
DENNIS CHANG:

We have a very full agenda today. This is the Thick Whois Policy Implementation Review Team Meeting on 17th January of 2017. It's a very important meeting, as we will discuss the public comments that we received for both of the policies.

Let me show you the agenda here. We'll quickly cover the project status and look at our project schedule. The schedule hasn't changed. And then we'll discuss our public comments for both CL&D and Transition.

Status-wise I'm going to go pretty fast here on the status and prior material because we do have substance discussions to have for this meeting for the IRT.

Public comments-wise the CL&D public comment closed on the 12th of December, and the summary and analysis report was published on the 11 January.

The Transition Policy public comment was closed on 16th of December. The summary and analysis report is still in draft and will be published.

Quick status on the IRT letter – Thank you to Amr who submitted it to the GNSO Council, and it's on the Council Meeting agenda for the 19th of January. We will see what happens at the Council Meeting. Amr distributed the call-in information, so you can call in and listen if you like.

CL&D implementation path timeline hasn't changed. We are targeting to publish this policy on the 1 February for six months of implementation for effective date of 1 August, 2017. No change here.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

No change in the Transition implementation either. Again, our target is to publish the finalized policy on 1 February and then have the effective date go to 1 May and 1 February of 2019. No change to this schedule.

Let's get right into the public comments. First, we'll discuss the CL&D. We received five comments from IED, Registry Stakeholder, Verisign, ITC and BC. They're all supportive of the policy. And then there was one suggestion we received for a change, and we will discuss that with the IRT today and decide.

The other comments were RDAP, and we decided that we were going to treat the RDAP as a separate issue from this policy early on.

This is the change proposed. We had a "not to be deployed before" date of 1 November, 2016, and, as Verisign points out, that date has passed, so maybe it's extraneous and is not very useful. So, the fact is, yes, before when we published last year we needed that date to allow the ICANN team to develop the platform for the PDP. Now that has been completed, we agree that there's no longer need for the "not to be deployed" date.

So, we're proposing adopting this change proposed by Verisign to remove that "not to be deployed" date. I would like to ask a question to the IRT at this point. Is there any objections to this? Any comments or questions?

If you support the change, you can also chat to us so we have an idea.

KRISTA PAPAC: Steve Metalitz says, “No objection.” Jody says, “No objection.” Marc Anderson says, “No objection.” Roger Carney says, “Makes sense. It’s not material and it just changes the language.” Joyce says, “It’s fine.” Okay, good.

DENNIS CHANG: Okay. I think we have an agreement, so we will go ahead and remove that date from the policy.

Next comment was a proposal for adding a provision for extension. This language is copied and pasted from our Summary and Analysis Report. [inaudible] we’re saying that we have discussed this schedule for a very long time and consider the implementation date of six months, and it would seem adequate at the time. And if there is a situation individually that extension is required for whatever reason, it could be handled on an individual basis with consultation between the contracted party and ICANN organization.

So, the proposal here is we do not change the policy [for] considering an extension provision. I’ll open it up for a discussion for IRT. Is any discussion here?

Go ahead, Marc.

MARC ANDERSON: Thanks. I haven’t read all the text in your slide, yet so I’ve skimmed it here. But it seems to say that requests for an extension will be handled on an individual basis as needed, which is fine; but, my comment here came from a question I got asked. “What is the procedure for requests

of an exemption if the 1 August, 2017, date can't be met?" My answer was, "Gee, I don't know. I guess it would have to go back to the IRT," because the Policy doesn't consider the possibility of an exemption.

It seems like you're saying that ICANN staff would consider exemptions and it doesn't need to be baked into the policy, but I guess I'm not clear on what that procedure would be.

DENNIS CHANG: Steve, do you have a comment?

STEVE METALITZ: Yes. Marc, are you talking about exemptions or extensions? According to this slide, your comment [inaudible]. [Are] you now saying there should be exemptions?

MARC ANDERSON: Sorry. If I said "exemption" I meant "extension." So, for the CL&D Policy I'm talking about extension. Sorry if I misspoke there.

KRISTA PAPAC: Steve's done.

DENNIS CHANG: Yeah, he asked the question and it is extension. That's what Marc meant. There is no standardized procedure or process for requesting an extension to a policy effective date.

KRISTA PAPAC: If I may, Dennis. My understanding – and this hasn't occurred in my tenure here, but when there have been unforeseen circumstances or extenuating circumstances historically, when contracted parties have needed an extension to the implementation deadline, they'd typically reached out to us, let us know what's going on.

