
BARCELONA – Engagement Session with the RDS-WHOIS2 Review Team
Thursday, October 25, 2018 – 10:30 to 12:00 CEST
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ALAN GREENBERG:

If anyone would like to move up, we have a few seats in the front left.

All right, we'll start. This is the Registration Data Services RDS WHOIS Review Team Engagement session. I'm Alan Greenberg, the chair, and I have with me, Susan Kawaguchi and Cathrin Bauer-Bulst who are the vice-chairs of the group. And I think we have a few Review Team members in the room but I can't see them, so. I see one now. I think it's a bad sign if even the Review Team members won't sit in the front. Thank you for joining us.

As you may know, we issued our draft report a little while ago. The comment stays open until the end of next week, so hopefully we will have this session to provide some summary to you of what we have done and provide any feedback or answer questions.

What you see on the slides right now is the quick overview. We'll be looking at the mandate and the timeline, the scope, methodology, findings, conclusions and recommendations. We will not be going over all of the recommendations. We do have them all on the slides but we will not be talking about them all in the interest of time. Next slide, please.

Forgive me while I switch glasses.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

I think everyone here knows what RDS WHOIS is and I'm not going to go into a lot of details. The review is one of the commitments that ICANN made with the affirmation of commitments to the U.S. Department of Commerce a number of years ago and when we went through the accountability exercise as part of the IANA Stewardship transition, these reviews were moved into the bylaws and we're now operating under the bylaws, but functionally, it's a very similar concept to what it was under the ALC. Next slide, please.

The Review Team is a moderately small one. The bylaws allow a team to be as large as 21 members plus Board representation. Our group is quite small largely due to the fact that only a few of the constituent parts of ICANN chose to participate in it, and that's not unreasonable given the mandate of some of the groups is quite far away from WHOIS, from RDS. And so we have ten members representing the ALAC, the GAC, and the GNSO plus Chris Disspain from the ICANN Board. Next slide.

The process started a little over a year ago and with the selection of the Review Committee. We had some teleconferences and the first face-to-face meeting was in October 2017, just about a year ago and at that point, we largely settled on the scope. The most difficult part of some of the reviews – not the most difficult part, but a difficult part of the review is to decide exactly what you're going to review and we'll talk about it in detail in a moment. But we did come to closure on that at the face-to-face meeting. The terms of reference took a while to be finalized and submitted to the Board for their agreement.

We've met twice since then face-to-face and teleconferences pretty much every week and it's been a very effective process. We were a little bit worried that this might drag on and as we'll talk about later, certainly the whole issue of GDPR confused the issue at the beginning and there was some discussion when we looked at, when we were doing the initial scoping, whether we could even do the work given the flux in GDPR. And as you'll see, it turned out not to be the case and we are proceeding.

We published our draft report in September and we hope to have the final report out either late December or early January depending on editing issues and things like that. So we took a little bit over the original concept of a year, but certainly, we're quite happy with the progress we've made. Next slide. One more.

This looks like a noisy slide, but we just tried to differentiate the different parts of the scope in different colors. The first part of what any Review Team does after the first one is to look at the recommendations of the previous Review Team and assess to what extent ICANN has implemented them and to what extent they were effective. So this is sort of the sanity test of both: did the Review Team recommend things that were implementable, were they implemented, and did they do anything? So that's a part that isn't really discretionary. We really have to do that.

We also chose to look at, since WHOIS is a moderately – what's the right word? – controversial topic within ICANN and it gets implicated in all sorts of policy issues, so although we haven't had a WHOIS PDP

that completed in the timeframe we're looking at, there are lots of other activities that had implications on WHOIS on the RDS, so we assessed any new changes to see whether there's something there we had to review. In other words, something the first Review Team couldn't review because it didn't exist yet.

There are also a number of other requirements both in the original AOC Review definition, plus the ones in the bylaws that talk about things we should do and we didn't end up doing all of them. We looked at them and tried to make an assessment of whether this was an effective use of our time. We did do significant work on the implications of WHOIS on law enforcement. We looked at the issue of consumer trust and safeguarding registrant data.

We also chose to do some additional work regarding contractual compliance. Compliance, obviously, was part of the first WHOIS review, but we believe that there were some other, we should look at it from some other aspects and we have done that.

And lastly, under the new bylaws, one of the requirements for a Review Team is to review the bylaw and should the bylaw be changed. Has the situation changed since the bylaws were drafted? That means they're no longer the right set of words for this class of review. Next slide.

There were a number of things we didn't review. The bylaws called for us to look at ICANN's implementation of WHOIS RDS with respect to the OECD Guidelines related to data privacy and transporter data flow. We didn't look at that for a number of reasons. First of all, the

guidelines were somewhat outdated and given the existence of GDPR, which although it doesn't apply to all countries, applies to a significant part of the ICANN, the world that ICANN serves, and the flux that was the changes that are ongoing within GDPR. We decided to not review the OECD Guidelines as such.

There had been a suggestion from the community prior to our starting that we review the RDAP protocol and the WHOIS protocol to, I guess, to inspect, to decide whether they were appropriate. We chose not to do that partly because we know the WHOIS protocol is on its way out. RDAP has already been accepted by ICANN as the protocol that will be used going forward. But moreover, we're not protocol experts and the team didn't seem constituted properly to review protocol even if it should be done right now.

We, I hope for obvious reasons, decided not to take on the whole GDPR question and try to settle it in parallel with other activities within ICANN. So although we didn't ignore GDPR, we're certainly, it hasn't been our focus. And I think that is about all. Next slide, and I believe we're going to Cathrin next.

CATHRIN BAUER-BULST:

Yes, thank you, Alan.

