RECORDED VOICE: This meeting is now being recorded.

BRENDA BREWER: Thank you, Carlton, and welcome, everyone, to the Single WHOIS Policy Meeting #1 on March 16, 2018 at 13:30 UTC. And in attendance today is Alan and Carlton, and from ICANN org is Jean-Baptiste, Alice, Lisa, Steve, and Brenda. We have a tentative acceptance of the meeting from Thomas. The call is being recorded. Please state your name for the transcript, and I'll turn the meeting over to Carlton. Thanks.

CARLTON SAMUELS: Thank you, Brenda. Good morning, everybody, who are joining the call. We are going to be discussing the single WHOIS policy, that is, how we respond to the recommendations and to see if we can find some areas to flesh out. I developed a talking point document that is in the display area of the connect room, and it's just really to background what has happened. The question is about policy, so you want to ensure that we understand what a policy is, what the policy-making process is, and then finally to look and see if there are any gaps in that process.

Secondly, in dealing with the recommendation from the previous WHOIS, we would look at what was recommended and what actually emerged from the recommendations. The recommendations are there in the report, the final report, for the WHOIS 1 review team, and there was an action plan that was developed to respond to the recommendations and, from that action plan, there was an

implementation plan, and there was a ruling implementation reporting system that gave us some information about what transpired in the implementation.

All of these documents are available to the team, to the group. In my mind, we agree that all of us would look at those documents and, out of those documents, after we're done, we would then address the questions. The first part of the document that is in the window is merely to reflect on all of that, where we're coming from, what is there to look at and so on.

And, Alan, I know you have a view on this. I would first ask if you have any objections or any detail you would want to add to this, or other issues.

ALAN GREENBERG: Not really. You've heard my view before, and I'll perhaps summarize it here, and that drives to some extent how we go about the task. I had originally thought, or my understanding was what they were asking for was a presentation of the policy in a single place. Susan corrected me, saying no, at least some people on the review team were actually looking for a single policy.

Now, if indeed that was what was they were asking for, I think that was completely unrealistic. We know that policy can only be formulated by the GNSO, and if the problem was as is shown on the screen, it was poorly defined, then only the GNSO can refine the policy, and for the board to have charged the GNSO to refine the current policy, given that

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we knew we really need new policy, I think would have been a glorious waste of time.

So I find it quite reasonable that the board did not attempt to redefine the current policy to satisfy that recommendation. I think they should have said that, which they didn't, but I think that's quite reasonable. So then it devolves to the second part of it, of can you present the policy in a single way, and they chose to instead point to all the bits of the policy, and not try to express it in a way that is understandable to someone, and I thought the understandable part was at least part of their requirement.

So I believe that not creating a single policy was an appropriate action, although perhaps not well-documented. The not attempting to do, to rearticulate the policies that existed in a way that was understandable, I believe meant they did not follow through on the recommendation, and given the current state, however, of new policy being formulated by the PDP, I would not recommend any follow-up action at this point, despite the fact that I don't believe they fully implemented the recommendation.

So if indeed we accept that thought process, then I don't think we want to spend an awful lot of time gilding the lily of that analysis. So that may shorten the process of how we proceed on this recommendation and go forward.

CARLTON SAMUELS: Thank you, Alan, because my view as well, as you have pointed out, is it's the GNSO that makes the policy, and the policy is a series of, I use

the term amendments, exemptions, et cetera, et cetera. There's a baseline and then there's all of these little additions, and these [inaudible] pieces exemptions here, there, and so on. That is in the past, and the policies are there. The issue for me was that I don't think that should be revisited.

So I am with you here, we're not going to revisit that. The only question, in my mind, that we need to answer is whether or not the publication on the website of the various pieces of policies and the way it was [inaudible] was sufficient for the documentation of it, to make it available to people.

To me, I don't see -- maybe if we do user interface design and so on, and do an analysis case and modern theories of UI design, maybe the website would come up a little bit lax. But it is what it is, and so the other issue then, for me, is if we're not going to go back in history, to look at all of those pieces of policies and try to find a way to bring them together, what can be simple going forward?

And this is where I think the board in D.C. could initiative, to look at an interim way to address GDPR, may actually be seen as a first step in having a single WHOIS policy. And we have to see what comes out of the PDP, the RDS PDP working group, and how they adapt that in for the work, to see what comes out at the end. But for me, the first indicator that they might actually know the opportunity for a single WHOIS policy is in this initiative that was crafted by the board to respond to GDPR.

ALAN GREENBERG: I guess -- Lisa has her hand up. Maybe we could go to Lisa first.

CARLTON SAMUELS: Yes, Lisa, please.

LISA PHIFER: Thanks, Carlton. Lisa, for the record. It occurs to me, in listening to those of you discuss this, that it might be useful to ask the first review team, whether that's Susan or others from the first review team, what benefits they really wanted to get out of having a single policy, as opposed to several policy documents, and then examine those intended benefits to see whether there are, in fact, gaps by going at this, just by having a consolidated document.

