
AUTOMATED VOICE: This meeting is now being recorded.

BRENDA BREWER: Hello everyone this is Brenda speaking for the record and welcome to the RDS WHOIS 2 subgroup number 2, Anything New call, on March 29th 2018 at 16:00 UTC. In attendance today we have Alan, Stephanie, and Susan. And from ICANN Org we have Alice, Jean-Baptiste, Lisa, and Brenda. The call is being recorded, so please state your name for the transcript. I will turn it over to you Stephanie.

STEPHANIE PERRIN: Great, thanks very much. Apologies for not getting out a summary of the documents. I really appreciate the one that Susan just sent, because, frankly I got a little overwhelmed when I looked at them all because so many of them really aren't going anywhere in the light of the GDPR discussions. What I would propose to do is go through that document, if nobody objects?

ALAN GREENBERG: I certainly don't object. I'm happy to either have you do it or Susan, who also did it, whichever.

STEPHANIE PERRIN: Well it makes sense to have Susan do it if she doesn't mind being put on the spot?

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SUSAN KAWAGUCHI: Sure, this is Susan. I read the most pertinent documents, I did not read the URS policy, [inaudible], or the context of law. I did review four or five documents, I guess, out of this list, and just put my brief comments down. If you look at any of these documents with GDPR in mind, it is just rife with issues, we're going to have all kinds of transfer issues... I mean the whole transfer policy doesn't work and the new one they're proposing doesn't work. Or, it might work but it doesn't do a lot of hijackings, but that's GDPR. I tried to keep my mindset, you know there were all kinds of GDPR issues coming up for me, I tried to ignore that for now and just focus on what issues in these policies that feel with WHOIS, that WHOIS is an intricate part to it, and hasn't been reviewed as they were new, since the last WHOIS Review Team. I only found a few things, in the Inter Register Transfer Policy, didn't see anything that was alarming that we should look at. On the additional WHOIS information policy.

ALAN GREENBERG: Susan, can we get the agreement on each as we go through it, so we don't have to go through them again.

SUSAN KAWAGUCHI: Sure.

ALAN GREENBERG: I support you on IRTP, I don't think there's anything that we need to consider from our current point of view.

SUSAN KAWAGUCHI: There are certainly GDPR issues, but as you point out that is a separate issue. There will be changes to it, I think, necessary. But, they're not WHOIS issues. Although they are register and data issues.

ALAN GREENBERG: Either GDPR implementation will allow the UDRP to work, or it will not allow the UDRP to work and UDRP will have to be reformulated because it makes no sense whatsoever to transfer... to say we're going to transfer but the receiving registrar can't verify who it's coming from, or whether the person owns it. Either the policy will have to change or GDPR will accomodate it, I don't think we need to do anything at this point. Given that we don't know where GDPR is going to end up.

SUSAN KAWAGUCHI: Exactly, I would have a lot of suggestions or input if we were looking at this for GDPR, but exactly, I think our job here is to look backwards and see if there's anything that... if WHOIS was going to stay exactly the same as it is today, then or let's say, before GoDaddy stops providing it, then are there issues within these policies? That was more of my viewpoint.

SUSAN KAWAGUCHI: It does seem to me that it might be useful to flag possible GDPR issues, and go no further. Due to inflation in everybody's minds.

ALAN GREENBERG: Look, if GDPR is implemented as strictly as some people believe it should be, with no flexibility for the whole WHOIS issue, the internet as we know it, is going to change substantially and most of ICANN's policies will have to change.

SUSAN KAWAGUCHI: Sure Alan, I am just trying to do due diligence. If we're looking at the registrar's have already identified some issues that they're grappling with right now, I think we should just say possible GDPR issues and leave it at that. I am not quarreling with you in terms of, yes there's going to be massive changes. But, the actual problem will be the display of registrant data at a critical point in the process and I don't think the last time I checked in they hadn't solved that. That's the registrant, RDS data issue.

ALAN GREENBERG: That's fine, I don't mind flagging it.

