
UNKNOWN SPEAKER: This meeting is now being recorded.

BRENDA BREWER: Hello everyone, this is Brenda speaking. Welcome to RDS WHOIS 2 plenary call number 35, on 23 July 2018 at 15:00 UTC. Attending the call today is Chris, Alan, Susan, and Stephanie. From ICANN Org we have Steve, Brenda, Alice, Lisa, and Amy. There are no observers at this time, we do have apologies from Dmitri, Erika, Lili, Vulker, Catherine, and Jean-Baptiste. Today's call is being recorded, I would like to remind you to state your name before speaking for the transcript. Alan, I will turn the call over to you. Thank you.

ALAN GREENBERG: Thank you very much and to note officially, we do not have [inaudible], so we cannot take any decisions in this call. But, given we will be meeting in Brussels later this week let's see if we can get any housekeeping or anything else out of the way and make as best use of this time as we can. I suspect it will be a short call. First are there and statements of interest? Changes statements of interest? Hearing nothing, seeing nothing... then I guess I have a statement, a change to a statement of interest. I have been appointed to the EPDP and for better or for worse, I guess that puts me in an interesting position in terms of overlap of responsibilities. Next statement... subgroup status update and I will turn it over to Lisa.

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LISA PHIFER: Thanks Alan, and Lisa Phifer for the transcript. We briefly talked about this before the call started but at this point we have four updated reports that came in between Friday and yesterday's due date, those four reports I have gone through and done a repeated GAP assessment and shared that with the repertoires of those groups, we're moving in the right direction on those four, in terms of actually completing the reports. On the updated reports, however, we have not yet received, we are still waiting six updated reports that I haven't heard from those repertoires as to whether or not to expect them still, given that the due date, yesterday, has passed. I know that we will not receive an updated report from Dmitri as he is on holiday for law enforcement needs because they are not yet in a position to draft their report and for consumer trust because Erika is in transit. I see that Susan has her hand up.

UNKNOWN SPEAKER: Please hold.

ALAN GREENBERG: Susan, I was just told to please hold by somebody.

SUSAN KAWAGUCHI: Alright, I won't talk.

ALAN GREENBERG: No no, please.

SUSAN KAWAGUCHI: On the compliance report, the GAP analysis, I don't know why I am finding that difficult. There was a few things I just didn't understand in your email, Lisa, so hopefully we will have time somewhere this week for a few questions, but I will work on it again and see if I can't refine some of the... there's some of it I just missed, skipped over, but there was a few points you made that I just didn't understand either, I couldn't find it in the report. Just a little bit more help, again, from you will help.

LISA PHIFER: Sure, and is there anything that you think is generally applicable that you want to ask now?

SUSAN KAWAGUCHI: No, it was specific wording that I couldn't find, like at one point you said you done a duplicate there and I just could not find it. Actually you did remove the duplicate.

LISA PHIFER: Oh, I don't remember what I do as far [inaudible].

SUSAN KAWAGUCHI: OK, well I still need to fill in some of the usability and the impact and all that. [inaudible] the slide over so hopefully have something for Thursday morning.

LISA PHIFER: This is Lisa again. I think the question I would have for the leadership is, how you would like us to proceed with the review report that were to assemble today, shall we just go ahead and include the previous draft reports from all the subgroups, so we at least do have a base document to work from. We will not be in a position to insert new subgroup reports that show up while everyone's flying.

ALAN GREENBERG: It's Alan. I would guess so, I mean, I'm presuming that when you get a better one, you will just replace it on mass. We won't try to edit two documents in parallel, but I would think just to give us an idea of where we are, sure. If nothing else, I am a little bit worried about the size of the document and that will give us an idea of where we are right now, and it will only grow at this point, other than decisions we make on terms of to delete certain sections or compress things. I would think for the cost of doing seven or eight cut and paste, it's probably worth trying to assemble the whole document and see what it looks like.

LISA PHIFER: Alright, we'll go ahead and do that. I too think that's pretty essential for us to have an effective meeting and I just to set expectations that if we do at least break in reports, they won't be pasted into the big document by the time our meeting starts on Thursday.

ALAN GREENBERG:

Sure, we have a timing problem also that... since there's a lot to be done in theory, one could draft things after the first day and then insert them for Friday, but we're also meeting for dinner that night, so that's not likely to happen to any great extent. So, we will have to decide there... we're going to have to decide there just where we go because of our decision to keep the comment open longer, we do have some slack. But, certainly from my personal point of view, given what I said about the EPDP, I would really like to have this closed up as possible by the time we leave Brussels. Any other thoughts on the overall status? Stephanie notes she will try to get it done, but she is swamped as well. I suspect we're all swamped and it's not going to get better, but I think we really want to try to get this out and try to get this off most of our lists, at least for a couple of months while the comment is open.

