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BRENDA BREWER: Good day everyone, I'd like to welcome you to the RDS WHOIS2 Plenary Meeting number 5, on August 17, 2017 at 11h00 UTC. In attendance today we have Volker, Dmitry, Alan, Chris, Erika, and Cathrin. In the observers pod today we have Vignesh, Subham and Svitlana. And from ICANN Org attending today, Brenda myself, sorry, I should be last.

We have Negar, Alice, Jean-Baptiste, Lisa, Steve, Karen, and that completes our attendance. I'll turn it over – oh, I would like to remind everyone to please state their name clearly for the transcription, and I'll turn it over to you, Alan. Thank you.

ALAN GREENBERG: Thank you very much. I think we should try to aim at having more participants in the working group in the review team than we have staff members online. That was somewhat in jest perhaps, but maybe not. Thank you very much. If people could look at the agenda, and I ask are there any recommendations for changes or any other business that anyone would like to include? We will give you an opportunity again for AOB at the end, should we have time.

Seeing no hands, hearing no voices, we'll assume the agenda is accepted as presented by staff and go onto the first item. The first item is leadership responsibilities. This should not be an onerous one. The leadership did review this with staff, it's part of the terms referenced,

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and just for transparency we'd like to quickly review the nature of this, no misunderstandings about who's doing what and what the process is. If we could have that displayed, please.

Alright. Chris, do you want this read out to you, or are you comfortable knowing what these kinds of things are cause you've seen terms of reference before?

CHRIS DISSPAIN:

No, you don't need to read that out. It's fine.

ALAN GREENBERG:

Okay. Fine, thank you. The only thing that we've added to this is since the review team is moderately small, and both the chair and the vice-chairs have been appointed by various groups, the chair and whoever's chairing the meeting, or the vice chairs to remain neutral on an ongoing basis, doesn't seem to respect the fact that all of us have been appointed out of a relatively small number of appointees to represent the groups on the review team.

So what we'll do is although the chair occasionally will make, you know, short comments in response to other interventions, if there's any substantive intervention that the person who's chairing, or for that matter a vice chair, wants to add we'll make sure to put ourselves in the queue, and the implication is we are clearly at that point taking off our chairs' hats and acting as a participant. Now, as applicable we may say that, but in general we will try to make sure that's being honored. Volker, you have your hand up.

VOLKER GREIMANN: Yes, thank you, Alan. I think it would be helpful in addition to [inaudible] you have in the chat, which not everybody may see because they're driving or not on the Adobe, just also include when you're making a statement whether you're making that in a personal capacity or as the chair. That's three words added to anything that would [CROSSTALK]. Thank you very much.

ALAN GREENBERG: Thank you, Volker. I certainly will try. But if we miss it and there's no clarity to it, please feel free to ask for clarification as applicable. Having done this a number of times, sometimes one forgets, let me leave it at that.

The other issue that we explicitly were asked by staff, is the last item on the list regarding managing the team's budget and financial reporting to maintain accountability and transparency. That essentially says looking at the documents every several months as they're published in a quarterly report, this working group, this review team like all others publishes. That did not seem like a particularly onerous task that required allocation to someone else, and the example of the existing review team, the CCT that was done by the co-chairs in their case.

So our answer was unless it becomes an onerous task, or for some other reason that we'll stay as leadership responsibility instead of being reallocated somewhere else. We really couldn't figure out why it would be necessary to not do it that way, but we'll play it by ear if it turns out to be a more difficult task or time-consuming task than we expect.

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I don't think there's anything else that needs explicit highlighting at this point, but if there are any questions or issues, I will open the floor for a moment.

Seeing nothing, hearing nothing, I will assume that we are good to go on that one. And we'll go onto the next agenda item, which is the face to face meeting in October. And I'll turn this over to staff to present where we are right now. The leadership did see this, we didn't have any particular comments on it other than to suggest that we have some informal dinners, which are optional depending on whether one is there and not otherwise occupied. Just to try to get the group together and some opportunity to talk to each other. But if we could ask Jean-Baptiste who will be presenting this.

JEAN-BAPTISTE DEROULEZ:

I can do it, Alan, thank you. So you have on this slide some general information about the face to face meeting. So first of all the meeting is set to take place at ICANN Brussels' offices. You have the address on screen, and also you should all have received confirmation of your hotel which is Aloft and is allocated six minutes walking distance from the office, so that's quite convenient. And in terms of schedule, the first day we start at 9 and leave at 17:30, and the lunch break would last 45 minutes and there would be catering offered at [inaudible] location.

One subject of discussion was also to have a potential start time on the second day at 8:30, so this is something to be decided by the review team. And also in terms of dinner, as you mentioned, Alan, so there will be a formal review team dinner on October 2<sup>nd</sup>, so on Monday and for

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[inaudible] and the team, those will arrive and want to meet, this is up to you, this is possible on October 1<sup>st</sup> and October 3<sup>rd</sup>. And the trust agenda for the face to face meeting is currently being prepared. Let me know if you have any questions.

ALAN GREENBERG:                    Alright. Any questions, suggestions or comments?

CHRIS DISSPAIN:                    Alan, it's Chris. Can I -- when you have a sec.

ALAN GREENBERG:                    Go ahead, go right ahead.

CHRIS DISSPAIN:                    Thank you. I haven't received any information at all about hotels or anything. I don't know whether I'm supposed to make my own arrangements through Fortravel or what. So could someone, Brenda or someone, let me know what, if anything, I need to do? That would be really helpful.

ALAN GREENBERG:                    Let me answer what I'm presuming. I'm presuming that just like for ICANN meetings, your hotel is being arranged for the dates specified unless you tell us otherwise, and your travel arrangements are your own as they normally are for board members. I'm guessing that but let me verify with staff if I got it right.

CHRIS DISSPAIN: That's fine, Alan. I'm sure that's right. It's just I thought I heard Jean-Baptiste say that hotel information had already been sent out, and I haven't received anything.

