

Transcription ICANN Beijing Meeting
Thick Whois F2F Breakfast meeting
Monday 8 April 2013 at 07:30 local time

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Coordinator: For the transcription this will be the Thick WHOIS Policy Development Process on - going from 7:30 to 9:00 April 8, 2013.

Mikey O'Connor: Thanks (Brandon). This is Mikey O'Connor, the Working Group Chair. For those of you who are just coming in there's juice and coffee and treats in the back.

That's our bribe to get you here at this hour in the morning at an ICANN meeting. Feel free to partake and since, you know, we're not terribly stressed in terms of seats at the table, if you want to sit at the table instead of way in the back feel free to come forward.

And with that I thought what we would do instead of the normal role call, we would just go around the room and let everybody say their name and a little affiliation into the microphone.

This is - one of the rare treats of the Working Group is that when you're at an ICANN meeting and you're doing a face-to-face Working Group, you get to put faces and voices together and so this is always a real treat.

And so I think we'll just start over there and circle on around. You're on. So you punch the little talk button that lights up the mic and carry on.

Marie Laure Lemineur: Good morning. My name is Marie Laure Lemineur. I'm with NPOC and with the Working Group and also the subteam on data protection and privacy. Thank you.

Klaus Stoll: Klaus Stoll, NPOC but also the Executive Director of the Global Knowledge Partnership, and the Global Knowledge Partnership has identified in their governance as one of their main themes over the next two years and that's why I'm very happy to be here. Thank you.

Frederic Guillemaut: Frederic Guillemaut from Mailclub Registrar and I'm part of the Working Group and happy to see you face-to-face.

Jonathan Zuck: Jonathan Zuck from the Association for Competitive Technology.

Alan Greenberg: Alan Greenberg, At-Large Advisory Committee. I am on the Work Group, the Data Protection Work Group and I Chair the Escrow Work Group I think. I'm not sure.

I know I Chair some Work Group. I think it's the Escrow one. We merged two together. I never remember the name.

Mikey O'Connor: Just for me? Okay. Can I go home now? I'll take something and my microphone back.

Don Blumenthal: There we go. I think you're right. Don Blumenthal with the Public Interest Registry. I'm on three of the subteams but as you might've just gotten from Alan the privacy one seems to dwarf them all and I'm kind of the team leader or whatever we call them for the Data Protection and Privacy Group.

Mikey O'Connor: I'm Mikey O'Connor. I bet you all recognize my voice. I'm the Chair of the Working Group and a member of the ISP Constituency.

Marika Konings: My name is Marika Konings. I'm from ICANN Staff and the main Staff support person for this Working Group.

Steve Sheng: Steve Sheng, ICANN Staff.

Erika Randall: Erika Randall, ICANN Staff.

Lars Hoffman: Lars Hoffman, ICANN Staff.

Daniel Halloran: Dan Halloran, ICANN Staff.

Steve Metalitz: Leaving the ICANN Staff neighborhood, I'm Steve Metalitz. I'm here representing the Coalition for Online Accountability and I'm a member - which is a member of the Intellectual Property Constituents.

Berry Cobb: Thank you. And Berry Cobb, ICANN Staff back in the neighborhood.

Carlton Samuels: Just out of the neighborhood Carlton Samuels. I'm a member of the At-Large Advisory Committee.

Mikey O'Connor: And let's see, Wendy are you on the Working Group? You're welcome to sit at the table in any respect. Okay Wendy Seltzer, NCUC member and sitting at the person - sitting at the table type person. Oh, oh, go ahead.

Olaf Kolkman: Olaf Kolkman, NLnet Labs. I'm here because I Chair the IATF WEIRDS Working Group.

Mikey O'Connor: Thanks Olaf. I didn't see you sit down. So this is sort of aimed at the folks that are sitting in the chairs in the back. How many of you - for you is this the first time you've ever seen a Working Group meeting of the ICANN flavor?

Just raise your hand if this is sort of new material, if Thick WHOIS is a new thing that you haven't run into before. A bit of a group there. Here's what we thought we would do and we'll spend a little bit of time sort of introducing the work that we're doing.

And also I'm going to take the opportunity to sort of make the distinction between what working groups do, which is what this is. This is just a Working Group meeting that happens to be held during the ICANN session.

We picked this opportunity to meet face-to-face because it's such a great chance to put faces and voices together, so this is a bit different than the typical ICANN meetings that you'll be attending this week.

And one of the ground rules that I would encourage the members of the Working Group to pay attention to is because we have folks that are new to the Working Group process, to ICANN and to the work that we're doing in the room, tend to try and ease off on the acronyms.

Try to explain a little bit more about what you're talking about than normal. I know it's going to be hard for us to get way far away from jargon, but to the extent that we can I think it's helpful for folks who are coming in.

No, a true working group call is practically in foreign language, but we'll try and conduct this in English as much as we can. The other thing that - I just want to do sort of an advertisement for what working groups are, at least - and this is purely a personal view.

This is not my opinion as the Chair of the Working Group. This is just a personal observation, and that is that working groups are where the pieces of ICANN come together to hammer out solutions, hopefully consensus solutions to problems and puzzles that the Working Group is chartered to address.

And so unlike almost any other part of ICANN the goal here is to get to agreement rather than to highlight the disagreements. And so this is a working session of a group of people who are trying to create something together.

And this is my absolutely favorite part of ICANN. We meet once a week for an hour on the phone and in terms of - Brenden are you still there? Do you have the ability to throw the Adobe room up on the wall, because if you do - yes, that would be fantastic.

One of the things that I want to show the folks who are new to the Working Group process is the view, and I'll just leave this running throughout the meeting - is the view of what we see in that one hour meeting every week.

This is a shared collaborative online workspace that we use to share documents, to have a chat with each other, et cetera, et cetera. And, you know, hopefully it's not my computer.

Yes, because I'm going to share my screen so can we share your screen Marika? Quit reading the gossip column over at Domain Insight. I'm not sure.