And then what they do is – I hate to even say this word because it makes everybody nervous, but don't be nervous – they work with Compliance to figure out what the timeline is and they collaborate with Compliance to agree on how they meet the implementation requirements.

So, if they needed another few weeks or whatever it is, they would just do that through collaborative engagement with the Compliance Team and just keeping Compliance up to speed as to when they would be able to implement the required Consensus Policy.

DENNIS CHANG: Amr is asking, "[inaudible] Compliance be workable."

KRISTA PAPAC: Yeah, Amr. That is essentially what it ends up being. I don't think there's an actual waiver that gets issued. It's just a communication process between the Compliance Department and the contracted party. But it effectively ends up being what you're saying here in the chat.

DENNIS CHANG: Go ahead, Marc.

MARC ANDERSON: Thank you. Is there some kind of existing policy or procedure or something I could point to, or is this just something that's handled on an ad hoc/as needed basis?

KRISTA PAPAC: It's the latter, Marc. It's handled on an ad hoc/as needed basis.

MARC ANDERSON: Okay.

DENNIS CHANG: Okay?

KRISTA PAPAC: And has been, for what it's worth. As I said it's been utilized in the past but for all of the various Consensus Policies that have been implemented over the years.

So, what does the IRT think?

DENNIS CHANG: Does the IRT agree that we do not need a policy language change to develop such a provision for extension?

Okay, Steve. How about other members of IRT?

Marc, go ahead. Do you want to speak?

MARC ANDERSON: Thanks. Rather than type, I'll just say I'd prefer if there was something a little more formal than just say it's something you would have to work out on an ad hoc basis. But this isn't something I have considerable heartburn or would consider objecting over either. I'd feel better if there was something more formal, but I don't object either.

DENNIS CHANG: Thank you, marc.

Theo?

THEO GEURTS: Thanks, Dennis. Maybe to give some reassurance here to Marc. Maybe he is aware of the issues we have at IRTPC and a specific section in the requirements that we had to implement regarding Privacy Proxy Services in which, very late in the game, we discovered that our programmers couldn't make it work and there were other issues. It was a little bit confusing at first how to address this, but basically we went to the GNSO and there was some discussion and then it moved forward to the Board and then we are currently working it out with ICANN staff at the moment.

I'm not too worried about it. We were extremely late in the game when we saw all these issues pop up. From my perspective, it was handled pretty neatly. I'm not too worried about it. But I sort of understand you'd like to see some formal language, but I don't think we really need it here. Thanks.

DENNIS CHANG: Chris mentioned that having something written down would be good. Then we're not [leading] into issues in the future. The other side to that is if we start talking about extension provisions for policies, we would have to work that out for every policy that [is developed]. And I don't know if that was the recommendation that we received from the working group.

KRISTA PAPAC: There are a couple of people typing.

DENNIS CHANG: A couple of people are typing. I'll wait.

"How to ask?" Procedure on how to ask. As I was saying, how to ask for an extension to a given policy implementation date seems like broader in scope that is above and beyond this particular policy. That is something that maybe we can take up outside of this policy. But to delay this policy implementation for that, that's a big decision.

The [IRTP-C-RC] and [inaudible] issue – that worked out well. We agree?

KRISTA PAPAC: And, Chris, I understand the request for a formal procedure – I'm trying to envision what that would look like. While something isn't written down, the procedure really is just to reach out to...

I know the registrars are not on our GDD Portal yet, but for registries you could submit your request through the GDD Portal and it would be

routed to the right people and they would reach out to you to work that out. From a registrar perspective, I think if you just reach out to someone on the Registrar Team they would help work through that with you.

We definitely, to Dennis' point, can think about writing down a formal procedure. I'm, again, trying to envision that. The procedure is what I just said, so that would be a couple of sentences and where would we publish it? But we definitely can sync with the team about – outside of this policy implementation – operationally, if there's something we could do.

Sorry, I'm reading your additional comments, Chris. I think the thing to do, like I said, is – in advance of the deadline for implementation, the thing you need to do is, as a registrar, reach out to your Registrar Team and they can help facilitate working through that with you.

And I think, largely, when we've had these requests in the past, most of the implementations over the recent years have been registrar based and so I think most of the requests that we have gotten, historically, have come in through that Registrar Team and the registrar reaching out to them.

