ICANN

Moderator: Maryam Bakoshi
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Tatiana Tropina: Yes.

Woman: Go ahead.

Tatiana Tropina: So and you can hear me well right? So the announcement for those who didn't hear the first part of my speech it was supposed to be a session with the ICANN legal. Unfortunately ICANN legal cannot attend so we have to play it by ear and instead of facilitating the community discussion of the ICANN legal we will play it by ear and facilitate the discussion between you so just don't queue each other here over the GDPR model compliance models.

In any case I will give the floor to Vicky to bring you through our so slides but just be about the structure. We are going to walk you through more those - through some EC guidance and through the summary of the public community or sorry of the public comments to open then the discussion between you. So Vicky please go ahead.

Vicky Sheckler: Thanks. Can you all hear me?

Woman: Closer to the microphone I think.

Vicky Sheckler: Okay. Is that better?

Woman: Much.

Vicky Sheckler: All right I have a tendency to speak quickly so please tell me to slow down if we get there. And if I can get you on the second slide please? Thank you so much.

Want to walk you briefly through some of the models that have been proposed for the interim model. I could give you a sense of some of the comments that ICANN has received on it and then, you know, the goal was to have questions for ICANN legal. I'm hoping that some of the other ICANN staff here might be able to take a shot at answering some of those questions while we're here.

I apologize in advance that a lot of this may be a repeat for some of you from this morning's Webinar but, you know, it – this is where we are. In any of event we thought we'd start with what is ICANN's stated goal for this compliance? This comes out of I think the blog that Goran put out on January 12 which is to ensure that the GDPR in terms (unintelligible) of the GDPR (unintelligible) in an existing Whois system to the greatest extent possible.

In that blog Goran also reminded us of ICANN's mission as stated in the bylaws which includes this concept of having a greater accuracy and access to Whois while complying with laws. And the next slide please. So as you all know there was three models that - or 3-1/2 depending on how you think about it that ICANN had proposed for consideration -- model one through model three. I'm going back and forth between repeating this to you or not.

How many of you are all familiar with the models already? Does anyone need to go over all three of them again?

Tatiana Tropina: So who wants us to go in detail just raise your hands and we can...

Man: (Unintelligible) if you know them or…

Tatiana Tropina: If you want us to go through them in detail? I don't see - yes there are a couple of hands Vicky so you can provide the details.

Vicky Sheckler: Okay. So, you know, the first model is the most open model if you will that has some personal data staying in the public Whois system including the domain name, name service (unintelligible) blah, blah, blah all the stuff there. And it calls for a two-year retention program. It has this concept of self-certification to get data that is perhaps private. And it's not clear how that self-certification program would work. It talked about it being on a case by case basis but also called a self-certification so it wasn't exactly clear how that would work.

Then the second model if we could move over to model two please. I'm sorry the next slide, this one applied to all personal data regardless for - regardless if it's a natural or legal person. So it didn't make that natural legal distinction which as you've heard, you know, some people say in this room today they don't think that's appropriate for compliance with GDPR. There was two concepts of whether it would apply more or less within the extra totality of the GDPR or whether it was applied globally. And ICANN asked for comments on that.

Again it had, you know, some data in the public domain. This one I, you know, called for certain email addresses to be included. It only called for a

one year data retention. And it contemplated a more formal accreditation program but not a lot of details on that. If I get any of this wrong please feel free to correct us.

And going on to model three please. This was the most restrictive model. It called for the data to be global, I'm sorry for the process to be global that for all personal data whether it's natural or legal to be behind the firewall and called for a due process in order to get access to the personal data without if I remember probably and a whole lot of explanation of what was meant by due process. So that gives you a rough flavor of, you know, the range of models that ICANN threw out for consideration.

If we'll go on to the next slide please. As you may know there's also several community models that were submitted prior to the January 12. They ranged from the eco-model that was proposed by several European registrars. That was the most restrictive of the models that have been submitted at that time. It did call for a tiered access through these other models, the redaction model, the expert working group type model from App VTEC, the COA model which had some concepts of tiered access and then the (eye) threat model which came from some security experts. Those five models are independent to the slides summarized if you'd like to see a quick summary of those as well. We're not going to go through them now necessarily.

In the middle of all of this and contemplating that last Monday I think the European Commission provided some guidance to ICANN on it. So we could go to the next slide please that, you know, hopefully can help inform ICANN and all of us in thinking about these issues. So we pulled out what we thought were two relevant quotes from that EC guidance to help think about it. So it - and one of them was that in the EC guidance it acknowledged that public policy objectives of Whois include -- and I'm going to read it to you --

identification of contact points for network operators and administrators, help in countering eligible property infringement, finding the source of cyber-attacks or assistance to law enforcement investigations.

And it also acknowledged the corresponding need to preserve Whois functionality and access to information. At the same time the EC guidance acknowledged that there's a need to comply with the GDPR. Note that it's important not just to ensure respect of the fundamental right to personal data protection but also for the stability, robustness and accuracy of the Whois system as an integral part of the infrastructure that allows the global interoperability of Internet services.