I think we do. Oh you mean on the phone. That's a good point. Alan just raised the question, "Do we have anybody in the Working Group on the phone?"

Nathalie? Just Nathalie on the phone? Okay.

((Crosstalk))

Mikey O'Connor: Thank you Alan. Okay, if somebody joins can you break in and let us know so that we can introduce them to the group as well?

Marika Konings: Of course.

Mikey O'Connor: As you always do just whack me when I get going too long. Okay so now we've got - cool. There it is. This is the workspace and you can see it up on the wall now.

It may be hard to read from way at the back but I'm going to use this workspace in a minute interactively. And so for those of you who are sitting towards the back of the room you may want to move forward and feel free to fill in some of these chairs around the edge if it's hard to do that.

Marika Konings: And it has more room.

Mikey O'Connor: Oh to the...

Marika Konings: They're going to get it.

Mikey O'Connor: Good. Okay. And yes that's another thing. You all can join this room by - if you're online, if you go through the meeting schedule to the - it's a - Page 4 of this meeting.

The link to this room is in that schedule and you're more than welcome to log in to the room and put it on your own screen, which will be a lot - at least for me it would be a lot easier to see.

Okay I think that's kind of it on housekeeping. So let me talk through the agenda. I think what we're going to do today is mostly focus on one topic, and that's a topic that's - I mentioned earlier that basically what this Working Group does and all working groups do is they work on puzzlers.

They work on, you know, some people would say problems. I like to say puzzlers. This is more solving a puzzle in the Sherlock Holmes sense. Aha, this is a two-pipe puzzle kind of puzzle.

And the puzzle that's been getting a lot of attention in this Working Group and is probably the most interesting one is the one that has been assigned to the subteam that Don Chairs, the Data Privacy subteam.

And so what I thought we would do is just work on that today as a Working Group. I think it's a huge opportunity in this face-to-face environment where we get a little bit more bandwidth with each other to sort of see people's faces.

We also have the opportunity of having some awfully smart folks from ICANN Staff who are usually not available to us, and so I want to sort of take advantage of that opportunity.

And we'll just work on that in the usual way that we work on stuff in the Working Group. And the last little bit of ground rule stuff is if you're in the audience and we get into a part of this conversation that you feel very strongly about and want to contribute to, you're welcome to do that.

And the way to let me know that you want to do that is to just head up to one of the open chairs in front of a microphone and wave at Berry, who gave me a very hard time yesterday and as a result I'm giving him a job.

Berry's going to manage the queue for this meeting. Normally I manage the queue on the call because I'm able to look at the chat room and all that stuff, but because of the way this is laid out and because Berry was so mean to me, Berry's the person to wave at when you want to get in the queue.

And so Berry if you can keep track of both the folks here in the room and the folks on the chat that would be fantastic. I think that's it. Any questions before we get going?

I know it's a blather at the beginning and I know it's really early but - there you go. Okay I'm going to share my screen at this point and hopefully this'll work.

Let's see how this works. Oh for heaven's sakes. It'll be flash. And we got an - oh it's coming pretty fast. Sorry folks. I'm using an unusual - I'm using an old computer that's been scrubbed and so as a result it's pulling down an extra N.

The thing that we're going to be - you'll see in a minute on the screen is an open source program called FreeMind, which is an outlining program that we use to document a lot of the work that we do.

And if you want to read these files the program's available at SourceForge and links to that are on our wiki. Okay so now the download has happened. It's - oh please don't.

It's reloading Adobe Connect. I should've done this beforehand. I really should - I'm terribly sorry folks. While this is loading let me go through a little story about what the difference is between thick and thin WHOIS, which I will do without notes because Adobe just captured my whole screen.

And now that more folks are in the room let me just get another show of hands. How many folks don't know - no I'm not going to do that. I'm going to just go through it because we did this yesterday, and for folks who are new it's very intimidating to raise your hand and say I don't know something.

So I'm going to talk you through thick and thin WHOIS while this ding dang ripping loads. It's altogether too much fun being had over there Wendy. Wendy was mean to me yesterday too.

She was really mean to me. She just whacked me off at the knees and I'm getting big nods around the room on that so there. Come on Adobe Connect. Please come on.

Why now? All right here we go. You know, I've seen more different clocks on my screen in the last 20 minutes it feels like while this is loading. There, now are you going to let me share my screen?

Please let me share the screen. Oh this is a good start. It's sharing. Now okay, so at last. This is going to be much easier to see on your local computer if you want to log in to the room.

Let's start. So in a thick - the other thing is I can't spell and I can't type very well. Let's go through the data. So WHOIS is all about information that's published on the Internet about domain names.

And we'll start with a thick Registry and then we'll do a thin Registry and describe the kinds of data that are available. So in a thick Registry there are Registries and there are Registrars.

In the Registry the Registry is the one entity that keeps track of all of the domain names in a top-level domain like Dot Org. I'll pick on Don's organization, PIR.

There is one Registry for Dot Org and Dot Org is managed by PIR and they keep track of every name in the Dot Org space. Dot Org names are sold by a large number of Registrars, so there's these two different kinds of entities.

And the debate that we are having in this Working Group is the question as to whether in the generic top-level domain names like Dot Com, Dot Org, Dot Jobs, Dot Info, those Registries should all be in this thick model.

So in the thick Registry model the Registry keeps track of data about the domains, and they keep track of data about the Registrant and they keep track of data about various contacts.

The Registrar also keeps track of this information because the Registrar, the person who sells the name, is also the entity that's responsible for collecting the data.

So the Registrar also collects and publishes domain data, Registrant data and contact data. And actually the Registrar collects all that data and then pushes it up to the Registry.

In a thin Registry model - Registry only - at this - in this model only domain data is at the Registry and the Registrar captures all three again. So they keep all three types of data but they only publish the domain related data to the Registry.

