

**ICANN Costa Rica Meeting  
WHOIS RT / GNSO joint meeting - TRANSCRIPTION  
Sunday 11th March 2012 at 15:45 local time**

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Coordinator: Excuse me, I'd like to inform parties today's conference is being recorded. If anyone has any objections you may disconnect at this time and thank you, you may begin.

Stephane van Gelder: Okay can I ask GNSO councilors to come back to the room please for our session with the Whois review team? We have Emily here so we'd like to start in a couple of minutes please. Operator, please set the recording up and we'll start in two minutes. Thank you very much.

Okay so I'd like to start this session now, please. Councilors, if you could take your seats. Emily and Kathy are here to basically I think run through some of the questions that we had. If you remember we had a session with the Whois Review Team a few meetings ago.

We'd asked a few questions and the Whois Review Team have come back with some answers which were sent to either me or the list, I forget, just a few moments ago so I haven't had time to send them on

but both Emily and Kathy are here to take us through the answers so I'll pass it over to you guys.

Emily Taylor: Thank you very much, Stephane. Thank you, council members, for inviting us to your meeting today. It's a great opportunity particularly as we've not had the opportunity to meet with the GNSO Council yet in our process. This is a good moment now I think to have a discussion on the draft report and the draft recommendations.

As Stephane said we had a session I think in late January where I was due to take you through the findings and recommendations and then promptly disappeared into a euro-style tunnel in one of my best presentational moments ever and left Olof to take you through the slides.

But the questions that you came back with I think it's fair to say, Stephane, these were sort of gathered together as a result of the transcript so while you might have been attributed as the question asker it might just be more general questions that came through.

Could I just say, before we work through the individual questions, a couple of just opening remarks? First of all having consulted with Stephane I understand that you're all fairly familiar with the Whois Review Team's draft findings and recommendations and therefore I'm not proposing to go through those one by one with you now; however if you want any clarification on those, if you have any questions please shout and I'll be very happy to go through them.

The second more overarching comment that I wanted to make at the outset is that in our call for public comments - and I think many people

who might have missed this because it's tucked away at the end - we specifically asked for feedback on who should be tasked with the various recommendations, whether the - what would be the appropriate process to fulfill the recommendations if they are adopted and also what the general priorities ought to be because we all live in a world where there is limited resources and endless so where would the best targets for our limited resources be.

So with that I think that might anticipate some of the questions that were posed by the GNSO Council. And I'd just say to confirm at the outset in no way are we seeking to undermine any of the processes within the ICANN arena that are established or to usurp the role of the GNSO or any other actor in the proper ecosystem.

So our recommendations are directed to the Board because it is the Board who asked us to do this review under the AOC. However it is not envisioned by us that the Board should manually fulfill each one of the recommendations themselves but they should oversee the process and to ensure that the right things are done. So if I could just get that out on the table I hope that that calms a few nerves.

Right, can I just turn - unless there are any immediate comments or questions? Oh yeah, could I just for some manners just ask members of the Review Team either to raise their hand or to stand up as Bill has because Kathy and I are not alone here; we've got others here as well.

Thank you very much. So...

Stephane van Gelder: I'll just - while you're talking manners if I can ask when you speak to mention your name before you speak for the benefit of the scribes; that is useful. Thank you very much.

Man: Who was that talking?

Stephane van Gelder: I was just about to say - having said I never do. But I've been told that the scribes know me and I speak quite a lot so I don't need to say my name but I can. My name is - I've forgotten it, sorry.

Emily Taylor: Thank you, Stephane. Okay so the first question - okay I'm going to - this is like going to the optician; I can't actually read this. But I think it says...

((Crosstalk))

Emily Taylor: Oh right. In the light of Recommendations 1 and 18, which are just set out there below, you've asked us whether or not ccTLDs were to be included in the review team's work. Thank you for that question because it provides us with the opportunity to clarify but really you can see our response at length there.

But in brief, no is the answer. We're not directing - we're not directing our recommendations towards ccTLDs nor are we directing our recommendations towards IP address registries who also provide Whois services.

The task that we were set by the Affirmation of Commitments was to look at Whois policy and its implementation which is done through the mechanism of the contracted - the contracts for contracted parties. And

so it is the gTLD Whois service which is the focus of our work. And thank you for giving us the opportunity to clarify that. It's something that we have noted we probably need to clarify a bit better in our final report.