LISA PHIFER:

This is Lisa again, I would make one observation about the updated report we're missing. Is that those are actually reports that haven't changed since, well before ICANN 62. So, I would consider those groups maybe a little bit stalled, and we may need to do what we can do install them during our face-to-face, whether or not we have a written report in front of us.

ALAN GREENBERG:

Certainly on subgroup 5 safeguards, it's just a matter of I haven't gotten to it, to close the gaps. It's probably not more than an hours, two hours work at most to do it once I get it to the top of my list. I will try before I get there but maybe not. Alright, what is next on our agenda? I don't

think we're... well which items were we going to talk about today? The single WHOIS policy is not... sorry go ahead.

LISA PHIFER:

This is Lisa. It is Carlton and we don't have Carlton with us. Carlton, to bring everyone up to date, Carlton did attempt a subgroup call but none of his subgroup members were able to attend, so he did produce a new... actually two new updated drafts of the single WHOIS policy subgroup report and what's on screen in front of you is how Carlton revised the draft recommendation to sort of reflect the recent events with the temporary spec in EPDP. What Carlton has not addressed at this point is actually turning this into a recommendation as opposed to concluding statement or finding, so we'll need to work on that as our face-to-face, I believe.

ALAN GREENBERG:

Is there a recommendation that's going to come out of that?

LISA PHIFER:

The recommendation that Carlton has put forward is what you see on the screen but it doesn't read like a recommendation.

ALAN GREENBERG:

Ah, OK. I mean, at this point the theory is with some combination of the RDS PDP which I believe has not officially been cancelled and the EPDP, I am presuming that if those come to some culmination we will have a single WHOIS policy, less clear based on just the EPDP. So, I am not sure

we have a recommendation coming out of this... but we will see, is all I can say. I guess we will have to decide that in Brussels. Alright, next one.

LISA PHIFER: That will be compliance, you Susan.

SUSAN KAWAGUCHI: Yeah that's me.

ALAN GREENBERG: Is there anything you want feedback on from us at this point? That's really all we provide.

SUSAN KAWAGUCHI: Yeah, we really need, I think the whole group, we discussed some of the changes on Friday in the subgroup, but I think the whole group meeting is better to really go over these unless there's specific questions or something that anybody has.

ALAN GREENBERG: I haven't read them at this point so I presume that no one else has also either. Alright, next item then.

LISA PHIFER: That would be Lili's plan and annual reports, and Lili is not with us. This is Lisa again to fill in, Lili did send an updated report yesterday, I believe it was yesterday, reflecting some of the discussion from the subgroup

call last week. The draft recommendation itself is shown on the screen, that might be the first time that you all are reading that, because she did essentially replace the previous recommendation with a new one, I guess I would just encourage everybody to read the updated draft and for those of you that were on the subgroup call, decide whether it reflects the sense of the group and addresses the concerns that Chris in particular may have expressed about some of the statements that have subsequently been revised after fact checking.

ALAN GREENBERG:

It was a good call I think, the subgroup call and I pretty well strongly suggested that she be far less prescriptive in terms of exactly what sections the report should have, or the methodology they should use. Simply put the targets in and I think she has done that. So, I hope from Chris's point of view, we are in a stronger position now. Next item.

LISA PHIFER:

It's you Alan, safeguarding registrant data.

ALAN GREENBERG:

Yeah, I think there was no change other than I have gaps to fill in, is that not correct?

LISA PHIFER:

The change, advance to slide 11, the potential change was to address the comment that Stephanie had made from our face-to-face decisions, last face-to-face decision.

ALAN GREENBERG: OK. Let me read it again.

LISA PHIFER: The comments are on screen.

ALAN GREENBERG: Yeah, I'm... yeah, Stephanie, I hope she is still with us. The problem I had with this is it's not clear that Escrow providers are even in a position to notify individuals, although they may well have contact information embedded in the data they are holding, that's not there for them to use as substantive data, so I think all they can do is notify the registrar and the registrar depending on what requirements we make of them or what national or local laws there are, can notify the registrants. I don't think there's any basis for the Escrow provider to use that data, even if it was parsed in a form they could actually use it. I don't know if you have any comment on that? Remember, there is no contract or agreement between the Escrow provider and the individual users.

UNKNOWN SPEAKER: Stephanie has her hand raised.

ALAN GREENBERG: Go ahead please Stephanie.