I think it's important to stop and pause here because I think the EC in this letter has captured a good balance of you ought to think about in moving forward in that the purposes for Whois of (protect ability) for all of these purposes are legitimate. We need to find a way to make that happen while at the same time making sure that we are GDR compliant and trying to - how to get to that objective. So I hope we keep this in mind as we move forward and stop debating whether the GDPR exists or whether these purposes are legitimate.

Next slide please. This one gives you a little bit more about the guidance that they gave and some more criteria considerations as ICANN the contracted party and everyone, you know, thinks through how to address the Whois system going forward. The next slide please I'm going to turn it over to Tatiana now…

Tatiana Tropina: Yes.

Vicky Sheckler: …to tell you a little bit about some of the comments that ICANN received.

Tatiana Tropina: So are there any comments on the summary that have already been presented to you? You probably all saw in the morning during the Webinar or from Steve's presentation this wonderful infographics which pose different comments into, you know, this diagram. We went a bit of a different way because we are not here to assess the comments and where they are. It's the job of ICANN.

But we believe that it would be helpful especially for those of you who were stuck in the meeting rooms, in the GNSO strategic session and so on and didn't have time to go through all 80 comments in detail because some of them are very long. So what we decided to do we couldn't summarize all the 80 comments. Like for example a very comprehensive comment from Stephanie didn't make it to the summary because she is here or a comment from EFF.

We decided to go over the comments from those parts of the community who either belong to the GNSO Council like registries registrars and us to show the diversity of use and a couple of comments from the governmental structures. So it is interesting because several groups didn't follow any of the ICANN models. It seems that eco-model had a great prominence in addressing some of the community concerns.

So for example selected contracted parties they support equal model and criticize all three models saying that model one doesn't provide justification for publishing personal data. Model 2 is unworkable for different reasons and model three fails to satisfy other stakeholders interested in preserving the status quo of Whois. A Registrar Stakeholder Group presumably from the information we have from going through their comments we assume that they support equal model also because they criticize all three of the ICANN models

and refer to eco comments in their own comments. IPC and BC support model one and with some changes model to. And IPC knows that model one should only apply to data associated with natural persons. Registrant email should be in public record (unintelligible) should work and registrar should be required to provide data and model three was completely unacceptable.

With regard to BC BC notes that model one should apply only to data associated with natural persons and registrant email should be in public record, entire self-certification should work. NCSG completely different view. NCSG supported the Model Number 3 and said that Model Number 2 might work.

So you can see that we have like completely different opposing opinion of those represented in this room. So NCSG which I belong to recommends the centralized accreditation model for access to all nonpublic data. We said – stated that we want due process for gaining access to nonpublic information and we noted that under the model three it may be within ICANN mission to include email address and technical contact point and possibly the name in the registrant on public record. Can we go to the next slide? Oh yes sorry please go ahead.

Steve DelBianco: Hey Tatiana, Steve DelBianco. The BC also in that comments suggested that Model 2 would be okay once we had a centralized certification authentication system but that coming right out of the box lacking such a system self-certification was the way to start. So our comment was slightly more nuanced than that which puts us a little closer to the center then at the corner with respect to the way you were positioning it. So the availability of a centralized reliable authentication certification system could replace self-certification.

Tatiana Tropina: Thank you very much Steve. Anyone else wants to comment on the – oh yes sorry Wolf-Ulrich. I'm still in the talking mode so I don't see the name plates. Please go ahead.

Wolf-Ulrich Knoben: No problem. Wolf-Ulrich Knoben for the ISP speaking but just to add to that matrix because we as a constituency we are not here appearing. So we didn't comment as a constituency because we were really confused of the process how it was done and asked for and it seemed to us that it was more ask for it to put forward your favorite neighborhood to what kind of model you have. So we did not do that. We left it open to our members. And just to add to this the members who commented on that or they joined more or less the eco model. So that's what I would like to add here.

Tatiana Tropina: Thank you very much. Well it proves the point that eco model had like great support like despite the fact that ICANN suggested three other models. Any more comments here? Then can we go to the next slide please. Well Christian would you like to comment?

Christian Dawson: (Unintelligible).

Tatiana Tropina: Oh okay well so and then there is a paper by GAC. This paper criticized all (unintelligible) models. I don't know who of you read I think there are like 14 or 20 pages so we stand up the point. So GAC model requires all fields to be public unless they contain personal data. Data should be retained for two years and should have an accreditation system for access to personal data that allows all legitimate parties to have access and some other points.

And they also criticize all three models. Model 1 was criticize for the lack of registrant email and self-accreditation was assessed to be too subjective and ineffective. Model 2 as it was pointed out by GAC conflates natural and legal

persons and uniform approach to data fields is an overreach. And one-year data retention was considered too short by the GAC. And Model 3 as GAC points out in their opinion as it requires the legal order it will hinder a timely access and would be unreasonable burden on the law enforcement and other parties who are interested in the access to data. And they also said that 60-day period for data retention provided by the Model 3 is too short.

And there is also the comment from the US government which points that we need Thick Whois, need all legitimate purposes permitted for the access to data. And as much registrant data as possible should be displayed in Whois and distinguish both natural and legal persons access to PI by GDPR should not be unduly restricted and burdensome for legitimate access. (Tied) access is kind of okay for the US government. They also advocated for two years data retention and bar access to third parties should be available.