The question that this subgroup has been working on is the privacy issues that arise when the transition - if we recommend that all Registries in a gTLD, the generic top-level domains, migrate to the thick model the - I think the naughtiest problem that this subgroup has been working on is what are the privacy implications for the Registrants who have registered their information in the thin model with the expectation that only domain data would be captured at the Registry during that transitional period where, you know, they've registered their name in a - let's say a jurisdiction where there are strong privacy protections in local law?

And now that data is going to be published in a Registry where perhaps that local law is different, and those Registrants are going through that transition essentially whether they want to or not.

So far how am I doing on capturing this issue? If I fall off the rails this is not a shy Working Group. They will let me know but, you know, I'm just giving you extra permission and Don is now taking advantage of that. Go ahead.

Don Blumenthal: The transition is certainly a big issue and I think in a real sense this is what people are focusing on. But I think the mandate of this group is a bit larger than that, and the group meaning Working Group.

So we've been looking at the transition issues but we've also been looking at in future new gTLD rounds should there be any after the entertainment of the current new gTLD round, should the - should thick Registries be mandated again as they are currently or should the thin Registries come back into the picture?

Mikey O'Connor: Thanks Don. So I was - I wanted to sketch this out a little bit on the screen and sort of use this as an opportunity to bring you, especially those of you who aren't part of the Working Group, sort of up to speed.

I'm sorry that we can't go into this in all kinds of depth but I hope this gives you at least a little bit of a sketch as to what we're working on.

Olaf Kolkman: So Mikey?

Mikey O'Connor: Yes go ahead.

Olaf Kolkman: Question - since I'm sure new to this Working Group and observing from the sideline is there - are there - can you sketch out the broad ways this Working Group is thinking in doing this? You sketched the problems.

Mikey O'Connor: Yes.

Olaf Kolkman: But are there directions or solutions that the Working Group is zooming in or is there a consensus that is already captured? If you could summarize....

Mikey O'Connor: On this issue today's the day for that. This is sort of - the Working Group has divided itself into some subteams and one of the subteams is the one that's working on this transitional issue.

Don chairs that subteam because I hate him and, you know, this is sort of the day that we're going to try to get going here. Now Berry's the manager of the queue and so I'm going to hand it over to Berry and just be blabbering Mike and so Steve and then Marika. Okay.

Steve Metalitz: Thank you. Steve Metalitz. It might be helpful for Olaf and for others that if Marika or someone could just list - and maybe I missed this because I stepped out for a couple of minutes - just list all the issues that we have that are in our charter to address and many - several of which we've already, you know, at least tentatively addressed rather than focusing exclusively on this one issue that is in discussion in the subteam.

Mikey O'Connor: That's a really good point Steve. Thanks. Maybe what we'll do is we'll let Marika go to work on that and when you get to the point where you can rattle them off - you're there. Go for it.

By the way did you know that Marika in addition to working for ICANN has two other jobs? I'll bet you didn't know this. First she's a brain surgeon. She only works on sort of cabinet level people and above.

She saves lives all the time. The other thing is that she's the lead guitar player in an internationally acclaimed rock band along with working with us here at ICANN. Go for it.

Marika Konings: Yes I just do this in my spare time Mikey. Thanks. So yes this is Marika. So that's something I want to add to to Olaf's point because they see that the Working Group has been given a charter, and basically its main task is to

provide the GNSO Council with a policy recommendation regarding the use of thick WHOIS by all Registries, both existing and future.

And as part of this - its conversation or discussion it needs to review the following elements with regard to this question. So it's response consistency, stability, accessibility, impact on privacy and data protection, cost implications, synchronization and migration, authoritative, competition in Registry services, existing WHOIS applications, data escrow and Registrar Part 43 WHOIS requirements.

And once it has gone through that list and should it come to a consensus that a thick WHOIS should be required for all gTLDs, the PDP Working Group is also expected to consider the cost implications for gTLD Registries, Registrars and Registrants of a transition to thick WHOIS, guidelines as to how to conduct such a transition and also consider whether there should be any special provisions and/or exemptions needed for gTLD Registries which operate a thick WHOIS but provide tier access.

Mikey O'Connor: And now Olaf to your point which was so where are we at on consensus, we've come pretty close to consensus on several of those issues. Don't quiz me real hard on which one is which because I can't come up with them by memory.

But essentially what has emerged is that were it not for the issue that we're working on today, there's a pretty strong tendency amongst the Working Group to support the notion at least in the ones that we've reviewed so far towards migrating in the direction of thick WHOIS.

But - and this is another advertisement for the Working Group process. The Working Group process operates by a consensus and we certainly don't have consensus yet on this issue.

And until we get to some sort of consensus on this issue we can't recommend because we need to have this puzzle solved as well. You're - Steve then - and Carlton do you want to get in the queue? Okay go ahead Steve.

Steve Metalitz: Mikey it might be, you know, we don't have consensus on it because it may be we might need to describe the process by which we would reach that. We have an active subgroup on it and we've been discussing it.

There have been two or three papers circulated and I think many of us are - haven't yet been persuaded that there are any issues that are - significant issues that are specific to the thick Whois environment as contrasted with the overall issues about Whois that will be very much discussed in about 2-1/2 hours in (the ownery) which is an expert working group that's been chartered and which there've been board resolutions to address these issues and on which, you know, there's an interface with the (WERTs) activity.

And those are real issues but what we're supposed to be focusing on here is really a narrower question about a thick Whois requirement and whether that presents any additional issues.

It's worth also recalling the context that we have had a transition of a major TLD from (unintelligible) (not org) and we've been asking for information about problems that arose there and I think that the evidence is that there were not significant problems in this area or in most other areas.

And we also have the experience of, well, I'm sure hundreds of thousands, probably millions of registrants in thick registries, TLDs that have thick registries, that - in which the kind of transfer that you're talking about up there occurs every day for - and the registrant may be in country A, the registrar may be in country B, the registry may be in country C.

You could have a full range of different applicable privacy laws and this happens every day, thousands of times. So that's kind of the context in which we're looking at this. So I just wanted to provide that and really, I think you're - I'm a little concerned that your description of it makes it sound as though we've run up against this giant boulder in our path and we're not - we're stymied about how to (climb) it or get around it.