So I'll just take you through two slides that will show you how we went about the work that Alan just described. So our methodology is also mandated by the bylaws and there's sort of secondary rules on how Review Teams are run. As you're probably aware, the work is

conducted in full transparency. The work is open to observers, so any exchange on e-mail, any of our frequent telephone conferences or face-to-face meetings are open for anyone with an interest to watch, to participate in, and to also review because all of the materials, including all of the e-mails exchanged within the group are on an ICANN wiki workspace accessible to everyone. So if you wish to take a closer look at any particular part of the work, everything is fully available on the ICANN website.

Our process is very much oriented towards consensus building. We actually spent a lot of time defining what exactly we mean by consensus and how we might seek to get there and what we do in case we don't reach it, but I'm very happy to say that for the current draft report, we had full consensus for the entire report, which given the very diverse viewpoints that we all bring to the table, we think is quite an achievement.

Our findings were strongly supported by ICANN staff from the organization who provided in-depth briefings for us on a number of issues, organized meetings with the appropriate members of staff to find out more about previous work done in this field and to learn about the work of the first Review Team and the work of ICANN implementing the first set of recommendations.

And on the basis of these findings and also on additional research that we did, we tried to identify the possible issues that remain. After the first set of recommendations from the first RDS Review Team was implemented to identify, first of all, where the implementation of the

first recommendations has fallen short in terms of achieving the overall aim that we identified behind those first recommendations, and secondly, to address issues that weren't yet on the table at the time when the first Review Team did its work and to try and address those through specific and targeted recommendations. Next slide, please.

So Alan was saying before that our work can be divided into two categories in terms of the content that we tackle. So first of all, as Alan was saying, we did an assessment of the implementation of the recommendations from the first WHOIS Review Team and that's everything you see here in the table next to the one and then we also took a look at a number of new issues or issues that were partially tackled by the first Review Team but that we felt deserved a fresh look. So we had the 16 recommendations from the first Review Team split up into a number of categories oriented on the topics that were covered by the recommendations and then we also covered anything new, so everything else that we identified, the specific issues that are identified in the bylaws for each Review Team to review, so that was the law enforcement needs, the consumer trust, and safeguarding registrant data.

We also reviewed, again, the contractual compliance actions, structure and policy afresh. And then finally, we took a look at the ICANN bylaws to see whether there were any issues with the overall setup of the review process that might need to be identified in particular. As Alan was saying, we were asked to check compliance with the OECD Guidelines which seem to be not the perfect reference

point anymore, just to cite one example. But we'll get into that in a bit more detail in a minute.

We did most of our work not as the full Review Team, but in subgroups. The subgroups consisted of two to five team members with a rapporteur leading the charge. We, just like with the full group, held teleconferences and exchanged e-mails to carry out our work, which was then reviewed in-depth by the full Review Team. So while there were subgroups that worked on individual pieces to prepare the work of the overall team, everything that we drafted was reviewed by the entire Review Team and was concluded on by the entire Review Team. Next slide, please and I think here I hand over to Susan.

SUSAN KAWAGUCHI:

Thank you. So in that review, these are the findings. So the first recommendation was required ICANN to treat RDS (WHOIS), in all its aspects, as a strategic priority. We felt this was partially implemented. It had failed to achieve the original aim of instilling a culture of proactive monitoring and planned improvement in RDS and I think due to that, we're all suffering today with EPDP and GDPR.

The single WHOIS policy recommendation, we felt was fully implemented. I think ICANN did its best, icann.org did its best to take all the pieces of the policy that were spread throughout contracts and different policies developed throughout the years and put them in one place so they were somewhat easier to find. What they couldn't do is create a whole new policy. That was up to the community, and though

I think we all gave it a good try, we're still working on that. So next slide, please.

On the outreach, the original WHOIS Review Team, which I sat on that team also, envisioned going out to communities outside of ICANN and trying to make sure the consumers and businesses and governments understood what ICANN was and what WHOIS was. And this is partially implemented. They did some things, but their reach did not extend to communities or we don't see a result that would make us think that actual communities outside of ICANN became very aware.

Contractual compliance, it's to be managed in accordance with best practice principles and overseen by a dedicated senior executive. They did, icann.org did put in place a Vice President of Compliance. Jamie Hedlund is the current. But one of the elements of this recommendation was that he would report up to a Board subgroup on WHOIS, and actually, that didn't happen, but it probably didn't happen with good reason. But this is partially implemented due to that part of it. So let's go to the next slide, please.

Data accuracy. Registrant education on requirements for accurate RDS data has been duly conducted through the RDS informational website. That was fully implemented. We don't feel that the rest, there was many elements to this or many recommendations to data accuracy, five through nine. The rest of them have been partially implemented. We've seen quite a dramatic increase in information from compliance team, and they've developed a larger compliance team to work on the data accuracy. GDD works on accuracy, but it's

partially implemented. We didn't feel like they had fully implemented those recommendations from the first Review Team. And one more slide, please.

So the WHOIS recs, the recs five through nine, dealt with several issues related to WHOIS accuracy, but this was not completely implemented either or not implemented. There's no metrics-based assessment of RDS for data quality improvements.

Privacy proxy. We've had a change in privacy proxy in the last two weeks, so I'm not sure that I would agree now that this was fully implemented. When we did the webinar, it looked like it was on the road to accreditation and that they would be able to credit entities soon. But that has been put on hold completely, so it's sort of implemented in my opinion. The WHOIS Review Team, or RDS Review Team will have to go back. We're meeting again in December and sort of take a look at that considering that IRT has been stalled.

There is a common interface to look up WHOIS, to perform a query which was very helpful. It worked for many years. It solved the problem of trying to figure out where you go to get this information. So I think that was fully implemented. It doesn't work as well since GDPR, since May 25th. There's many problems with that, at least from my perspective. So although it was fully implemented, I think the effects of GDPR has made that less useful.