STEPHANIE PERRIN: Yeah, Stephanie Perrin for the record. The thing is, it'll be up to the parties to the contract with the Escrow provider, so that will be ICANN, right? Basically, I am not sure it is upto the registrars to notify the individual about a contract that they're not really a major party to [inaudible]. So, maybe the responsibility falls to ICANN, as ICANN has access to the data. You know?

ALAN GREENBERG: It's not clear ICANN has access to the data in that way. My understanding is... and it's too bad that [inaudible] isn't here, is that ICANN has agreements with the Escrow providers to be official Escrow providers, but there are contracts between each of the registrars or registries that use the Escrow provider, I believe, because the Escrow provider... no one knows which Escrow provider a given registrar or registry is going to use, I believe there are agreements between those.

STEPHANIE PERRIN: ICANN is a privy to every Escrow agreement, they are a party to it, either.

ALAN GREENBERG: I don't believe so. ICANN has an agreement with the Escrow providers, but I believe they are parallel agreements between the registrar or registry and the Escrow provider to which ICANN is not a signatory. Chris may have knowledge, Chris says I am correct.

STEPHANIE PERRIN: You think the responsibility in the event of notifying individuals that would be the registrar or registry?

ALAN GREENBERG: If we, or national law indicates that. Right now, we do not require them to do that, so they may be subject to their own national law, which may require them to do that. But that's not...

STEPHANIE PERRIN: So, ICANN is largely harmonizing to GDPR compliance, which is pretty damn clear about it, so I can't imagine that we would leave this out, it's a major flaw... because yeah. Maybe this is not where we discuss it, maybe we discuss it on the EPDP but it's a required aspect of compliance with GDPR and other data protection law.

ALAN GREENBERG: OK. We do not have to require something that law requires. We may choose to over and above law, and I believe that's one of the recommendations that we're considering already. So, you're suggesting that we have the Escrow provider... I don't believe that is practical for a number of reasons. The question is, whether the registrar must do that or not. I am not sure it is ICANN's responsibility to do that if national law or local law doesn't require it, but that's something we can debate as an issue of whether we want to require the registrar or registry to notify people in case of a breach. But that's different from requiring the escrow provider to do it. Of course, that may be something in the EPDP.

LISA PHIFER: Alan, I see that Stephanie's hand is up and mine is as well.

ALAN GREENBERG: Stephanie, please go ahead and then Lisa.

STEPHANIE PERRIN: Maybe it will save me chasing, I was going to say old hand. Stephanie Perrin for the record. I am perfectly willing to do the work and go and set [inaudible] to see which of the 127 laws require data breach notification, but it's kind of a [inaudible] of data protection law and any laws that are being updated to comply with GDPR which includes all of them, will include it, so to not include it, particularly when you're talking about registrants rights, they have a right to know if there's been a breach of the Escrow provider, you know, particularly because of the nature of the data that's in Escrow there. Now, who does it? I think that's open for question, personally I think it would fall on the data controller that forces them to Escrow, which would be ICANN, but that's something for the EPDP to resolve, but to not recommend it, how do you pretend that we're safeguarding registrant data if you don't look after such a basic item, I think it's just a bit silly. However.

ALAN GREENBERG: Lisa, please go ahead.

LISA PHIFER: Thanks Alan, I'm just going to step back one slide for a moment and say that this is actually the recommendation that is on the table, the

agreement from the face-to-face meeting was really agreeing that something wasn't going to be factored into this recommendation, so I am wondering if there are any changes actually needed to the recommendation in front of us to address Stephanie's concern?

ALAN GREENBERG:

Well part of Stephanie's concern is the square bracket. Is, do we want to require that registrars and registries notify the... and Escrow providers is a typo there, notify the registrants in event of data breach. I don't believe it's possible for the Escrow providers to do it, but we could require registrars and registries if they are notified by the Escrow provider to do so. The question is, do we want to do that? And that's a question on the table that I think we're going to have to decide. Lisa, do you have anything further or I'll go to my hand?

LISA PHIFER:

Go to your hand. It was really just trying to focus on the text we need to advance.

ALAN GREENBERG:

The question in my mind is not whether 150 jurisdictions require it, if indeed every jurisdiction requires it then we don't have to put a rule in, in any case. But, let us presume that there's some jurisdiction that does not have a data protection law, or does not require notification in terms of a breach. The question is, is it our responsibility to tell them they have to, and I think that's the real question. The fact that it is in 150 laws, the EPDP is charged, as I understand it, is charged with making

sure we don't require making contracted parties to do something which will cause them to violate the law, so we could not tell them they must not notify registrants if there is a breach, because that would violate the law within 150 jurisdictions and certainly within the jurisdiction of the GDPR, but we're not required to reinforce it unless we choose to do that ourselves. There's many things in GDPR that we're not going to put in any WHOIS policy, we simply have to make sure the WHOIS policy is compliant with GDPR as I understand it. Chris?