So these shows you the range of different approaches. In addition to ICANN model we have at least like five or six different models. One of them is widely supported by the community, especially contracted parties since some of those who are in our house. And now I believe the most fun part here because that's where we will have to play by the ear. We don't have ICANN legal and at the same time we don't have a crystal ball. We cannot predict the future. We cannot say which model will be selected by the ICANN legal so we cannot, you know, guess here.

But what we can do we can still go through the questions Vicky and I prepared for the ICANN legal and you and see what we can discuss here. And we also have the questions only for community. So Vicky would you like to lead the discussion from now for a while for the first questions?

Vicky Sheckler: Sure. I'd be happy to do that. Even though we don't have ICANN legal here we do have some ICANN staff.

Woman: (Unintelligible).

Vicky Sheckler: I would love to hear your response the best that you can to any of these questions if…

Tatiana Tropina: Yes if you have any.

Vicky Sheckler: So if you could that would be great. I'm sorry go ahead.

Christian Dawson: So this is Christian Dawson for the record. I have - oh wow that's a tough one. So your first question is who and who and how to settle on a model? And I'm happy to give some ideas as to how I would go about answering that question. I think you've done a good job this morning talking about the fact that we in this room don't get to choose. Ultimately it's going to end up being the people that are under threat of being sued that in one way or another are the ones that are getting the choice here.

So we discussed that those in the ISP CP there's a great deal of support for the eco model. I want to take a moment to talk about it as a framing mechanism for how we go about our conversation here. And I was a little disappointed this morning that it – that not only did the Webinar only touch on display because the eco model is really rich in dealing with all aspects of GDPR compliance and not just display but that it really didn't delve that much in that it really didn't delve into that much.

You talked about it being one of the more restrictive models and I think that's true. It's purposefully risk adverse. And it's focused on data limitation which

is the way really the entire world's going. So I kind of think maybe when we're sitting here talking about how we can move the ball forward and helping people make decisions so we're not spinning our wheels in here the people that don't get to choose let's take a look at the most restrictive model. And if you think it's overly compliant propose alternatives and explain why they meet a business risk focused view of compliance, why the things that you don't like can meet, the alternatives can meet a business risk view of compliance. Take a little look at individual components of risk and propose why that risk doesn't exist. I don't think public benefit is a proper response for that. It may be from the commission but not from an individual. Does that make sense to everybody?

Vicky Sheckler: Vicky, and no I don't think it makes sense for right now. We've got ICANN staff in the room. Let's see if they could help us answer some of the questions to the extent that you can. And then afterwards I would love to talk about the .eco model so let – while we have these gentlemen in the room I'd love to get their input. So I'd like to put that to the side for a moment and let's go through the questions then we'll get back to the eco model. Anyone object to that approach?

Woman: That's my phone going off. Sorry about that.

Vicky Sheckler: So the first set of questions came from Stephanie and Steve on that panel, you know, which go about if you could tell us a little bit more or repeat what you guys did this morning about the process. I understand – I believe that ICANN wants to have one model and some of the rationale behind that, thoughts about enforcement, you know, because as Christian mentioned that there very well may be a case where a registrar's risk tolerance is such that they do not want to follow whatever model is selected and what your thoughts are and how you're going to deal with that. And then the – I guess the last question is how

are you guys thinking about these comments that came in and, you know, the various stakeholders that you're trying to help? Thank you.

Akram Atallah: Thank you. This is a lot of questions in there. I think, you know, I'll try to address some one by one. I think that Goran has been very vocal about asking the contracted parties as well as the non-contracted parties to come together and agree on a model that we can support. And that would be our preferred approach is that we don't dictate the model but the community comes up with a model that is supported.

But short of that he will decide on a model because we have to also as ICANN organization we have to be compliant. And so we have certain fiduciary obligations to do what we need to do to protect the organization. Now we would like it to be a joint decision but short of that we will have to make a decision and move forward.

Why one model? From the beginning we looked at what is being asked of us and what do we have to do to get to something that is acceptable for us as an organization as well as for the contracted parties who have to be compliant with this or that run the risk of penalties and issues. And we thought of a few things that we don't want to let happen. One of them was to make sure that we don't fragment the Whois in general. We don't – we didn't want every contracted party to come up with their own solution and then users of the Whois system would have to guess what solution each one of the contracted parties providing and then also seeing contradicting data whether you get from the registrar or you get it from the registry.

And so we wanted to have it - to have everybody conform to one policy. Also because for us one - sorry not policy, one implementation. And also for

enforcement we didn't want to have to pick and choose, you know, everyone is different and every implementation is different.

So the other thing we wanted to make sure is we don't make policy. So how do we approach this without making policy on the fly and on contradicting the consensus policy? So we wanted to be – to approach it from not change the policy but maybe do it from the compliance perspective and try to stay as true as possible and enforce the current policies as much as we can.

So the approach was to, you know, not stray away from the current policy and make something surgical instead of something like, you know, that we say we're going to do it this way and forget about the - what our job is which is to enforce our policies and comply with our consensus policies. So that's another reason for why we trying to good - to get everything into one model so that we can do our job and also make it easy for everybody to see to monitor the results of what we're doing.