Hopefully, that helps a little bit to clarify what you would need to do.

DENNIS CHANG:

Chris, to be very clear, this is a decision saved for the IRT. Do we hold up and delay this particular policy to work on an extension process or do

we let it go and work on an extension process outside of this policy?
That is really, I think, the question that's on the table here for you.

KRISTA PAPAC:

I think what we're asking is, the staff is recommending that we proceed without amending the policy language. There was a number of people buying in, but we just wanted to make sure the IRT didn't disagree with that, moving forward that way on the recommendation [stuff].

DENNIS CHANG:

I think Marc was okay with that approach, too. So, Chris, if you're okay with it we'd like to proceed.

Thank you for lodging your comments.

Let's move on with the CL&D policy. There's one change that we agreed to, and that's to remove the "not to deploy" date. And that is the final version we will distribute to you, and then that will be announced and published as we had discussed before.

Let's talk about the Transition policy. We received four comments from Verisign, [inaudible], and individuals. They were generally supportive, but there were suggested changes and we will discuss them in [detail] here.

We also want to note that there were comments expressing disappointment on the long timeline for this implementation, and also the urge for the IRT to both continue making the process and not delaying it further.

Let's talk about this. The first one is this one. There is an RDAP profile mentioned in Section 2.10, and the suggestion is: rather than mentioning RDAP as a reference, IANA takes the exact requirements from that and embeds it into this policy. We want to point out that the policy language here says, "If you are implementing RDAP, then you should do this." But, I want the IRT to consider also possibly just removing the entire section that has to do with RDAP.

Francisco, do you have any comments on this? No?

So, let me hear from the IRT. Is there a preference one way or the other? Option one – we can just leave it as it is because we're saying that, "If you're doing RDAP, then you have to pay attention to this, but if you're not it doesn't matter to you." That's option one. That's the way we have it today.

Option number two is taking the RDAP requirement and embedding it into this policy.

And then option number three is removing this section entirely to make it clean and without RDAP because RDAP is being handled and dealt with outside of this policy as of today.

JOYCE LIN: [inaudible] being removed so making it clean [inaudible].

DENNIS CHANG: So, we have Joyce's preference for removing. So, the [inaudible] staff question, the staff here recommends removing it and making it clean.

“We agree with Joyce because I don’t think it warrants our time to talk about RDAP here since we’ve already made the decision to remove RDAP from this policy.’

So, Steve is typing. Marc, would you agree with that approach?

MARC ANDERSON:

Thanks, Dennis. Sorry, not having an advanced copy is a little bit of a challenge here. I’m rereading 2.10 here because I guess I’m not opposed to removing the reference. Certainly, I don’t think it’s necessary to reference RDAP in this policy, but I want to make sure there isn’t any other language in 2.10 that is something we would want to keep.

You indicated 2.10 is just *if* implementing RDAP, but I’m not sure I agree with that because it also says, “If implementing RDAP, and in the case of Whois Port 43 and Web Whois.”

Sorry, I’m just trying to quickly read through this on the fly and try and make sure I understand the ramifications of just removing it altogether. I guess I’d need a little bit more time to be comfortable that we’re not removing something that is something we’d want to keep or is necessary for the rest of the policy. Thank you.

DENNIS CHANG:

Francisco, go ahead.

FRANCISCO ARIAS: Marc, I think what Dennis was suggesting is to remove the sentence that talks about RDAP, not removing 2.10. Does that make sense?

MARC ANDERSON: Okay, yes. Do you have a proposed new language?

FRANCISCO ARIAS: I can put it in the chat if you like.

MARC ANDERSON: It might be useful to see the final form of the proposed new version.

FRANCISCO ARIAS: Okay.

DENNIS CHANG: So, while Francisco is working on that, let's see if we can make some progress on the next comment. I think this is easier to handle. This is another comment from Marc.

Section 2.4. The proposal basically is, instead of starting on 1 August, say "by on 1 August." What this does is allows the registry operator to provide a support for the contact comments before 1 August because it says "by 1 August" rather than "starting on 1 August."

Staff here thinks that's perfectly acceptable and preferable as to the suggestion, and we'd like to hear from IRT if there is any questions or objections or support of this change.

No objection from Steve. Marc, go ahead. Do you want to speak?