CHRIS DISSPAIN:

Thanks Alan. I am more than happy to accept that I may get this completely wrong, but it seems to me that first of all, I acknowledge your point about if the law is the law in the jurisdictions, and therefore the registrar has to, or registry for that matter has to comply with the law that governs them, so that's fine. If it's not the law in a particular jurisdiction, then there's two ways that it can be dealt with. One is, if it's within the picket fence, hence contractual negotiation and you can't recommend... this review team can make recommendation to the board should negotiate, by all means, it needs to be couched in those terms, and secondly is it's outside of that and it's policy, in which case the GNSO needs to create that policy. So, neither of those two things are actually within ICANN's control, it seems to me.

ALAN GREENBERG:

You're using picket fence in a different way than I've ever heard it. My understanding of the term picket fence [inaudible] certainly for the eight years that I sat on the GNSO and maybe the definition has

changed and people are using it differently these days for some reason. The picket fence was always, what is it that is subject to consensus policy, that is... the GNSO... anything is also subject to negotiation. Something which is within the picket fence, if everyone agrees to do it, by negotiation, that's fine, that's a valid way of doing it. But if they do not agree, they could be forced by consensus policy.

CHRIS DISSPAIN:

Correct, my apologies. I misspoke, I said the wrong way round. I meant to say what you just said. The point remains the same, which is...

ALAN GREENBERG:

To be clear, any recommendations we make that are within the picket fence, and pretty much anything related to WHOIS, is within the picket fence, our recommendation will have to be coached in terms of the board should negotiate or initiate a PDP. Because the board can do both of those, they may not do either of them successfully and the whole thing may fall flat on its face in that case, that's the only power the board has, is either to attempt to negotiate or have ICANN Org to negotiate, or to initiate a PDP. Other than that we cannot require anything to be put in a contract unilaterally. Alright, clearly there's some discussion to be had in Brussels and we're going to have to be disciplined to do these kind of things effectively or we're going to badly run out of time. Lisa please go ahead.

LISA PHIFER: Thanks Alan. It strikes me that, our sticking point is on the mechanism that contracts are policy and who does the notification but is there agreement at least amongst those of you on this call, I realise I count the agreement as the review team, is there agreement amongst those of you on the call that if there is a data breach of the Escrow provider and its required to do a notification by law that should be required, a requirement?

ALAN GREENBERG: If its required by law, we don't need to make it a requirement. The only question in my mind is, do we choose to make it a requirement even if it is not a requirement of the law. I mean we don't know whether it's a requirement of the law in any particular jurisdiction. Alright, let's go ahead to the next item, this clearly is an issue. Sorry Lisa, you had your hand up. Is that a new hand now, or was that your...

LISA PHIFER: No, it's an old hand, I still it would be helpful. I know Alan, you have this draft report on your to-do list. If the item that's in brackets could be reworded to reflect what you think it should say, at least we'll have something to then discuss and see if we can agree on in the face-to-face.

ALAN GREENBERG: I will try to do that. Let me make sure I put it on to my growing to-do list at this point. OK. Next item. I don't think we need to do anymore

updates on this, we've already discussed it, I think unless Lisa wants to point out something we haven't brought to our attention yet.

LISA PHIFER: No, this is just a roll up on one page of where things stand. Alice?

ALICE JANSEN: Yes, thank you. Before we move to [inaudible] schedule, I see that Carlton has just joined the call in case you want to go back to single WHOIS policy.

ALAN GREENBERG: Let's do that please.

UNKNOWN SPEAKER: Hello Carlton. Carlton are you able to hear us?

ALAN GREENBERG: More importantly, is he able to speak?

UNKNOWN SPEAKER: He is typing. Carlton are you able to update us on the single WHOIS policy related progress you've made?

ALAN GREENBERG: I am going to assume Carlton cannot speak unless we hear him speak.

CARLTON SAMUELS: Are you hearing me?

ALAN GREENBERG: Now we are hearing you. It took a threat.

CARLTON SAMUELS: It took a while. So, you will see in the last draft of the report that was circulated. What was left in the report to do was to add some content to recognize the temporary specification that was board initiated policy, as well as to recognize the process by which that board initiated policy discussion becomes a consensus policy, by way of the expedited PDP. I am making the case that in terms of the WHOIS 1 report, the fact is that the board has acted to initiate a single WHOIS policy. The fact that the temporary specification, if you look at it in its entirety represents a framework for the single WHOIS policy and the EPDP is just another step in the direction of implementing the single WHOIS policy. So, having said all of that, I believe that it is reasonable to say on the balance of the evidence that we have that the recommendation from the first WHOIS review team for the single WHOIS policy is implemented.