Stephane van Gelder: Yeah, yeah, we'll open this up for questions and comments at each of the questions if that's okay with you, Emily? Jeff wants to ask one. And I just wanted to say that I would actually suggest that - I understand the explanation you've just given and the fact that this was not something that is a required task for you or even a task that you were asked to do.

However logic suggests that if we are reviewing Whois we might want to review Whois with recommendations for everyone that uses it. I understand that there are specific - I mean, the G-space is one specific area where your purview is an obvious one and that the CC-space is a different case. And no one's suggesting that the two be lumped together.

However it would seem logical for the hard work that your team has done to possibly come across to the CCs as either recommendations, advice, whatever, but something that would be known to them because otherwise this just feels like, you know, we always say ICANN operates in silos but these - the G and the C-space are the two biggest silos you can get.

Emily Taylor: Thank you.

Stephane van Gelder: Might want to use that one (unintelligible).

Emily Taylor: No thanks for those remarks and suggestions. I would just say that we were quite - we were quite keen to particularly look at examples of good practice in the ccTLD arena as we approached our task because, as you quite rightly say, this isn't the only show in town. And indeed many of the more established or larger ccTLDs have had to grapple with similar issues.

And in particular within a data protection environment so they've had to grapple with how you strike the appropriate balance between the different stakeholders.

I think that if we go back to first principles what we've been asked to do is very much particularly look at ICANN's performance. And ICANN has very much a role to play through the contracted parties and the compliance effort that it has with reference to the gTLD space.

But certainly your comments are noted. I think that the report will be there. Examples of good practice in the ccTLD arena are highlighted and we were - we benefited from inputs from the ccTLDs. So it's all there; it's in the appendix as well. You know, it might well be that they would be interested in what we have to say.

Stephane van Gelder: Thanks, Emily. Jeff.

Jeff Neuman: Yeah, I mean, I guess you always have to consider that in a lot of spaces the Gs compete with the Cs. So to the extent there are recommendations that impose costs on the Gs but not on the Cs that always has an impact. And that can always be behind participants. And I'm not sure - I'm not saying that it was behind it; I don't know who the

ccTLD participants were (unintelligible) someone - whether there were others.

But, you know, since they view them as competitors it's always easier to make recommendations that you know will never be applied to you if you know that they're only going to be applied to others.

But actually I really wanted to address the Recommendation Number 1 because I think, you know, the Registries, by the way, are preparing a lot of comments on this and are going to submit it - hopefully approve it at this meeting to submit it.

One of the ones we were kind of scratching our heads about is that it basically says the ICANN Board should oversee the creation of a single Whois policy. And to us it was isn't that the job of the GNSO? When you say that - especially with gTLDs you're saying that the Board should oversee the creation of a single policy document.

Now I thought, in reading the first time, that you were really just talking about the actual administrative task of putting together what the policies were. But then I kind of read it and was a little confused as to whether it was talking about more of a role.

Emily Taylor: Yeah, thanks for highlighting that and certainly, no, we're not recommending the creation of the policy. It's literally a clerical, administrative job to document it. I can see that Bill wanted to come in with some comments and Kathy, I don't know whether - but the thing - while we're figuring out how the microphones work is to emphasize - and thank you for giving me the opportunity to do so because I always forget to say this.

All of these recommendations are consensus recommendations. So they have the unanimous support of all of the Whois Review Team members and that includes registries, registrars, law enforcement, brand owners and representatives from ALAC as well as ccTLDs. So tempting as it might be to say well this is one particular party promoting their own interest I would strongly emphasize that these are consensus recommendations that have full support of all of the members of the team.

Stephane van Gelder: Thanks. I've got Kathy next and then Wendy.

Kathy Kleinman: Just a quick note to support - this is Kathy Kleinman, Vice Chair of the Whois Review Team. Jeff, it is an administrative type of document that we're considering. I'm actually the drafter of Chapter 3. And it was hard; the pieces of the Whois policy are scattered, some in history, some in the RFCs, some in registry contracts, registrar contracts, consensus policies and a consensus procedure.

And so when we asked ICANN staff where's the policy, where do you find it? We found it was in these different places. So for the next - and many people have asked us in our different sessions and we've, you know, throughout the ICANN community, where is the gTLD Whois policy?

And to have to say you have to go here and you have to go there; let's make it easier for the next group of people that ask that question and put it in one place, administrative purely.