MARC ANDERSON:

Thanks. As the author of this comment, I'll just speak up. We were internally discussing this and it just seemed to create a little bit of confusion whether it had to be implemented exactly on 1 August or if there was flexibility – if it could be implemented earlier, such as the “by 1 August, 2017” language.

The request is to change it and make it clear that it's by 1 August. It gives a little bit more flexibility. And since this is optional functionality, I don't think there's any downstream impacts to having the language updated to be clear it's by 1 August, 2017. Thank you.

DENNIS CHANG:

Yes, the staff agree with this. Is there any other questions? This provides flexibility to Verisign to provide support for that data, and I don't think there is any issue there. It's a simple change.

Okay. So, then we'll go ahead and make that change. Francisco, you're ready. Go ahead, Francisco.

FRANCISCO ARIAS]:

I think Mark had his hand [up] before me.

DENNIS CHANG:

Marc, did you want to speak again before Francisco?

MARC ANDERSON: Sorry, that was an old hand.

DENNIS CHANG: Okay. Go ahead, Francisco.

FRANCISCO ARIAS: So, for 2.10 I paste the text that I'm suggesting. This is removing only the part that talks about RDAP.

DENNIS CHANG: Does that work?

MARC ANDERSON: Francisco, any particular reason why you're still referencing the 2013 RAA here? I know, in other sections, the language was updated to reference the CL&D policy in conjunction with the Base Registry Agreement or subsequent amendments. That language was changed in other sections, but not there. I was just wondering is there a reason for that or is that an oversight?

FRANCISCO ARIAS: We're not referencing the 2013 RAA. [inaudible]. Do you see that [18] between quotes?

MARC ANDERSON: Okay. I got you.

DENNIS CHANG: What does the IRT think about the language? It's basically removed the mention of RDAP, that sentence, and we're keeping everything else. Do we agree?

Any more questions then?

Could you provide some indication whether you agree with this or not?

Any objections?

JOYCE LIN: Looks fine.

DENNIS CHANG: Thank you, Joyce.

Roger, thank you.

Okay. We'll take that as a decision, then we'll move on to another point.

This one – Marc – I think, probably requires some explanation from Marc. We really weren't sure why you were asking this postal info type. If we limit it to that, we're losing some critical elements. So, I'd like to give the floor to Marc to maybe explain this request for change.

MARC ANDERSON:

Okay. Thank you. So, this is part of the reduced validation rules that members of the IRT requested be added to the policy. The postal info type was one that I had specifically requested remain as a required field because, specifically, there are two values for postal info type – loc or int – specifies localized or internationalized version of contact information. That’s really an attribute that you must have for the contact.

So, when we set up the minimum validation rules, I requested postal info type be retained as a required attribute.

The policy language as it’s written, though, just says “postal info” which has a number of sub-elements. So, if you say the contact postal info is required, that implies that all of the sub-elements would be required as well, although it’s not specifically stated.

The only element that we, as an IRT, had specifically discussed keeping as a required field is the postal info type one. So, I was adding that in as a clarification to what we had discussed in the IRT. Thank you. I hope that helps.

FRANCISCO ARIAS:

Hi, Marc. I think I understand what you’re saying and I think this would be complemented by the other sections. Let me see if I understand what you’re saying. 2.4 will be saying, “Starting on August, 2017, the contact data will be optional.” And then 2.5 will say, “For new registrations, starting 1 May, 2018, contact data will be required.” We are missing, then, our requirement to say that for...

Sorry, I lost my train of thought here.

DENNIS CHANG: Seems like Jody agrees. Roger agrees. Theo agrees.

KRISTA PAPAC: Marc agrees.

DENNIS CHANG: Anyone else? The validation point, right?

FRANCISCO ARIAS: Yeah. I think it should be workable. We just need to make sure...

Let me say it this way. I think what you are saying, Marc, is – the spirit of what you’re saying is – “Starting 1 August, 2017, the contact data becomes optional in [inaudible].” Then, “Starting 1 May, 2018, contact data is required for all new registrations.” And then, “1 February, 2019, contact data is required for all the domain names [fields].”

Right? Is that what you’re saying? Or is that the spirit of what you’re saying?

MARC ANDERSON: Yeah. I think the spirit is right, although the way you’re saying it is a little nuanced. Where contacts and domains are separate entities. So, starting 1 August, 2017, contacts are supported. So, all contact operations are supported by the registry at that point. But for domain

commands, contacts are optional on [create] until 1 May, 2018, at which point contacts are required attributes for domain [creates], right?