Because I think the general understanding is GNSO sets policy, and so you can't really ask GNSO to go off and create a new, single policy for practical reasons. But focusing on what they were trying to achieve, and whether those things have actually been achieved or if there are gaps, there might be a different way to address those gaps. That might be a way to, you know, bring this around to something that is a recommendation that would be helpful, and not impossible to achieve.

ALAN GREENBERG: It's Alan. We're not obliged to make this all one recommendation. We can simply make a judgment and leave it at that. Carlton, I would disagree with you. I would think we want to avoid, like the plague, calling what the board is doing in response to GDPR a "policy." If we start calling that policy, you're opening a can of worms that you really don't want to open. I think they took action on a single policy by

chartering the PDP, having followed, having been preceded by the expert working group. So I think they took action to say, let us create a policy.

I do not think -- what one of the problems with a nice, simple page that people can understand, regardless of whether it is describing a policy or a conglomeration of miscellaneous bits that add up to the policy, is you always have the problem of what is the definitive source. The definitive source is the policy, and it's never going to be in simple language that's easy for some novice to understand.

And, you know, I think at some level, what was being asked for was unrealistic. And I think, going forward, we want to say there will be a single policy eventually, and it should be described in ways that people can understand, but I don't think we need to do a lot more than that. I do think the group overstepped their bounds in saying the board should define a new policy, a single policy. I think that was unrealistic.

But that was in a day when we did not define the terms "policy" and "implementation" the way we do today. I think we have an easy way to go forward on this, and I don't think we need to make it a lot more complicated, is what I'm saying. We have enough other really complicated work to do.

CARLTON SAMUELS: Alan, can I tell you, I don't think we are disagreeing at all. I would absolutely not want to have what the board is doing as a policy. What I said was that, if what is done is followed through, through the policy development process and all that, this is the initiation of it.

ALAN GREENBERG: Yeah, they initiated a long time ago, and this PDP is going to proceed, regardless of whether there was a threat of GDPR fines.

CARLTON SAMUELS: Right, but the guidance from the EWG, and those are board actions that [CROSSTALK].

ALAN GREENBERG: That's right. I just wouldn't mess it up by adding GDPR into the equation, as one of the steps. It's one of the ugly things we have to do right now, but that's it.

CARLTON SAMUELS: Yeah, and I take that on, yes. You probably would not want to muddy the waters with this [inaudible]. But I want to recognize that the board has done some things that has kind of been driving a single policy development process that is going through the GNSO now. That's where we want to leave it. I agree with you that we don't need to get into the weeds beyond that. [CROSSTALK]

ALAN GREENBERG: Go ahead.

CARLTON SAMUELS: We are totally together on how we respond to this. I really haven't looked at it. I didn't see that we could go much beyond that. Lisa's suggestion that maybe we look at the review team and ask them what the intended objective was for that recommendation, and if they see gaps, even in the recommendation itself, not just in terms of the implementation, but gaps in the recommendation, what may be some [inaudible] advice, is a good one, because it will help us bring closure to what you and I agree would have been an impossible task anyways. [AUDIO BREAK]

Lisa has her hand up there?

ALAN GREENBERG: No, no hands.

CARLTON SAMUELS: Okay.

ALAN GREENBERG: Everyone is silent. [CROSSTALK]

CARLTON SAMUELS: Go ahead, Lisa, I'm sorry.

LISA PHIFER: I was just saying Thomas has joined us as well.

CARLTON SAMUELS: Oh. Hi, Thomas, welcome.

THOMAS WALDEN: Good morning.

CARLTON SAMUELS: Thomas, good morning. We were having a discussion about how we go forward with this question, and I am agreeing with Alan, and we agree that it would not be sensible to go back and look at whether or not -- knowing what we know about how policy is developed and implemented, in ICANN. It would not be useful to go back to look at whether or not a single WHOIS policy could have emerged in the situation.

So we thought the real question to answer here is whether or not the presentation of the policy, which is one aspect of what was recommended, on a website, whether or not that was sufficient. We just found -- in my view, I think Alan supports it, because the bits and pieces and all of those things together combined becomes the WHOIS policy, you have to put up all of the pieces, and it would just be impossible to find one single document to merge all of them.

So to us, the publication on the website, probably there's places you could have some user interfaces on issues that might be brought into play here. But by and large, we think based on how things evolve, that it's pretty much the best that could happen at the time. So the question is, going forward, would there be an opportunity to a single WHOIS policy?

We think that the RDS working group that's going on now, that is following up on work done by the EWG, is an opportunity to do that. I don't know, what are your thoughts? Have you seen the two questions that I have down there, a couple of questions for the group? Maybe you could focus on that and let us know what you feel?