ALAN GREENBERG: Well, I received something on Monday just in the form of a preliminary review of this slide. So if staff either can confirm right now or later. Karen, you have your hand up, go ahead.

KAREN MULBERRY: Yes, thank you very much, Alan. Chris, in response to your question, your travel gets arranged through the board travel, so we'll reach out to you to confirm that they have the information and work with you.

CHRIS DISSPAIN: Yeah, I'll organize that because the easiest way for me to get down is on the train, so I'll sort it out. It was just the hotel that I was concerned about because I hadn't seen anything. But thanks, and I'm sorry to interrupt. Thank you, guys.

KAREN MULBERRY: Okay.

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ALAN GREENBERG: Not a problem. Volker, you had your hand up. Do you still want to speak?

VOLKER GREIMANN: Yes, just to confirm. Same here, I got the travel arrangements for the flight and I got the information that the hotel booking will come later because I had to make some special requests, and that the hotel booking will sent out at a later time. But it's already helpful to have that and get the confirmation from ICANN so that we contact the hotel if we have any special requests.

ALAN GREENBERG: Excellent, thank you very much. Anyone else? Any other further comments on the meeting itself? We will be talking about the draft agenda a little bit going forward, but formally probably at the next meeting.

Alright, let us go onto the next agenda item. We may actually finish in the hour this time. I'd like to look at a couple items from the Terms of Reference. You'll recall the Terms of Reference is a relatively extensive document which addresses almost all aspects of our existence, and we have a fair amount to complete on that. The target is that we complete it leaving the Brussels meeting. So we're going to try to chip away as much as we can as we go forward and then see what's left by the time we get to Brussels.

There are three items I'd like to look at today. One is decision making, the other is what do we do in the event of either a team member leaves

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or we believe a team member must be removed. And last things are Dependencies, which is a curious title but we'll look at at least what's in that section as it stands right now. If we can pull up the terms of reference, and we seem to have gone to the next item already. Pull up the terms of reference and scroll to the decision-making section. If any of you have your own copies of the terms of reference, you may wanna look at that document. [AUDIO BREAK]

And if you could either scroll there or tell us what page to scroll to, I'd appreciate it. [AUDIO BREAK]

Do we have someone from staff? [AUDIO BREAK]

Am I still on the call, does anyone hear me?

ALICE JANSEN: Hi Alan, this is Alice. Decision-Making Methodologies is on page 13.

ALAN GREENBERG: 13, thank you very much.

ALICE JANSEN: So you'll want to scroll there, yeah. [AUDIO BREAK]

ALAN GREENBERG: Alright, this is a relatively standard ICANN terminology, it's been in use for a while. The definitions range from full consensus through consensus, strong support but significant opposition, divergence and



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minority view. It is the call of the chair of the review team to decide what the level of consensus is, and I believe technically there's an appeal mechanism. Although I don't remember that for absolute sure. I don't see any particular reason for us to invent a new set of words, and I'm presuming that these will be both adequate and acceptable; acceptable and adequate for our use, unless there's some strong feeling that we want to look at something else. Almost surely we will not have, you know, full consensus on everything that we do going forward.

On the other hand, certainly from my target, my position is we should not be doing much which has very significant opposition, unless we find no other way to go forward at all. But I'll open the floor. These I think are definitions that came out of the GNSO, they have been used widely for a number of other working groups. And as I said, I can't see any reason that we would want to modify them and that was the recommendation of the vice chair also when we looked at them the other day.

And I see a comment, no need for a new position from Carlton. I don't see anyone else's hand or comments, so I will assume that we will take this recommendation as written in the current Terms of Reference and proceed with it. We can always revisit this if there's some absolute strong reason that we have to, but I can't really see that.

In that case, let's assume that's a decision made and go onto the next item; that is Team member replacement or removal. If we could have the location of that.

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ALICE JANSEN: Alan, yes it's on page 12.

ALAN GREENBERG: Thank you very much, so just scroll back one page. Alright, the section that is there, and I'll read it out because it's -- don't think many of you may not have. And this is in square brackets, that is something that we have to consciously decide to do or not. Review Team to insert circumstances under which a Review Team member could become unable to continue, change in personal/professional illness or circumstances, if any, under which a Review Team member could be removed (refusal to participate, inappropriate behavior etc.) and how to replace them. The Review Team could bring the matter to the SO/AC who named the respective team member and ask them to remove them or name a replacement.

Now, my feeling is I don't think we want to be in the business of removing people. So if we are in a situation that we find someone is problematic, I would suggest we do exactly what is suggested here and go to the SO/AC. I can't imagine a situation where the SO/AC would refuse to respond, but I think if necessary, we deal with it on an ad hoc basis if that happens. And I see absolutely no reason for us to do anything else other than allow an SO/AC to replace a review team member.

That's been the practice going back to the first ATRT, even though in those cases the team was actually selected by the chair of the board, the CEO and/or the chair of the GAC. If there was a replacement, we always loved the SO/AC just to name a person, to name a replacement.

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And I see no reason to deviate from that. So I would suggest in very simple terms that we simply say: if there's a problem, we go to the SO/AC. If a replacement is needed, we ask the SO/AC to name someone.

And I see agreement from Carlton and Erica. And from Cathrin. Alright, not hearing any no's, I will presume there is consensus and we'll move ahead. We'll come up with some wording, the exact wording for that and pass it by the review team of course.

And the last item is Dependencies. If we could have the location of that.

ALICE JANSEN:

So that's back on page 13.

ALAN GREENBERG:

Thank you. Oh, we're going forward again, okay. This one is a curious one, and I'll read it. Review Team to insert here any dependencies or other key organizations within the ICANN Community, such as the ICANN Board or any other Review Team that may already be gathering input of relevance to the Review Team, and any GNSO Policy Development Working Groups that may be working on related issues.