But then we have this separate concept of the reduced validation rules where – and that’s in Section 2.4 – where we’re saying, “In RFC 5733, which describes the contact rules, we’re only going to require the contact field, the postal info – which I’m suggesting should be postal info type – and the ‘auth’ info fields.” And that should run, starting 1 August, 2017, and run through – do I have this right, Dennis? Maybe if you could pull up the timeline slide – I think it’s 1 February, 2019.

DENNIS CHANG: Yes.

MARC ANDERSON: Yeah. Running through – thank you – running through 1 February, 2019. That represents the end of the back fill period. So, the reduced validation rules as described in Section 2.4 are there to facilitate the back fill of contact information for registrars. So, we want the reduced validation rules to start on 1 August when contacts are first introduced, and then the reduced validation rules would go away on – sorry – on 1 February, 2019, at the end of the back fill period.

Does that make sense?

DENNIS CHANG: Yes. Thank you, Marc. That makes sense. I think we’re in agreement here. So, what we’ll do is we’ll make these changes and we will

redistributed it so you can have one more close look. But what you say makes sense. And it will come up again, what we're discussing, because Marc made another comment about cross referencing different sections about this timeline which is sort of complex for this policy.

Let's talk about the next one. This is the one. Marc made a comment on Section 2.8, 2.9, and 2.10. It seems to be confusing and maybe redundant. I tried to write down what we think we mean here.

1 August, 2017, as you know, is when the CL&D policy is effective, and what we are trying to say is that the registry can implement the CL&D for both new and existing. And by 1 May, 2018, the new registrations must have CL&D. And 1 February, 2019, all of them – including the existing registration.

Did we get this right? Is that what you were trying to get at, Marc, with your comment?

MARC ANDERSON:

Yeah. I think this is one of those situations where all of us are close to this and have been talking about it for a long time and we have the timeline to reference, and so we know what we mean. But I think sometimes you get caught up in revisions and you lose the original meaning of the text. And I think maybe that's what happened here.

I think if you look at how those things are written literally, I don't think they necessarily reflect exactly what we mean. That's really the gist of my comment. I think we ran into that a little bit here. I think we just

need to make sure these sections state what we actually mean them to state.

DENNIS CHANG: Yeah. I think we all agree on the definition. We just looked at the timeline. We are trying to say this, basically, what we see on the timeline. Right?

MARC ANDERSON: That's exactly it, yeah. We're trying to put this timeline into words, and we know what we mean but I've had a number of internal reviews and somebody looking at this without the benefit of our discussions and trying to interpret what 2.8 means by itself – it's not necessarily obvious.

DENNIS CHANG: I agree. Here's what we'll do. I think what we'll do is, we're going to go ahead and craft between 2.8 and 2.9 [inaudible] here.

We're going to go ahead and write this out, and then I think the three bullets...

Conceptually, we all agree so we just have to make it more clear to a new reader. And we'll do that. And we'll include that as a [quality of review]. Conceptually, there is no disagreement here. Okay? So, we'll move on then?

Last comment here. This is a substantive comment that is...

This is a request that we develop, define a requirements and procedure for registry operator and registrar to seek a waiver. So, this is a waiver procedure for a conflict with the local law and develop alternative triggers. Within this policy is the request and – but as I pointed out below, we have received a comment that we must move on and relitigate these policies in the implementation and move forward.

The thing that I guess I'd like to point out from the staff side: the policy recommendations from the PDP Working Group did not ask us to develop a waiver provision. And there was actually – looking at the final report, there was a lot of discussion on this, and it seems like they deliberately decided not to include this requirement.

And then the other thing is, on the GNSO Council side, I think a lot of you are already involved there and probably know more than me. There is already an ongoing discussion on alternative triggers. And also, as you all know, [Amr] has submitted an IRT letter to the GNSO on the Privacy issue.

So, it seems like this idea of the conflict and privacy issue, that is something that is outside of this policy and is much broader in scope than what this policy has to deal with.

I'd like to open it up for discussion here. Go ahead.

Go ahead, Steve.

STEVE METALITZ:

I would agree this suggestion is completely out of scope. Not only that, we've now spent this entire call discussing changes to these documents

suggested by Verisign. Verisign is the source of almost all of these suggestions. Verisign was participating in just about every single meeting of this IRT. And now we get a lot of changes that they want made. Most of these are very minor and technical and I don't have a problem with them. This one is not minor and technical.