Stephane van Gelder: Thanks. Wendy.



Wendy Seltzer: Thanks. Wendy Seltzer. And are we going through the recommendations in order or is this the appropriate time for me to ask some more general questions?

Stephane van Gelder: Well perhaps we can finish on just this line and then come back to you for general questions just on this specific because...

((Crosstalk))

Wendy Seltzer: Because I don't see my question addressed among the question and answer document.

Stephane van Gelder: Okay well let me go to Bill and Jeff because I guess they want to respond to this point and then come back to you. Bill.

Bill Smith: Going back to a point that I believe Jeff Neuman made - or comment about potentially receiving recommendations from certain parties who would not be subject to those recommendations. Having sat in on virtually all of the meetings and discussions in these areas I recall no such dialogue either in fact, perception or in any other manner.

So I took each piece of the information that came in on its face. I don't believe that we evaluated anything in terms of being anticompetitive or encountered any input that could be conceived as anticompetitive.

On the first recommendation I would point you to the word "oversee" - the Board should oversee. It does not say the Board should create; it says it should oversee the creation. And I firmly believe that that is the

Board's responsibility as a board of directors is to oversee things, create strategy.

And they have - the Board members themselves has a fiduciary responsibility to the entity and in this case it's both the corporation and I think the community at large. So they are responsible to oversee these things.

Stephane van Gelder: Thanks. Jeff.

Jeff Neuman: Sorry, I have a partial lawyer part of me that's jumping out of my skin when you say a fiduciary duty. I'm not sure this would be a material - maybe others would disagree but the lawyer in me says yes they have a fiduciary obligation for material obligations. I'm not sure that this would fit in there. But I understand your point.

And one of my points was not - I did not mean to imply that there was any improper motives but there are perception issues when you tell the gTLD community as a whole that here are some extra things we're going to put burdens on you, we're going to penalize registries.

Our recommendation is there should be penalties for registries and registrars in the G-space but nothing on the C-space where we see a lot of the problems in the C-space as well as the Gs. We all share the problems in a lot of respects. So while there are the good ones out there there's, you know, there's the not so good ones as well. So it's a perception issue. I didn't mean to imply that I thought there was any in there. But it's something that needs to be dealt with on the perception.

And one of the things you'll find in our comments too is that when you say the Board should oversee what we feel though is that if the Board oversees it should still go back to its proper place which is the GNSO which is the GNSO community that sets policy for the gTLDs.

So one of the messages you may see from the registries, for example, is that when you say the Board should oversee or the Board should do something in our mind that means the Board should send it back to the GNSO.

Emily Taylor: Is that through the clerical documentation work that you think the GNSO should be doing?

Stephane van Gelder: Obviously (unintelligible).

Jeff Neuman: Well I think it's...

Emily Taylor: Sorry, where we've actually just said we're not asking for policy development here but we're asking for documentation of existing policy; would you see that as the GNSO's role or would you see that as a staff role?

Jeff Neuman: I would say it would be the staff within the GNSO that would probably do that. But again, you know, maybe that wasn't so clear to me that it was clerical; it's helpful that you've clarified that.

Stephane van Gelder: So let's go back to Wendy for some more general questions then.

Wendy Seltzer: Thanks. Wendy Seltzer. And my first question is Recommendation Number 3 that Whois should be - that ICANN should make Whois a strategic priority. And in order to ask that question what else did you consider among ICANN's strategic concerns? And what would you de-prioritize in order to increase the focus, emphasis and resources given to Whois?

Emily Taylor: Well luckily - obviously I'm desperately looking for members of the Whois team to help me out on this question. But luckily, if I can just be flippant, we were tasked to look at Whois and we - the - and not to look at the entire panoply of ICANN's strategic efforts or its endeavors.

However I think you make a very good point that this is about, you know, how to use limited resources in the best way. Can I - I don't know the answer. Luckily I don't have the job of implementing it. But the issue that we were trying to put on the table is that as far as we can see it is not currently having the strategic priority or if it does have that strategic priority that is not filtering through into implementation effectively.

So thank goodness two of my review team members are coming to my rescue here. So do you want to go first and then (unintelligible)?

James Bladel: Yeah, I think you touched on my response there at the very end which is that I don't think that - the short answer is we didn't - we didn't look outside the walls at the other areas and decide, you know, how they were going to contend for limited resources.