STEPHANIE PERRIN: OK, great. I am annotating as we go along, seeing as how Susan is kind enough to walk us through.

ALAN GREENBERG: Back to you Susan.

SUSAN KAWAGUCHI: OK, so all is agreed on the [inaudible], and the additional WHOIS information policy. The only thing that, and I tend to look at everything, is there a compliance issue here, does this actually happen. The only thing that came to mind in the AWIP was, it requires that the EPP codes have the links that will take you to the description of what that code is. I just was wondering, if that might have my compliance subgroup hat on, is this something where there is an issue with this, is this compliance see this, do registrars today at this moment strip out information that is required in the WHOIS. I think that's something we might be able to ask compliance.

ALAN GREENBERG: We could certainly ask compliance, under the compliance form are you auditing, or to what extent are you auditing or monitoring the additional WHOIS information policy. I don't we need to look at it in it's own right as a project in its own.

SUSAN KAWAGUCHI: Right, I agree with that. Does each of you see anything there?

STEPHANIE PERRIN: I'm just noting that we should ask compliance whether they are auditing.

ALAN GREENBERG: We'll leave that to the compliance team.

SUSAN KAWAGUCHI: We should ask the registrars whether they have any issues here.

ALAN GREENBERG: The policy is past the point of the registrars having issues, the policy was adopted.

SUSAN KAWAGUCHI: Sure, but there may be having trouble implementing. That is something that could be asked in the report.

STEPHANIE PERRIN: Yeah, if there's a compliance issue, why is there a compliance issue. Are they just not bothering to implement, or what?

ALAN GREENBERG: I think that is an issue that compliance should address.

STEPHANIE PERRIN: Sure.

SUSAN KAWAGUCHI: Move on to the gTLD URS policy, procedure, and rules. I didn't read it. I am very familiar with the process, I've filed multiple. Since the RPM PDP is discussing the URS, I just don't think... they're looking at it right now

to see if there are any changes that need to be made, so I am not sure that there's anything there for us.

ALAN GREENBERG:

It's Alan. I am one of the authors of the original policy, or original practice as it was deemed not to be policy. The issues related to URS are pretty well identical to UDRP, GDPR will, undoubtedly affect it, but I don't think there's a WHOIS issue directly with the policy that we need to look at. It's another GDPR flag, but that's it.

SUSAN KAWAGUCHI:

Are you okay Stephanie?

STEPHANIE PERRIN:

I'm saying first of all we defer to the RPMs review team, and second, there may be GDPR issues involved. Now presumably when we get back to plannery we're going to get some comments from some of the others, who may feel there are additional issues. I think that's enough.

SUSAN KAWAGUCHI:

In the expired registration recovery policy, my only concern here is, and I didn't understand this previously. I thought it was a requirement of all registrar's have a website, because they go very in depth for what you have to have on your website. So, if there is, I just need to do some research on this. If there is no website, how does the registrar provide WHOIS today?

STEPHANIE PERRIN: I regard this as putting our finger on a major problem because I don't think compliance checks on what registrars and there resellers have available on their websites. I have done a little bit of goofing around and I'm not thrilled by what I see across the score of things, mostly on the consumer protection side. Maybe this is one where we should ask for compliance to tell us what they see, do you think that might be useful? Ask for a written report?

ALAN GREENBERG: This is not the only place where website are referred to in the RAA, and so I don't think there's any...

STEPHANIE PERRIN: Absolutely not, I know, but we can set a lump as together as a general question to compliance, 'can you tell us, what in your audits and your compliance actions have you found, and is there a need for streamlining and having a checklist, or something'. I think there's a huge gap in consumer protection.

ALAN GREENBERG: My recollection is, and I chaired the PDP that did this, is that there is no requirement for a registrar to have a website and there are potentially registrar's who only work through resellers to not have their own website, I believe, I am not 100% sure of that. But there is a requirement for this information to be made available to registrants and I don't believe the mechanism is explicitly specified, but these days

there is no mechanism other than the web, except for a few specialized registrars who may do it through other ways. Markmonitor is an example. So they must have the information available, I don't believe there is a requirement to make it available on the web, and my understanding is that compliance does audit that kind of things, but again it is something we could ask under the compliance team, but I don't think there's anything particular to ERRP. There were other places where the RAA requires information to be made available.