And I think I'm handing that over to Alan.

ALAN GREENBERG:

Thank you. Next slide, please.

The next item is internationalized registration data, and I'll note that those of you who are familiar with the first WHOIS Review Team, in their report, they labeled this and the title of the section as IDN. That is Internationalized Domain Names, but in fact, the topic was the registration data. So we're talking about registration data in Chinese or Cyrillic, allowing a person to give their name, the organization, their address in their own script and language. And that applies both to IDN registrations and to regular, to Latin registrations which happen to be done in a place where the common language is not based on Latin script.

This is another of the interesting ones that was similar to privacy proxy in that a very significant amount of work was done, including several studies of PDP and they all completed. However, to actually implement any of this, we need RDAP because none of this can be done in a WHOIS database, an access method that is based on [inaudible]. Similar to privacy proxy, although the current status is somewhat different for that one, we deemed to be fully implemented but we're completely unable to assess the effectiveness because it's not live.

So we are going to be making a recommendation that the ICANN Board in chartering the third RDS Review Team make sure they go back and hopefully by then it will have been implemented or they can pass it on to the fourth one, I guess.

The next one is planning and reports. We deemed it to be partially implemented. The instructions were followed. Reports are generated. Plans were documented. But they were done in such a way that they weren't particularly effective. They were very much activity-based, so telling us what icann.org was doing, but not really based on the functionality, not documenting the outcomes and not sufficiently putting metrics and numbers on it to really understand, although technically they implemented plans and reports, we didn't feel they were as useful as the first Review Team envisioned they would be. Next slide.

On the anything new, looking at all of the policy changes that have taken place since the first Review Team, which was roughly 2011-12, something like that, and we found there were a number of things that impacted WHOIS but nothing, very little, that really needed our careful review at this point. There were a couple of items that we found were slightly problematic and they fit very, very well in with the other work that the first WHOIS team had done and we simply folded any recommendations that came in, into there.

Law enforcement, that was a challenging one. The bylaws require us to look at – and the wording is interesting – whether RDS (WHOIS) effectively meets the needs of law enforcement. And one of the first questions we tackled here was what are the needs? It's not an easy answer. We ended up doing a relatively short, but extensive, survey of law enforcement and we'll talk about that in some detail later on in the presentation.

It turned out to be, I think, a very important part of what we did and has generated results which are both interesting and in light of the GDPR discussions, somewhat enlightening I hope – I think – and hopefully, will have an impact on how we go forward on the other issues.

The last item that we looked at in terms of the bylaw requirements was consumer trust, and that's a very vague one. It's not 100% clear. What does it mean to assess whether WHOIS affects consumer trust? Now part of this folds back into, again, the GDPR discussion but it wasn't a well-defined term and it was influenced by GDPR in ways that we didn't think we could really talk about at this point.

So we did look at it. We looked at it in a slightly wider perspective than just WHOIS, but our conclusions were we are not making any recommendations on it at this point and it's something that's going to require focus going forward. But the WHOIS environment is likely to change so radically and has already with the temporary spec, that we didn't think it warranted an awful lot of effort at this point. Next slide.

The last one was safeguarding registrant data, and again, huge overlap with GDPR. And the obvious conclusion is prior to GDPR, we didn't protect registrant data at all from disclosure. It was public. It was, by mandate, public. So that part, clearly, we didn't do it and we will do it more in the future. But there wasn't a lot more that we could say.

There are other aspects of safeguarding data that is safeguarding it from being changed and that one we found there was an interesting

set of requirements. Typical in a contractual environment is you would specify essentially what level of protection you need to put on these things and to what extent you need to report any breaches.

So we found in the three classes of contracts, the contracts with registrars, registries and escrow agents, each of them had a unique set of requirements and it was intriguing to look at it and notice that in some cases, the contract was completely silent. Such as for breaches, one contract was silent, one contract said you had to do it in terms of what standards do you use to protect the data, to protect it from change. Again, three contracts, three different terms so we are recommending that ICANN standardize on these and use reasonable industry standards.

It turns out that probably will not be necessary because GDPR considers both of those and by the time we make our recommendation, it may be rather moot but there is a draft recommendation on that issue.

And lastly, on the bylaws, we reviewed the bylaws. We decided that for reasons similar to the reason we didn't do the OECD Guidelines in this review, we decided that it was probably inappropriate for the bylaws to mention a particular standard. Moreover, it mentioned OECD Guidelines and then safeguarding registrant data and there really is significant overlap between the two, so we're recommending that both of those phrases be dropped and a single, more generic statement be made to require the Review Teams to look at the overall issue but not by specific name.

And I think the next one is Cathrin. This, actually, this is the only place that we're detailing findings at this level of granularity but we think the law enforcement survey was interesting enough and timely based on the GDPR discussion that we wanted to go into it in some detail. Cathrin?

CATHRIN BAUER-BULST:

Thank you, Alan. Indeed. As with all of the slides, of course, these materials are available in the wiki space for the Review Team where you will also find, also in our draft report, further graphs of the law enforcement survey findings.

So this is a survey that we did as part of the research that we did as this Review Team. It was responded to by 55 law enforcement agencies, a number of which were responding on behalf of their jurisdictions. For example, for the European member states, we had asked the ministries to appoint a representative of law enforcement for that jurisdiction to participate in discussions around the WHOIS given the issues that have arisen and we built on these representatives in part to conduct this survey. So while the number of respondents is not enormous, most of those were in charge of responding on behalf of a much larger group of law enforcement so we do think the results are quite interesting.