I'm sorry, I should mention this is James Bladel, Registrar representative on the Whois Review Team speaking.

But to more specifically address your question, Wendy, Whois was obviously given a fairly prominent place as a topic within the Affirmation of Commitments. And I think what we're discovering and what we're saying in this particular recommendation is it doesn't seem to align with the priority that it's given strategically within ICANN and that there's a gap there that should be closed.

So it's not necessarily saying you should take away from these other areas to elevate Whois but it seems to be a misalignment then between the priority that it's given versus the prominence it features into the Affirmation of Commitments. That's...

((Crosstalk))

Emily Taylor: Thank you.

Bill Smith: And Bill Smith, Whois Review Team. I want to echo James's comments there. There were four review teams in the Affirmation of Commitment, the affirmation as a covenant, it is a promise made by the Board - the ICANN Board to the world. And each of these things, in my opinion, deserves recognition within the organization.

And it - and our review indicates that there is no one who is paying attention to this from a strategic perspective. There are people who pay attention to it from a compliance perspective, okay, but not strategically in saying where does it need to go.

And so our recommendation is put - basically you made a promise, put some teeth behind it. Turn this over to someone and make them responsible for it.

Stephane van Gelder: Okay shall we move onto Question 2 which was...

Emily Taylor: Jonathan.

Stephane van Gelder: Oh, Jonathan, sorry.

Jonathan Robinson: Stephane, actually it's Jonathan Robinson. In some ways I think I was trying to come to Emily's rescue. But I'm not sure that - the Review Team, I mean, the way Wendy has questioned it is because of the way this is phrased. It says ICANN should make Whois a strategic priority.

Now I accept that that's in a sense implicit and it cascades down from the Affirmation of Commitments but it might be better phrased to say ICANN should consider the strategic priority of Whois and if so this will involve rather than the Whois Review Team saying ICANN should make Whois a strategic priority as a statement in our space but I'll leave that with you.

Emily Taylor: Well, yeah, thank you. But perhaps if I could just come back on that and explain why we phrased it in the way that we did is because we believe it should be a strategic priority because it is a litmus test for effective - now I'm sure you'll all jump - sort of jump at the word - how can I put this?

This is an industry with no external regulator. And one of the factors of Whois - one of the features of it is it relied upon by people who are

different than the people who are supplying it. So there's no actual benefit that we could determine apart from there is technical use of, you know, technical to technical use of Whois.

But the real people who are relying on Whois are law enforcement  
brad protection if I can put it in that very, very crude summary. The evidence from our consumer research is consumers don't use it, have never heard of it and when they're taken to it they don't understand what they're looking at. So we can rule out at the present time consumers as the users of Whois.

So we say this is a test for the ICANN community. How well are you doing here in providing a service which is accessible to these users who rely on it and providing them with accessible and accurate data. And we say at the moment we don't see that the strategic priority is there; we think it should be. Not yes we considered it and we don't think it should be. We don't think that's an appropriate response.

Stephane van Gelder: That's a good lead-in to the second question because if Whois is of no use to registrants then why are we spamming them all the time. But before we get to that I've got Jeff and David. Oh, Jeff's going to wait so I've got David.

David Taylor: I just wanted to say as you've seen with the IPC comments that we fully support the Whois Review Team findings. You know, just following up there with the strategic priority what we'd also applauded in that was the fact that a senior member of the Executive Team be responsible. And we suggested that should be the CEO of ICANN so we're fully behind you on that.

Stephane van Gelder: Thanks, David. So can I move onto the second question?  
Yeah, Yoav? Or - go on, quickly.

Yoav Keren: Very short. Just to clarify you said that you found that it's not relevant to consumers. When you say consumer do you mean registrants or just consumers wherever they are?

Emily Taylor: We did a study which is quite fully documented in the appendices - and I recognize that not everybody might have got to the appendices. But we covered a - I think 10 countries, 1200 users.

Now some of them were registrants and some of them were not registrants. But the term consumers - and you just wouldn't believe how long we discussed what was meant by the term consumer in our work. But by consumers we eventually could live with Internet users.

And so the evidence of the study was they haven't heard of it, they don't use it. There's a big question there of if they had heard of it and if it was presented to them in a useable fashion would they find it useful? I think they probably would. But it would take an enormous effort and expense in our view to get from where we are now to that point.

Stephane van Gelder: Thanks. So let's go to just one online comment and then Question 2.