STEPHANIE PERRIN: [inaudible] services for instance, and that is something that doesn't necessarily get displayed on the website either. How and which ones, would be good questions to ask compliance.

ALAN GREENBERG: I think this is another one we can... I don't think we have anything to do on this one, but we can have compliance. It does raise a number of questions that compliance could ask specifically to what extent does ICANN audit or otherwise monitor whether information that must be made available to registrants is in fact on.

SUSAN KAWAGUCHI: Through my consulting business, I have been consulting on at least a couple of registrars and there is a requirement. If you have a website then you... there are strict requirements on how things are worded, and what is on their website for all of this. It is a part of the audit process, that compliance team runs on the registrars. I'll dig into this a little bit

more, as personally I just want to know and then propose some questions for either this subgroup to ask, or for the compliance subgroup to ask.

ALAN GREENBERG: It's Alan. Once we raise this one as something we are working on, we have a whole infrastructure we have to provide on it. I can think it's a question that can be under the compliance umbrella, if that makes our life a lot simpler to actually follow through and report on it.

SUSAN KAWAGUCHI: Yeah, point it to the compliance subgroup as soon as we identify the questions.

ALAN GREENBERG: The question is, to what extent does ICANN monitor, and we can also ask what happens to a registrar that for one reason or another has no website, how do you verify that the information is presented?

STEPHANIE PERRIN: OK, what I've got down as notes is, Alan reports that there is no requirement to have a website, can we ask compliance to discuss whether and how they check for this and other transparency requirements.

ALAN GREENBERG: My recollection from 4 years ago, when this was done that there was no requirement to have a website. I believe that is the case, however. There is a requirement to have it displayed if there is a website.

LISA PHIFER: Stephanie, this is Lisa.

STEPHANIE PERRIN: Squeaky noise in the background, it's my dog.

LISA PHIFER: Stephanie, this is Lisa. I just wanted to ask one follow up question about that, so in the case where compliance comes back and says that with a list of items they do audit for compliance with for these two policies, are you then looking for information on what compliance issues they've encountered as well?

STEPHANIE PERRIN: Yes, that's a good idea. I will add that too, and what issues they have encountered. So are we happy with that one?

ALAN GREENBERG: I am.

STEPHANIE PERRIN: OK. Now that one is along to the thick WHOIS DDP and final report.

SUSAN KAWAGUCHI: I think to review that right now, it is not implemented, everybody has had a chance to comment on that.

STEPHANIE PERRIN: Not moving anytime soon.

ALAN GREENBERG: To be clear, there is all sorts of parts of it that are implemented. The actual part that is associated with the name, is not. There were two other phases that have gone through, or in the process of going through. I don't believe there is anything particularly relevant for us on that aspect, other than things where GDPR may kick in.

STEPHANIE PERRIN: Are we happy with stalls? Trying to disentangle parts that aren't likely to change under GDPR would be a mare's nest.

ALAN GREENBERG: I don't see any merit in us opening it as a separate case.

STEPHANIE PERRIN: That gets us to the next one, the thick policy for dotcom, dot net, and dot job, [inaudible], right?

ALAN GREENBERG: That's the third phase of the previous one. Actually, the previous one I believe has no implications. Sorry, I didn't realize they were separated here as two different things. I don't think there are any... I am not aware of any implications in the thick WHOIS policy. It included things like uniform presentation and a number of other issues like that and I believe perhaps, I don't think there is any real WHOIS issues that we need to look at in the rest of the thick WHOIS policy.

SUSAN KAWAGUCHI: I don't want to do the work checking, so, you know, I would prefer to just call it stall, un-stall.

ALAN GREENBERG: I am happy to put GDPR in both of them.

SUSAN KAWAGUCHI: Right, what about this consistent labeling and display. Is that not part of the previous, or a whole separate one?