But I think we did need to push - you know, we need to have a method for deciding when we have talked this issue out and can move forward on it. Thank you.

Mikey O'Connor: Yes, and again, this is a bit of an advertisement for the working group process. You know, there are different levels of consensus. There's full consensus which is unanimous consensus which is a situation where there is very broad agreement with perhaps one or two points of view that have been heard and acknowledged but that haven't carried the day.

There is consensus, and now I get fuzzy because I've never gone into these two zones because we've always been in full consensus in my working groups. Strong support but significant opposition and then divergence, which is not consensus.

And one of my roles as the chair, well, one of the roles is to create an environment where we are successful at getting the full consensus or at least as close as we can but another one of my roles as the chair is to make the call as to which of those four layers of consensus we're at.

And then put that out to the working group for agreement or disagreement and, you know, if there's disagreement on that, there's a process to resolve it. And the reason that I'm painting the picture this way right now, (Steve), is because I really want to create a broad avenue for this discussion because I think that if we get through this discussion and arrive at a conclusion that's agreeable to everybody, that we moved dramatically forward.

But you're absolutely correct, that this does not stop the process in its tracks. It's just something that I'm very motivated to try and figure out a way through. And so I'm trying to create a big space for that. (Barry), (Don), go for it.

Don Blumenthal: Okay, if you insist. Yes, I - probably I wanted to just echo (Steve)'s point. This is a very - the term has been used by many, including me - rat's nest of issues but I don't think the other sub teams have got - to the level that other sub teams haven't had to deal with.

So when we say we don't have a consensus, it's not that we've had a battleground, it's just that this specific sub team has had to take a lot more time than the others.

I think in - there aren't many people here who are active in the sub team. So I just wanted to suggest as a counterpoint, you know, the views that (Steve) mentioned have been - are certainly active on - have been active in its own cause and we meet once a week.

But there's also been a view suggested that first that questioned how much these issues, even though they have not come up because they have never really been examined and now it's our turn to finally do that.

We have an expert group that we sought out that was involved in PR transition ten years ago which was before my time and so far, well, I've been disappointed in their level of involvement to answer our questions but so far we've had no indication that ever really - we even talked about that.

So some people in the sub team, I'm guessing now is the time particularly with the change in landscape of privacy laws and if nothing else, you know, look at what's out there. Look at what might be happening. Look what is happening in the privacy space.

And even if we don't make any conclusions, and I'm not sure we have the resource to do that, at least make some recommendations for other groups such as general counsel to consider in terms of looking at ICANN policies now and either new ones or refining existing ones.

And I think those are the two extremes of the working group and we have a draft that's floating that I wrote on the plane. I've never completed a ten page memo on a plane before but when you've got 13 hours - and ultimately we're going to pick it up and come up with something fairly soon after Beijing.

But this meeting's going to be, I think, very useful because it's - you've got the advantage of being able to hear from people who are beyond this seven or eight folks who are - who've been looking at it weekly since February or March, whatever it was.

Mikey O'Connor: Thanks (Don). Okay, I think we're sort of done with the preliminaries. Sorry that they took so long for those of you who are old hands, but this is an unusual circumstance being at an ICANN meeting.

And I think the first question that I would like to put out there is where does the requirement for the publication of Whois data come from? Is it coming from the registry agreement with ICANN? Is it coming from the registrar agreement? And I'm taking advantage of the fact that we have senior staff here which is wonderful, especially (Dan) and (Steve). Thanks a million for coming.

And so I'm going to sort of take advantage of the fact that you're here. I'm just curious, and let me frame that a little bit better - let's take a thin registry. Let's pick on (dot jobs). The requirements for the Whois, the data that's published and how it's collected and so on, where does that come from? Go ahead, Dan.

Dan Halloran: Thank Mikey. This is Dan Halloran from ICANN staff and I'm on the legal team. I'm on the general counsel actually. So you pointed to several places. There's - I mean, there's a set of obligations. Start with the registry - ICANN has a registry agreement with the dot jobs registry and that specifies that dot jobs registry operator has to operate a Whois service and publish certain data.

And then with each registrar that works with dot jobs, also has a registrar accreditation agreement and that ICANN registrar RA also specifies that the registrar has to publish certain data.

Those are two separate obligations of each of those entities or to ICANN, to those contracts. And additionally, for dot jobs or for any registry, there's a registry/registrar agreement which indicates that dot jobs is a sponsored TLD and it was up to them that ICANN doesn't dictate the form that registry/registrar agreement so we have to look at that, and I don't know if it's available and that ICANN approves changes to it.

But I don't even know if we have a recent version but there could be obligations in that registry/registrar agreement also about what the registrar has to give to dot jobs and what dot jobs is going to do with it.

Mikey O'Connor: Okay, so one of the scenarios that I'd like to explore a little bit is one that - and I'm - Avri, I'm going to be picking on you in a minutes, so just giving you a heads up, fair warning.

I want to paint sort of a hypothetical. Let's say that I'm - John Berard and I were kidding about this - I'm a Democrat living in Nebraska, the state of Nebraska in the United States, which is an extremely conservative state and I want to protect my identity for fear that I'll be chased by a Republican wielding a shotgun.

And so I register my name in dot jobs with a registrar located in a country or let's say a jurisdiction with very strong privacy protection woven into its legal structure, like Europe, let's say or Iceland or someplace like that.

Where would the requirements for that registrar come from? And would they be the same in all of those countries? Or would they be different depending on what country I'm in?

So in other words, the scenario is that I want to be able to shop for a privacy friendly registrar and this is I think at the nub of this issue, because the presumption is that people have done that shopping already. They've chosen their registrar based on that privacy and when we transition to thick, we're going to erase that choice that they made because when it goes to thick, it will go to the privacy regime of wherever the registry is located rather than the registrar.

That's sort of the nub of the issue. So if we circle back to the privacy shopping, jurisdiction shopping thing, would the requirements be the same for a registrar in Iceland as they would be for a registrar in Atlanta given this sort of (deal)?