Marika Konings: Yes this is Marika. I have a comment from Greg Shatan from the IPC. He said he would suggest that Recommendation 1 be revised to state that the ICANN Board should resolve to authorize the GNSO to oversee the recommendation.



Emily Taylor: Thank you for that input.

Stephane van Gelder: So Question 2 was asking about the data reminder policy. I'll let you go through the response, Emily, thank you.

Emily Taylor: So what we're recommending is that really - if I can just start a little bit of a narrative on this. When we looked at the implementation of Whois policy the Whois data reminder policy which obviously those in the industry would be fully aware is quite a deal.

At the time when we looked into it - so we know how many registrars comply with sending it out and that's really, really high, you know, there's very, very good compliance on sending out these notices. But then after that the tape stops; you just don't know what happens.

You don't know whether registrants make changes as a result, whether they contact the police to say that they're being spammed or whether they say I've never heard of this registrar who is this person? What is this all about? We just don't know what the impact of that policy is.

And so our initial start off pointed let's have some metrics here to follow up. You know, there is - acknowledged a great deal of effort on the ICANN Compliance department's part and of the registrars. They put a lot into complying with this; what do we all get out of it? Does it fulfill its goal of making data more accurate? And can we say how much - what impact it does?

If it's not possible to trace that then I would suggest to you that we have a problem and that it might be ripe then for review in terms of

how do we achieve the objective of improving the general accuracy of data.

Stephane van Gelder: Thanks. As a registrar I can tell you that the response we get is systematically either please stop spamming us or where is this coming from. I can - my own personal view on this policy is that it's bad; it's a copout. It's something that ICANN has imposed to try and address something that is not being addressed.

So I would fully agree with the conclusions that you are drawing from this. It is an effort for the registrars to comply with this. And I can also confirm that compliance - ICANN Compliance is on top of this so it is a lot of work for a lot of people. And I think it's a nuisance for the people that get these emails.

And I do not think that - I have no metrics for saying so - I don't think that registrants will update their Whois records as a result. And one of the things I think is often forgotten in this policy is that some registrants have several hundred or several thousand names so they are getting one email per name. So I'll let you work that out.

Emily Taylor: Yeah, thank you very much. Bill.

Bill Smith: I believe this is a GNSO policy though that was - it's not an ICANN-mandated - ICANN the corporation. This came through the policy development process.

Stephane van Gelder: Absolutely. I was talking about ICANN in the general sense.

Bill Smith: Okay. And as has been pointed out perhaps the policy needs to change and this would be the appropriate place to do it. All we were asked to do was to review the policies around Whois. And we've done that and pointed out that this appears to be, you know, an issue. And we are suggesting someone address it.

Stephane van Gelder: I think your response is interesting, Bill, because often when we say, you know, there's something wrong or we've done this in the past and we don't think it's working often the kind of response you get is but hey this is your group that's come up with this. And that's fine. I understand that.

But I still think we should be free to question what we've done especially as generally the people have changed and the, you know, the groups have changed. And I think this community is actually good at doing that - the community at large once again - ICANN at large I think is good at questioning itself.

But perhaps what we're not so good at is, you know, trying to change things in a relatively timely manner. At times perhaps, I mean, I think this policy is a problem for a lot of people that get these emails. But your comments are well taken.

Emily Taylor: Well - Stephane, I think if it's true - the anecdotal evidence that you've given about the sort of reception is very similar to what we heard from James and obviously Go Daddy has got many millions of customers. So I think we're all on the same page.

And of course if it was the case that this is a policy with wonderful objectives that haven't quite hit the target in its implementation I don't

think that we would be seeking to apportion blame there or that it would be the first policy that has fallen short. It's simply just trying to get us - drag us back to the original objective which surely is to make - to reach out to the registrant in some way and remind them of their obligations about data quality.

And I think I would hope that the GNSO community would view this as an opportunity to make a positive impact here in the event that the W - whatever the acronym is - does find - it does turn out not to be as great as it was hoped to be.

Stephane van Gelder: Thanks. Any further comments on this? So let's move onto Question 3 which was addressing your Recommendation 5. You've got it here, Emily, if you can read it better. But I can just summarize.

Your recommendation is that ICANN should take measures - appropriate measures to reduce the number of unreachable Whois registrations. And the question was what are these measures - I mean, do you have an idea of what they are?