And I just want to share four individual questions with you here, the first one of which shows the frequency of use of the WHOIS prior to the implementation of the temporary specifications. And you can see from the chart there that the large majority of units made between 100 and

1,000 or between 1,000 and 10,000 lookups per month, so this is frequency of use per month, which shows that, indeed, the WHOIS was a tool that was not just used on occasion but was part of the regular bread and butter of investigators’ work in this space. Next slide, please.

We also asked law enforcement what to do in case the WHOIS data was not available, whether there was another means of investigation that they could use to replace the information they gathered from the WHOIS to assure that they still were able to pursue their investigative leads with the same efficiency.

And when we asked law enforcement which alternative data sources they could use, a full 60% told us that there were no alternative data sources they could use. A further 24% said that they weren’t aware of any further data sources they could use, and only a little bit more than 16% said that they did have other leads. So that was another way of showing the importance of the WHOIS information for law enforcement.

And that is confirmed by the impact of the unavailability of WHOIS information on an investigation which you see on the right-hand side of this slide. So you can see that for 52% of cases, if the WHOIS information is not available, the investigation is delayed and in 26% of cases, it is even discontinued altogether. That, to us, seemed like a very significant impact and the figures were even larger than, at least, I expected when asking the question. If we go to the next slide, please.

So what we tried to do on this slide was to show the changes in the use of the system when comparing the situation prior to the implementation of the temporary specifications to the situation in June 2018, a little while after the temporary specifications had gone into effect.

And what you can see on the left-hand graph is that the number of individual WHOIS lookups has started to drop. So what we found also was when conducting the survey, that there was not yet full awareness of the changes and that a number of colleagues were still making lookups or using tools that still had accurate data for the time period that they were investigating, which often was investigations relating to behavior prior to May 2018. But already in June, we see this drop and the change is more significant when you look at the percent of WHOIS lookup results that actually help an investigation.

There, you see that when asking about the period prior to May 2018, so prior to the coming into effect of the temporary specifications, you see a peak at around 80% of WHOIS lookup results that somehow help further an investigation. That does not necessarily mean that accurate and perfect data was provided on the suspect, but rather that the WHOIS information provided a lead that could be further pursued for the investigation, just to be very clear on that, because of course, accuracy remains a significant issue.

So in 80% of the cases, the information was somewhat useful. If you now look at the post-temporary specs situation, you see that the peak

has now moved to 20% so there is a significant drop in the usefulness of the information that can be gathered through WHOIS lookups.

And if we go to the last slide, we basically ended the survey by asking did the WHOIS meet investigative needs before May 2018, and we had a total of 98% of investigators who said that at least partially or even completely met their needs. Now if you look at the situation after the implementation of the temp specs, and here, one of the legends is obscured but 67% of investigators very clearly said that no, now WHOIS no longer meets their investigative needs.

So that, I think, is a very clear picture of the significant change that has taken place even during the course of the work of this Review Team and that will probably lead us to address the question in the bylaws as to whether the WHOIS meets legitimate law enforcement needs in a quiet, negative way because the data already shows that even in June when investigators were largely still investigating cases that related to events that had taken place prior to May 2018, you already saw this significant change.

So one of the things that we're now looking at is, first of all, whether to re-run the survey ourselves to make another assessment of the situation as it is today before finalizing our work and we're also looking at whether we should not encourage ICANN to run such surveys for WHOIS users at regular intervals to see whether the policy, as it is in place, what type of an impact it has on the legitimate needs of the stakeholder groups that make use of the WHOIS.

So that terminates my quick highlights on the slides and there's much more information. So the survey, as Alan said, was more comprehensive and you will find more information and more colorful graphs in our draft report.

ALAN GREENBERG: Thank you, Susan. If we can go back to slide 23. I'm sorry. Thank you, Cathrin. If we can go back to slide 23, one interesting little anecdote. You'll notice on the left-hand graph, it says 16% of the respondents said, "Yes, we have other alternatives." We actually asked them what the other alternatives are and it turns out to be third-party services that rely on WHOIS. So they didn't quite understand those will disappear too.

CATHRIN BAUER-BULST: You have [inaudible] an important point. Thank you.

ALAN GREENBERG: If we can go back, now onto to slide 27 I think. Correct.

So this is a very quick summary. Of the 16 recommendations that were made by the first WHOIS Review Team, we found half of them to be fully implemented and the rest partially implemented. There was one that was not implemented at all but that wasn't accidental. The assessment of the, the initial assessment said it couldn't be implemented, and in fact, was not something that could realistically

be done. ICANN did do other things in its place, but technically, it wasn't implemented.

We found that a little bit problematic because ICANN's assessment was that everything had been fully implemented and I think the overall concept of how ICANN evaluates its implementation, it has to be looked at because you shouldn't have to wait five years for a Review Team to say there's a problem in that area.

We have ended up with 23 recommendations ranging from nine high priority, six medium, seven low and one we haven't assessed the priority yet. A few of those recommendations are still in flux because as we are formulating, realized we needed more data and we have worked on that and will continue to work on that. As was noted earlier in the presentation, they were all adopted by the Review Team with full consensus. That was something we weren't predicting because our views on some of these cases were very different. But we managed to come up with wording which did not dilute the recommendation, certainly in my opinion, but we did get consensus on it, whether that maintains for the final report remains to be seen but I think that's some measure of success that I'm proud of. Next slide.

Oh, there are no next slides, not in that part.

We've listed in the slides and they're available on the, I think attached to the agenda or they should be or we'll make them available. They're certainly on our website. All of the recommendations, we are just going to go through a subset of them now and we'll try to be very brief

to allow some time for questions. We did start late so we're going to be a little bit difficult with time.

The first recommendation we'll look at is 1.1 which is on the next slide and Cathrin will do that one.