SUSAN KAWAGUCHI: It's a separate one and I apologize. Now I've read that and I have some comments that I left it off, I was working on this kind of late last night, and I cannot find my document right now. I will send that to the subgroup with any questions. I just can't remember reading it and somebody said that on the way to San Juan. I didn't realize I had not filled that section in. I will do that in the next day or two and get that

back to the subgroup. If you know anything about it, that would be great.

STEPHANIE PERRIN: I know zilch about it.

ALAN GREENBERG: All I know about is what the policy says is, essentially they want the information as produced on WHOIS, is automatically machine parsable and people conform to specific standards. To the extent that information will still be available, through WHOIS, or whatever mechanism. This requires that they present it consistently. I don't think there's anything in it that is likely to, that we need to comment on.

SUSAN KAWAGUCHI: I'll go back and check, I know that there were some issues. I think, actually, the reseller being labeled. I'm sorry, I just flaked on that one. I will get back to you on email.

ALAN GREENBERG: OK.

SUSAN KAWAGUCHI: What about the translation, transliteration of contact information. I mean, that strikes me as being GDPR dependent.

ALAN GREENBERG: Well certainly what information will be available, which may be translated is relevant. I believe that is all under the rubric of IDN which we're already looking at in the original PDP. This PDP only came about because of the recommendation from the first WHOIS Review Team. I think to the extent that there's anything we need to report on, or question, it's already been covered under the subgroup that's looking at IDN.

SUSAN KAWAGUCHI: OK, that makes our lives easier. Punt to IDN subgroup.

ALAN GREENBERG: We skipped over privacy proxy. But again, the same thing applies there. Susan?

SUSAN KAWAGUCHI: I agree with that completely, sorry about that.

ALAN GREENBERG: Next one is law enforcement. Privacy law.

SUSAN KAWAGUCHI: [inaudible]. I'm sorry, the international registration data, that should be also in the...

ALAN GREENBERG: The other subgroup tends on IDN.

SUSAN KAWAGUCHI: Yeah, so we don't have to worry about that. I just lumped all the WHOIS complex with privacy law, because the new IAG has been created, and it has stood out that GNSI were a great choice.

ALAN GREENBERG: This one is a little bit different actually, because, this one actually says: 'Should a registrar or registry need a waiver from ICANN, because privacy law in their jurisdiction requires them to do something that is different from whatever our standard policy is.' So, this one is going to stand and certainly there are going to be a lot of criticisms of this particular policy, in terms of implementation, but I really don't see how in the light of the huge amount of flex that's going to be going on at this point, we can look at this aspect of it. It doesn't go away if we implement GDPR fully, because there are still going to be jurisdictions where they may have other rules that have to be complied with. But, a certain China and Russia, are examples. I am not too sure how we tackle it in the light of the huge amount of flux around it.

STEPHANIE PERRIN: I think we have to note, because some of the proposals under GDPR suggests that we restrict the new policy to GDPR, and that strikes me, one as any other laws as remarkably stupid. It just merely throws the ball straight into this court and we don't have a working procedure at the moment. Now, I have gone through the AD laws, to see whether or not any of them comply with the conflict with law procedure, but I know Canada can't do it, because the commissioner has no powers to enforce.

That's still in the language, and many of the other laws you have to go to court as well. So, you know, this remains really dumb as a procedure, needs to be rewritten and if we just defix GDPR and then chug on with the other AD laws, we just punting and I think it is irresponsible.

ALAN GREENBERG:

I would tend to say that we certainly could make a statement, but I don't believe it is the form of a recommendation. That it's quite clear that there's dissatisfaction with this and it needs to be reformulated, but until we resolve the general privacy issues and have a mechanism for it, because, the interim policy is GDPR. What has to come out of the PDP is not just GDPR, it is more generalized. The more generalized one, the only way I can see implementing a policy which will allow compliance with local law, is essentially to have it table driven and different registrars and registries can do things differently according to their local law. That may remove the need for this completely. I don't think we can say reformulate this until we have settled the PDP on WHOIS, then there may be a need depending on what the outcome of that is to reformulate this. I think we can observe that, but I don't think we can make stronger recommendation until we know what comes out of the PDP.