Emily Taylor: In fact we just were discussing this within our group before coming in here. Wendy, would you like to chime in? No, no I'd be very happy to give way to you if you're - okay.

So we were just - we were discussing this before we came in here. And, you know, I'll be completely frank with you; we wanted to - in fact I'm going to quote from James. We were trying to get to what we mean by this recommendation. And we were all sort of dancing around our handbags on this. And...

Stephane van Gelder: James has a handbag?

((Crosstalk))

Stephane van Gelder: Show us the man-purse, James, come on.

Emily Taylor: Sorry, James. James was not dancing around the handbag he just cut to the chase and said the policy exists let's do better. We think this is possible. We're putting a stake in the ground. We will be completely frank that the figure of 50%. We didn't do an extensive study on that number; what we're trying to do is put the stake in the ground and say look we have the tools here.

There are many tools that exist. We have deliberately not gone into implementation measures. We think that to do so would be inappropriate. We're not the best placed people to do that. We think that the industry itself in many cases are taking steps and their own voluntary measures to address inaccurate data.

And to be clear we're not just talking about data going in right now. There is an enormous legacy problem. And any issue that - any solution for inaccurate data must in our view also take account of an reduce that huge legacy problem which I think is very clearly set out with numbers behind it and empirical proof. And we can all disagree with the metrics but these are the metrics that we have is the (Nolk) study and that was what we were based on.

And if I could just say one more thing which is of course data accuracy means different things to different people. There is an enormous

amount of money and effort that could be spent on taking something that was 80% accurate and moving it to 100% accurate.

We wanted to be very clear about what we see the problem as being. The people who are relying on Whois are law enforcement and those who are enforcing their private law of rights. They just want to contact the registrant.

And if it's not pretty it doesn't matter. If it's not every single record that's accurate it doesn't matter. We are talking about contactability. And the ones where you can't make contact in any way are the obvious target to direct resources.

Stephane van Gelder: Thanks, Emily. We've got a lot of questions and we're running out of time. So we'll carry on going through the questions as time permits but if you do have - I've got Wendy and Jeff in the list. If you do have general questions throw them in now before it's too late please. Wendy.

Wendy Seltzer: Thank you. Wendy Seltzer. And I'll start with questions on contactability because I'm again wondering sort of what are the alternatives under consideration. You know, is it - did you consider that some people's interests might be served by having a mechanism for deleting the domain rather than contacting its registrant?

Or for out of band identification rather than going through the Whois and - versus saying that contactability was a key element here. I mean, sure it's a statistic that can be measured but is it the one that's most meaningful to our people who are finding problems with domain registration getting their recourse against those problems.

Emily Taylor: Okay I'm not sure if I completely understood the question so bear with me if I answer a different one; I'm not intending to I'm just trying to address the question as I understood it.

I think that there - so what alternatives did we consider? I think that the - I would hope that all of our recommendations would be viewed holistically together. And in particular that we - that in my view - my personal view are a very important finding the Whois Review Team is that there is legitimate purpose for privacy and proxy services.

That this is not something that is a fault in the current system however the, you know, the policy that surrounds it needs to be developed a little bit more; it's currently immature.

Now there may be people who don't wish to be contacted. I think what we're talking about here - if I can be clear - is the sort of rubbish records. We've had some - I don't know if we can get it on the screen - where there's just the letter A for every single field. It's obviously a completely useless record. And, you know, then there's nobody who's going to get any good out of that.

This is a different issue from the legitimate rights of registrants who want to not have their address or details right up on the Internet. And so I hope that's the question you were asking but please let me know if I've misunderstood it.

((Crosstalk))

Wendy Seltzer: Just to clarify because part of what I was asking is does contacability solve the problem that people are concerned about or is that just a sort of - only a rough proxy for what we're actually concerned about that could be solved for in a better way than just cleaning up a database because we happen to have the database?

Emily Taylor: Thank you for clarifying. Yes is the answer - yes it would. And we were very fortunate to have on the review team representatives from law enforcement, from those who are doing brand protection.

And obviously, you know, in each of our recommendations I think there would be some people on our review team who would want more and some who would want less but they could live with where we ended up.

And while law enforcement in particular - I was personally very impressed by the pragmatic view - pragmatic approach taken by law enforcement which is, yeah, we'd like it to be totally accurate but we can live with anything. And we got very similar feedback from say the IPC saying, you know, a record, you know, even if it's mostly inaccurate is still useful to us if we can actually make contact.

