together and see whether they can reach agreement on some of those areas.

So this conversation here and the opportunity to speak with this group, hear things, opportunity to talk to other groups here things and then obviously going into Puerto Rico and the ICANN meeting the opportunity there I think will be very helpful and informative to be hearing from everybody as this is quite fluid and moving quite quickly. But as we've noted we do have a timeframe when a final decision will have to be made and so we just want to make sure to capture as much of the community input as possible and to keep showing iterations of that. So this conversation is very helpful especially if, you know, you have substantive input as we've heard from the beginning of the discussion where there's an opportunity to capture it.

Farzaneh Badii: Okay that's great. Thank you Theresa. So are there any comments on the model from the participants? So also what's - what we have noticed in the model that there is no - the data has not been - so we are sticking with the (unintelligible) model already. And we have not changed that. There is no data minimization. And this has been flagged by the community and I think in Echo comments as well that if you are sticking with the same amount of data that you want to gather then - and also stick with Whois which is going to - and then the data transfer this might not be in compliance with GDPR. So John I'm wondering why we insist on keeping Thick Whois and also keeping all the collection of data or you can correct me if I'm wrong about collection of data.

John Jeffrey: That - it's a very good question and it's one we've struggled with through this process because we've had very good comments indicating that, you know, there's an opportunity for data normalization and we've also had comments saying that every single field is used. So when we did the analysis between building the three models and building this one we looked at every field and we try to find things that weren't being used that didn't have a purpose where there wasn't a community group that said there was a value in the utilization of that data. We at first identified a handful of fields that we saw that just weren't even being used that didn't appear in the public Whois as something that was being utilized. It was a registry registrant ID which was assigned by registries to the registrant.

But as we looked at that the anti-abuse community for example identified that that actually had a purpose and that that data field was still then in Port 43 and we went through a couple of other fields like that as well. So we - this is something we took very seriously but we've been unable to identify fields that we don't have community groups indicating that there is a specific purpose for them in terms of collection. In terms of publication obviously that's much

more limited. And the collection that - what is going to be displayed in the public Whois versus what would be behind the firewall is really, you know, where we've come into some of the critical questions such as registrant email addresses and other factors where we're seeing different aspects of the community taking very divergent views on those aspects.

Farzaneh Badii: Yes thank you. So communities are very important but unfortunately we this beautiful line which is going to be in place. I think ICANN priority should be complies with the law but also as consider as something (unintelligible).

((Crosstalk))

John Jeffrey: Well certainly...

Farzaneh Badii: But that's my (unintelligible).

John Jeffrey: Certainly you didn't hear - hang on, hang on. Certainly you didn't hear me say that I didn't think we were compliant with the law. So when we were going through those fields we were basing it against the tests that exist in the law but whether there was a legitimate purpose for the use of those fields that would be collected.

Farzaneh Badii: Yes and this legitimate purpose is how is this legitimate purpose being interpreted? Is it - is GAC going to come up with a legitimate purpose or because well because as we believe it should be in line with ICANN mission. But are we going to come up with like additional legitimate purposes and who's going to come up with that?

John Jeffrey: Yes so if you remember from the very beginning this is the focus of what information we solicited from the community. So we went through the use

case analysis back in the - and this is late summer, early fall and we collected the data about that. And we have gone through independent legal analysis and other things looking at what would be the legal tests that we could apply. And so we're building what we're calling the cookbook because it's, you know, helping build the calzone and provide the justification. And the cookbook is essentially a document that's going to go through every element. And we'll talk about why each of those elements we believe the position taken on the model in each of those elements is justified under the law. So that's the way we're approaching it. That'll become part of the publication of the final model. And as we reach a draft of that we will circulate that hopefully significantly before the final model is completed.

Farzaneh Badii: Okay thank you very much. So Rafik your hand is up. Go ahead.

Rafik Dammak: Thanks Farzi and thanks for Akram, John, Theresa for joining us on this call. So my question is really quite simple. I ask it in the Adobe Connect channel about the timeline since we are talking about an interim model. And I think the concept that an interim that would last forever. And those I know if there is any change and if we need proper RDS or Whois voices that should be the community work. But do you have kind of timeline for this interim model so by when we should really work more sustainable solution? So the concern that we - wasn't that something that won't change for many years so any idea on this?

Theresa Swinehart: Rafik I think it actually it's in part also depends upon how it - how long it takes for the RDS working group to complete its work. That's certainly not something I'm in a position to answer but maybe others are.