Dan Halloran: Thanks Mikey. It's Dan again. So just a note of caution I'm running on short sleep and it's a little bit (unintelligible). This is the kind of stuff that I'd usually rather do in, like, a memo or a presentation or something more prepared.

But I can say that ICANN assigned the exact RA with a thousand-plus registrars and it has the exact same Whois obligations across all those thousand registrars whether they're in Iceland or Nebraska or whatever.

We have a GNSO recommended and board adoption ICANN procedure for dealing with conflicts should they arise. We never actually used this procedure with a registrar but we have a procedure in place if a registrar ever comes to us, whether it's in Nebraska or Iceland and says, "Hey, we've got a

problem with my (unintelligible). I need to modify my (use) obligations. Do you have steps we can walk through to deal with that situation?"

And then just note - just a footnote that I want to put on your question, just to note it. I don't want to give in to all the complexity of it but if you're sitting in Nebraska, it might not just be the laws of where your registrar is located that applies but there's also Nebraska laws or US laws or - so it's not necessarily just the laws of the registry or the registrar. You're the subject of that data and therefore, the laws where you sit can be relevant too.

Mikey O'Connor: So maybe I picked a bad - so if I live in Europe, I, the registrant, the local laws that bind me - and this gets us to the ERP and the union discussion about privacy rights that's ongoing right now, correct, that those laws may change in a month or two? Not a month or two. (Steve) is shaking - maybe a year or two?

Okay, well. Okay, well, I'm not going to go there. I guess the question that's on my mind is, is - and Avri, do you want to sort of jump in? I guess the question is - yes? Let me do the queues. It's too hard. Okay, so you were first, then Avri. Okay, so let (Don) go and then Avri and then back to me.

Don Blumenthal: Well, the (solid) question I have here is we're focusing on new registrars and what are the procedures out there and how much will it come up where a registry may have problems with privacy issues?

Mikey O'Connor: Back to Dan, I think.

Dan Halloran: Yes, I'd want to go check it but I think, in theory, the same procedure - I don't know if, (Steve), you remember better, but if it's - on its face, a registry and registrar procedure or if not, then we would follow the same procedure or something analogous to it.

We have had a couple of registries that have come to ICANN and said we want to modify our Whois obligations because we think we have an issue under local laws. And it's been a - I'm waiting to (write a letter) kind of carefully documenting the steps of exactly what happened but we, you know, ICANN undertook what the public consultation changes in agreements, at least taking those procedures in light.

I think there was debate at the time whether the actual procedure had been triggered and the groundwork was there that ICANN would have to follow that procedure but we took it into account when handling that registry request to modify its Whois obligations.

Mikey O'Connor: So it's a procedure that's been attempted at the registry level, not at the registrar level but presumably it would operate in a similar way all the caveats of (a thinking) memo to follow.

So if we go down that route, then let me recap what I think I heard, which is today, all registrars in all jurisdictions operate by the same RAA agreement requirements for publishing clean data.

However, there is a possible avenue to bury those requirements based on jurisdiction and that proposal - that process would be the way to do that if that was ever needed. But today, the choices - and this is back to this nub issue that is interesting to me.

Today - there went the network. I'm not going to worry about it. There has been no ability for a registrant to shop registrars for privacy, and thus, the transition from thin to thick and the privacy issue of losing that shopping is moot because everybody's been operating under the same data collection requirements. Am I tracking on that, (Dan)? Avri, I'm getting good facial expressions. Do you want to jump in?

Avri Doria: Not until you give me permission.

Mikey O'Connor: Oh, you always have permission, Avri. You know that. Anyway, go - do you want to jump in and then come back to Dan?

Avri Doria: Okay, thanks. First of all, apologies for being late. I was trying to call in sick but then I realize having this issues disposed of without having come in to talk about it would make me even sicker.

So first of all, I wanted to take issue with a couple things. It's not that they can pick and choose that is an issue. The issue is the people living in all these jurisdictions have certain rights.

As ICANN has said multiple times, it doesn't matter what our policies or contractual conditions say, of course they do not expect anyone to break their local law. They have the obligation, first and foremost, to respect their local law.

Now what's happened with these privacy directors, for example in Europe, is that you came up with them a while ago and various countries seemed to be catching up in terms of enforcement, you - is starting to catch up in terms of enforcement.

So all of these registrants currently have a set of rights. Now it's unfortunately, perhaps that no one has sued any of these registrars yet for their privacy protections and perhaps one of the strategies that we should have taken was to encourage a couple lawsuits against registrars so that now we wouldn't be talking quite as theoretically but we would actually have somebody being sued. And I think that's a great idea.

Now, deep down, I kind of hope it happens though I dearly would regret it for the registrar. But the point is that they do have rights whereas the set of rights that they might have at a registry based in the US are obviously very much lower in terms of their privacy protections.

That's why we are seeing various efforts to get major US corporations to deal with those rights. But they don't have to. The US, you know, doesn't really have to ever accept those EU rights, and certainly it wouldn't be the law but one would have those rights in the US.

So that, I think, is that jurisdictional change that basically removes people's rights. It would basically be ICANN saying even if you didn't pick it for that reason, that - I'm trying to get to that issue sort of thing - that's irrelevant.

It could be relevant. I know it's relevant for me in terms of what project I'm doing, yes. I went and got a registrar in Iceland because I wanted Iceland's rules. So I've at least done that in one case. But - so perhaps I'm the one that'll actually do this in Iceland.

But that is, I think, a major point in that. So the nub, the issue as you're describing it, that everyone has the equal condition, is not the case. They may have a contract that has the same words, but the conditions they're under are the ones that their jurisdiction mandates.

And that's what you change when we mandate that data, moves to the US, and that data is subject for review under US law, Nebraska law, you know, the law of the registry. So we are materially changing the privacy conditions that those people live under.

And that's where I find us having a real problem in that we are forcing the removal of a right. I found it unfortunate when the board, on its own, or maybe it was a staff (at the time), decided not to grant that right to new gTLD registrants but they didn't, so there's very little to argue about except for, or course, presumptive policymaking.