What was the other question? Yes so all of the contracted parties it's not about they would be forced to use the model. The current policies are the policies of ICANN and everybody should comply with the policies of ICANN, ICANN as a whole. So if you look at it from that perspective what we're looking at doing is to say in certain areas where there is this conflict with local law we will not enforce the compliance of the contractual obligations that are in conflict with the local law. If that's allowing registries and registrars to if they follow the model that's prescribed that we will not enforce the current obligations.

If they do not follow the current model and they follow the contract as it is we're fine with that. If they stray from both then – and we get a complaint about that then we have to enforce the contract. So let's say it's fine line

between saying we're going to allow, you know, everybody to do whatever they want or now comes the really important part. This model, this interim model that we're going to pick short of it being a consensus policy is a legal call on what we think is compliant with local law.

And there will be some organizations that feel that this is not going far enough to be compliant with local law. Now they will need to have a mechanism to comply with ICANN. And the mechanism is what Steve was talking about earlier which is that trigger that says, "Look I got this issue here. I need to be able to deviate a little bit from your model because I don't think I'm being compliant. And if it's justified we need to be able to be flexible to do that."

So it's important for us to actually look at this trigger mechanism and don't make them prohibitive which means in my view you should not lose your business through a court proceeding in order for you to have something to come to ICANN and say, "Okay I lost my business now. How – this – can I be as compliant with local law?" I mean just we shouldn't make the triggers so high that it's not justifiable, it's not helpful right?

So I think we need to - we implore the GNSO council to actually reach out and get consensus on something that's more reasonable that works that allows them to be preemptive instead of, you know, post action get the waiver. So that's critical for those instances where some of these contracted parties feel because there is certain jurisdiction or any, you know, other reasonable justification need to stray from the model that we all – we agree on implementing. So that's very important. The other question is…

Tatiana Tropina: Sorry, can we accept a comment because I saw Stephanie's hand was up. Would you like to – okay can we accept a couple of comments because I saw

that Stephanie's hand was up all the time. So Stephanie would you like to intervene for now or…

Stephanie Perrin: Yes if I could, Stephanie Perrin for the record. I'm just wondering where this puts ICANN if ICANN chooses a model that many in the community do not, particularly the contracted parties do not regard as being GDPR compliant and they can't use the trigger because to my mind there's a lot of work in figuring out a trigger that would work then this puts ICANN in the position of being the data controller so that – I mean not a co-controller at all I would say. They are top down mandating a policy and there is a significant work threshold to get out of that policy as it were. So have you thoughts on that because the discussion this morning was a little lean on the actual controllership of ICANN and what it's responsible for?

Akram Atallah: So I'll preface this by saying I'm not a lawyer therefore I will not speak to whether we are a controller or not controller or a joint controller or a co-controller or, you know, all the different acronyms so but from common sense I would say that we are trying to work with the contracted parties on something not only that the – we feel that it is actually makes ICANN the organization compliant but also we believe that they can be compliant on that as well. And at the same time we're threading the needle to not to stray away from the current, you know, policies that we are interested in implementing. So we have to walk that line.

It's very important to look at the work that's been done so far in order for us to get to where we are getting to. I think that a lot of people have been talking about, you know, we have not – we are only focusing on the display. It's very important to look back and see where the work started. The work started with a collection of use cases. Those use cases led to a rationale on legitimate purpose of Whois. We've communicated with a lot of the governments and

we've sent with the assumption that their collection of the Thick Whois data is – it has a legitimate purpose unless somebody tells us that it doesn't.

And we have actually got letters and replies confirming, maybe not 100% confirming but not denying that this is a legitimate purpose. So the Whois collection of data has a legitimate purpose. We also have done the same thing on the transfer. So we made certain assumptions that allow us to get to these models that we put and then we focused on the display. And all of the work that's been going on so far is to reaffirm these assumptions so that we can focus on the display. And I hope that kind of helps approach why we feel that the display and the tiered access is what we're trying to address now. So thanks.

Vicky Sheckler: Thank you. That is very helpful. We have a few more questions that we've put into the presentation for you. And then I would love to open it up to any other questions, you know, from the room.

Tatiana Tropina: Yes. I think there were a couple of them. Dean you were the first.

Dean Marks: I'd rather...

Tatiana Tropina: Will you wait?

Vicky Sheckler: Okay so if I may let's go through the two or three other questions that we had and then we'd love to hear your questions if that's all right?

Gangadhar Panday: Yes this Gangadhar Panday and for record. I'm just trying to figure out which of these models is strong on transitional provisions. To put my question into context India is in the process of making a GDPR legislation and being a big democratic country it obviously takes some time. So in this is transition

period amounts to one variable for the end users. So which of these models is most strong to take care of this transitional period?

Vicky Sheckler: I'm sorry I didn't understand your question. Did you – can you rephrase it please? Oh you did? Okay you can...

((Crosstalk))

Erika Mann: I think you better do it yourself. But I think the point was you wanted - you - we are pointing to the fact that India is introducing a new law and that you would love to know for the transitional period until this law is going to be implemented which is the best model to use?

Gangadhar Panday: Yes that was my question right.

Erika Mann: Yes. And the law I think is similar if I'm reminded, similar to the GDPR. At least that's kind of the dispute you're having currently in India.