That one I think is relatively obvious. We're certainly dependent on the various GNSO Review Teams, or the implementation teams that go along with RDS issues, and we'll name them there. And clearly we're dependent on the Board because we may well want to interact with the Board as we go forward. We may or may not. But other than that I think the dependencies are reliant on staff and I don't think that needs

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to be delineated there. So again, I'm up for suggesting a relatively simplistic answer here and presume it will be sufficient. Comments?

Not hearing any. I'm assuming that it's so acceptable that we'll go ahead with it. Every once and a while someone should disagree with me, just to keep me on my toes. But I'm sure that will happen when we get to Scope. Lisa, go ahead.

LISA PHIFER:

Thank you, Alan. Lisa Phifer for the record. And I'm not disagreeing with you, I just wanted to amplify that I think the reason this section is here is that there's a recognition that there's much going on in the WHOIS arena and that it would be helpful for the review team to enumerate the groups that they felt were most relevant to whatever the scope might be. So, perhaps as the group works on scope and thinks about what might be going on, enumerating them in the section would be helpful.

ALAN GREENBERG:

Thank you, Lisa. But you're implying we don't have the option of saying, now that we know we rely on them we'll wait 'til they finish before we do our work?

LISA PHIFER:

No comment.

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ALAN GREENBERG:

Anyone else have anything to say? Then I'll ask staff to try to identify all of the known groups and pass it by us in our next meeting.

Alright, next item is Scope, a little thing that we do have to decide and that will be the bulk of the discussion. Actually, if you don't mind, I'm going to flip the order of the next item, the GDPR briefings. I think that's a very short one, and then we'll go back onto Scope for effectively the rest of the meeting. It dawned on me that we're talking a fair amount about GDPR. By the time we get to creating even a draft report, deadlines will have passed. And since ICANN is doing some work trying to address the GDPR, on its own behalf and on behalf of its contracted parties, I thought it was reasonable for us to get a pretty detailed description of what's going on.

So we're not talking about a vague process but we have something a little bit more concrete in our plate. Now, it's not our decision whether they do this or whether this is the right thing or the wrong thing to do, but I think it's one of the pieces of information we should have in our background just so we understand what's going on and can track it, 'cause it may well have impact on what we're doing or not. By the time we come close to being finished I'm guessing we will well understand whether they did something brilliant and have addressed the issue or not.

So I'm suggesting that we ask ICANN, and I don't know who it is who will do the presentation, but I'm going to be asking not for a generic overview to pat us on the head and tell us, don't worry it's under control, but so that we actually know what is planned to the extent that it is known and have an opportunity to either ask questions or do

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whatever's appropriate at that point. I got a number of comments back on the list saying they support this. Stephanie asked the question of, who is it that's going to do the briefing, and my answer was, I don't have a clue.

But I think it's something that we should do early on in our process and perhaps, depending on how this unfolds, get updates as we go along. Are there any comments or reasons I should not go ahead and do this? My target is, if someone can do it in sufficient time, is to have this briefing at our next meeting. It's possible that will be too tight but that's what I would aim at. No comments? No input? Then I'll consider that accepted and we'll go ahead and proceed on that.

The next item, and the substantive one for our discussion is Scope. We've been talking about that for a fair amount of time now and last night I was looking at—something I should have done before, but I apologize, it didn't get done 'til then—to try to put something in writing in a simple enough form. We've had a number of relatively long documents talking about it and it seemed relatively difficult to make decisions when we had information scattered all over the place.

So, I've put together a very simple chart which I sent out last night and if we could display that I would appreciate it. Alright, thank you. This is something that, as I said, I went through the document, I may well have missed a proposal that someone made, and if I did please let me know as we go forward on it. And I did a stab in the dark from my position of whether I think this is something within that we could do for a variety of reasons. We still have to make a decision on whether we actually do it or not. Welcome, Stephanie.

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First of all, does trying to use this chart, and going through it one by one, adding things that other people have suggested as appropriate, seem like a reasonable way to proceed at this point? Again, not hearing anything, I'm assuming someone will put their hand up or call out if they think it's totally unreasonable. And hearing nothing, seeing nothing, I will presume we can go ahead with this.

Alright, the first item on the list, there are three items that are referenced in the Bylaws. Now, the Bylaws list these as very prescriptive. That is, they say the Review Team WILL look at that. You'll recall that when the proposal was made for an abbreviated scope there was a strong belief from some parts of the community that the ACs and SOs cannot instruct a Review Team what to do, but it has to be a decision of the Review Team.

Now, that was a community that was help by a number of people and I don't think there was any real strong objection to it. And from that I take that in the community's perception, even though the Bylaws say we should do something, this Review Team could decide to limit our scope. So, I'm not taking as a given that everything there is going to be done, but I think we should look at it consciously. I suspect the answer is we will decide to go ahead on all of those, but I think we should do it consciously.

The first item is that we are mandated to review the work of the previous Review Team and see to what extent ICANN has implemented all of the recommendations. And I think also within our scope is to try to understand to what extent that implementation has been effective at addressing whatever it was the Review Team was trying to address. So,

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in my mind, I don't see how we could step away from that particular one. Any discussion on that? Anyone think that indeed it's something we should try to step away with or could?

Alright, we've got a couple of agreements in the chat, I have heard nothing negative. So, I'm assuming that means we must look at all of the recommendations, and I think there were 16 of them, and we must pass some judgment on all of those. That's going to be, hopefully, an easy job, if ICANN has done a good job in its review, at least in updating us on where we are. On the other hand, experience says we may well disagree and decide that something still needs to be focused on, in which case we're in a position to make further recommendations on the same topic.

The next item is comment on the effectiveness of the current WHOIS implementation. That one I'm a little bit lost on because I'm not sure we understand enough about what the WHOIS is doing today. We know why it was invented 30 years ago. The RDS Review Team has spent a very extensive amount of time, and will go back to it a lot, to look at what are the uses that are made of WHOIS and is it effective.