But in terms of this condition, those people do have those rights and I don't see where we could sort of take it upon ourselves to sort of say rights you

had, you no longer have because we've decided that a US, you know, that this needs to have one law predominate is the point, so that's what I wanted to add there.

Mikey O'Connor: Hang on, (Alan). So just to add to my little list, I want to make sure that one of the things I'm building on the screen is this list of where these requirements come from. So we have RA, RAA, the registry/registrar agreement, and I think what I'm trying - check in with Avri is another source of requirement is local privacy law on the registrant or local privacy rights.

Avri Doria: The local privacy rights of the registrant.

Mikey O'Connor: Of the registrant. Okay, just wanted to make sure I'm capturing that right. Okay, I've got (Alan) then (Jim) and anybody else? I'll let you stay with wrinkled brow for a while. You can see why this is an interesting puzzle. There - okay, go.

Alan Greenberg: First on what Avri was talking about, it's quite true that a registry, if it's in a jurisdiction such as the US, which has far fewer privacy laws than Ireland, Europe, whatever, but - and it's a big but - the registrar who operates under those privacy laws is still required under current Whois rules, under the current contracts, to submit the information to - sorry, to make the information available. Avri is saying no.

Avri Doria: A contract cannot force someone to do something against the law.

Alan Greenberg: I understand but I haven't heard of any evidence that is anything against the law. The registrar/registrar agreement is required to ask and get permission from the registrant to display the data and currently that data is displayable.

It's exported all around the world in various databases. People sell it. So although it might be that acting purely as a local agent, the data may not be

displayable unless they get permission, they do get permission. And the data is available.

For instance, there are retention laws saying you can only retain data for two years in some jurisdictions. However, what is on Whois right now in a thin Whois model, the data from the registrar may need to be purged two years after the registration but that data lives on forever.

Mikey O'Connor: Okay, (Joe) and then...

Joe Waldron: Thanks.

Mikey O'Connor: See, you're back in your job and you're doing a darn fine job at it. So back to you, (Barry), for the queue. Carry on.

Joe Waldron: Okay, so I just wanted to echo (Dan)'s position about - that we don't want to make interpretations of agreements here on the fly but just to clarify, I think there is a difference especially when you look at dot jobs and we're the backend provider at VeriSign for employee media operating dot jobs, so again, I'm a little bit on thin ice on that, making a legal assessment.

But there's a difference between the data that's collected by the registry from the registrars and the data that's displayed. So when we think of Whois, we kind of often lump all of that together. In the case of dot jobs, there is what you'd refer to typically as (thick) data that is collected and passed to employee media because they have registration requirements that need to be met in order to validate that it's an appropriate registration.

But the Whois provides thin data. So - and I just bring that up, not to say that, you know, that that's a model that's used elsewhere but, you know, that that's a - I think an important distinction in terms of what data is being passed and, you know, which has the jurisdictional questions but it's also the public access of that information.

So just a - I just wanted to clarify that on dot jobs. And I think (Dan)'s also right - dot name, back when global name registry was operating it, I think was the first one that came back and made some changes to their registry agreement in order to comply with some of the privacy laws for dot EU. So I just wanted to make those two clarifications.

Mikey O'Connor: And before I go to you, I just want to add one thing. This working group is only looking at the impacts of the transition from thin to thick. You're looking at more than that, you rascal. You've (borne) your scope all out of - all right, you know, the really interesting one for me, anyway, is the transitional one. Go ahead.

Mikey O'Connor: You know, if I can just ask folks to identify yourselves. Could you identify yourself for the record on your comments?

Joe Waldron: Sorry, it's (Joe Waldron) from VeriSign.

Mikey O'Connor: Thanks. And as I said earlier, the - I think a lot of folks out there primarily looking into transition issues, but the charter does require us to look at whether ICANN in the future should be requiring thick Whois.

Man: Yes, (Unintelligible). Just to echo what we said, in the registrants, when they order, one the (patient) orders at the registrar and (they're not happy) in the registrar, didn't have (unintelligible), there are steps perhaps on the (data) to be able to (unintelligible). So that's - I think at some point, we just consider that is was not an issue anymore.

From what I understood, because they had (to pass it) and I guess if one of the registry's changed (to a different) jurisdiction, they would have to warn the registrants to gain another (unintelligible). Maybe they don't read the terms and conditions but they click and (it's one).

Mikey O'Connor: Carlton?

Carlton Samuels: Sorry, it's Carlton Samuels for the record. I'm picking up on a couple of issues. First of all, it (could) be intriguing while we haven't had any lawsuits from registrants. And that tells you something, it says something, because there's something called informed consent.

The rules under which the contracts are made usually says what jurisdiction the participants would subject themselves to. I'm from a common law country and I'm used to looking at contracts and I've never seen a contract that doesn't outline to you where jurisdiction access is for the parties of the contract

And that is usually very clear. The second thing is - and even in countries where you see privacy laws, there is informed consent. If the registrant is informed of their rights and what the requirement is to register a domain and they accept the terms and the conditions, that is something that is - it seems always not to be recognized in these documents. The third thing is this - in a transitional state you are always going to have to deal with the issue of what the legal environment is that the database is going to end up. And that for many more reasons will determine what the stand is for the registry, but that still would not relieve them of either the right to go back to ICANN and ask for a variation in the agreement or they accept the terms of the existing agreement.

The point I'm making is this. There is ample opportunity, even with transition, to make changes and maybe why you are not seeing so many lawsuits is probably because these things are actually being adhered to by the actors. Thank you.

Man: And so we have Kathy, Avri, and then Wendy.

Steve Crocker: Let me just jump in real quick and compliment Kathy. Kathy is not a member of the working group. She was in the audience. She wants to address us. She's come to the table so we know that she does. She's got in the queue. So if any of the others would like to join this conversation, just find a chair near a microphone and do what Kathy did. Carry on Kathy - Kathy Kleinman for the transcription.