THOMAS WALDEN: Actually, now I'm driving in, so I'm not looking -- I'm listening in, not looking, following along, so I have to look at that and I'll probably send you guys something back a little later this morning.

ALAN GREENBERG: I think part of the problem is the original recommendation, or the preamble to the recommendation, says something which I don't think is possible. And moreover, although they were complaining about poorly defined things, I think their sentence was poorly defined. It says the ICANN board should oversee the creation of a single WHOIS policy document. Not policy, but policy document. And reference it as this in subsequent versions as -- subsequent versions of agreements.

In other words, it should become the definitive policy document. So they are talking about a policy, not a document. If you reference it in other places, it's the policy, not the policy document. And the concept of the board overseeing the creation of a policy does not parse in the context of ICANN and the GNSO. Because the GNSO has the sole responsibility of recommending policy to the board.

So what they were requesting, I don't think was possible, and if you then assume that, well, all we could do within our rules was create a single policy document, I don't think they did that, nor do I believe they could have done it as the definitive document, because, again, the policy that's written is what sets the rules, like they're not. So I think they took reasonable action. It did not create an easy-to-read document. That's understandable.

And I think, at this point, it was an interesting recommendation. I don't believe it was completely implementable, and I believe the only reasonable action going forward is what we are doing, chartering a group, having chartered a group to create a new policy, and hopefully we'll write this one up better than we did the last one. And I'm not sure we need to do a lot more than write that in nice words.

CARLTON SAMUELS: Yup. Thomas, what say you?

THOMAS WALDEN: I agree with what he's said.

CARLTON SAMUELS: Okay. All right, so we are good. Lisa in the chat says the benefits the review team was trying to achieve could be described and provided as info to GNSO RDS PDP working group. That's a kind of outcome from all of this. And that is after we've spoken to the members of the review team, to get further and better understanding of what they're doing.

ALAN GREENBERG: I would suggest that it certainly would be worthwhile reminding them that the end product should meet this original target. But that's a matter of documentation once they actually define what the policy is going to be. So I think it's part of this ask, and it's worth reminding them, but I don't think it's part of their work today. So I don't think they've not done it. I just don't think they're anywhere near that stage of doing it.

CARLTON SAMUELS: Okay. So I figured it would be useful, what Lisa is suggesting, that we bring closure to the idea that we agreed on here, Alan, that maybe we talk to the members of the review team and kind of nail that down, and then Lisa is also suggesting that for us, if they do a good gap analysis, we could present that as an output from us to the RDS PDP, as something that they could look at, just for closure.

ALAN GREENBERG: Sounds like a plan.

CARLTON SAMUELS: That is the only thing that we can add to this discussion. I will try to set up an interview discussion with some members of the review team, maybe while we have Suzanne on it, and Billy Taylor was the person, and I think, who else? James, I think, was on it. [CROSSTALK]

CARLTON SAMUELS: [Inaudible] was on it. So any of those persons, there are a group of them. Lisa, if we could get to them and see if they would be willing to have a chat with us.

ALAN GREENBERG: Probably easier focusing on people who are still active in ICANN.

CARLTON SAMUELS: Yeah, yeah. It would be useful. [CROSSTALK]

LISA PHIFER: Specifically, you want someone that was involved in developing this recommendation, right?

CARLTON SAMUELS: Right, right.   Someone who was involved in developing the recommendation #2, and we were [inaudible] names of people that [inaudible] just put a label to people who are still active in ICANN who'd be easy to reach. Maybe we could have a little sidebar with them in Puerto Rico. Maybe that would be good.

ALAN GREENBERG: You are going to be there, Carlton?

CARLTON SAMUELS: Yes, I'm going to be there on the 13th.

ALAN GREENBERG: Okay.

CARLTON SAMUELS: But only for two days.

ALAN GREENBERG: Okay. Carlton, when do you think -- do you want to talk to them before doing the write-up, or after?

CARLTON SAMUELS: Before doing the write-up.

ALAN GREENBERG: Okay.

CARLTON SAMUELS: Before doing the write-up.

ALAN GREENBERG: Well, I'm available. You know where to find me. My schedule, as usual, is crazy, but we can try.

CARLTON SAMUELS: Yeah, we will talk. We will talk further so we can outline clearly what the thinking is. And Thomas is also, we're going to put it together. So

we could do that. So that's [inaudible] are there. Is there anything else we want to add? I don't think.

ALAN GREENBERG: I think we're done.

CARLTON SAMUELS: I think we're done. I will follow up, as I said, and we will move on with this. Thank you all. Thank you, staff, for [inaudible]. Thank you, Brenda, for arranging the call for me.

ALAN GREENBERG: And thank you, Carlton.

CARLTON SAMUELS: I'd like to call the call to an end. See you, all.

ALAN GREENBERG: Bye-bye.

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