CATHRIN BAUER-BULST:

Yes. Thank you, Alan. So as Alan already mentioned in the beginning, the first recommendation that the WHOIS1 Review Team made was to ensure that the WHOIS is treated as a strategic priority. So beyond just putting that in the bylaws at the time and the affirmation of commitments, it also needs to be [lived] as a strategic priority of the organization because it is a key part of the functioning of the Internet as a safe, secure and resilient place.

So Alan already described what some of the problems have been in the implementation of that recommendation, so while the organization did take a number of steps to comply with this recommendation, there were challenges in terms of actually taking a forward-looking approach and one of the pieces of evidence to show this is the fact that we walked into GDPR without the necessary level of preparation. Ideally, we would have done a lot of the work that we're doing now a lot earlier in the process so that we wouldn't have the situation of temporary fixes and patches and a breakdown of the system as we know it, but would have started preparing earlier.

So what we are planning to recommend to the Board is to put into a place a mechanism that takes a forward-looking approach to policy

development around the world to make sure that the impact on the multi-stakeholder model, and on the WHOIS in particular, is assessed in a timely manner and anticipated to be able to allow ICANN to take the necessary measures in good time.

Given that we still live in a world where multi-stakeholder policy is superseded by any given national law, such in anti-collision plan if you will, is deemed to be absolutely essential in order to make sure that what we develop here is not just superseded by a piece of legislation or destroyed in unpredictable ways. So we do see this as a key recommendation that does need to be implemented and we see that ICANN is already taking steps in that direction so I think we will help support and confirm those steps further. And this, we gave high priority, of course, because we think it is really the backbone of all the rest and, again, there was full consensus on all of this.

ALAN GREENBERG:

Thank you. Can we go to Recommendation 3.1, R3.1? Thank you.

One of the recommendations out of the first Review Team was outreach and in a variety of ways and it was interpreted in two ways. Number one, put documentation on the website so people can figure out what's going on and make it usable and clear. That was done and it was done very well, but it was not integrated with other things on the same website so there are bits and pieces scattered over the website related to WHOIS and they did not necessarily correlate with each other. They conflicted at times, so if you focus just on the new documentation, it was good. But it wasn't well-integrated, and clearly,

it will have to be updated significantly based on whatever comes out of the GDPR discussions.

So we are recommending that the thing essentially be redone not until we know what's going to happen, and when it's redone, it needs to be integrated across the website. So you don't, it's not just a matter if you happen to find it by accident, you get the right information.

And moreover, as things change – and they will change – we're looking at GDPR right now, but there is other privacy legislation in other jurisdictions and certainly there are other issues other than privacy in play here that will cause things to change and it's important that it not be a one-time event. Next slide, please.

The other half of the recommendation is outreach and as was reported, ICANN does lots of outreach but it wasn't necessarily targeted to outside of the normal community we talk to and that's necessary. We are recommending that it be done but it be done with community consultation and discussion to make sure we reach the right people and to make sure the content is reasonable, and moreover, we don't know what the outcomes of GDPR are in detail but we know it will change things so we need to make sure that we're very clear in outreach to registrants and other bodies to tell them what we're doing with their data or if you are a group that should have access to data, educate them as to what to do, how to do, what they can get access to. So there will be a lot to be done once the dust settles.

And next, we're going on to Recommendation 4.1 and I'll turn it over to Susan.

SUSAN KAWAGUCHI:

Thanks, Alan. So the Review Team did a fairly thorough review of the compliance actions and the team, and found that they've improved quite a bit and have many more systems and technology in place to help them do their job. But what we're not, we didn't see was a lot of proactive enforcement. They're very good at, they have a system that works very well if it's reported and someone else has detected it, reported it, then they have a thorough process to deal with that. But we didn't see was sort of a risk-based systematic approach to data accuracy and so a proactive approach.

So instead of waiting for those reports to come in, that they would actually, using the data that they have and there's also DAAR data, that they could understand a problem and then look to see what's going on in the WHOIS, the RDS information. So that's Recommendation 4.1 The second one that we thought was of prime importance was the fact that if ICANN does recognize the compliance teams do see an issue with a specific registrar over and over again, it would have to be a pattern of abuse, that they should then take a further, deeper look instead of just, "Oh, another inaccuracy report's come in," or "We've seen this reported or that reported and handled those individually." You should take a comprehensive look at that and is there something they can do to work with the registrar and to bring them into compliance on all things or just is a learning curve or is this

just bad behavior? So that analysis isn't quite done. There is the registrar audit, but we felt it was important with the data accuracy, that they take a comprehensive look at registrars when there is a reason to do so.

So I think I'm going to hand it back to you, Alan.

ALAN GREENBERG:

Just a follow-on to that, in discussions with contractual compliance, it's clear that they do this sometimes. It's not that they will ignore patterns but it's not clear there's a clear part of their function that looks for patterns. If someone notices it in doing their work, they won't ignore it. But it doesn't seem to be quite part of their culture in the discussions and clearly, we're hoping for comments from icann.org and if we've misunderstood this, then we presume they'll tell us.

Next one is R11.2, please. Thank you.

We mentioned this before in the common interface. This is the WHOIS portal that was built and the intent was you shouldn't have to look around to try to find the WHOIS portal for the right, you shouldn't have to figure out who the registrar is and then find out where their WHOIS access is and then try to find it. You should be able to go to the ICANN portal, do a WHOIS query, and get an answer. And it worked moderately well. The problem is with the implementation of the temporary spec. As an example, for a thick registry, that is where the registry has the data, it was presumed that the registry is

authoritative, so ICANN has gone to the registry. As an example, .org or any of the new gTLDs.

It turns out that some registries have decided to redact virtually all data even if the registrar is not redacting the data. As a result, you can go to the portal, get nothing, but if you know where to look, you can get all the information you want and so GDPR, the temporary spec essentially broke it because it gave the registrars and registries very significant discretion on what to do. The temporary spec, the policy out of the EPDP may well do the same. So the portal has to be a little bit more flexible and making sure that it's providing the data that is available by looking in the right place.