I'm not sure I want to go there. But I'd like to open the floor to discussion on that. It sounds like an open ended discussion because the uses are so varied. Virtually none of them were architected, other than the need to get hold of a contact person if a machine which was in the university was not working, which was the original mandate. But I'd like to open the floor. Volker, go ahead.



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VOLKER GREIMANN:

Yes, thank you. Volker Greimann speaking for the record. I'm completely on board with what you said, Alan. The word 'effectiveness' immediately falls after the question, effective for what purpose? And that would mean that we would have to find a purpose for WHOIS and that's outside the scope of our mandate, that's something that the RDS Working Group has been struggling with for quite some time already and not yet done it.

So, I think we would probably have to look at changing the term 'effectiveness' to something that is less broad and less open to interpretation and has less requirements for further determination that we are simply not equipped to make.

ALAN GREENBERG:

Thank you, Volker. My recollection is, and we have to check the wording, is that it is within scope for review teams to recommend that the scope be changed for future review teams. And this might be one that we want to consider from that perspective. But perhaps in the next review team in five years we'll already have a new RDS to be commenting on, I don't know. I'm not making a lot of predictions but it may have more meaning in the future but I think that should be something that's clearly looked at consciously. And we may want to think about whether we make a recommendation like that.

Carlton asks, would it be an aspirational kind of question? Well, I guess in relation to what I just said, if we ever know what the purpose is we might be able to come up with whether it's effective doing it. But certainly at this point for the current WHOIS, I would like to stay away

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from trying to answer that question, and moreover, stay away from the definitional work that would have to be done before we could answer. I'm not hearing any objection, then I would like to suggest that the answer to that is, no, other than to consider whether it should remain in the Bylaws or not. And we have some hands. Cathrin, go ahead.

CATHRIN BAUER-BULST: Yes, this is Cathrin for the record. Thank you, Alan. Can you all hear me?

ALAN GREENBERG: We can.

CATHRIN BAUER-BULST: Excellent. Also, I don't know whether you saw, I marked up the terms of reference to add language on scope which matches your table largely, for the discussion of the review team members. And with regards to the effectiveness, I was also wondering what on earth that might mean. And one interpretation that I came up with to sort of limit the scope of the effectiveness question is to look at the rest of the sentence, namely, 'the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data.' So, those are three aspects with respect to which we could assess effectiveness. I think letting go of it altogether is a bit too drastic of a decision for this review team.

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ALAN GREENBERG: Yeah, I did have that text somewhere in there in the chart, and I remember writing it last night, and I don't know quite what happened to it.

CATHRIN BAUER-BULST: Yes, you have it under the RDS PDP excerpt, you've included that. Is that maybe what you're referring to?

ALAN GREENBERG: I don't think so.

CATHRIN BAUER-BULST: There it does say with regards to the needs of law enforcement.

ALAN GREENBERG: Oh, okay, you're right. Sorry, that was also something that was echoed by the GNSO and that's where I put it. Okay, yes, thank you very much, I'm getting a little bit spaced out. This was a late night last night and then a early night for me at this point. Alright, then let's have that discussion when we get to that particular item. Stephanie?

STEPHANIE PERRIN: Thanks very much, Alan. I hope you can hear me. Stephanie Perrin for the record. I agree that this whole question of effectiveness is difficult and there's a limit to what we can take on, but to side-step it entirely is a bit of an evasion. One that I can well understand because I'm on the RDS Working Group as well.

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But the fact is, it seems to me, that evasion of the, what I would call, knotty problems, K-N-O-T-T-Y, as in Gordian knot, has led us to the kind of impasse that we have with the RDS at the moment. You know, dealing with the actual purpose is something that so many have reminded us of over the past and we haven't really done it, and we still haven't completed it in the current working group. The review teams have, in my view, kind of side-stepped. Said, okay, go on and do this. And as a result the snowball rolling down the hill has got bigger to the point where we now have a little bit of a mess to clean up.

So, I think that some addressing of how we've handled the unsolved problems, recognizing that you can't go on and on and on forever arguing about something, needs to be made in our review. It doesn't have to be, we don't have to spend time on it. But to just sort of allow ourselves to scope it out seems to me not particularly honest. I think we should address it dead on. In many ways the TAC 55 recommendations addressed a lot of the problems head on and said we really have to solve them. Even if it's to ask the questions, I think that might be one way of doing it. Thanks.

ALAN GREENBERG:

Thank you. I put myself in the queue and speaking on my own behalf. It's Alan Greenberg for the transcript. I think this is head on overlapping with the RDS PDP. The RDS PDP is charged with looking at what the purposes of WHOIS are, or its replacement, assessing whether the current protocol is sufficient or effective, I think is one of the other words for that, and if necessary, making recommendations on what to do instead.

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So, I think this exactly overlaps and we can certainly comment that we think it's important that someone do it and the RDS Review Team is in fact charged with doing it right now. We can't control if it's going to throw up its arms and say, we give up, as a previous PDP did, or whether there will be some other resolution. But I don't think we can tackle the question itself. We could make a comment on the question but that's about I think as much as we can do. And Lisa, I have your hand up next, and I'll put my Chair's hat back on. Lisa?

LISA PHIFER:

Lisa Phifer for the record. I put my hand up just to call your attention to, I copied into chat, that this text in the Bylaws asking the team to look at the effectiveness of the now current system, is actually the same mandate that the original WHOIS Review Team had. So, just calling your attention to where the origin or the request to assess the effectiveness of the current system came from. So, you might think of the first WHOIS Review Team recommendations as their take on what was needed to address the effectiveness question.

ALAN GREENBERG:

Thank you. Which indeed they did and that has ultimately through a number of steps resulted in the PDP going on.

CHRIS DISSPAIN:

Alan, it's Chris.

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ALAN GREENBERG: The queue is empty, Chris, go ahead.