Gangadhar Panday: Similar to but it takes care of some (native) elements.

Tatiana Tropina: Is there any discussion (unintelligible) we turn on the microphones so just proceed with further questions?

Vicky Sheckler: Okay thank you. So just to summarize some of the other questions it's if there is a preferred approach at this stage I think we're hearing not quite. But, you know, if there is if you're heading in a direction we'd love to know about that.

Tatiana Tropina: I think they asked us to repeat the answer on mic so that we would hear it because it wasn't really clear. Could you answer the question please?

Erika Mann: So look I can't give a, you know, final complete answer. That's not my role but I think what you – yes I think you would be safe in India if the model which is chosen here complies with the European GDPR. India will be fine. It will cover what you intend to do as far as I have followed the law in India. So I think you will be fine. So whatever is selected here. I would assume will be fine for whatever you're planning to do in India.

Gangadhar Panday: The penalties proposed are too high.

Tatiana Tropina: Actually coming back to your question I think this is what exactly we are discussed in here which model potentially would be the most compliant with GDPR and what ICANN will choose. So you can just follow the discussion in India and as Erika suggested to the same model. Vicky back to you.

Vicky Sheckler: Thank you. So it's the additional questions about where are you headed, how are you taking into account the comments you've received to date? What are your plans for just sharing with the community, any advice that you received from the Article 29 working party or DPAs? I think some of these questions may have been answered this morning but if you could repeat the answers that would be great. Thank you.

Akram Atallah: So again I think that Goran was really looking for the community to come together and agree on a model. Short of that you'll have to see which model is the, you know, getting the most support in the community that we feel comfortable with and go from there. I think that in line that there is some concern that what if the model doesn't – that we choose does not seem to be appropriate enough or I think that if that's the case we will have to adjust. I mean we – again this is difficult. It's like saying, you know, your – there is a law that says you cannot play music on the street very loud.

So how loud is loud? You know, so you're saying, you know, some people might feel like very low volume is too loud and some people might feel – so it's a - it's difficult to say this is right and this is wrong. There isn't such a thing in here. It's more of a level of comfort. And that's why I think that it's important for us to have that Whois conflict with local law triggers because some companies will feel more comfortable than others and some companies would like to go beyond what the model will be and so it's not very easy to say where we're going to end up.

But we're trying to again with the principle of staying is true as we can to the current policies do enough so that we're compliant with the GDPR without, you know, overreaching. So that's our guidelines. But also there is uniformity. And very importantly it's also what's implementable and what's not implementable. I mean, you know, there are questions in the display for example that we have been asking or hoping to get some comments from the community on that because it's important for us to know is it easy to differentiate between legal and natural person is it, you know, online? Is it easy to differentiate between European data subject?

I mean, you know, how do you decide that because European that's living in the United States provides you with the United States address? You know, all of these things go into play of how do you make it implementable and so that globally implementable and then address the issues. So we need to get your opinions on these things and hopefully we get some consensus and we would move from there on the particular issues and get a model that works for everybody. So…

Vicky Sheckler: Thank you for that. Do we have a queue?

Tatiana Tropina: Yes we have surprisingly a short queue consisting of one person now is Dean. And then Stephanie. Dean.

Dean Marks: Thank you so much, Dean Marks here. I just wanted to make a comment to - I'm so sorry Akram's note and it was something that Goran had spoken about this morning and also sort of getting back to a point that Christian had made which is I actually think there could roam for not maybe everybody to come to an agreement on a model but for a number of folks to come to a closer consensus on the model. The problem is the time.

You know, when the announcement has sort of said well the model's going to be selected by January 31 and now it's well the model will be selected in 12 days it's really hard to sort of say, "Okay Christian let's get a group of six or seven people. You know, we're not pretending to represent everybody but just see, you know, from these different perspectives if we could come to agreement." For example I think there's a lot of -- and I'm speaking in my personal capacity now -- that there are lots of things in the eco model but are very, very sensible, eco model for example in addressing the concern about UDRP and URS.

For whatever you may think about it at this stage of the game eco model says, "No, that's part of the underlying contract." So when we have a registrant name and there's a UDRP or a URS proceeding the registrant has to reveal that name. That's part and parcel of what was – if I understood it Christian the low risk of factor the DL1 to give over registrant name and contact information for purposes of UDRP or a URS proceeding. You correct me if I'm wrong but that's how I understood it.

Well I think that's a productive step for example. So I wish we really could. It has also seemed to me that there's this balance if you – if guidance was given

by the Article 29 Working Group or DPAs to say look we've looked at the trademark register. We've looked at company registers, we've looked at land owner registers and we do see that there are certain times a set of purposes for which it is appropriate to make a name, an address, perhaps an email address publicly accessible.

If that were the case -- I'm not saying it would be the case -- but I'm saying if it were the case right because privacy interests are not the only interests at stake. Even in a data protection, you know, governmental context then there would be some benefits to the contracted parties because they would have less volume of inquiries right? And so I think there is this balance where the interests – it's not a zero-sum game. That's all I wanted to say.

Tatiana Tropina: Christian would you like to address anything that was said to Akram?