This is substantive. We've discussed this issue at great length. I had extensive negotiations with Verisign over the text of the letter to be sent to the GNSO council which touched on this issue. I consider this not only out of scope; it's entirely bad faith on the part of Verisign. I think we should reject this suggestion, and I would just criticize Verisign for raising this at this point. Thank you.

DENNIS CHANG:

Marc, go ahead. You have the floor.

MARC ANDERSON:

Thank you. I appreciate the points you made. And Steve, I do appreciate your frustrations on this. However, I do think that this is an important point that we need to consider because the existing procedure for handling Whois conflicts with privacy law is completely reactionary. It's a perfectly sufficient reactionary procedure when you're subject to legal action, but it doesn't provide any mechanism for you to proactively comply with privacy laws.

Again, simply where there is a conflict – where you have a conflict, there isn't an opportunity with the existing procedure to address that proactively. In my comments, I referenced the 2013 RAA which had to

deal with the same situation around data retention specifications. They were in the situation where they knew, specifically, that the data retention policies would conflict – in the 2013 RAA – would conflict with European privacy law.

So, in there they have three sections in there as part of the data retention specifications on how to address that. They provide two other options for a path registrars can take to ensure they maintain compliance with local law where it exists.

So, I think the 2013 RAA provides a template for something that's already been done. It can be incorporated into this policy relatively easily and allow registrars and registries a path forward to maintain compliance with local law. Thank you.

DENNIS CHANG:

Steve, you have the floor.

STEVE METALITZ:

Yes. Marc, can you explain how this suggestion is anywhere in scope of what this IRT was set up to do? You're probably aware there is a policy, a consensus – a policy adopted by the GNSO Council, approved by the Board, about this.

What makes you think that this Review Team cannot just recommend but change that policy?

MARC ANDERSON: Steve, I'm actually not sure what you're asking here.

STEVE METALITZ: I'm asking why you think that now, at the 13th hour of this process, after all the opportunities to raise this, you bring this up for the first time. And I'd like to know why – if you can point to what in the Charter of this Implementation Review Team would empower the staff to make this change, because that's what you're asking for.

MARC ANDERSON: Okay. I guess I'll break this up into two parts, Steve. The first is, obviously you're frustrated that this is coming up late in the process. Like I said, I appreciate your frustration here, but I can't go back in time and do anything to change that.

To your second point, though, I think it's very much in scope and the entire concept and discussion of complying with local law is very much a part of this. And the discussions around privacy – the protection of privacy, and the changing laws here – has very much been a topic of discussion the entire time, both as part of the PDP and during the IRT.

In fact, the PDP as you recall – and we were both members of that – was very specific asking for ICANN to conduct its own legal analysis and provide that report. That was something the PDP insisted on and ICANN staff later conducted – or contracted with an outside party to provide that.

Part of that recommendation, or part of the recommendation that came out of that was that registries and registrars must do their own analysis

and determine what they need to do to not violate the principles of local laws. So, I think this is very much in scope and it's been part of the discussion all along.

What I'm pointing out is that where there is a conflict between the policy and laws which we're required to comply with, obviously, there isn't a clear procedure for how to address that. The existing procedure is completely reactionary, and any discussions about changes to that just haven't been completed yet. So, we don't have a proactive mechanism for maintaining compliance.

STEVE METALITZ:

Marc, what you're leaving out is that that legal analysis referenced the existing policy and procedure for seeking waivers from Whois obligations and said that was sufficient. And then you're also leaving out the discussion we've had over the last six months about the letter Verisign wanted to send to the IRT saying that the policy needed to be changed. I thought we had arrived at an agreement that this IRT would say we don't have consensus on whether the policy should be changed.

I recognize you don't have a time machine, but you were here the entire time when this discussion was going on. If your marching orders from Reston have changed, I understand and appreciate that, and I regret that. But I think you're showing bad faith in bringing this up at the last minute here when we have already been through it and arrived at a conclusion that this is not something that this IRT can take on.

MARC ANDERSON:

I'm sorry. I think we're going to have to disagree a little bit. I'm not proposing changes to the policy at all – which you seem to be under the impression that I'm proposing. All I'm doing is pointing out that where a conflict with local law exists, with the policy, the existing procedure for handling conflicts is insufficient.

The existing procedure is completely reactionary in nature. As a reactionary procedure, it's excellent; but as a proactive mechanism for maintaining compliance with law, it doesn't have a mechanism for doing that.