CHRIS DISSPAIN: Thanks. So, I really do applaud the desire to tackle knotty and difficult problems and some of us have been involved in this RDS WHOIS stuff, the review of it, for what seems like a lifetime. So, I understand the desire to do it. My question would be simply, effectiveness against what criteria? I think that's the challenge. At the time the first review team did its review, there was the existing WHOIS, there was a desire to do some stuff, but Rdac wasn't really there and there hadn't been any work done for a long time on what the criteria might be and so on. For us now, this review team is slap bang in the middle of a significant amount of work going on in all sorts of different areas.

So, my question would be, if we're going to assess the effectiveness of the current WHOIS, against what criteria? So, it's not agreeing as to what the legitimate or illegitimate uses of it are, outside of any legal issues, so I'm lost as to what we would use as criteria. But I want to stress, I'm not advocating that it shouldn't be tackled at this stage, but I am concerned that we might end up spending all of our time discussing what would in the end be a bunch of hypothetical criteria against which to judge the current protocol's effectiveness and efficiency. Thanks.

ALAN GREENBERG: Yeah, thank you, Chris. I'll point out, we have an item later on which Carlton had introduced, to assess the current protocol to do the job. And although that sounds like the same issue, it is actually a different one and a lot simpler, because it is easy to demonstrate the current

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protocol is not sufficient simply because of the issue of IDN 7-bit ASCII. So, the fact that it fails for that makes it fail, and we don't need to enumerate all the other reasons it might be poor.

So, they are very different items and I really think that if we are going to try to look at effectiveness, period, then we are replicating the work of the RDS PDP and I really think we need to step away from that. Stephanie, you have your hand up, but I was going to make a suggestion that if you feel strongly that we should be doing this, could you try to write up something for our next meeting to describe exactly how you believe we should approach this? But, Stephanie, you have the floor.

STEPHANIE PERRIN:

Thanks, Alan. Okay, I will take up that challenge. Stephanie Perrin for the record. I see this as, how do we discuss effectiveness in the terms of, I would say, policy without getting into drafting the policy. To me, I quite agree, there is no reason for us to try to redo what is going on in the RDS. However, commenting on the things that Cathrin pointed out, you can't do that without mentioning that we're at an impasse on the conflicts of law, that the mechanism hasn't worked, etcetera. I think we can make it quite quick and I will undertake drafting some kind of basic paragraph on this. Thanks.

ALAN GREENBERG:

Thank you. We'll take a look at that when we get it.

I'd like to move on to the next item now, and that is the OECD Privacy and Transporter Border Flow. That's one that I think we can do, I think

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we probably have to do, and I think it's pretty simple. Because it's pretty obvious that the current protocol, and ICANN's requirements for where information is stored and Escrow, and things like that, pretty well violate all of those, not all of them, but violate sufficient ones, to say that we have an issue with that. So, I don't think it's a particularly onerous task for us to take that on. I don't think we need to enumerate fully every possible way, 'cause it's pretty much a disaster.

And I did send out a message on privacy which I tried to expound or expand a little bit more on how we could approach that, but I'd like to have input on that. That was sent out after the last meeting, so we haven't discussed that at all. Stephanie, is that a new hand? I assume you have some input on this. It is not a new hand. Does that mean everyone is in agreement that we will look at this but we'll look at it from a pretty light point of view and in accordance with that document I sent out summarizing my positions on privacy? This was supported by the two Co-Chairs. Erika says, focused point of view.

Alright, I'm going to assume that we will incorporate words similar to that into our scope definition and proceed. Once we have written decisions on this we will go back to the Review Team to make sure it's getting captured properly.

Alright, the GNSO comments and the first one is the one that we were talking about briefly before, is assess the RDS—well, actually, interestingly, I think the wording here is somewhat different, Cathrin, than in the Bylaws. The Bylaws says, The Board shall cause a periodic review to assess the effectiveness of the then current gTLD Registration Data Services and whether its implementation meets the



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legitimate needs of law enforcement promoting consumer trust and safeguard Registrant data. That's a different item than the one listed GNSO, 'cause the GNSO one is saying, assess whether our current RDS efforts, the PDP, are meeting those.

So, I did err in leaving out the one from the Bylaws, that is, assess the current protocol for whether it meets legitimate needs of law enforcement and consumer trust and safeguards. Views on whether we should include that? Again, putting on my personal hat, I would tend to say that, yes, we should include it, but again, it's a relatively cursory review trying to assess what aspects it meets and what aspects it doesn't meet.

But to belabor the point too much on the current protocol, which in any practical world is likely to be ditched, I would not think uses our efforts really well. Open the floor to that though. And Lisa said the GDPR compliance activity might fall under those activities. Yes, indeed. You know, we know it doesn't meet the needs right now and whether the GDPR efforts will come closer to helping it meet the needs remains to be seen. Stephanie, go right ahead.

STEPHANIE PERRIN:

Thanks, Alan. Stephanie Perrin for the record. Predictably enough, I think that we have a little bit of a problem with this expression because if we're going to assess the RDS efforts with respect to legitimate needs of law enforcement then we have to decide (jump in recording - 00:49:52) legitimate needs of law enforcement which certainly is an issue we're debating in the RDS group. By law enforcement I include

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Cybercom enforcement, which you know, if this said law enforcement agencies, maybe it would be a bit easier but still not easy.

Promoting consumer trust, I would regard that as press release wording. We have not really examined that. We can assess, you know, some previous work on measuring measurement, but that one's kinda wide open. And safeguarding Registrant data, well, you know, I would argue that we don't do that either. So, I think this is a really difficult one to assess quickly. I'm happy to look into it but defining those terms would be quite a job. Thanks.

ALAN GREENBERG:

Thanks. We'll go to Volker next, and I put myself in the queue. Volker?