So that was the key element that we were getting to. So we put it in light - we don't all want to be A+; we might be B-.

Wendy Seltzer: Thanks very much.

Stephane van Gelder: Thank you. Jeff.



Jeff Neuman: I know since we're getting low on time I was going to wait but I'll ask the question. Obviously the registries are preparing their statement but one of the key elements that the registries are concerned about is the notion in the report that registries are somehow - play a key role in ensuring the accuracy of Whois data.

There's not much explanation around that. You know, normally the relationship - I should say in unsponsored TLDs and even in some sponsored TLDs right now the registries don't have the direct contractual relationship with the end user; it's more the registrar.

There are some sponsored TLDs that do have a relationship but that's - at this point that's kind of - that's in the minority right now. With new gTLDs though who knows whether that is going to change or not.

But I guess my question is there's a heavy emphasis on penalizing the registries and registrars if they're not doing their job. And so what does the review team consider the job of the registries? I was a little confused by reading that.

Emily Taylor: Okay. Well thank you for that - for making that point, Jeff. I think that this is obviously a distributed system where - and if you look at some of the other recommendations that we're making we're talking about I think it's more helpful to think about the sort of unbroken chain of contractual responsibility so that you can actually flow right the way through.

You're quite right of course in saying that there may be limited amounts that certain registries can do but if they have knowledge, if they can do

something it's more a question of less bashing people over the head and telling them where they've gone wrong.

And I would draw your attention to some of the recommendations we're making where we're talking about thinking of appropriate incentives as well as punishments and also of, you know, I can't remember the word but, you know, not just the all or nothing cancel be a credit or do nothing but the sort of incremental kind of responses might.

So what we're trying to do is to create a landscape where each party while they may not have the entire solution they are willing to play their part to do what they can to make things better.

Jeff Neuman: Yeah, I think it's - just as a follow up to that. I think this is one area where the Cs and the Gs differ in a lot of respects. Because in the C world it's very possible that the registry also, quote, accredits registrars as well as their registry.

And the problem within the G world is that you have a third party ICANN that accredits the registrars. And ICANN policies are generally enforced by ICANN. If ICANN has an entity that's accredited then the registry is under an obligation - it has to accept that registrar whether it likes it or not.

And so therefore sure if the registrar is violating a registry specific policy the registry could take action against the registrar. It's very ambiguous as to whether a registry could terminate a registrar or penalize a registrar for a registrar violating an ICANN policy.

That's actually an issue that's been talked about on a number of occasions and has never been formally addressed. And so one of the problems we in the Registry Stakeholder Group have is okay now you're telling us that registries need to enforce the ICANN policy - that's the way we're reading it. I know you're shaking your head. That's the way we're reading it. And that the registries may be penalized for not enforcing the ICANN policy.

Emily Taylor: No - well that's certainly not our intention, Jeff. And I think that we would - I would probably caution us all not to channel our inner lawyer too much. And I know for some of us that's a - quite a challenge.

But, you know, there are many - there are many actions and interventions that can be taken short of the letter of the contract. And I think that where we were - what we were hoping to encourage is much more of the spirit of compliance of cooperation and this helpfulness on the part of the registries no less than any other party in this complex ecosystem.

That is not about pointing the finger and telling - and beating people up but it is actually - but the other side of that is in many cases for example if the registry is operating at thick Whois and has a view of certain problems, just as ICANN gets to hear about inaccurate data or a registrar that is not pulling their weight then that is a key piece of information that ought to be done, you know, that ought to be - somebody ought to do something about it.

And that they're perhaps - each party in this ecosystem might ask themselves what more they can do in this - in the effort to improve data accuracy.

Stephane van Gelder: Okay we have five minutes left roughly. So perhaps we'll drop the list of questions and answers and just open this up for general...

((Crosstalk))

Stephane van Gelder: ...yeah, general questions or comments. John.

John Berard: I don't know if you were here earlier when we were talking with the Board but Whois was described as a museum piece. Do you agree with that?

Emily Taylor: I think - I tend to take a bit more of a pragmatic approach. It's that the analogy I would give is it's a bit like asking for directions in Ireland; the answer is well I wouldn't start from here. You know, and if we were creating this world from a blank page well perhaps we wouldn't have some of the tools; we wouldn't have some of the solutions that we have. But we have them.