I'm suggesting that using the 2013 RAA data retention language as a template, as an example of how to address this, we can add language that provides a mechanism – and I'm not even identifying an issue or saying there is an issue. I'm just saying *if* a registry or registrar identifies an issue, they don't have a mechanism to proactively obtain an exemption or a waiver.

And so, I'm suggesting an existing mechanism in the 2013 RAA that could be used in this case as well to give registries and registrars that opportunity.

So again, I appreciate your frustration here, you know, but I'm not suggesting a change to the policy. That's not my suggestion at all. I'm just suggesting that the existing mechanism for requesting exemptions is insufficient. And, again, I'm even providing a template. I'm referencing the 2013 RAA as another case where this was identified and they provided a mechanism.

Does that help at all?

STEVE METALITZ:

It helps me to understand your position, yes. And you have a perfectly legitimate point of view there. It's certainly one that could have been brought up in 2014/2015 when the Implementation Advisory Group was assisting ICANN staff in looking at the procedure that was adopted and approved by the Board and to see whether any changes for getting exemptions or waivers from Whois obligation – looking at that and considering whether any changes were needed.

This exact point of using the data retention specification, which specifically applies only to data retention and not to Whois – this was discussed at great length. And that group could not reach – it did reach a consensus on some changes to the procedure, but it did not reach consensus on the kind of change that you're talking about.

So, why were we spending literally years discussing that in the Implementation Advisory Group – which Verisign chose not to participate in, for whatever reason – and now, suddenly, at an Implementation Review Team whose only job is to implement a consensus policy that's already been adopted and that does not include any of these changes...

Again, I just think you're in the wrong forum. It's a perfectly legitimate point of view and I don't mean to imply otherwise. I happen to disagree with it. It's a legitimate point of view. It's just entirely the wrong forum. And you really leave the impression of just finding wherever you can to slip this in at the last minute in order to circumvent the policies, the processes, that have been underway for years to look at this.

DENNIS CHANG: Krista, go ahead.

KRISTA PAPAC: Thanks, Dennis. Marc, I just want to make sure I heard you correctly because you said it twice. You're not suggesting a change to the policy. You're merely pointing out that you'd like an alternative procedure for dealing with Whois conflicts with national law? Did I get that right? So, no change to what we published, but you're looking for some other mechanism – which is a different conversation. And it's going on right now, from what I understand.

And I'm well aware of the challenges with the current procedure that's published and I know the GNSO is talking about this and, I think, contemplating trying to take another look at the challenge there. But if I heard you correctly – and you did say it twice – you're not proposing a change to this policy. You're just pointing out the issue with the procedure and the need for something else to exist to deal with that issue. Is that correct?

MARC ANDERSON: Sorry, Krista. I think I misspoke a little bit. I am suggesting that language be included in this policy to provide a proactive mechanism for addressing conflict with privacy laws. In the absence of another mechanism, the existing procedure, as I said, is insufficient for proactively addressing that. If there was another mechanism that would address that, that'd be great.

But as has been pointed out, there have been other opportunities or other initiatives underway to try and to provide other mechanisms or proactive mechanisms. As Steve mentioned, there's an existing effort underway within the GNSO to modify that, which has been largely stalemated to date. In the absence of another mechanism, then I think it's necessary to have something in this policy.

Again, my intent in pointing out the language in the 2013 RAA was to provide an existing example. Again, I feel for Steve and his frustration. I know he's been very frustrated with the long timeline on this, and I appreciate his point of view there. And so, my attempt or my reasoning for referencing the 2013 RAA is to provide an existing template for how this could be accomplished without having to go back to square one here.

I think they had a similar situation and in three fairly short paragraphs here, they added two additional triggers for registrars to obtain exemptions in situations where they identify conflicts with local law. So, my intent here was not to derail or be completely disruptive to the process, but to provide an example of a template, an existing group that had a similar situation to provide a potential path forward. Thank you.

KRISTA PAPAC:

Okay, Marc. I know that there are some people in the queue. I need to point out something I think Steve touched on earlier. From a staff perspective, our challenge is going to be putting something like this in the policy because it is not in the policy recommendations. And I'm sure you're all familiar with what we constantly hear from you guys actually

– contracted parties and the community – about making sure staff is not overreaching and we should only be implementing the policies for the recommendations we were given.