Next one is LE.1 and I'll turn it back to Cathrin.

CATHRIN BAUER-BULST: Yes, thank you, Alan. So the law enforcement needs recommendations were a bit of a challenge because once you see the results of the surveys, if you ask law enforcement, they very clearly say, 67% say that the current situation does not meet legitimate law enforcement investigative needs.

So in a sense, if you look at the question that the bylaws ask us, the clear answer is we see serious issues. But of course, as you're all well-aware, there is a policy development process going on at the moment that is looking at this amongst many other issues so it is a bit difficult for us as a Review Team to make recommendations to the Board now

as to what should happen there given that this work is already ongoing.

So at the moment, what we've put is that we sort of reserve our possibility to comment further on this part and what we've really focused on is trying to at least provide the data to inform the work that is going on because as we've all said, we consider it a significant achievement that we've managed to come to consensus around the recommendations that we're making even though we all have very different viewpoints and part of why that seems to have worked out well is because we really try to tie all of our conclusions and all of our recommendations to solid evidence because when you can agree on the facts, then the conclusions are a bit easier to draw.

So we think that the main contribution that we can make at this point is to make sure that there is solid data available, that the policy development processes can use to make the right choices and to design systems and policies that appropriately balance the interests involved and that create a system that is workable for all those who are either subject to the system or have to use the system.

So what we have recommended now in our draft report is, first of all, that regular surveys should be conducted on the needs of law enforcement and on how the policies are impacting the needs of law enforcement given that these are highlighted in particular in the bylaws.

But what we also want to recommend is that beyond looking at law enforcement, such surveys should also [inaudible] at least consider

extending such surveys to other categories of users with a legitimate purpose who might seek access to WHOIS data to also assess what impact the policies in place or any future policies might have on the way that they use WHOIS and on the aims for which they use the WHOIS. So those are the two law enforcement recommendations in the draft report which we would invite you to review and comment on. And again, we're still sort of reserving our judgment on whether we would need further recommendations that we might look at in our final report.

ALAN GREENBERG:

Thank you, Cathrin. The last section we're looking at recommendations on is compliance. As you might guess, compliance was a significant part of the last review and a very significant part of our additional work, so I'll ask Susan, the right Susan, to review some subset of them. And it looks like we've got almost 25 minutes left so we'll do a few of those, then we'll open up for questions, comments.

SUSAN KAWAGUCHI:

Thank you, Alan. So the first recommendation, if we could go to slide 40, please. One back. There we go. So we were seeing an issue with suspended domain names. Sometimes domain names are suspended for a lot of reasons. Inaccuracy is one of those, but it's not clear in the record that remains available – of course, with GDPR, maybe we won't see this problem anymore, I don't know – why that suspension was done. If that data is inaccurate, and sometimes the inaccuracy is another party's data. They have copied somebody else's data and put

it in there and have no right to use that data. That remains and remains with a suspended domain name that oftentimes, if it's suspended for inaccuracy, it's also suspended for some sort of abuse. So you have a third party's data in a domain name registration sitting there to be looked up and so in safeguarding that third party's data, there should be some sort of notation in a standard notation across all registrars that tells why it was suspended to incorrect data or if it was you could take this farther and say it was suspended for abuse, but if it's incorrect data, it should state that so that people know that, "Okay, this data is staying there until the domain is deleted," but then they can immediately tell this data is incorrect, this is not really the registrant.

And also, there's nothing that we could determine that prevented a registrar from unsuspending a domain name that had fallen into this without another review of the data. So if you have an inaccuracy, it's been suspended, 90 day later, you just never know. It could – there's nothing to prevent it – it could be unsuspending, which was a problem.

We were also looking – and I'll just go really quickly through the other ones – in the ARS reports that are done by GDD and compliance, there are grandfather domain names. And grandfather domains only have to adhere to the 2009 RAA. So since we are now working diligently on a new policy for registration data, we also need to know if the 2009 policy affects how many domain name registration it really affects and at the end of the day, we should have one policy for information in the domain name record, not multiple. And so we're looking, we're asking in this recommendation that ICANN takes a look and 10-15% of the

domains tend to lack the data in the registrant field, then they should take some sort of action to update the policy and require all registrars and registrations to adhere to, at the minimum, the 2013. Can we go to the next slide real quick?

So we also found that there's low inaccuracy reports in sort of the global south, especially Africa. So this may be an education issue and that outreach could help with that. Maybe individuals and consumers don't understand that they can report this and so there should be some outreach on that. There is a bulk WHOIS tool that's sort of very limited right now. I think there's three users and it seems to me that since, if we get to see the WHOIS data, you could report hundreds at a time. And then we should also, the last recommendation is to adopt a risk-based approach to incorporating requirements for measurement, auditing, tracking, reporting, and enforcement in all new RDS policies. That came out of a review of the anything new. Some of these policies have been implemented but no data has been collected on this, so yes, it's supposed to be implemented but hasn't been. So I'll hand it back to you, Alan.

ALAN GREENBERG:

And that concludes our review of the recommendations and our presentation. So we're open for questions, comments. I will note we did a similar engagement session at, in Panama, I guess, the last meeting, and you always enter these sessions never knowing is there really a purpose to waste everyone's time, both ours and the people in front of us? And there were a number of comments made that

basically pointed out we had worded some recommendations really badly and were saying things we didn't intend to say at all and so it turns out it was a very productive session and we got some good stuff out of it, so I'm hoping to see the same here. And we'll open the floor.

Since we're in the GAC room, people have microphones. We don't have to wait for a roving microphone for many of you, and if you're not at a table, we have a few seats left.

Kathy?