VOLKER GREIMANN:

When we look at the term, legitimate needs of law enforcement, I mean, data privacy officers now are pushed into a role of law enforcement agencies, agencies as well, just that the law that they enforce is not criminal law but just data protection, and in their case it's not their needs that are not being met by RDS or are being met by RDS, but rather if the law is being broken or not broken or at least affected in a way. But basically, I think we might need to break up the question of legitimate needs and maybe just say requirements, or something like that, so that all branches or law enforcement are actually encompassed by our work.

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ALAN GREENBERG:

Thank you, Volker. If we were to do this, I would tell you how I would approach it. In all the discussions I've heard on WHOIS, and that goes back a good 10 years or so, the discussions all center around what information should we remove from WHOIS or make less accessible, than it is right now. I don't recall having an awful lot of discussion talking about new information that isn't there today. The RDS PDP is talking about putting in an abuse contact, but that can be filled in with the same address and email address and name as the other contacts.

But other than that, I haven't heard any discussion. So, I think it's moderately safe to say that the current WHOIS, where no one is really advocating adding elements to it, and is completely open with no restriction on who can get it, is probably as good as you're going to get. And that makes the analysis pretty simple. Because, if it is insufficient how could it be made better for law enforcement, for instance? We're currently, everything that is in the RDS is available and no one is really suggesting adding more items to it.

So, from that perspective, I think it's a relatively simple job to do. We may not be able to put an absolute answer on how effective it is in meeting the needs, but it's not likely to get any better and putting any effort into trying to identify those things, I think immediately transfers into the RDS PDP that is looking at what should follow. Putting back on my Chair hat, I'll go to Erika.

CATHRIN BAUER-BULST:

Alan, if you could add me to the queue, this Cathrin. For some reason it's not working in the Adobe.

ALAN GREENBERG:                   Okay. You're after Stephanie. Erika, go ahead.

ERIKA MANN:                       Thank you, Alan. I think the issue for law enforcement sometimes is that procedures are not always clear and they have sometimes difficulties of getting the information, the true information they need. But I agree with you, I doubt that at the current stage there's much to add. There's maybe one piece which relates to a slightly different topic. Our industry is probably the only one which is not publishing information about law enforcement requests.

The only organization in the sense that most other internet companies do this. So, this is not something you were debating but it could be something we could recommend for the future, which would help certainly those which have some concerns about law enforcement request's for a reevaluated situation and to understand it better. It would be a nice counter balance to legitimate requests from law enforcement angles.

ALAN GREENBERG:                   Thank you. And you're really talking, I believe, about requests to Registrars or Registries? Because I don't believe ICANN gets many requests in that area.

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ERIKA MANN: I would include all players. I mean, you know, if you go to the tiny ones they might have difficulties, but definitely the big players, and even ICANN. ICANN certainly receives some requests, so ICANN should do this as well.

ALAN GREENBERG: Okay. So, you're really talking about publication of information about law enforcement requests, not whether it's effective for law enforcement itself?

ERIKA MANN: No, I agree with you. If we can put it at the other side of the law, yeah.

ALAN GREENBERG: Okay. So, you're not disagreeing that to the extent that we tackle it, it's a relatively lightweight...

ERIKA MANN: I agree with you.

ALAN GREENBERG: You've just written that recommendation already so we can almost tick it off. Again, somewhat of a joke. Stephanie, go ahead.

STEPHANIE PERRIN: Thanks. Stephanie Perrin for the record. Erika's point addresses one way to help solve the problem. One of the issues that I think is

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important in terms of the legitimate needs of law enforcement is the number of constitutional cases that have been brought regarding this access to data issue. And we have our own in Canada with the Spencer decision, as you probably know, Alan.

So, one has to stay current and one has to recognize that ICANN runs a risk in violating constitutional rights abusers by continuing with the WHOIS policy that was hashed in '98 or even before. So, I think coming up with a couple of ways that we could recommend that ICANN acknowledge the existence of court cases that have addressed these issues would be a good thing. Thank you.

ALAN GREENBERG:

Thank you. I'm not sure we're in a position how to fix it, we can certainly identify there's an issue. And Cathrin, please go ahead.

CATHRIN BAUER-BULST:

Thank you, Alan. This is Cathrin Bauer-Bulst for the record. And Alan, you were asking earlier that you were hoping people would disagree with you occasionally to keep you on your toes, so I'm about to do that on the law enforcement issue. I think there's two points and that also came out during the first review team report. There are significant issues for law enforcement.

The first is on the accuracy of the information that's in the WHOIS, because it's very frequently inaccurate as we all know. And the second is on the privacy proxy issue, and there of course, we are going to look at the work of the Implementation Review Team and we can probably

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say more on that after we've reviewed where they're at. But to my understanding, the fact that now the privacy proxy services are still pretty much unregulated and have very different approaches as to how they react to law enforcement requests.

And I'm speaking about criminal law enforcement, so the more narrow definition here. I cannot speak for all the other ones, including Volker's legitimate raising of the data protection commissioners as one of the potential parts of that community as well. But for criminal law enforcement, the privacy proxy services are certainly causing somewhat of an issue.

And when it comes to the transparency reporting on law enforcement requests, I can only agree with what Stephanie and Erika have already highlighted, that that would be a significant step forward. Obviously if you're dealing with an open WHOIS in the current state, companies won't necessarily be aware of who is making a WHOIS request because it's just an open database.

So it will be difficult for them to distinguish in any sort of reporting as to where requests have come from unless they have the technical information to be able to identify law enforcement machines making the requests. So, to my understanding, this type of reporting would not be possible under the current system of WHOIS, but I'm happy to be corrected on that one. And I would also be a fan of it if it were possible.

ALAN GREENBERG:

Thank you very much, Cathrin. I took the suggestion to mean requests that are made directly to the groups, which implies the information is

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not currently available on WHOIS but they're looking for more information. That's how I took the request. They can only report on requests that are in fact made, you're correct.

CATHRIN BAUER-BULST: Right. And I totally think that would be very useful.