Kathy Kleinman: And thank you to Marika for signaling that I was allowed to do it. I wasn't sure what the rules were. Excellent discussion everyone - let me introduce myself. My name is Kathy Kleinman. I'm a member of the non-commercial stakeholders group and also an alumni of WHOIS Review Team. So, this is - you know, WHOIS is an issue that some of us on the table have been dealing with for a long time and it's nice to see people who haven't been stuck dealing with it for ten years - dealing with it as well.

So, an observation and then a question - and this is follow up to Avri's. The observation is - I'm hearing about transition of - for - and transition, just let me double check - the big 800 pound gorilla in the room is the transition of dot com, which would be to verifying the registry located in the United States with a 100 million records. We have a 100 million registrants in dot com and some percentage are U.S. registrants - some good percentages is not - so coming from European with data protection, Japan with data protection, Canada with data protection, South Korea with data protection.

I don't know to what extent you've looked at the statistics but I worry about this and it seems to be a scale entirely different than dot org - so, observation. Now, the question - I see OWOP from the (unintelligible) group and the question is about consideration of the future - especially since as Don pointed out - this is about a recommendation for (unintelligible) on all future registries as I understand it - not just the new GTL's in round one who have been mandated the WHOIS but round two, three, four and fourteen.

So, as I understand it, some of the new protocols may have something we've talked about for years which is tiered access -- the ability to perhaps not to display certain data. And that data might then be made available through the protocol, and God-willing due process, to different groups that might need it for reasons that through policy we decide together people should see that data. So, law enforcement intellectual property and others who might need the data for investigative purposes.

What happens now in a fixed WHOIS environment? And I open this to (Dan) and others and I know this is - but have you thought about it and what happens now and under who's jurisdiction does the reveal take place if you've moved registrant data from a send WHOIS, from the local registrar that I know and I know where they're located - perhaps to a registry in Saudi Arabia or Iran or some other country. How is that handled and have you thought about the implications of that? And if that's not clear, I'm happy to keep trying to clarify because it's a complicated question.

Man: I'm just going to let Berry take us through the queue for a while because, you know, you've built quite a queue, and we'll sort of try and circle back to all this stuff. So we have Avri, Wendy and then (unintelligible).

Avri Doria: Hi, Avri Doria again. Looking at the notion of complied consent - first of all, obviously I'm not a lawyer. I don't even play one on T.V. or in these rooms, but I know that the rules of un-implied consent do differ and I know that there are jurisdictions where you can't give up your right. You know, a right is a right and it remains a right and you can sign any contract you want but that doesn't give up your right. In other countries, yes, you can sign away your right at the drop of a penny. There's also the issue with the European privacy rules - I would expect - that the - it's not the rights were new but the declaration of those rights and the codification of those rights came after one side that implied consent, if indeed there was an implied consent that allowed you to give up those rights.

So, are we saying that having in the past at some point - except at a situation where you have no rights - it doesn't matter that the rights were now declared, "You don't have them" - or indeed does anyone within the EU - within any registrant within the EU - indeed have those privacy rights that they could enforce? I do agree it's still too bad that no one has taken this to court yet but I don't think that ICANN should get in the business of sort of saying, "We want minimalist protective policies until somebody sues us." You know, that basically, we need to sort of understand and uphold the rights of privacy that people have. So, I think that the implied consent sounds like a really, you know, killer argument but (a) we don't know to what degree it applies in all places and (b) to what extent it applies to rights that have been recognized long after you did your signing.

Wendy Seltzer: Thanks - Wendy Seltzer from the non-commercial stakeholder group and interested observer of the worker group and long been interested in WHOIS privacy issues. So, to follow Avri - we should also need to recognize that ICANN is making policy in its determination of what registrants have to sign when they agree to registrar accreditation agreements. ICANN is setting the conditions for users for the domain system and we - as the stewards of this process should not be saying every person who wants to register a domain name must give up privacy rights, must consent to the display of private information in a public WHOIS, but rather, we should be giving people more substantive options there. So, I don't think we should be accepting - but because we can put an adhesion contract on them we should but rather let's give people better choices.

And, we're also making policy for existing and future top level domains. So while currently much of the debate is around a couple of thin registries that are facing pressure to go thick, we're looking at future rounds as we discuss this - and I would like to - for us to leave open the option that future registries can choose different models and that future registrants looking at their registration options for domain names can choose based on those considerations as well as what the (unintelligible) happens to look like.

Steve Crocker: Berry, I'm going to jump in - beauty of being the Chair. Wendy just touched on a point that I sort of want to inject back into the conversation. One of the things that I've done in my little notes - it says, "This is a puzzle. What kinds of things can we do to mitigate the puzzle?" And one of the suggestions that came out was well maybe we warn people when this transition happened in the whole informed consent thing. But one of the other things that (Dan) brought up - and by now (Dan) is going to be pretty unwilling to speak much because he's really going to want to write a memo and I get that - so I'm going to put words in your mouth unless I get them wrong, just let me know, but otherwise, don't want to put you on the spot.

But one of the things that came out is this notion that maybe a registrar in a jurisdiction could get a variance just like registries have done in the past. Maybe a registrar in a privacy, friendly jurisdiction could apply for a similar variance and then provide the people - you know, I'll pick on Avri - who, for whatever reason wants to be in a different privacy regime than the one of the registry. Maybe the way through this little puzzler is to introduce the idea as a mitigation of permitting variance of registrars to preserve that choice and then the mitigation would be that as this transition takes place, one of the things that could happen would be the people who want the different privacy standard in a jurisdiction could change registrar.

So, I've got (Dan)'s - my goal in a face-to-face meeting is to have everybody's brow wrinkled. I mean, that's the thing. This is not a no-brainer and that's the reason why it's such an important part of this conversation and the reason why I picked this topic for this face-to-face thing - and now, back to you Berry and on with the queue.