KATHY KLEIMAN:

Hi. Kathy Kleiman. I was on the first WHOIS Review Team. First, thank you for the presentation. Thank you for taking the time to walk us through.

I have a question. Can you go back to slide 21? I have lots of questions, but we'll start with this one.

Okay, so safeguarding registrant data. This is, indeed, one of the areas we've learned a lot about since the first WHOIS Review Team. So I wanted to ask you, some of the things we've learned about, I'm trying to see how it maps to your review of safeguarding registrant data. We've learned that registrant data should be correctible. Under GDPR, it should be deletable if you withdraw your consent. There should be short retention periods. There's some concern about escrow and customers, not just ICANN, customers have to know about breach.

Where are some of these concerns reflected in the work that you did and in the recommendation?

ALAN GREENBERG:

Understanding that we're in the middle of the EPDP and GDPR addresses all of these issues, so there will certainly for registrars or registrants who are subject to GDPR, a lot of this will be addressed and I'm assuming in a number of the similar issues, we're going to see ICANN regulation.

For instance, on standards that you should use to safeguard data or report breach, we are suggesting that number one, ICANN consult with experts, come up with a unified policy across all three types of contracts and look at the GDPR implementation because since so many of our contracted parties are subject to it, we should try to make sure that it's aligned with it and not just have this as a make work effort.

But that's about as far as we can go right now in that. Reporting breach is an interesting one. Although, in most jurisdictions you have to report it to the people whose data has been breached, it's hard for ICANN to make that as a requirement because they're not our customers and under GDPR, it gets even more complex because we may be the data controller, but we don't know who they are. So it's a messy area.

All we're doing, we're saying right now is consult with experts and do something reasonable at the time, and presumably, there will be

appropriate opportunities for people to comment. It's not clear that we have the expertise to do it nor can understand enough about what the post-EPDP field will be to know exactly what was already there, what is not there. I'm not sure that answers the question. No, it doesn't. We can try again or is there anyone else? Or we can keep Kathy on the mic. Anyone else have any questions, comments?

Kathy, you're on.

KATHY KLEIMAN:

Thank you. Yes, I think in some ways we could answer all of the questions and many of the recommendations with punting it to the EPDP, by the way.

Okay, so a procedural question, and that has to do with something I think I heard and I want to check it, raise some concerns and let you respond. And that is that normally, when a Review Team puts out their work, it's their final product and we're reflecting on it. You look at our questions, concerns, support and then issue the final, final that goes up to the board. Did I understand correctly that you're going back to look at some of your underlying recommendations, that you're looking for new evidence in light of changes to the WHOIS and that you may be issuing some new recommendations, some new thoughts, some new material that the public hasn't seen after the initial report that you'll be putting into the final report? In which case, how do we comment on that?

ALAN GREENBERG:

It's not uncommon to have a final report with new information in it. The CCT Review that was just issued had it. The last review I worked on, ATRT2 had it. So that being said, I don't think we are contemplating at this point – we haven't seen the public comment yet and we haven't met to talk about it, obviously, and last time I checked, there had been no public comments – so if there are no public comments, our life would be a lot easier. But that's not what we really hope.

So at this point, I don't think we're contemplating brand-new things we're pulling out of the air. On issues such as how the ARS, the Accuracy Study data is processed, we have a note in this one saying we're doing more work because when we came time to publish this report, it was very clear that we did not understand why some of the results were what we saw and we have since done a fair amount of work to try to understand it. And that will probably result in a somewhat different recommendation. It could result in the recommendation being withdrawn altogether. I don't envision it resulting in a brand-new recommendation.

But it is possible and it will be our judgment call at that point, whether there's a significant enough change to warrant a second draft report prior to the final one, so it is standard practice in these reviews to issue new material in the final one and the Board, as its first action, puts a report out for public comment.

The Board, I suppose, could reconvene the Review Team – heaven, help us – but that has never happened yet so I can't comment at this

point whether that will happen. I'm not expecting radical change. But Susan disagrees.

SUSAN KAWAGUCHI:

No, no. I don't disagree. I just wanted to comment. I agree that I don't see radical change but I do see that if what we're seeing is drastic change is because of privacy laws and how these are being interpreted in the community, then I think commenting, the Review Team may comment on those but may not actually create a recommendation. It could be as simply as, "The next Review Team should look at this because there will be more data," but this is a concern we are seeing now like the common interface, for example. Many of the registrars seem to be timing that out for ICANN and not providing the access that they had been giving. So they should at least be showing the redacted information. I'm not sure why they're doing that but that would take a study to figure out is this truly happening or is it just a glitch?

ALAN GREENBERG:

Go ahead.

LARISA GURNICK:

Hi, this is Larisa Gurnick, icann.org. Just to clarify the last point of Kathy's question as a matter of standard procedure, the final report will go out for public comment and that's something that the Board does, as Alan suggested, in preparation to take action and bylaws mandate is that that action happens within six months. All of that will happen regardless of whether there is any change to the

recommendations or not, so there will be an opportunity to comment.
Thank you.

ALAN GREENBERG:

And although the Review Team has not discussed this at all, I am presuming that should we do something really radical, we may choose to have another draft report out before we finalize it. But that's a judgment call at the time and we're not there yet.

I see no one else but Kathy, so Kathy go ahead.

KATHY KLEIMAN:

Yes, final reports often have new information. That new information is generally generated from the public comments of which you've received none. I trust you will. I think you'll have some company in that queue soon.

So with respect, most Review Teams – and it's hard, it's really hard – draw a line under their work and say, "This is our work as of such and such a time." I can see what Susan's saying in light of the rapidly moving ball going around, and to the commenter – excuse me, ma'am – to the commenter, the Board doesn't want to sit and reconcile policy in that final report. They don't want to deal with a lot of new material. That's not, that's what this group is for.