John Jeffrey: And I would add in in terms of a timeline to needing additional comments it's right away. We need your input as soon as you possibly can. This is the - for

the last or one of the final stages of a multi-process which included the publication of the three models by ICANN in the publication of the other models from the community, you know, number of weeks ago. So we're sort of coming down to a final time in terms of accepting comments and trying to build to an interim final model. And remember this is interim because it's very likely that this is - this has to be a temporary specification which will then lead to a new PDP under our bylaws.

And so this will engage in a policy process where all of these things get to get rehashed and rethought and hopefully we can emerge with a community process because that temporary specification if that's the way that we go towards enforcement of this model that temporary specification only left every three months and can be renewed by the ICANN board for only up to a year. So we're going to be striving for a policy process which has all of this spot through in the community and presents an actual policy, you know, very quickly.

Farzaneh Badii: Thank you John. Rafik if you don't have a follow-up I have a question about the applicability of this model. I have - when I looked at the model I think it is European oriented so it is not a global model that applies to all those data. Is that - did I get that right?

John Jeffrey: So the applicability part of the model goes two ways. It applies certainly for anyone in the European economic area, it must apply. And any contracted party that's utilizing (unintelligible) must apply it. We're also giving them the option to not apply it - to apply it globally to everyone if in fact that is their choice. So they have an opportunity to make an election of whether it's applying only to EEA European Economic Area registrants or whether it would apply more broadly globally.

Farzaneh Badii: So okay so this would be registrars will decide whether they want to apply this or not so contractually you're - they are not bound by it but they can decide. Okay I think I got that right since John didn't correct me.

((Crosstalk))

John Jeffrey: Again so I'd say sort of. So they're not - they're contractually bound by it. And if they're electing not to apply it for example to non-EEA residents then they would have to - we believe they should be entering into a controller agreement with them so that they're taking responsibility for that decision. So we want them to be accountable for that decision.

Farzaneh Badii: Okay great. Thank you John. So well I - since we have enough information for now we are - we have - we are drafting - so how would the process work? And now do we need to provide comments on this - on this model before Puerto Rico and discuss it in Puerto Rico and should we have separate meetings with you about the model and tell you our concerns or are we going to have like a community group because I know there's cross community session. We are also involved in organizing that on GDPR but just process- wise I think we can just as we can just meet with you in PR and also later on send an email and comment on the model?

Theresa Swinehart: And so I think as John had shared feedback as soon as possible is really important. We really have the opportunity also to discuss it in PR but if you have feedback before that that would be very helpful.

Farzaneh Badii: Okay great. So we can put together something with the NCSG Policy Committee. Just to reiterate the concerns generally we've been hearing one is that ICANN - and the Whois purpose should be in accordance to ICANN mission. And anything beyond that, that is not a ICANN mission should not

be called a Whois purpose. So we are very concerned about this and we don't - we want this to - you know, we want the purpose to be discussed within the community and without just having like a set of purposes that has been just - that a law firm come up with. So that's one concern.

The other is the data minimization that we have, you know, we just discussed with John. And another concern is self-certification accreditation which in this model that there is no self-certification by Stephanie kind of had a point that if you just consult with GAC on accreditation and not include the community in the process of coming up with accreditation it might be called self-certification in a way.

And so we are also concerned about exclusively giving GAC that role especially because GAC has not been active in the side of data protection. They've been more active on the side of abuse and public safety. So we are not sure how GAC can help you with coming up with a layered approach. And in the end if the layered approach is not ready we are concerned that something will be implemented before in a rush that we cannot change later on. And that is concerning especially if it's a layered approach that gives access to players that we - that, you know, they can bridge data protection.

And in general we have been at the NCUC and the NCSG we have been long advocating for the privacy protection of the registrant and Whois and you already know our concerns. We've made them quite clear but we are happy that GDPR is coming into effect and we are not - we are well we're not glad that a law is helping us to achieve our goal because while it would have been nice to get some data protection without the help of law but with ICANN's help.

So that's about it. If there are any other comments then if there are no other comments then we could just adjourn the meeting. Thank you very much. I don't know if John or Akram have any comments. And thank you very much for joining us today and certainly clarified some things. And we are going to be active and send you our comments and concerns about the model you provided.

John Jeffrey: This is John. I would just add...

((Crosstalk))

John Jeffrey: ...it's really important - I would just add that it's really important that we do get your comments because it's an important part in having those comments in writing and having them in a way that we can show them very much supports helping us finalize the model. Thank you.

Farzaneh Badii: Thank you very much John. Thank you Theresa, Akram. Thank you NCSG...

Theresa Swinehart: Thanks.

Farzaneh Badii: ...members.

Theresa Swinehart: Thank you.

Farzaneh Badii: Thank you.

Theresa Swinehart: Thanks bye-bye. Thank you.

Maria Otanes: Thanks everyone for joining. (Sal) can you please in the recording?

END