ALAN GREENBERG: Yeah. Privacy proxy is one of the recommendations so I think we will be tackling that one as we look at the effectiveness going ahead, to the extent that it's already implemented. Of course, we have an issue in that things are still in a state of flux, so we will only be able to evaluate what is actually being done or what we can look at as planned at this point. But privacy proxy is within scope because it was a recommendation that came out of the previous review.

Alright, if I could ask staff who are perhaps working with me to try to summarize what we've come out of this. I think we're close, relatively, in agreement at this point, or we know where we're focusing. That is, that it's not an issue that we can side-step altogether, on the other hand, it is not something which we foresee taking a huge amount of effort to go through. I'm not sure to what extent we have new hands up. I see Erika and Stephanie. I suspect Erika's still an old one, but I'm not sure. Erika? We now hear someone typing. Old hand, Erika says. Stephanie, go ahead.



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STEPHANIE PERRIN:

Stephanie Perrin for the record. And I expect this is not going to be a popular comment but I'm going to make it anyway. If you were on the last RDS call you may recall I brought it up there, Alan. The issue of what is required in the matter of retention data, what's required of the Registrar, is relevant, because of course, particularly with criminal investigations, the data that might be of real interest is data that the Registrars are obliged to retain under the data retention requirements which are in the RAA.

Now, I understand the Registrar's position that that is a private contract, not subject to policy, it's between them and ICANN. But if we, as a review team for registration data, do not review how ICANN has managed access to that data through its policy requirements that are set in the contract, then we are effectively putting the most interesting data, from a law enforcement perspective and from a personal privacy perspective, into some kind of no man's land.

You cannot just say, oh, it's in the contract, it's not part of registration data. If that's the case, then what exactly is it? So, I just think we have to include that data in transparency report and in any other data. And I would point out that the data commissioners have pointed out on several occasions that that data retention is not adhering to EU law. Thanks.

ALAN GREENBERG:

Thank you. I would have thought that fell under the previous category of OECD privacy. But Erika, go ahead.

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ERIKA MANN:

I might not have understood Stephanie correctly, I mean, data retention laws are very complex and depending on the legislation in different countries around the globe they vary to a large degree. The EU is even more complex because they have various court cases pending and they will have to probably come up with new data retention laws. I don't know what's going to happen there.

But nonetheless, data has to be stored depending on the business company data, and this varies of course on the specific relations between the hosting company, or however you want to call them, and the individual client. So, it's a very complex issue. So, I was not sure what you were actually saying, Stephanie. We should not include it, we should not look into it? Or we have to look into it? But then in its total complexities? Which might be difficult.

ALAN GREENBERG:

Thank you. Volker, you're next.

VOLKER GREIMANN:

Thank you. I think the data retention is one thing. The thing is that ICANN compliance is also very fine, this data retention, then we are moving out of the question of data retention to (inaudible). But I don't think that is entirely relevant to us because it does not 100% only affect WHOIS data, it's all kinds of data that we are supposed to collect, that ICANN is demanding of us. Whether they have the right to do so under European law or not, is an entirely different question.

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But I don't think it only applies to WHOIS data and therefore is only tangentially relevant to us. I mean, where it affects WHOIS data is one thing, but then it's in the WHOIS. As long as when it goes out of the WHOIS and we have to retain it for another purpose, it does not remain WHOIS data per se, it's just data that matches the fields that are in WHOIS and therefore I don't think it's part of our scope any more. Sorry to disagree with you there, Stephanie, but I think we should focus on WHOIS data in this, otherwise, if we broaden the scope too much then we could spend years on this.

ALAN GREENBERG:

Thank you. Stephanie, go ahead.

STEPHANIE PERRIN:

I'm just clarifying—Stephanie Perrin for the record—for Erika's question, I certainly don't propose looking into the vast complexity of data retention, but my point is really that this difference between... it's basically all registration data, we're talking about the client relationship between a Registrar and an individual. The data that has been forced to be published in the WHOIS becomes a focus and the only sort of public access that we talk about.

Whereas in reality the data that ICANN, our data controller, forces Registrars to retain, whether it's illegal or not, and in my view of course it is illegal, at least under European data protection law and under Canadian protection law, constitutional law, that just slides under the rug as contractual requirements. But if you are looking at ICANN's role in managing, as data controller, Registrant data, you can't sort of sweep

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all of that required data under the rug. That's the point I'm trying to make.

I'm not suggesting that we in this review team have any authority to look at that. But we could certainly say, there is a looming problem that is developing and that is that, from the perspective of the data controllers, they look at the contract, and that would be where they go to assess data protection compliance. And the WHOIS, or whatever we call them in RDS, is merely the publication instrument. Releasing data is releasing data. And that includes releasing, you know, the banking data to law enforcement when they ask.

And the terms of that are obviously set country by country, depending on local law, that is not something that ICANN interferes with, and therefore thankfully not something we have to look at, but the retention of it is something that ICANN has intervened in and set. That's all I'm trying to do, is to recognize that we have an iceberg of data. There's the tip that goes in the RDS and there's the stuff under the water that is retained. Thanks.

ALAN GREENBERG:

Thank you very much. Again, I'll take off my Chair hat for a moment. We could abolish WHOIS today, completely. We no longer publish any information. We shut down all of the WHOIS portals. And there still may be retention rules that ICANN attempts to impose on Registrars and Registries. And there are still data protection laws, which in some cases say we are asking them to retain data longer than is necessary.

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So, can we make a statement saying there is a conflict between ICANN's current treatment of registration data, including retention and national laws? I think we've just said it. If the group wants to, say, make a statement like that, and say ICANN must address the conflict, I have no problem with that. Going into much more depth or analysis of it I find is really problematic, though.

CATHRIN BAUER-BULST: Alan, this is Cathrin, could I join the queue again?

ALAN GREENBERG: You're back in it. You're on the front, thank you. Go ahead.