Berry Cobb: Thank you Steve Crocker. Let me just respond to a few of the things that have been said. Kathy's correct that we're now in a period where there may be changes to - in fact, we're not even going to be calling it WHOIS anymore. We'll be calling it Registrant Data Directory Service. I'm still working on

deprogramming myself here on that. That is going on and - but I would hate to see - at the same time we started this process with the issue report and setting up the working group and so on and so forth - probably close to a year ago now - it's the genesis of this - and it would be a shame I think to say, "Well, let's put this on ice until we see where everything ends up with - expert crew and whatever comes after that" - which I understand will be discussed later today.

When people say the process is broken, that would be exhibit A because that's saying, "Well here we have a narrow, well defined, well focused problem and ICANN is incapable of dealing with it until it does - a lot of other much more complicated and complex issues." Second, on implied consent - you know, there's a little bit of déjà vu here. Look back to WHOIS working groups - back around the time of (unintelligible), (Rome), (Montreal) - 2002 to 2004 roughly - there was a lot of discussion about whether registrars should be required to do more to explicitly obtain consent. Should there be - you mentioned there's a click and that's the consent. We should add a separate click just on this issue which is now more common than it was perhaps then that you have a separate click where you accept a privacy policy or whatever.

The registrars strongly opposed that at that time. I assume it might have come up in the renegotiations of a registrar's accreditation agreement. I see - I don't see anything about it in a proposed provision of the registrar accreditation agreement. And even so, it really is not the topic of this working group. Again, that's a much larger topic affecting every single GT/LD registrant. And finally, you know, just again, as a bit of a reality check - and we talk about the hypothetical Nebraskan who wants to be - to keep the registration separate - but just two things to remember.

One is, we do have - there is something called a proxy registration. And whether - how you feel about it and what is for a con is actually - I mean, it's not as big as dot com but it's about a third of the size of dot com. There are

30 million proxy registrations in GT/LD world. So, people do use that mechanism.

And second, you know, although sometimes we don't - since this organization is about domain name system to a greater extent - we sometimes don't pay attention to the fact that there are many ways to have an extremely robust online presence and live a full virtual life without registering a domain name at the second level in a generic top level domain. That's all we ever - that's all we are talking about within ICANN. And within this working group we're actually talking about an even smaller subset of that. So, let's kind of put that in context - thank you.

Man: And so we have (Ora), Don and gentlemen across from the queue.

Man: And so there was a question lurking about authentication and in (WORDS) where I got the question - to paraphrase it - suppose I create from - (WORDS) my data in a (WORDS) registry and there might be some jurisdiction limitations - can - does (WORDS) of the mechanisms to make that distinction? (WORDS) itself does not have the possibility to make that distinction but there is an authentication model in (WORDS) where the backend of that authentication model could go - could basically maintain a database of which registrations fall under which jurisdiction. And in the backend, for instance, go out and create a certain places for what is allowed and what is not.

But that's all back in processing which needs to be transformed in giving back a flack back to the database for this user to show its data. So this is all backend stuff where it basically allows for the user to give a set of credentials and then get (unintelligible) answered and it's based on a set of credentials. How the server determines what data belongs to that or what data is - that credential is allowed to see is back in processing.

Don Blumenthal: Somebody (unintelligible) a little time. I did want to come back to Kathy's point though -- that cured access -- this is Don Blumenthal, I'm sorry - I violated my own request didn't I? And as long as I've interrupted you, we're going to have to chop it pretty short because we have the opening session in about five minutes. So, everybody has to speak very succinctly for now on. I'll go back to my parents' NY roots - so I'll talk faster.

Yes, tiered access has been out there for a while. I mentioned that I've been at this for ten years - and I've been at this nest for 15 and so, WHOIS issues never die. But there was tiered access called (Crisk) a number of years ago under the (Irisk) protocol that never went anywhere. And it's one thing to say that the protocol supports it but then it's going to be ICANN's job to make policy decisions as to whether tiered access should be allowed - under what circumstances - and I was in law enforcement side so I think it's fair to say, even if it's possible - there are severe questions of whether it's practical, even though there are some underlying issues that are there..

(Galstone): (Unintelligible) commercial stakeholder group. What - maybe what I'm saying is very naïve and simplistic but I want to come back to Avri. Avri, several times - considering nobody sued - wouldn't it be a good idea to go to the Euro jurisdiction and actually explain to them, "Look, we are trying to move from, into (unintelligible). This is what's going to happen. What is the decision of your restriction and (unintelligible) or the different restrictions have a problem? We don't have something like that where (unintelligible) can be built in. But instead of waiting for somebody to sue, then isn't it possible to find out what is actually the position of the different jurisdictions first?

Man: How are we doing on queue and time?

Man: We just have Wendy in the queue and we've got seven minutes left and (unintelligible) you might want to turn your mic off just in case.

Wendy Seltzer: Very quickly. Wendy Seltzer - In response to (unintelligible) - it's a useful suggestion was tried in some of the earlier questions about - by registries and registrars - and the response that they got was that the data protection commissions and - won't give advisory opinion. So, like U.S. courts that won't rule on an issue until it comes up in the litigation, they won't give that kind of advice - and so, unfortunately, we can't use that.

(Galstone): Sorry to come in again, it's (Galstone). So, it's that stupid options - why don't we do agreed suings so that somebody actually agrees with the registrar to sue him and they go through the process just to find out what the law situation is.

Steve Crocker: And with that, you can now understand why I love working groups. I mean, this is the - this happens once a week for an hour a week. And this is the heart of ICANN group. This is why I participate because there are a bunch of really smart people working really hard on some really interesting puzzles and you just got to see it and you can see and (unintelligible) of it.

Thanks for being here. Thanks for all of you coming. Thanks for you for coming and joining us. Next meeting - and thanks Marika for being Marika and keeping me on track. So no, we will not meet in one week. Avri is so disappointed. We will meet in two weeks. You know, and we may have a little bit light attendance - Don mentioned that he might not be able to join us - but we are trying to get an initial report done by (Durben). We don't have many weeks between now and then so we'll see you all in two weeks and thanks.

END