Christian Dawson:I, you know, there are some things that I just wanted to say that – so you don't think that there is time to talk through these things but we – that's what we need to be doing right now is we need to be having the conversations. I think a lot of good work has been done on commonalities. And I think that the things that you point out that we've made a lot of progress on that's valid.

One of the things I want to make sure we keep an eye on is we're spending all of our time talking about display. And I really want to make sure that we end up with a model that is really comprehensive and thorough to address all aspects of risk that are beyond just display. And if we spend – I'm even guilty of it when I came in here saying, "Let's take a look at eco and use that to bounce everything off of right?" But to me it seems to be the most thorough and comprehensive in all aspects other than display where we can certainly, you know, continue to fight on the areas where we don't have commonalities.

And so I said, "Well it's use the most thorough and comprehensive, you know, and poke - try to poke holes in it right?" But the fact of the matter is that we need to end up somewhere that you guys have this responsibility of ending up somewhere. And at some point it's great to gather up the commonalities but then we do need to spend that time talking about deviations or at least somebody does. At the end of the day we again aren't - we're not the ones who get to choose.

Tatiana Tropina: Thank you Christian. Akram any thoughts of this – on this sorry?

Akram Atallah: So the only thought I have on this is that I hope the interim model is very short-lived. I hope that the RDS will come together and do the job that we all are here to do and develop a policy that we can all implement and move on with this because this is what it's supposed to be is an interim model, you know? It's not supposed to be a policy. It's not supposed to be a replacement to the consensus policy. It's supposed to be an interim model to get through the local laws that we are subject to.

And we - believe it or not in the next year or so we might see all the laws that come into play and we might have to adjust the model also. So I saw something today in the chat from Paul I think that was very thought provoking is that what if a law comes in that says you need to display certain things? Well, you know, now where do we stand on that? So I think we need to, you know, really get our minds together and form a policy that is consistent with all of these things that are coming out and so that we can all go on and do our business. Thanks.

Tatiana Tropina: Thank you very much. So next in the queue we have Stephanie than Paul who put his hand up in the Adobe Connect right and then Farzaneh.

Stephanie Perrin: Stephanie Perrin for the record. And in your response to your remark that you hope the RDS will come together and come up with something I hope I win the lottery so that I can continue to participate for the ten years it's going to take the RDS to get there but don't call me cynical. I'm – I wanted to ask about the concentration on the view of the GAC and governments and law enforcement. Those of us who have worked in the data protection arena know and I sometimes wonder if everyone here understands just how much time data protection authorities spend arguing with law enforcement over basic rights. I mean this is a constant, constant dialogue.

And I think that too – for ICANN to go out and talk to governments and the GAC because I would submit to you that the GAC members who come here are generally representing the intellectual property units of their trade guys and their telecom departments and their law enforcement. Rarely do we see them bringing their constitutional lawyers and their data protection experts.

So I just have to say that this tension is not well discussed in the models that we see. Those of us who are used to reading the different documents will note that there appears to be some tension in the commission document that you received, the letter to Goran and that the Council of Europe had two separate presentations indicating that they also were unable to reach a common position.

So the RDS PDP doesn't need to feel bad, others can't reach a common position either. But at the end of the day the GDPR will be decided by the data commissioners. So genuflection to the demands of law enforcement may be walking us down an avenue that I think is going to once again get the contracted parties into trouble. Thanks. And of course as the representatives of the end-users A, we're here for rights of the end-users and we have been since the inception of ICANN. And B, we don't believe that the Whois should

continue the way it is. We think it should be dumped and a better model developed so just had to put that on the record.

Tatiana Tropina: Thank you very much. Akram would like to address it? And is it Tim's names - in the names plate? No. I just want to put you into the queue so it's yours. Thanks. So we will accept - no I know. I just I was just wondering you don't want to address it right now. Paul you're next.

Paul McGrady: Paul McGrady for the record. It's a pretty faraway microphone. I'm just going to do that. Here we go. So we talked around – we've talked a lot of about this stuff. And somebody I think wisely said, "Well we don't have time to talk today about what we really need and what's going to happen if we don't get this right." So and then somebody else wisely said, "But we do have time because we're here together."

So I thought I would - this is going to be - may be disruptive or maybe everybody will think it's boring but I thought I'd talk a few minutes about what we need and what's going to happen if it doesn't – we don't get this right. From an IP lawyer perspective right now we have Whois it's, you know, publicly accessible. But most importantly we have data aggregators like domain tools who can go in and search and help us draw patterns so that we can prove some of the elements of the UDRP in bad faith elements for example a pattern of abusive registration. It also helps us make our UDRP complaints more efficient because we can figure out all the domain names that the bad guy has that contains the client marks. Instead of filing one UDRP we can - instead of filing 15 UDRPs we can file one. And so that's an important thing that we have now. So when I don't know if I'm making that buzzing noise or…

Tatiana Tropina: Yes your phone is…

Paul McGrady: My phone is buzzing.

Tatiana Tropina: …accepting the calls.

Paul McGrady: There we go. Bye-bye. I just probably disappointed my 16 - or my 18-year-old daughter who wants to tell me something urgent but she'll have to wait.

Man: (Unintelligible).