The Whois might not have been intended to do what it does but the fact is now it does this and people do rely on it. So unless somebody has got a magic wand to wave and sweep the whole - the whole thing away and just replace it overnight with something perfect I suggest that we just take a pragmatic view.

Stephane van Gelder: Don't you just love British humor? Rafik.

Rafik Dammak: Thank you. Just want to ask if there was any assessment on the application of all this recommendation on the privacy? Yeah, and

freedom of expression. And my second question is more about IRD, the Internationalized Registration Data because I am part of that working group. And I'm not sure what you are recommending on this - on that side.

Emily Taylor: To take the first part of your question, yes, indeed we did consider issues of privacy and issues of freedom of expression. And I hope that that comes through in our finding and recommendations which acknowledge the legitimate role of proxy and privacy services.

Now those are - we're not saying that the current situation is perfect but I hope - if you actually look at the wording of the Affirmation of Commitments that would seem to suggest a completely open and accessible total - all bells and whistles everybody's data fully accessible all the time.

And we actually step back from that and say well in fact if there's a way of getting it that there is a legitimate reason for somebody not to want that out in the public that's fine as long as someone with a legitimate reason to get it can get it.

And your second question on - I think it was on IDN registration data and that we - we were very fortunate in having other members of the IRD working group as well on the review team.

One of the findings of the (Nolk) study which was quite surprising, and we were aiming for low hanging fruit here, was that many of the seemingly inaccurate data were in fact an anomaly with transliterating IDN registration data. That was their finding.

And in fact the - our other findings was that despite the fact that IDNs have been on the market now for over 10 years there is still no standardized way of capturing and presenting the registration data relating to those IDNs.

And of course it follows I think that people who have registered in an IDN would also find it much more convenient to enter their registration data in their mother tongue and their - the appropriate script. So that's where we're going on that.

Stephane van Gelder: Thank you. Can I ask - well Zahid, I was going to say can I ask Zahid to make the final comment since Jeff put his hand up...

((Crosstalk))

Stephane van Gelder: Yeah, because we're under some time pressure here. So, Zahid.

Zahid Jamil: Yeah, thank you. I just wanted to ask did the review team have an opportunity to consider when you do hand over legitimate, you know, when law enforcement contacts the registrar it's a legitimate request, that's perfectly fine. But there are law enforcements out there and there are law enforcements out there, there's Iran and there's the US and there's a big difference between the two.

What is the mechanism if you've given any thought to how you differentiate? Or are there let's call it safeguards in place that would sort of ensure the privacy would be protected and that this wouldn't impede human rights and things of that nature?

And when I say that sort of I'm thinking of the context of the COE Convention Article 15 for instance.

Emily Taylor: And you raise a live issue; one that was debated at length and very passionately within the review team as you'd expect. I think that the challenges are the - you've got a contractual system which is by definition international versus national laws, national sovereignty and national norms.

And so we - after a lot of debate about that we - I think our view - and there are many different views around the table - our view is that, you know, these things do happen and these things should not happen in the world.

Is a contractual mechanism the way to usurp those national laws? What takes precedence? (Can) we hope to prevent that happening through a contractual system of private law contracts? I think this is a huge debate for us and one that we'd be very happy to engage in.

Kathy Kleinman: And I just wanted to supplement that with guess what? We're not deciding that. The privacy and proxy rules come back to you. And so that's a valid - you get to do where you wouldn't want us involved with those details. But that's exactly the consideration we hope will come before the GNSO shortly - sooner rather than later.

Stephane van Gelder: I really need to wrap this up.

Woman: Sorry to interrupt but just quickly on this point. This issue has also been live in human rights arenas as well in the United Nations. And the very clear message going to governments has been that their request -

their law enforcement request must comply with international human rights standards. They must follow due process in the rule of law.

And I think there will be some utility in connecting some of those conversations for the benefit of this policy process in the right place and when that's appropriate.

Stephane van Gelder: Okay so let's wrap this up. And let's thank the Whois Review Team for their presence. And enjoyed the dialogue. Thank you very much.

GNSO councilors can I ask you then to make a room change? We're expected in 15 minutes in the GAC room which I forget the name but it's over there in the Ramada main lobby - walk into the lobby, first room on your left.

Emily Taylor: And can I just say to Whois Review Team members don't disappear we're still carrying on our meeting in our previous room.

END