And the policy recommendations don't talk about this at all. They talk about doing a review, which we did. And the review proposes a number of options; not just the procedure, but other options that could be utilized to address circumstances.

So, from our perspective, one of the things we're really struggling with with this comment is – we're not able to...our read of the policy recommendations...this is out of scope and, basically, this would be received as staff creating policy where it wasn't created by the community.

So, that's the struggle that we have and I want to give these other folks a moment to speak, too. So, thank you for the opportunity.

DENNIS CHANG: Steve.

KRISTA PAPAC: I think Amr was next.

STEVE METALITZ: I think Amr's ahead in the queue.

DENNIS CHANG: Thank you. Okay. Go ahead, Amr.

AMR ELSADR: Thanks, Dennis. I just wanted to say that I totally see where Marc is coming from, and the GNSO has been having this discussion for years now. But I also very much sympathize with what Steve is saying. And I am really sorry to say this – speaking on behalf of myself, not as a Council liaison – but I am sorry to say that I think Krista’s absolutely right in how she framed what the policy recommendations are and what is within and out of scope of this IRT to implement at this point in the game.

I do note that the letter the IRT has drafted and sent to the GNSO Council is in one way fulfilling an obligation to notify the Council if issues have been identified that were not considered by the [PP working Group], but it also does note that there’s no consensus within the IRT on any policy considerations in the future.

So, it’s not saying that the IRT does not wish to recommend or does wish to recommend. It’s just saying there is no consensus, which I believe reflects what is happening in today’s discussion.

Marc, I really do wish you’d brought this up a few months ago, and then the letter might have come out a bit differently. I would have certainly supported any suggestions to improve ICANN’s procedures and policies to deal with Whois conflicts with the law.

But at this point, my suggestion to you would be to reach out to your Council representatives. And when this topic does come up on Thursday

during the Council meeting, I would suggest that the registry representatives on the GNSO Council do make a note of this specific issue, and noting that it is out of scope of this IRT and this IRT is effectively unable to do anything about this at this point – but the GNSO Council can.

The GNSO Council can decide to take a different approach to the work the Implementation Advisory Group did. It can direct the Next Generation RDS PDP to do something because their policy recommendations are obviously not done yet.

But, as far as this IRT is concerned, although I do sympathize and I would really like to see the language you're suggesting be included, I think, from a process perspective – and in all fairness, it would be difficult to introduce it because this would effectively go against the policy recommendations coming out of the original PDP Working Group.

I hope that was even remotely helpful. Thank you.

DENNIS CHANG:

Thank you, Amr.

As I think you've noticed, we're over our time limit and I just wanted to quickly point out what I had on my next [inaudible]. We do have to go ahead and finalize this language because it needs to be published by 1 February, 2017. That's the schedule that we agreed to execute to.

Any change to that to consider additional process or procedure would indeed have an impact to the schedule and further delay, and I don't think that's what IRT had in mind.

So, what I propose is we will go ahead and make the changes that we agreed to and we will distribute to the IRT for final review, and then...

Let me just hear from you right now. Do you need another IRT meeting? If so, we'll schedule another one. Or have we hashed this out adequately, do you think?

Steve, go ahead.

STEVE METALITZ: I don't think we need another meeting to discuss the changes that we have agreed to. That does not include this last one that was suggested.

DENNIS CHANG: Right. Got that. Thank you. Marc, how do you feel about this? Do you need another meeting?

MARC ANDERSON: I think, having not seen the final new version of the Consensus Policy Language and considering how quickly 1 February is coming up, I would suggest it would be better to have a meeting and not need it or end early than to not have a meeting and wish we had scheduled one. So, my vote would be to still have a meeting – at least schedule one – and we can always cancel or end early if need be.

DENNIS CHANG: Okay. That seems like the prudent thing to do. So, what we'll do is we'll schedule the same time here next week for one hour meeting. We'll

schedule just like this one. And then we'll go ahead and distribute the languages and, if everybody agrees with the final language, we'll go ahead and cancel the meeting.

KRISTA PAPAC: For both policies?

DENNIS CHANG: Yeah, for both of them. Is that agreeable to everyone?

Yes? Yes, Joyce.

KRISTA PAPAC: Okay, good.

DENNIS CHANG: Okay. Good. We have to end this now.

KRISTA PAPAC: Thank you, everybody.

DENNIS CHANG: Thank you, everyone.

[END OF TRANSCRIPTION]