Paul McGrady: You'll let her know. So that - all that to say this, if we end up with non-searchable tiered access to Whois that's not going to cut it. At the end of the day if we can search across all the Whois database to draw the patterns that we need to make the UDRP effective that's not going to cut it.

                  If we end up with tiered access model with an accreditation process - and by the way I'm super happy because I made Stephanie raise her hand so I know I'm on track. If we end up with tiered access with an accreditation process that takes years to develop, not weeks to develop that's not going to cut it right? If this top down direction from staff is followed-up with a PDP for how to get accredited to gain access to Whois that's going to take four years that's not going to cut it. If this is a staff, you know, this is a staffed down model and we can bust it up and make it part of a PDP and part of it staff down.

                  So those are the – those are essentially the things that we need that we need to see come out of these models. I think it's helpful and I'll get accused of threatening and all of this stuff because I – whenever I talk about reality I always get accused of threatening but I'm not threatening anybody. I'm just talking about what's next. If this doesn't work out what's next is we will use a CPA complaint instead of the UDRP. The ACPA will allow us to issue

subpoenas. We'll get the information. It'll take us a little longer but we're going to get to the information.

Bad news about the ACPA though is although it has some protections for ICANN and some protections for contracted parties those protections generally deal with damages. They don't deal with proactive injunctions. And so if we're going to have to jump through the hoop of filing ACPA complaint instead of being able to use the UDRP complaint we're going to be seeking proactive injunctions limiting new registrations of certain domain names containing our clients marks to certain people and that's going to be an extra cost to ICANN and contracted parties because they're going to have to start tracking for the first time who the bad guys are. And that's going to be a pretty big deal.

In addition to responding to the subpoenas and getting us the information and responding to the lawsuits as a party that's going to cost extra legal fees. The contracted parties and ICANN are going to have to beef up their legal teams in order to do all that extra work. So that's extra money for everybody in the entire system making the domain name business which is not terribly high-margin to begin with even lower margin. And then lastly something I hinted at this on the call this morning there is the possibility of competing legislation that requires disclosure for any domain name that resolves in a particular jurisdiction. And so long as that disclosure is on the front page of the Web site and not in Whois that falls under content. And everybody around this table has assured us over the years the ICANN has nothing to do with content. So that issue won't even be a ICANN issue. That'll just be what it is.

So I say these things not to be belligerent or viewed as somehow negative but we all have to get to a place where we can all live in the New World. So thank you. I hope that's helpful.

Tatiana Tropina: Thank you Paul. The next in the queue is Farzaneh and then Tim.

Farzaneh Badii: Thank you Tatiana. It's Farzaneh Badii speaking. Akram in response to what if like we will have a law that wants an open Whois I don't think the world's respect for privacy will actually go to the level of Whois protection of privacy now so low. And we have not really been mentioning what sort of risks the open Whois has had for registrants and noncommercial registrants and people that live in undemocratic countries that their law enforcement can prosecute them for reasons that we don't think in democratic countries are good reasons or legitimate reasons.

And it is – now I don't want to open this can of worms but yes of course the trademark infringement is bad for economy but also trademark overreach is not a great thing either. And so I just to bring a balance to what Paul was saying more limited data might make it a little bit harder for trademark infringement claims and resolution but we've got to see what we also get. We get more privacy for registrants. So that's one point I wanted to make.

I wanted to make the point that a registrant's right here is not only trademark. It's not only copyright. It's not only about like security. It's about privacy and protecting people.

And also I think the purpose of Whois should be in line with ICANN mission. And this is what we are not considering here. And can I just say there is this one comment that Thomas Rickert made today during the Webinar. And he said that the model the ICANN proposed just assume all data that is currently collected to be collected henceforth. Please share the legal rationale for these assumptions because apparently all these in some people's opinion all these three models are illegal and not compliant with the GDPR.

Tatiana Tropina: Thank you very much. I know that Paul wanted to make a very short comment. Yes with my microphone to ensure that it's going to be short.

Paul McGrady: So just to be clear I'm not talking about alternative legislation that has put forth an alternative Whois model. It won't be Whois. It'll just be a publication requirement. It'll be content so therefore outside I'm told by many people although I don't know how much I agree but outside the scope of ICANN because it's content. So they're not talking about an alternative Whois model.

And terms of trademark overreach I won't take that opportunity to respond to it but I will say that I'm not saying that we need new tools. We have the ACPA. We have all the tools we need. We have just not had a need to use it much because the UDRP has been such a wonderful steam pressure valve for this entire system but if the UDRP becomes useless the steam pressure builds up we'll use the other tool.

Tatiana Tropina: Thank you very much. Before I go to Tim if you want to put yourself into the queue please do it now otherwise I will close the queue with Stephanie. We have only six minutes left. Tim the floor is yours.

Tim Chen: Thank you, Tim Chen for the record. I just wanted to again save it to Farzaneh's points it certainly I don't envy the situation that the ICANN Executive Team and team is in. It's – there are competing equities here and I think their job is to provide a balance of those equities. I will say that I absolutely agree with you that the – this decision needs to be in line with ICANN's mission. And one of the things that I really appreciate about this morning and session both the Webinar and this session with ICANN executive staff is it's clear to me that ICANN is trying to be faithful to its mission which is specific around protecting the security and stability of the DNS.