CATHRIN BAUER-BULST: Thank you. I would just like to second that. I think ICANN is aware of the issue and in fact we have a specific conflict resolution procedure for conflict with local data retention laws and data protection laws that is already in place. So, if we just point to the issue, I think the community is well aware of it. That being said, I would agree with Volker that it's out of our scope, because we already have enough on our plate with the current WHOIS (inaudible).

And if we want to make some high level mention of it and recognize that this has already been recognized as a problem by the community, including ICANN, or that there's a procedure in place, that might also be in need of further refinement, I think that would be useful but probably not to do much more.

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And just a second thought on that, I think we might also hear a little bit about what ICANN plans to do around those issues when we hear the GDPR briefing, because obviously, data retention is one of the issues that is addressed in the GDPR and that ICANN will have to look at in trying to ensure compliance with the GDPR by May. Thank you.

ALAN GREENBERG:

Thank you very much, Cathrin. That's a good summary. We're 17 minutes past the hour, I'm going to put an end to this discussion right now. We'll resume it at our next meeting, at the next item. And of course, if anyone else has any items they'd like to add to the end of the list, then please make it known on the mailing list. I think we've made pretty good progress going forward at this point, so I thank you all for it.

The next item on our agenda is, I believe, AOB, and it is. Is there any other business at this point? Then I thank you for your participation and look forward to the summary from staff on the decisions we've reached at this point. Oh, we have an item to actually confirm the decisions, sorry about that.

ALICE JANSEN:

Hi Alan, this is Alice. Yes, if you go down in the notes you'll see all the decisions reached and the action items listed there. If you want to scan through them.

ALAN GREENBERG:

Okay, if you could read them out to me, I'm really bad at reading things. Can someone summarize?

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ALICE JANSEN: In terms of decisions reached, on the Terms of Reference, Review Team adopts proposed decision-making methodology. With respect to the action items, we have one on the leadership responsibilities. Edit item #2, to use when speaking in individual capacity instead of advocate. On Terms of Reference, on replacement and removal of members, leadership team is to draft a text for Review Team consideration.

On dependent org to identify all the known groups for Review Team consideration. On the scope, Stephanie to suggest some language on the effectiveness component. Leadership is to suggest text that reflects OECD component. ICANN org is to help leadership produce draft text reflecting Review Team's discussion on law enforcement objective. And then, Review Team to send any other comments on scope to Review Team list.

ALAN GREENBERG: Thank you very much. Any further comments?

ALICE JANSEN: That's all we have.

ALAN GREENBERG: Yeah, and I think that maps pretty well to it. Essentially at this point we should be able to complete the right hand column on the items we have discussed today on the scope issue, and for future discussion, to make sure we have it right. Lisa, go ahead.

LISA PHIFER: Alan, thank you. Lisa Phifer for the record. I just wanted to ask a procedural question which is that Cathrin had circulated some draft text for the Terms of Reference section in the scope, and I was wondering how you wanted to proceed with updating that to reflect today's discussion?

ALAN GREENBERG: My preference is to treat that as input into our processes which we have at this point. The scope discussion, I would think we need to have a discussion in principle as we are right now, before we try to cast it into words. So, I appreciate Cathrin having put it into that format but I think at this point we need to take her suggestions along with the other ones, and I think we are. Much of what she said is captured in the list we're looking at.

So, I would not try to edit that part of the Terms of Reference on a day by day basis, but wait 'til we finish the discussion on scope and then try to update it. So, unless there's a strong objection, that's certainly my preference.

CATHRIN BAUER-BULST: Hi, this is Cathrin. If I can have the floor for just one second?

ALAN GREENBERG: Yes, please, Cathrin, go ahead.



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CATHRIN BAUER-BULST: I don't see any issue with that. So, I tried to draft the text to reflect what I thought was the pattern of the discussion so far and it's quite generic. So, I've put a lot of comments saying where I think we should further specify. Nonetheless, I do think it is helpful to get down to concrete text because a lot of the issues that we were having in defining the scope are actually on precisely defining what we mean by the different issues that are now listed in the table. So, maybe there's some way of reconciling this by fleshing out the issues a bit more in the table.

And one point in particular I think may have gotten lost earlier is this issue around effectiveness, where you were saying, if I understood you correctly, that that's very hard to define and therefore we should look into whether we want to get into it at all. And where I suggested that one way to look at it might be to see whether it is effectiveness with regards to the three needs that are defined in the Bylaws themselves, namely those of law enforcement, consumer trust and safeguarding Registrant data.

And that's something that's not yet reflected in the table so if we want to continue working with the table then maybe we should look at whether the effectiveness criteria could be further narrowed down by using those three focuses.

ALAN GREENBERG: Thank you, Cathrin. I think I said, or I imagined or I planned to say, I'm not sure which at this point, that there is a line missing from the table. That I missed that in capturing it, that the issue on law enforcement and

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issues is not in the table and must be. So, there's a Bylaws line that's missing, and I think that's what we've just spent a fair amount of time discussing. I agree with you, we need better wording. And hopefully coming out of this meeting, I'll work with staff and certainly be passing it by both Vice-Chairs to make sure that you think that the summary that we're now doing in the last column, comes close to capturing what our intent is.

So, I agree we need more words. I would prefer not to try to refine the whole document within the Terms of Reference until we come a little bit closer. Because I suspect this is going to be an iterative process that we go back and adjust other ones, as we're adding the new ones. So, I'm just suggesting that we do it as a separate document until we have the thing relatively close to the end.

Alright. I think we're done. Anything else in our agenda that I have missed? I see we're at the last item and we're just about close to the end of the 90 minutes. So, I thank you all for your participation and I look forward to discussions on the mailing list. I think we're actually making good progress at this point, which makes me feel better than I did going into this call, where we seemed to be going around in circles a little bit. So, thank you all for your participation and I'll see you all on the list. And again we'll meet in two weeks. Bye bye.

**[END OF TRANSCRIPTION]**