STEPHANIE PERRIN:

So, we just make a general statement, I would just add to that, that many countries are busy upgrading their laws, that's exactly like 95 and 98. They're busy in flux, so even if we jolt something now, it wouldn't

work in 3 years, by the time parliaments have passed new laws to comply, you know.

ALAN GREENBERG: I would note, I would call it an observation because I think that simply says, depending upon the PDP outcomes there may or may not be still a need for such an ability for registrar's and registry's to get a waiver from parts of who, whatever the WHOIS policy is, and once we see the outcome ICANN needs to look at whether there is a need or not, and if so, reformulate it.

STEPHANIE PERRIN: OK. I'm saying make an observation that current language, can I say appears not to be working?

ALAN GREENBERG: Oh yeah, well there's dissatisfaction certainly.

STEPHANIE PERRIN: How about, appears to fail to satisfy?

ALAN GREENBERG: Whatever, we can refine the wording when we get to the actual writing of the report.

STEPHANIE PERRIN: We will change depending upon GDPR outcomes.

ALAN GREENBERG: Yeah, but for us to investigate it in depth right now when everything around it is in turmoil, this is a waste of our time I think.

STEPHANIE PERRIN: Absolutely, we're not looking at it. OK, I got that down.

ALAN GREENBERG: I think the same thing applies to the next one.

STEPHANIE PERRIN: Yes. Man, we're just rushing through here. RDS, WHODS, data retention spec.

ALAN GREENBERG: As I said, I think the same thing applies.

STEPHANIE PERRIN: Yeah, how did you come up with, did not find any WHOIS issues to review Susan?

SUSAN KAWAGUCHI: Well, because of GDPR it is all going to change so, if you read it and saw something as of today, but I mean, you know. The only things I focused on were things that I didn't think were going to change after GDPR. To me, the data retention is going to...

ALAN GREENBERG: That is a significant part of the interim and final GDPR solution and privacy, and the RDS in general.

STEPHANIE PERRIN: Attending GDPR solutions. The only thing that I would add is that the data retention at the moment, the data commissioners have said it is excessive. It's not just that it's being kept too long, there are just too many data elements for ESCO purposes are being retained. So that's a big GDPR issue, that's a WHOIS issue I think. I got pending GDPR solutions for that too. Now did we miss anything? Is there anything else on here that wasn't summarized?

ALAN GREENBERG: I am going to work on the assumption that staff is being exhaustive in creating this list.

STEPHANIE PERRIN: There was one document that was off the list, and I know it is not a policy but it is certainly a major amount of work, that was the EWG Report. That is certainly anything new since the last WHOIS Review and it came right out the WHOIS Review.

SUSAN KAWAGUCHI: It's not policy, so for me that list was a list of any new policies since the last WHOIS Review.

ALAN GREENBERG: Yeah, it's for working group input into the PDP.

UNKNOWN SPEAKER: In addition to that, I would just like to note that I believe that falls under the recommendation to strategic priority. The formation of the EWG and the results that I had.

STEPHANIE PERRIN: OK, so not part of what we're looking at now.

ALAN GREENBERG: Where we are, subject to Susan's relooking at the consistent labeling and display policy. We have in several cases booted things into the compliance review to ask some specific questions related to these subjects. We have a whole bunch of them, which are going to be in flux as both an interim and a long term solution to GDPR and other privacy legislation is addressed. We have nothing that we are going to look at in its own right, right now. If we take the independent things that we've just done.

STEPHANIE PERRIN: That sounds really good to me.

ALAN GREENBERG: It does. Based on our success of getting subgroups to do active work, yeah.

STEPHANIE PERRIN: I would put my hand up and volunteer to work on turning this excellent outline into a two-pager with some preliminary questions to the compliance gang, and send it to everybody for comments and Susan can fill in the one, once she finds her notes on that other one. Then we can have a report very shortly. Does that sound like a plan going forward?