ICANN does not exist to comply with GDPR. That is not a purpose of ICANN. ICANN's purpose is clearly laid out its mission as you pointed out. I also believe that the process is good, try to keep things close to where they are but provide a solution for edge cases where there is noncompliance of local law, absolutely agree that has to happen. There's a process in place that seems fairly straightforward to me and I applaud the ICANN team for following through with that.

The question that I have or maybe it's just a statement because I don't want to belabor and let other people talk in the last four or five minutes is this. One of the things that I hope the ICANN as an organization and ICANN executive staff keeps in mind is this concept of enforcement. I think at the end of the day much like GDPR it's just really a law in GDPRs case or whatever the appropriate term is a regulation or contract in ICANN case. What really matters ultimately is how the organization at the center of that chooses to enforce. And in the case of ICANN it is my hope that there is also going to be a process to enforce the compliance to the model once it's written. And I'll just by way of example ad experience that we have had is that we've seen one of the - the largest registrar in the world throttle their access to Port 43 on a consistent basis over the summer and that continues today.

More recently unilaterally decide to redact information in their Whois records to Port 43 which in reading the RAA is a direct conflict with the RAA and been waiting to see if there is any reaction from compliance for that because it's certainly a big signaling effect to the market to let that kind of thing happen. And so rather than get into that and asking you to address that which you're probably not prepared to do I will just say that it's my hope that kind of after all of this handwringing and working out happens and there's a clear model and a clear process that everyone at the table can work on providing –

enforcing compliance because it's that uniformity of however we treat the data that will I think ultimately support the use cases that Paul was talking to and certainly our constituency in the cyber security space so we can apply some of that and trust that we're doing it the right way as well. So thank you.

Tatiana Tropina: Thank you Tim. Akram would you like to address it or accept - okay.

Akram Atallah: Yes sure. Thank you for your remark Tim. This is Akram Atallah. I just want to say that when we're implementing policies in general the GD team takes very - a very detailed approach on implementation to make sure the compliance is included in the - or the ability to make sure that they - that the contracted parties are compliant and they can actually measure that and work with that. So when we implement things the compliance is a big part of the implementation path because of course if we implement something that then we cannot make sure that the registries and registrars are compliant with then it defeats the purpose of the implementation. So that's always taken into consideration when we're doing a implementation and it's a - it's on our foremost thinking during that period. Thanks.

Tatiana Tropina: Thank you. Tim is it an old hand? So thank you. Then I'll pass it to Stephanie and then Christian you're the next and then I'm closing the queue. Stephanie please.

Stephanie Perrin: Thanks very much, Stephanie Perrin for the record. I raised my hand of course to respond to Paul. One of the frustrations I have of the way the EWG report was handled and released is we didn't get the benefit of the very rich discussions we had of what could be done in a tiered model. And one of those things is what various other sectors in the world have been doing for a great long time and that is anonymizing the data and doing their analytics on anonymized data.

I think in particular of the medical data field where IMS help for instance has had to - has gone to various courts around the world and has figured out how to do pretty good data analytics on very important health data without having the identity of the individuals on the file. So I really think that it has not been a great service to ICANN that they have gotten away with ignoring the data protection commissioners who've been telling him they have been in breach of the law since 2000. That's when the first opinion came from the Berlin Group and then the 2003 opinion that came from the Article 29 working group and I won't go on and on and on. But we need to focus on how to do a tiered axis system that will solve your problem Paul. And I don't think these are insuperable problems. I have great faith in RDAP for solving some of these. I don't think we need to get to the court procedures you're talking about.

I found it particularly offensive that law enforcement is complaining because they won't automatically get access if they can't figure out how to accredit themselves. Well that's a whole other issue but that's where we ran into that on the EWG. And quite frankly if we've been working on that for the past five years we wouldn't be in the mess we're in now. We should get going on accreditation models as soon as possible. Self-accreditation is not going to work. There are many legitimate cybercrime fighters out there that will have no problem getting accredited. They might even get accredited to do un-anonymized data processing.

But to just say that every Tom, Dick and Harriet who puts their hand up and says, "I'm an anti-spam fighter can get access is offensive." Thank you. As you can see you got me excited.

Tatiana Tropina: Thank you very much. And Christian you're the last if you can make your intervention very short and concise.

Christian Dawson: Well I can make my intervention very short because there are aspects to what Stephanie just said that I'm basically attempting to build on. I put my original attempted framing in the terms of business risk. And I think that you categorized and basically my interpretation of what you said was, "Well there's business risk on the other side too." And I definitely understand that.

I also said at the last session that I believe that we - the tiered system is an inevitability. And the fact is that the models that are presented are – they're going to get you inside the tent with some pretty clear paths forward. There are some segments of the community that have a harder path. And I believe that since we've got that inevitability the responsible thing for this community to do is to figure out how to do exactly that, figure out the way that the tiered system is going to work for as many people as possible that have a legitimate use for that data.

Tatiana Tropina: Thank you very much and Vicky over to you for the wrap up. Thank you.

Vicky Sheckler: Thank you all for engaging in this discussion. Thank you Akram and Cyrus for sharing your views with us. We really appreciate it. Bye.

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