So the final report that you issue should not, what I'm hearing here is that you have more questions. You want to do more work. I get it. But at some point, you have to draw the line because we have too many

moving balls as a community. You have to draw a line. No more studies, guys. It's kind of done and give us what you have as well as what questions you have – I think that's fair – what questions you have going forward in this fast-moving universe. That's the comment.

So again, new material comes in, like from the CCTRT, the Consumer – I'm going to get the acronym wrong, I apologize – but the Consumer Trust Review Team, but again, I think most of that arose because of the public comments.

Okay, to the next question. Did you do –

ALAN GREENBERG:

Kathy, if I may, if you look at the CCT Review, for instance, there is a significant section on DNS abuse which was not in the initial report. It was work they knew they needed to do but that hadn't been done yet at a time they felt they wanted to get it out. In any case, we're not planning, the public comment closes next week. We may have to extend it by a week or two. We're meeting on the second week of December to try to finalize the final report. We haven't left ourselves a lot of time to do a huge amount of work. We're just being open and candid that there are a few open issues that we're still discussing. Our intent is this Review Team will have its work essentially finished by the end of December or soon afterwards.

There was, to be honest, a little problem that our staff member is no longer with us and we have to find someone else to do some of the work. So that's why we're hedging our bets on the exact date. But

there is no plan to spend another six months and delve into new areas. The areas are not changing. There is a little bit of work that was not finalized and we didn't want to miss the window of having a draft report in time for this meeting.

Please go ahead.

KATHY KLEIMAN:

Again, happy to wait if anybody... Okay, a question about the WHOIS complaint process. There are reports, you've seen them in CircleID and others that the WHOIS complaint process might be abused and I'll give some detail and then ask you if you looked at it.

That complaints are going through maybe anonymously, but certainly anonymously to the people about whom the complaints are being filed, so in allegation of inaccurate WHOIS but the person can't know who the complainer is and that sometimes WHOIS complaints are filed as a pattern of harassment. And again, I'm referring to kind of Open CircleID and other blog posts, that complaints have been processed as a matter of harassment, that people are losing complaints because of [poor]. There was a student who lost his WHOIS, an accuracy report was filed. He didn't have a phone. He has an address, he has an e-mail, but he didn't have a phone and it was canceled because he didn't have full data and he went public on that.

So one of my questions is have you looked at anonymous complainers through the WHOIS process, whether there is a pattern of harassment and what people can do about it if they feel they're being harassed, if

registrants feel they're being harassed through WHOIS comments and complaints? Thanks.

ALAN GREENBERG:

Let me try first and then I'll turn it over to Susan.

We did not look at that explicitly. ICANN treats confidentiality pretty strictly and they did this before GDPR but GDPR just reinforces it, so Susan and I met with compliance and we told them we wanted to see the actual reports. And we did with an awful lot of things blacked out to make sure that we could not possibly understand who it is that, well, in this case, these are reports that were done by the ARS system, not by individuals but I have no doubt if we had asked for individual reports, the complainants certainly would have been blacked out. So that's an interesting question that I don't think, we didn't even look at.

I don't think we looked at anonymous reports at all and we've been told by a previous commenter we shouldn't go into new fields for this final report. Sorry. Couldn't resist. Susan?

We have someone who knows something about compliance here. Maggie.

MAGGIE SURAD:

Good morning, everyone. Maggie Surad, icann.org. Kathy, thank you for your question. If I may add to Alan's answer, the compliance process, one of the things we do, if we receive complaints that there is such behavior, you're right. Someone can say, "Hey, I want to remain

anonymous, I don't want the registrar to know who I am, I'm complaining," but we have had in the past where some reporters, also referred to as complainants, they may be abusing. We would not know. We have a lot of repeat complainants or reporters but if we receive evidence from the registrar or the registrant, the other registrar, that there has been evidence of abuse or something, we do inform the reporter that we have been noted of this and then to please just be mindful of that.

And what we do with the report, we inform them but we say, "Do not do that again," and if it happens, it's like the one, two, three process. We note their IP address through our technical service people and we ask them to not allow them to submit or abuse of it, but we do let them know that we're going to suspend you from submitting complaints for a period of time.

Now I know that has caused mixed feelings with some of the ICANN community members, but again, we make it on a case by case situation. If we are made aware of it, we will inform and take action on it. So it is not that we're looking out for that, but we don't have evidence of that unless it's been reported via the channels.

ALAN GREENBERG: Susan, did you want to make a comment?

SUSAN KAWAGUCHI: I think she answered.

ALAN GREENBERG:

Okay. In terms of the registrant who lost a domain name because they don't have a telephone number, clearly, that shouldn't happen. I think that's clear and if, indeed, ICANN has a policy right now and I'm not sure the wording saying you have to have a phone number, it should have an escape clause saying, "If you put something in that passes the legitimately test," you can't put "I don't have a phone number" because that will be parsed and said "That's not a valid phone number" and you'll lose it for another reason. So clearly, we have to factor those things in. If we are so focused on parts of the world where everyone has a phone that we will not allow someone to have a domain name without a phone, we have a policy issue that has to be fixed and although I'd like to think that compliance can work around it, as a matter of course, it may not happen automatically. So that's the kind of thing that should be reported in blatant ways that we can't ignore.

Kathy, you can do it again or you can let us go to lunch early.

KATHY KLEIMAN:

I will in just a second. I wanted to thank Maggie for her comments, but I wanted to say that you're the ones watching the watchers so if you want to make a note in the report for future review teams, that use of the complaint process for harassment is something to look at, I would certainly appreciate it.

ALAN GREENBERG: Thank you. If someone makes a comment to us, it would be useful.

I see no more questions. Thank you for coming.

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