ALAN GREENBERG: I think you're finished now. So, there is no further recommendation, or there is still something you're going to recommend?

CARLTON SAMUELS: The only thing that we were going to recommend was that in terms of the single document that they might improve the website, especially the navigation on the website. That is the only real recommendation were going to make, but in terms of the...

ALAN GREENBERG: That is presuming the EPDP and the RDS PDP do not, somehow out of the fire will come a phoenix of a single policy.

CARLTON SAMUELS: A single policy, right.

ALAN GREENBERG: They don't have to clean it up if we indeed we end up with a single policy.

CARLTON SAMUELS: They don't have to clean it up if we end up with a single policy.

ALAN GREENBERG: So it's going to have to be worded, coached, in those terms.

CARLTON SAMUELS: I will do that.

ALAN GREENBERG: OK, very good. Let's go on to the next items please.

LISA PHIFER: This is Lisa, if I might? I had my hand raised.

ALAN GREENBERG: Please go ahead Lisa, I hadn't noticed.

LISA PHIFER: Carlton, the text that appears on slide 6 and is on screen now, you have in the subgroup draft presented it as a recommendation but it does not seem to be a recommendation, it seems to be your conclusion. If you do have a specific recommendation for an additional action to be taken, that's what I think needs to be called out as a recommendation and then the text here needs to simply be stated as the conclusion prefacing any recommendation you give. Along the same lines, I'm wondering your section on problems and issues, it doesn't actually identify any problems or issues and if that was the intent it would be helpful to say you see no further problems or issues, and if that's not the intent if you could enumerate what potential issues or risks you see. I think that would help flesh out that section as well.

CARLTON SAMUELS: OK, Lisa. I will take it on advisement and look at it and see.

ALICE JANSEN: This is Alice, we're moving to the plenary call scheduled agenda item. We had a very simple question for you, do you want to keep the call that we have on July 30th, that's next Monday after your face-to-face meeting, or would you like to cancel it?

ALAN GREENBERG: I cannot see any purpose in that, we will not get home most of us until Saturday, late Saturday and that's... not going to be any real substantive work done, so let's give staff and Lisa some time to pull together whatever is coming out from that meeting and let's skip that meeting.

ALICE JANSEN: Perfect, OK. We will issue the cancellation notice. Then another question we had was, the frequency of plenary calls during the summer, I think we should probably wait to have this discussion in Brussels with the full group and know a good sense of the work plan and the work that's left.

ALAN GREENBERG: I think we're going to have to decide at that point how many calls we're likely to need to finalize the report, clearly it's not going to be finalized ready to be sent out in Brussels. I suspect, unfortunately, we're going to have at least one or two plenary calls necessary to pull the report together in Brussels and perhaps even then a few weeks later to decide when to cancel the calls until the comments to come in. We will probably need a call at some point to prepare a presentation for Barcelona, but other than that, I don't see much need for calls during

the public comment period. I may be wrong in that, of course. Unless there's any comments, next slide.

ALICE JANSEN:

This is Alice. [inaudible] the Brussels meeting agenda circulated to the list, and the [inaudible] will be posted on the Wiki page as usual. Staff is also working on composing some slides to help drive the session, so we'll send those as soon as they're available.

ALAN GREENBERG:

That's fine. We have a leadership meeting at 8 o'clock in the morning on Thursday and if there are any last minute changes we'll look at them at that point, but I don't think there's any merit to try and make any adjustments at this point. Hopefully, none will be needed at all. Any further comments? Then if there are any decision reached, there weren't because we didn't have [inaudible] and are there any action items out of this, other than work that people have to do to adjust their specific sections?

UNKNOWN SPEAKER:

We do have a set of action items I'm happy to read them.

ALAN GREENBERG:

Please go ahead.

UNKNOWN SPEAKER: OK. Subgroup 5, [inaudible] to update the draft recommendation text that appears in brackets regarding [inaudible] to serve as the basis for discussion at the face-to-face meeting. Recommendation 2, single WHOIS policy. Carlton to update this record [inaudible] current recommendation text into conclusion followed by any further recommended action if any. [inaudible] number 36, 30th July to be cancelled and the frequency of calls during the summer to be discussed in Brussels, and staff to [inaudible] no later than July 24th. That's all we have.

ALAN GREENBERG: Any further comments before we adjourn? Thank you all for coming and we'll see you in Brussels in a few days. Bye-bye.

[END OF TRANSCRIPTION]