ALAN GREENBERG: I believe April 5th is our target.

STEPHANIE PERRIN: Recognizing we only have a temporary reprieve from the GDPR stuff, it's going to be one hell of a mess when we finally come up with something.

ALAN GREENBERG: I am not sure.

STEPHANIE PERRIN: I'm planning to be retired by that point.

ALAN GREENBERG: All we are going to get, at best, in our lifetime is an interim GDPR solution.

SUSAN KAWAGUCHI: I suspect that that is the case.

ALAN GREENBERG: The board is now talking about implementing policy on an interim basis, that is they seem to be edging towards the fact that a compliance model is not sufficient and they actually must invoke policy. That policy has a finite lifetime, but it is not likely to... If that policy is enacted, it is not likely to be enacted before June. Which means it will live until next June, and I surely hope that we have issued a final report before then.

STEPHANIE PERRIN: Yes, but the problem with the policy, which has me somewhat distressed, is that if we have no alternative it becomes a permanent policy.

ALAN GREENBERG: No, it doesn't. The policy board can enact is based on contractual terms, and it is limited at this point to four terms of three months each. Maybe they could on day 366, reenact the policy and they get another year out of it. I'm not sure how that would be viewed, but maybe they can do that. But, as written today, it has a one-year finite life and then disappears, goes poof. It is not our decision whether the board does that or not, they may go for public comment and ask us, but it is certainly not our decision.

STEPHANIE PERRIN: Right, but nevertheless it might be something we want to make recommendations on.

ALAN GREENBERG: If it happens, let's decide then.

STEPHANIE PERRIN: It's bound to happen Alan, is there any other option? I don't think so, nobody's happy with anything that the registrar's have come up with.

ALAN GREENBERG: At this point the compliance model, which is what we're talking about on paper is an option. The board has sent out feelers for whether they should set policy, but at this point it is very informal talk.

STEPHANIE PERRIN: Yeah, right, well the clock is ticking. I mean, we're going to comment on it, obviously, hence my lack of activity on this particular group. Because commenting on that is a big job, but... anyway, we don't need to debate it here. It is a major development though, that the first real policy on WHOIS is being set by the board.

ALAN GREENBERG: At this point there is no policy set.

STEPHANIE PERRIN: It will be a policy. It's not just an interim compliance option, right?

ALAN GREENBERG: No, I can't say right, as I don't know that. At this point all they are talking about is the compliance model, telling compliance and not enforce some aspects of the current policy.

STEPHANIE PERRIN: Well except there isn't a current policy, you know. Anyway, we don't need to debate it. It's tedious and boring, and all the rest of it. So, does that sound like a way forward?

ALAN GREENBERG: Stephanie, you are going to do a summary? A page or a couple of pages.

STEPHANIE PERRIN: A couple of pages max.

ALAN GREENBERG: Target to have it out at the... in time for our deadline or soon after.

STEPHANIE PERRIN: Right, I plan to get it out today, as I plan to have a holiday over Easter weekend. I will leave you guys having to comment on it over Easter weekend and then we get it chugged out by April 5th, if that sounds reasonable?

LISA PHIFER: Stephanie, this is Lisa. I wanted to make you an offer that I have the other subgroups as well, which is that if you wish I can take the generic template for subgroup reports and fill in the first couple of sections with the references to the other key documents and so forth. Leaving you the blank sections in which to insert your findings.

STEPHANIE PERRIN: That sounds like an offer I couldn't refuse Lisa.

LISA PHIFER: I thought as much. So I can get that to you today.

STEPHANIE PERRIN: Wonderful, thank you so much. OK, well all of the fun guys I guess. Susan, have you got anymore comments on this?

SUSAN KAWAGUCHI: No, that was it.

STEPHANIE PERRIN: OK, wonderful. Happy holiday weekend everybody.

ALAN GREENBERG: Thank you very much.

LISA PHIFER:

Thanks everyone.

[END OF TRANSCRIPTION]